UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.
_____/

RECEIVER'S APPLICATION FOR FINAL FEE AWARD FOR RECEIVER'S COUNSEL

Roberto Martínez, as the 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 ("Livoti"), hereby files this application for a final fee award for his counsel, the law firms of Colson Hicks Eidson and Kozyak Tropin & Throckmorton, pursuant to the terms of their original retention in this matter.

INTRODUCTION

The MBC Receivership is nearly at its conclusion. The funds accumulated are ready to be distributed to the investors who were the victims of MBC's fraudulent conduct consistent with the claims process approved by the Court in this case. VSI is in the process of being sold to a new owner, which will allow for the servicing of the policies that have been kept by investors going forward without the need for a Receivership. Although there is the potential for some

additional recoveries of funds in the future, and there remains pending an appeal by certain insurance companies of the final Sale Order entered by the Court, the time is now ripe to make a distribution of the Receivership's assets.

The Receiver's counsel in this case were originally retained, with the Court's approval, at a substantially reduced hourly rate with the opportunity to apply at the conclusion of the matter for a fee award based on the results obtained. The Receiver and his counsel, Colson Hicks Eidson ("CHE") and Kozyak Tropin and Throckmorton ("KTT"), are making such an application at this time. The reduced bills and reductions made by the Court have resulted in approximately $1,335,743 in fee reductions for the Receiver's counsel. CHE and KTT have worked on this matter at an average hourly rate of approximately $218 and $264, respectively. This application is being made for a final fee award, and the Receiver and his counsel will not submit any future applications for compensation (and have not submitted bills for any work done since May 2009), although there will be continued work required of them on behalf of the Receivership.[1]

The Receiver submits that the results obtained in this Receivership have been excellent. The Receiver has over $117.5 million available for distribution. The investors who chose to sell their policy interests ("Sell Investors") should recover approximately 23% of the amount they invested with MBC. The investors who chose to keep their policy interests ("Keep Investors") should recover approximately 13% of the amount they invested with MBC now, plus whatever they ultimately receive in the future as a result of their decision to keep their investments (and continue paying their share of premiums and administrative fees). This is just one measure of the successful results of this Receivership which will be discussed in greater detail below.

1 The Receiver and his counsel have also not treated any of the time spent on this application as time billable to the Receivership and have borne the cost of retaining the experts who have provided Affidavits in connection with this application at their own expense.

THE INITIAL RETENTION OF RECEIVER'S COUNSEL

The Receiver retained his law firm, CHE, to be primary counsel to the Receiver on all litigation and general receivership matters. The terms of CHE's retention were that CHE would bill its partner time at the discounted flat rate of $350 per hour (where normal rates back in 2004 were $350 to $525 per hour) and would discount by 15% the rate charged for associates and paralegals. However, CHE would be permitted to

> make application for enhancement of fees based on all relevant factors as set forth in Section 4-1.5 of the Rules of Professional Conduct for determining a reasonable fee to be determined by the Court, after review by the Receiver, application to the Court, notice to all interested parties and hearing at an appropriate point after conclusion of any significant settlement or resolution of the entire matter.

[D.E. 67 at ¶ 9.] The Court approved of the Receiver's retention of CHE by Order entered June 4, 2004. [D.E. 105].

The Receiver also retained KTT, based on its particular expertise in bankruptcy and receivership issues. The terms of KTT's retention were to bill for the time spent by any partner at the flat rate of $350 per hour (while normal hourly rates back in 2004 for their partners ranged from $310 to $600 per hour) and to discount by 15% the rates charged for associates or paralegals. In addition, KTT was also permitted to "make application for an enhancement of fees based on all relevant factors as set forth in Section 4-1.5 of the Rules of Professional Conduct for determining a reasonable fee to be determined by the Court . . . at an appropriate point after conclusion of any significant settlement or resolution of the entire matter." [D.E. 61 at ¶ 8.] The Court approved of the Receiver's retention of KTT by Order entered June 4, 2004. [D.E. 108].

A VERY BRIEF HISTORY OF THE RECEIVERSHIP

The Early Days. MBC was in the business of selling viatical settlement contracts. In a viatical settlement contract, a provider like MBC would purchase the rights to the death benefits on a life insurance policy from an insurance policyholder who was terminally ill or of advanced age, and would then sell fractional interests in those death benefits to investors, who would realize a return on their investment when the policyholder died.

This Receivership began in May 2004 as a result of the action brought by the Securities and Exchange Commission ("SEC") against MBC and its former principals, Joel Steinger, Leslie Steinger, Steven Steiner and Peter Lombardi for violations of the federal securities laws by selling unregistered securities and making fraudulent misrepresentations in the sale of those securities.

At the inception of the Receivership, the Receiver's immediate task was to get his "arms around" MBC's and VSI's operations, which were then in full gear in three different locations with a substantial number of employees. MBC occupied a full floor (and part of a second) of a major downtown office building in Fort Lauderdale; VSI had its own office space at a separate location; and VBLLC had a small office in Atlanta, Georgia. MBC had sold viatical settlements to over 30,000 investors around the world, and VSI was administering over 7,000 insurance policies with a face value in excess of $1.5 billion. The Receiver's immediate responsibilities from the Court were to preserve the status quo of MBC's and VSI's operations while litigation proceeded over the Court's jurisdiction and the SEC's motion for a preliminary injunction against MBC and its principals. The task of assuring that the premiums would continue to be paid, the policies continue to be administered, and that no policy would be allowed to lapse was a daunting one.

The SEC Action. The SEC's action was hotly contested from the start by MBC's former principals, who were represented by prominent and skilled defense counsel. At the inception of this case, there was a substantial period of time in which there was significant doubt as to whether the SEC's action (and thus the Receivership) would be dismissed for lack of federal jurisdiction. After vigorous litigation, this Court held that the viatical settlements sold by MBC were indeed "securities" under the federal securities laws, and the Eleventh Circuit eventually upheld that decision in *SEC v. Mutual Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005).

In addition, a lengthy evidentiary hearing (effectively a bench trial) was held before Magistrate Judge Garber on the SEC's motion for a preliminary injunction, throughout which the Receiver and his counsel participated in discovery and other matters related to the hearing. The Receiver was called as a witness at the hearing and cross-examined at length by defense counsel. Magistrate Judge Garber eventually entered a 47-page Report & Recommendation in November 2004 finding that MBC and its principals had engaged on a Ponzi-type scheme and had made fraudulent misrepresentations regarding the "life expectancies" of the insurance policies, and recommending granting the SEC's motion for a preliminary injunction. The preliminary injunction was subsequently affirmed by this Court in February 2005 in an Order Granting Preliminary Injunction [D.E. 712]. The Receiver also pursued litigation to have Joel and Leslie Steinger held in contempt for violating the Court's Asset Freeze Order, which included an evidentiary hearing before Magistrate Judge Simonton.

In the SEC Action, the Defendants all eventually agreed to the entry of Consent Orders and to pay disgorgement and civil fines of varying amounts to settle the SEC Action. (1) Joel Steinger agreed to pay $9,500,000 in disgorgement and fines, of which the entire amount has now been paid, including post-judgment interest, after the successful litigation of interpleader

actions by the SEC and the Receiver in New Mexico and in Minnesota and litigation over the proper calculation of the post-judgment interest due before this Court. (2) Leslie Steinger agreed to pay $9,500,000 in disgorgement and fines, of which only $4,605,590.89 has been paid. (Leslie Steinger is deceased, and the SEC, among others, has a collection action pending against his Fort Lauderdale home). (3) Peter Lombardi agreed to pay $6,000,000 in disgorgement and fines, all of which has been paid. (4) Steven Steiner, in a joint settlement of the SEC action and the Receiver's lawsuits against him, agreed to the payment of $3,925,000 in disgorgement and fines, of which only $750,000 was ever voluntarily paid. The payments received from these judgments total approximately $20,850,000.

The Policy Disposition Process. The fundamental dilemma in this Receivership was that the enormous portfolio of insurance policies serviced by VSI also required an enormous sum in premiums to be paid to keep the policies in force. While there were substantial sums available in "premium escrow accounts" earmarked to pay these premiums at the inception of the Receivership, the "burn rate" as a result of the cost of paying those premiums was also very high. This put a fuse on a problem that could eventually result in massive lapses of policies for non-payment of premiums if steps were not taken. A process for disposition of the policies, by sale or otherwise, had to be implemented before the money available to pay the premiums ran out.

After extensive briefing, hearings and input and objections from diverse parties in interest, this Court eventually entered an order authorizing a disposition process. Under the Court's Order on Disposition of Policies and Proceeds [D.E. 1339], a voting process was implemented in which the investors were allowed to vote whether they wanted to sell their policy, keep their policy by assuming the responsibility for payment of premiums themselves, or allow their policy to lapse. The weighted majority vote (based on amount invested) controlled

the decision as to each policy. To the Receiver's knowledge, this was a unique approach in a viatical settlement receivership and gave rise to unique issues and challenges.

The disposition process ultimately resulted in 3,052 policies being kept by the investors, representing over $1 billion in face value. This required the Receiver and his team to scramble to implement an entirely new system for VSI to handle the Keep Policies. Prior to the Receivership, VSI and MBC had never billed investors to pay premiums and were not set up to do so. The issue was further complicated by the problem that, inevitably, some investors on any given policy (and some policies have over 100 different investors on them) would inevitably default on paying their share of the premiums, which in turn required systems in place for handling "shortfall" situations. A process and computer software system were developed and put in place to handle all of this. This has resulted in all of the Keep Policies being successfully managed to maximize their value by keeping them in force or, where shortfalls occurred, allowing other investors on the policy to take on a larger portion of the policy, selling the fractional interests in the policy or selling the entire policy through an auction process. No Keep Policy has been lapsed as a result of inadvertence or mistake during the course of this Receivership.

The disposition process also resulted in the Receiver being directed to sell approximately 3,400 policies with a face value of approximately $337 million. Through a variety of different sale processes, including auctions of portfolios of policies and sales of certain individual policies, the Receiver realized gross proceeds of nearly $29 million for the ultimate benefit of the investors, which, after reimbursement of premium expenditures, has provided an additional $20 million for distribution to the Sell Investors in the "Policy Proceeds Pool."

Defensive Litigation. MBC was also involved in a wide variety of defensive litigation around the country when the Receivership began. This included investor litigation in state and federal courts, regulatory investigations and actions from various state insurance departments, and other miscellaneous litigation. Prior to the Receivership, MBC had engaged some 72 lawyers and firms around the country, and had expended over $5.2 million in legal fees in 2003 alone, just to manage its various litigation and regulatory actions. The Receiver's counsel successfully managed this litigation to bring it to a conclusion at a minimum of cost and without any funds being required in the form of settlements, penalties or fines.

Most notably, a short time after this Receivership was ordered by the Court, a group of seventeen insurance companies (the "Intervening Insurers") that issued life insurance policies within the scope of the Receivership brought an ancillary complaint against the Receiver and the Receivership Entities. The Intervening Insurers made sweeping allegations of a portfolio held by MBC filled with insurance policies procured by fraud in an 84-page, 25-count Amended Complaint alleging claims for fraud, civil conspiracy, RICO and violations of the Florida Viatical Settlement Act. The Intervening Insurers also fought the Receiver at every step of the way in this Receivership, objecting to the Receiver's plans for disposition of the insurance policies, and objecting to every sale of policies to date (including appealing every order authorizing a sale of policies to the Eleventh Circuit). The Intervening Insurers claims, if accepted, threatened to deplete the Receivership of in excess of $100 million in existing insurance policy assets, among other things. This litigation ultimately resulted in an across-the-board victory for the Receiver and the victim investors in the Eleventh Circuit's decision in *American United Life Insurance Co. v. Martinez*, 480 F.3d 1043 (11th Cir. 2007).

Offensive Litigation. The Receiver also initiated a variety of proactive litigation to attempt to recover assets for the Receivership estate. This litigation, which is discussed in more detail below, included (a) actions against MBC's former principals and other insiders, (b) actions against MBC's former sales agents, (c) an action against MBC's outside auditors, and (d) actions against the recipients of various fraudulent transfers from MBC. These actions resulted in successfully augmenting the amounts the MBC principals agreed to disgorge in the SEC action (as well as assisting in collecting upon those amounts), the repayment of commissions by former sales agents, the settlement of various fraudulent transfer actions, and an eve-of-trial settlement for $3,500,000 against MBC's former auditors.

A Class Action was also brought on behalf of the MBC investors against a number of defendants. The Receiver's counsel worked jointly with the Class Counsel to assist in achieving a number of substantial settlements, including a settlement with MBC's former outside counsel Brinkley, McNerney Morgan Solomon & Tatum ($10,000,000), a settlement with a number of banks that served as MBC's "escrow agents" ($9,750,000), and a settlement with certain MBC insiders including Peter Lombardi ($1,684,624).

The Claims Process. The Receiver also initiated a claims process to determine who should be permitted to share in the pool of funds to be distributed by the Receiver and on what basis. On April 3, 2008, the Court entered its Order Authorizing Claims Process [D.E. 2058]. The Receiver subsequently sent out 49,127 Claim Forms to every MBC investor whose policy had not yet matured, as well as to other potential claimants and creditors. 36,922 Claim Forms were ultimately returned. The Claim Form indicated that the Receiver intended to recommend to the Court that the amount invested by each investor should be recognized as the investor's claim

amount (a "dollars invested" approach), but gave the investor an opportunity to disagree with that amount and seek additional or different damages as his or her claim amount.

The great majority of the Claim Forms (87.7%) were returned without any objection to the Receiver's recommended claim amount. The Receiver's team worked diligently to minimize the number of Claim Forms that would be objected to by working directly with the investors to resolve issues with numerous deficient Claim Forms that were returned. The Receiver also successfully objected to claims brought by various trade creditors in order to maximize the recovery to the investor victims (by subordinating roughly $600,000 in trade creditor claims).

Eventually, after briefing and hearing before the Court, the Court entered its Order Granting Receiver's Motion for Final Determination of Allowed Claims [D.E. 2188] in October 2008. The Court determined that the basis for all investors' claims would be the amount invested. The Court also determined that investors whose policies have matured before the date when the distribution of the Receivership assets is made will not be entitled to share in the distribution (having received the benefit of their investment).

The "Spin-Off" of VSI. Finally, the Receiver has also undertaken extensive efforts to sell VSI to a new owner and operator. Because VSI is still administering approximately 2,700 "Keep Policies", and because many of those policies will likely continue to need to be administered well into the future, VSI needs to continue to function after this Receivership has concluded. Thus, this was not a situtation where VSI could simply be dissolved and its fixed assets sold. In addition, the Receiver was concerned that, once sold, VSI would be "on its own" as a commerical enterpise and out of the control of the Receivership and the supervision of the Court. Thus, equally as important as a goal was attempting to find an operator that could continue to run the business in a way that will provide the best possible security and protections

to the "Keep Investors" going forward. After an open auction process, the Receiver sought approval of the sale of VSI to a new owner for $1,000,000, which includes provisions (such as a Trustee to serve as the owner of the Keep Policies) intended to accomplish that goal.

WHAT THE RECEIVER HAS AVAILABLE TO DISTRIBUTE

The Receiver has a total of approxiamtely **$117.5 million** to distribute to the victim investors. A schedule showing the cash balances of the Receivership accounts comprising that total is attached as Exhibit A. Other than a *de minimis* amount left over from certain pre-Receivership bank accounts, this sum represents "new money" made available to compensate the victims through various efforts. This sum is comprised of two pools of assets.

- In the **Asset Recovery Pool**, there is a balance of **$97,268,654**. This is not a final figure. There is also a current balance of approximately $3,992,882 in the MBC operating account, and there are other sums that may still be obtained and added to this pool, such as unclaimed funds and interest from the Union Planters distribution of the "pre-closing" investor funds (which are in excess of $3 million).

- In the **Policy Proceeds Pool**, there is a balance of **$20,287,041**. This is a final figure, as there are no additional policies to be sold.

Based on the Court's Order Approving Receiver's Plan of Distribution of Receivership Estate [D.E. 2257], all investors who have not had their policy interest mature as of the date of distribution will share *pro rata* in the Asset Recovery Pool. The investors on Sell Policies will also share *pro rata* in the Policy Proceeds Pool. The Receiver estimates that the Sell Investors should recover approximately 23% of the amount they invested with MBC. The Keep Investors should recover approximately 13% of the amount they invested with MBC, plus whatever they ultimately receive as a result of their decision to keep their investments.

AN OVERVIEW OF THE ASSETS RECOVERED AND THE VALUE PRESERVED BY THE RECEIVER AND HIS COUNSEL

The purpose of this section is to highlight what the Receiver considers to be some of the key results achieved by the Receiver and his counsel. They are (a) certain litigation recoveries, (b) the protection of assets from loss through litigation, and (c) other forms of asset preservation and recovery.

A. Litigation-Related Recoveries.

- *Spear Safer & Harmon*. In the accounting malpractice lawsuit against MBC's former accountants, Spear Safer & Harmon, the Receiver faced a number of hurdles to bringing the case, including defeating challenges to the Receiver's standing and overcoming the "*in pari delicto* defense". In addition, the Receiver relied on an aggressive "deepening insolvency" theory (that is, that Spear Safer's conduct allowed MBC to continue in existence and deepen its own insolvency thereby causing it damages) in its claims. Judge Dmitrouleas, in an order denying Spear Safer's motion for summary judgment, stated that "the trend in recent cases appears to cast doubt on the continuing validity of the deepening insolvency theory as a viable cause of action or damages theory," but nonetheless allowed the Receiver to proceed if he could show damages that were in fact caused by Spear Safer's negligence. *See* Order Denying Motion for Summary Judgment [Doc. 61] at pp. 8-9, in Case No. 06-60727. By pressing this case to the eve of trial despite these obstacles, the Receiver obtained **$3,500,000** for the investors that would not otherwise have been part of the pool of assets to distribute. This recovery standing alone more than covers all of the fees paid to the Receiver and CHE for the entire five years of this Receivership.

- *Other Litigation Recoveries.* The Receiver's counsel also undertook a variety of other offensive litigation, including (a) actions to recover fraudulent transfers in the form of payments

made from MBC funds to pay for the former principals' personal expenses (which resulted in over $300,000 in recoveries), *see, e.g., Martinez v. American Express Travel Related Servs. Co.*, 2007 WL 1695339 (S.D. Fla. June 8, 2007) (Cohn, J.) (denying American Express' motion for summary judgment); (b) litigation with MBC's former outside law firms to recover pre-paid retainers in the possession of the firms (which resulted in over $800,000 in recoveries); (c) actions to recover certain commissions paid to MBC's former sales agents (which resulted in over $140,000 in recoveries); and (d) collection efforts to collect on the judgments entered against MBC's former principals (which added over $340,000 to the amounts disgorged by the former principals). The total litigation recoveries from these various sources added **$1,666,649** to the Receivership's asset pool.

- *Class Action Litigation Recoveries.* In addition, parallel to the actions brought by the Receiver, the Class Counsel also brought actions against certain third parties. The Receiver has worked jointly with the Class Counsel to varying degrees in the prosecution of these actions and has assisted in the settlement of these actions, which resulted in a gross recovery of **$21,434,624** for the victim investors. The three settlements reached by the Class Action with the Receiver's participation are as follows:

(1) *Brinkley McNerney Morgan Solomon & Tatum, LLP & Michael McNerney.* Class Counsel and the Receiver jointly asserted claims against attorney Michael J. McNerney and the law firm of Brinkley McNerney Morgan Solomon & Tatum, LLP, the former primary counsel to MBC, for, among other claims, professional malpractice. These claims were jointly settled for **$10,000,000**. The Class Counsel and the Receiver moved jointly for approval of the settlement. The Class Counsel requested an award of attorney's fees at that time, but the Receiver reserved his opportunity to seek a fee enhancement for his work in connection with these settlements to a later date. [Case No. 04-21160, D.E. 470, at p. 1 n. 1]. The Court awarded a fee of 25% of the settlement amount to Class Counsel. *See* Order and Final Judgment [Case No. 04-21160, D.E. 477

at ¶ 33]. As this Court noted in its Order giving final approval to the settlement, "Lead Plaintiffs and the Receiver will have achieved an excellent result for the Class Members – one that will provide the Class with a substantial monetary recovery very early on in this Action that will, among other things, prevent BMMST and McNerney from wasting the proceeds of their insurance policies on their attorneys in further defense of this Action." *Id.* at ¶ 22.

(2) *Peter Lombardi, Anthony Livoti, Mark Pettyjohn.* The Class Counsel and the Receiver jointly asserted claims against Peter Lombardi (the former President of MBC), Anthony Livoti, Jr. (the former Trustee for MBC), and Mark Pettyjohn (an MBC sales agent), among other individuals. A settlement in the total amount of **$1,684,624** was reached with these individuals ($1,500,000 of which was from Lombardi and was above-and-beyond what he had already paid to settle the SEC action against him). The Class Counsel and the Receiver moved jointly for approval of the settlement. The Class Counsel requested an award of attorney's fees at that time, but the Receiver reserved his opportunity to seek a fee enhancement for his work in connection with these settlements to a later date. [Case No. 04-21160, D.E. 800 at p. 1 n. 1]. The Court awarded a fee of 25% of the settlement amount. *See* Order and Final Judgment [Case No. 04-21160, D.E. 808] at ¶ 29. As this Court noted in its Order giving final approval to the settlement, "Lead Plaintiffs and the Receiver will have achieved an excellent result for the Class Members – one that will provide the Class with a substantial monetary recovery and avoid the possibility of further litigation resulting in judgments which were not collectable." *Id.* at ¶ 20.

(3) *Bank Defendants (Citibank, N.A., Union Planters Bank, N.A., American Express Tax & Business Services, Inc.).* The Class Counsel also pursued an action against certain banks that had served as escrow agents for MBC, an action in which the Receiver assisted, but was much less directly involved than in the above actions. The action against the bank defendants resulted in a **$9,750,000** settlement. The Class Counsel and the Receiver moved jointly for approval of the settlement. [Case No. 04-21160, D.E. 932] The Court awarded Class Counsel a fee of 30% of the settlement amount. *See* Order Approving Settlement [Case No. 04-21160, D.E. 941, at ¶ 26].

B. Defensive Litigation to Protect Insurance Policies.

A short time after this Receivership was ordered by the Court, a group of seventeen insurance companies (the "Intervening Insurers") that issued life insurance policies within the scope of the Receivership brought an ancillary complaint against the Receiver and the Receivership Entities. The Intervening Insurers made sweeping allegations of a portfolio held by MBC filled with insurance policies procured by fraud. The Intervening Insurers eventually filed an 84-page, 25-count Amended Complaint alleging claims for fraud, civil conspiracy, RICO and violations of the Florida Viatical Settlement Act in which they sought compensatory damages, treble damages under RICO, punitive damages, and a declaration that an unspecified number of the policies they issued were void *ab initio*.

According to the Intervening Insurers, "an astounding percentage of policies sold to investors were actually procured by fraud," and "perhaps as many as 40% to 50% of [MBC's] policies are tainted by fraud." *See* Plaintiff Insurers' Brief in Opposition to Receiver's Motion to Dismiss [D.E. 49] in Case No. 04-6113-Civ-Moreno. The Intervening Insurers calculated that they had issued 1,700 of the policies administered by the Receiver and that "a substantial proportion of their policies, perhaps as many as 40%, had been procured through fraud." *American United Life Insurance Co. v. Martinez*, 480 F.3d 1043, 1049 (11th Cir. 2007).[2]

[2] The Intervening Insurers also fought the Receiver at every step of the way in this Receivership, objecting to the Receiver's plans for disposition of the insurance policies, and objecting to every sale of policies to date (including appealing every order authorizing a sale of policies to the Eleventh Circuit). Indeed, the Court's order approving the sale of a final portfolio of insurance policies by the Receiver has also been appealed to the Eleventh Circuit by the Intervening Insurers. The Receiver's brief was recently filed in that case, and the appeal is pending.

The Intervening Insurers were never precise in the exact amount of damages they sought. However, their claims, if recognized and borne out, threatened to deplete the Receivership of in excess of **$100 million** in existing insurance policy assets and a refusal to pay over **$15 million** in then-pending death benefits.

This litigation ultimately resulted in an across-the-board victory for the victim investors. The Eleventh Circuit issued a 62-page decision affirming this Court's dismissal of the Intervening Insurers' claims. *See American United Life Insurance Co. v. Martinez*, 480 F.3d 1043 (11th Cir. 2007). In fact, instead of having an unspecified number of insurance policies voided or an award of tens or hundreds of millions of dollars in damages as sought, the lawsuit resulted in the Intervening Insurers eventually paying out **$3,550,000** in death benefits on four of the specific insurance policies they originally challenged.[3]

In sum, this defensive litigation effort preserved and created substantial monetary value for the victim investors. Just the $3,550,000 in death benefits that the insurers agreed to pay (and would not have paid otherwise) standing alone nearly covers the fees paid to the Receiver's counsel for the entire five-year history of this Receivership. More broadly, if the Intervening Insurers' claims had prevailed even in part, the Receiver would now be distributing a far smaller pool of assets to the victim investors.

C. Other Asset Recoveries.

The Receiver has also amassed significant assets for distribution through other means. First, the Receiver managed to preserve the policies held by Sell Investors by, among other things, advancing premiums to keep them in force, so that they could be sold for their highest value. By strategically dividing the policies up into portfolios and individual policies, the

[3] The specific policies that the Intervening Insurers initially attacked, but subsequently paid the death benefits on were for (1) Wendell Mullins (a $1 million policy), (2) Wendell Mullins (a second $1 million policy), (3) Jack Johnson (a $50,000 policy), and (4) Gerald Metoyer (a $1.5 million policy).

Receiver conducted multiple auction processes through which all of the sellable policies were successfully sold. In connection with the sale of one particularly large policy (the B_ C_ policy), which was owned primarily by MBC, the Receiver, after conducting an auction of the policy, determined that the highest auction bid was insufficient and rejected the bid in accordance with the auction procedures. The Receiver subsequently undertook additional efforts to market the policy which resulted in the ultimate purchase price for the policy (of $10.25 million). This represented an increase of **$5,650,000** in the consideration received for the policy – an amount that, standing alone, is significantly more than the total amount of CHE's and KTT's fees over the entire five-year course of this Receivership. By means of other sale efforts for the portfolio of policies designated for sale, the Receiver obtained a gross amount of **$28,903,970** from the sale of policies held by Sell Investors.

Second, the Receiver also generated substantial value for the investors by stepping in to protect Keep Policies where investors on the policy defaulted on their premium obligations. As a result of the disposition process, there were 3,052 insurance policies where a majority of the investors decided to keep the policy in the voting process. However, when these investors were sent an invoice for their share of the premiums to keep the policy in force, some or all of them declined to pay their share of the premiums. To date, there have been defaults by investors on approximately 15,859 investment interests, representing approximately $300 million in interests in death benefits. So, the policies became either completely "unsubscribed" policies or "partially subscribed" policies. For these policies, instead of allowing them to lapse, the Receiver took various steps to try to preserve the value of the policies, including by surrendering the policy to receive some cash value for it. For the partially-subscribed policies, the Receiver used Receivership funds to preserve the fractional interests in the policies. These fractional interests

were then subsequently sold at auction or, fortuitously, the policy matured and the Receivership received that portion of the death benefit. Perhaps most fortuitously, the Receiver was able to find an institutional buyer to purchase fractional interests in the partially-subscribed policies – interests that are normally considered to be unsellable in the marketplace. These actions resulted in preventing a large number of policies from lapsing and instead generated approximately **$27,500,000** in value for inclusion in the assets to be distributed by the Receiver.

DISCUSSION OF FEE ENHANCEMENT REQUEST

THE APPLICABLE LEGAL STANDARDS

The leading case in this District regarding an award of attorney's fees in a comparable receivership case is *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468 (S.D. Fla. 1997) (Moreno, J.), known as the Premium Sales Receivership, a case with which this Court is most familiar. In that case, the receiver and his counsel and plaintiffs' class counsel worked together to obtain recoveries for victim investors who had been defrauded into investing in a grocery diverting operation that was in fact a Ponzi scheme. The receiver's counsel and plaintiffs' counsel worked under a "hybrid fee arrangement whereby the attorneys would receive interim payments at a substantially reduced hourly rate with a final enhancement or reduction of fees based on the amount recovered." *Id.* at 1470. The Court ultimately awarded the law firms involved a fee enhancement in the form of 15% of the common fund of $141 million that they had generated they had generated -- or $21,178,277 in fees. *See id.* at 1469. The law firms had been paid $7,525,200 in interim attorney fees already, so the net additional amount awarded was $13,653,077.

Although not a perfect comparison, this case is most analogous to *Walco* in several respects. As in *Walco*, the Receiver's counsel here were engaged on a similar "hybrid fee

arrangement"; the Receiver's counsel engaged in a "fragmented litigation against [a] diverse group of defendants"; the matter presented difficult and sometimes novel legal and factual issues; and the Receiver's counsel likewise agree that they will not seek any additional fees. *Cf. Walco*, 975 F. Supp. at 1470. There are also material differences with *Walco* that should be noted, including the fact that the value generated by the Receiver's counsel in this case is not solely in the form of a "common fund"; the funds available for distribution are not all or solely a result of the Receiver's work; and there was significant monetary value preserved by the Receiver's counsel that is not reflected in the simple dollar figures of what is available for distribution.

In determining the fee enhancement award in *Walco,* this Court relied on the analysis set forth in *Camden I Condominium Association, Inc. v. Dunkle,* 946 F.2d 768, 774-75 (11th Cir. 1991). In *Camden I*, the Eleventh Circuit held that attorneys' fees in common fund-type cases should be based on a reasonable percentage of the fund established for the benefit of the victims. The Eleventh Circuit noted that while "[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee," 25% of the common fund is a "benchmark" which "may be adjusted in accordance with the individual circumstances of each case." *Id.*

The Eleventh Circuit discussed the non-exclusive factors a court should consider in selecting the appropriate percentage of a common fund which may reasonably be awarded as a fee. These factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results

obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 775. Furthermore, the Eleventh Circuit also held that courts must also consider "any non-monetary benefits conferred upon the class by the settlement," and any additional factors unique to the particular case. *Id.*[4]

ANALYSIS OF THE "*CAMDEN I* FACTORS."

1. *The Time and Labor Required.*

This Receivership has indisputably taken a huge amount of time and effort to handle and now bring to a conclusion. The Receivership has been in place since May 2004 – roughly five years from start to finish. Measured purely on the number of hours involved, a total of 18,740 hours have been spent on this matter by the Receiver, CHE and KTT. More importantly though, the Receiver submits that the time spent has been extremely efficient in light of the nature and complexity of this Receivership, the pressures and complexities entailed in preserving the value of the Receivership assets, and the results achieved.

After the initial crush of activity when the SEC action was first brought and the Receivership first put in place, the Receiver's counsel has staffed this matter very leanly. At KTT, there has been one principal attorney handling the matter throughout. At CHE, in addition

[4] Rule 4-1.5(b)(1) of the Rules Regulating the Florida Bar, which was referenced in the initial retention of CHE and KTT, also sets forth factors to be considered as guides in determining a reasonable fee. These factors largely overlap with the *Camden I* factors and are: (A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (B) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature; (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained; (E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client; (F) the nature and length of the professional relationship with the client; (G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and (H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

to the Receiver, there has been one principal attorney handling offensive and defensive litigation throughout the receivership and one attorney handling operational and investor issues. The number of attorneys billing on this "file" has remained very limited.

The Receiver also took steps to reduce the amount of legal fees that would be billed – to the benefit of the Receivership estate – by, among other things, using an in-house counsel at MBC/VSI to handle much of the day-to-day work (such as dealing with insurance company issues and disputes and handling issues raised by counsel for various investors around the world) that would otherwise have been handled by attorneys at CHE or KTT. In addition, the Receiver used staff at VSI to function as a "customer service" department to handle as many investor inquiries and issues as possible in house, with only the most difficult or unresolvable issues and disputes being addressed by the Receiver's counsel. Again, while this sort of work might ordinarily have been handled by attorneys at CHE or KTT, the Receiver reduced the costs to the Receivership (and the fees billed by CHE and KTT) by having as much of this work performed "in house" at VSI as possible.

By way of comparision, in the "Lancer Receivership" (*SEC v. Lauer*, Case No. 03-80612-Civ-Marra), another SEC receviership that is pending in this District, a Receiver was appointed in July 2003 to wind down the affairs of the Lancer hedge funds, which like the MBC Receivership has required, among other things, the disposition of untraditonal assets (large holdings in unlisted securities) as well as affirmative litigation. As of March 31, 2009, the professionals (including professionals other than legal counsel) retained by the Receiver in that case have been paid a total of approximately $36 million in fees and costs, including $16.9 million to the Receiver's law firm. The Receiver has collected aproximately $54.5 million from the sale of assets and $9.7 million in litigation recoveries. *See* Notice of Filing Receiver's

Twelfth Statuts Report Dated April 30, 2009 [D.E. 2259], at p. 16, in Case No. 03-80612-Civ-Marra. This is not an apples-to-apples comparison, as every receivership presents its unique challenges. (Nor is it meant as any criticism of the Lancer Receivership: both CHE and KTT have also worked on that matter as special counsel to the Receiver and as Class Counsel, respectively.) It is simply offered as one point of comparison to show that the MBC Receivership has been conducted very efficiently and economically.

2. *The Novelty and Difficulty of the Questions.*

This Receivership required a high level of skill due to the nature of the fraudulent scheme, the complexity of the operations necessary to preserve the value of the over 7,000 insurance policies originally administered by the Receiver, and the vigorous and aggressive opposition the Receiver encountered from other litigants, including the Intervening Insurers. The case involved novel and difficult legal issues, such as the accounting malpractice litigation against Spear Safer and the defensive litigation against the Intervening Insurers. And it involved novel and difficult operational issues, such as the efforts to prevent any policies from lapsing by mistake or shortfall in premiums and the efforts to implement a unique system where the Keep Investors could continue to hold their policy interests during and beyond this Receivership.

3. *The Skill Required to Perform the Legal Services Properly.*

The Receiver submits that substantial skill and expertise were required to manage this Receivership successfully, including substantial legal skill in the area of securities fraud, complex business litigation, insurance litigation, professional malpractice, and commercial law and receivership law more generally.

4. *Preclusion from Other Employment.*

The Receiver's counsel, although spending substantial amounts of time on this matter and treating this as a "top priority" case, have not been precluded from accepting any other engagements as a result of the privilege of working in this matter. It is worth noting though that the greatest investment of time was required by the Receiver and his counsel during the first few months of this case in order to get their "arms around" MBC and VSI and its operations, to ensure that no policies would lapse, and to deal with the immediate flurry of litigation and related issues. The Receiver and professionals from CHE and KTT dropped virtually everything they were working on to devote themselves to this task on a beyond-full-time basis. Then, as soon as things were under control, they stepped away from the matter so that it could be handled by lower cost paralegals and staff at MBC and VSI.

During this initial period of time, there was significant doubt as to whether the SEC's action (and thus the Receivership) would be dismissed for lack of federal jurisdiction. This Court held that the viatical settlements sold by MBC were indeed "securities" under the federal securities laws, and the Eleventh Circuit eventually upheld that decision in May 2005 in *SEC v. Mutual Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005). Until that decision a full year after the Receivership began though, there was significant uncertainty and significant risk that the Receivership could be summarily dissolved for lack of jurisdiction, leaving the Receiver and his counsel at significant risk of non-payment for the substantial amount of time they were investing in the case at its inception. At the time of the Eleventh Circuit's ruling, the Receiver's counsel had over $1.7 million in time invested in the case, including roughly $500,000 in accrued but unpaid fees – and thus at serious risk of non-payment. The Receiver's counsel also faced the possibility that, if jurisdiction was found to be lacking, they would be the targets of lawsuits by

the former principals of MBC for recoupment of all fees paid, for claimed damage to the business or otherwise.

5. *The Customary Fee.*

The customary fee for a matter of this size and complexity would be the normal fee charged by commercial lawyers and litigators experienced enough to handle this type of matter, which in the modern legal market could either be in the form of a straight hourly rate or a hybrid of a reduced hourly rate combined with a contingency fee. The Receiver retained CHE and KTT, with the Court's approval, at substantially reduced hourly rates based on 2004 rates with the ability to seek a fee enhancement at an appropriate juncture. In addition, neither the Receiver nor his professionals have sought to increase their rates since 2004 in this matter, as would have been done with an ordinary commercial client.[5] The reduced rate represents a reduction of approximately 40-45% based on current hourly rates. CHE has worked on this matter at an average hourly rate of $218 per hour. Taking this into account, CHE has reduced its bills to the Receivership by approximately $675,828 through May 31, 2009. In addition, based upon reduced fee awards by the Court, CHE's bills have been reduced by an additional sum of $187,121. The total reduced payments are thus approximately $862,948. *See* Exhibit B (CHE Fee Chart).

Similarly, KTT billed at the agreed-upon reduced hourly rate from its 2004 rates and has not sought to increase its rates since 2004 in this matter as would have been done with an ordinary commercial client. The reduced rate represents a reduction of approximately 40-45% based on current hourly rates. KTT has worked on this matter at an average hourly rate of $264 per hour. Taking this into account, KTT has reduced its bills to the Receivership by

5 In addition, both the Receiver and his counsel have practiced very "conservative" billing practices in this case, by routinely declining to bill for time spent on miscellaneous tasks, such as responding to numerous calls and e-mails from victim investors and their counsel and, as a practice, recording their time spent conservatively.

approximately $294,709 through May 31, 2009. In addition, based upon reduced fee awards by the Court, KTT's bills have been reduced by an additional sum of $178,086. The total reduced payments are thus approximately $472,795. *See* Exhibit C (KTT Fee Chart).

6. *Whether the Fee Was Fixed or Contingent.*

A portion of the compensation was fixed at a reduced hourly rate, and a portion of the compensation was in the form of the opportunity to apply for a fee enhancement at the conclusion of the matter based on the results obtained. The Receiver's professionals thus had, on the one hand, the security of knowing that they would receive a reduced hourly fee for their effort. CHE (including the Receiver) has been paid a total of $2,475,458. KTT has been paid a total of $1,400,623. The Receiver is mindful of the Court's comments in *Walco*, regarding the benefits of receiving interim fee awards, that "the presence of a consistently paying client for four years, even at a reduced hourly rate, would warm the heart, let alone the pocketbook, of even the most successful securities litigator." *Walco*, 975 F. Supp. at 1472. The same is true in this case.

However, the Receiver and his professionals also bore the risk that they would not be fully compensated for their efforts unless a successful result was obtained. They also bore the risk that they would not be compensated for their initial work in this matter if federal court jurisdiction was lacking or that they would be subject to lawsuits from MBC's former principals and their aggressive defense team for recoupment of amounts paid or other "damage" to the business. The reduced bills and reductions made by the Court have resulted in approximately $1,335,743 in fee reductions for the Receiver's counsel. In addition, the Receiver's counsel have not billed for any time spent on this matter since May 2009 and will not bill for any time for the work required in carrying out the claims process and formally winding down this Receivership.

7. *Time Limitations Imposed by the Client or the Circumstances.*

This case posed significant time restraints and required significant resources at certain critical points in time. At the inception of the Receivership, the Receiver faced the immediate concern of insuring that, despite the shut-down of MBC, all premiums on all policies would continue to be paid. And, as the Receivership unfolded, the Receiver faced the ongoing problem of determining how, in light of a decreasing pool of premium funds available, to prevent widespread lapses of policies. As part of the disposition process, when it became apparent that a large number of investors would choose to keep their insurance policies, the Receiver and his professionals had to scramble to create and implement an untested system for billing investors for their share of premiums – and dealing with "shortfalls" when investors changed their minds about paying their share of the premiums. It is one of the sources of pride in this Receivership that, through this all, no policy was allowed to lapse by accident or mistake.

8. *Amount Involved and the Results Obtained.*

The MBC fraud is reportedly one of the largest viatical settlement frauds in the United States and one of the largest Ponzi-schemes to have taken place in Florida. Based on the claims submitted, and measured by the dollars invested, the loss to investors is approximately $746 million. Based on the size and quantity of the assets involved, the Receiver had to administer over 7,000 insurance policies with a face value of over $1.5 billion at the inception of this case. The Receiver has over $117 million available for distribution. The amounts involved in this case are big by any measure.

As far as results obtained, the Receiver submits that they have been excellent. It is difficult to find direct comparisons, as the MBC case is unique in many ways. However, in one ongoing conservatorship in Florida involving a viatical settlement company called Future First

Financial Group, Inc., which started in 2002, the conservator has estimated that the investors will ultimately receive between 12 and 15 percent of their original investment once all future distributions have been made. *See* www.insurance-conservator.com. The MBC receivership has thus resulted in a higher return to the victim investors in a shorter period of time.

As another point of comparison, these results have been achieved in a very cost-effective manner. The Receiver has submitted an expert affidavit from Fred Caruso, an experienced financial advisor in bankruptcy, reorganization, trusteeship and receivership proceedings. Among other things, the Caruso Affidavit contracts the results and costs of a comparable viatical receivership, known as "RRL," with the MBC Receivership.

MBC v. RRL

	MBC	**RRL**
# of policies involved	7,322	1,065
# of investors involved	30,000+	5
Face value of policies involved	$1.5 billion	$2.6 billion
"Keep Policies" involved?	Yes (2,700 currently)	No (all policies sold at 1 auction)
Length of time req'd	62 months	22 months
Total cost of relevant professional fees	$4,674,356	$10,608,146

It is difficult to come up with a true apples-to-apples comparison of viatical receiverships. However, the MBC receivership was arguably a significantly more complex receivership than the RRL matter, because it involved (a) a much larger number of retail investors, (b) a much

larger number of policies and (c) required the implementation of a complex process for keeping policies. Yet the MBC receivership has been conducted at a cost in professional fees that is approximately $5.9 million less than the costs incurred in the RRL matter.

The Receiver acknowledges that this is not a traditional common fund case though. It is not possible to simply state that the Receiver's professionals generated a common fund of $X. Some of the recoveries that the Receiver obtained, or assisted in obtaining, are dollar amounts that resulted from settlements or other litigation efforts and do represent a traditional common fund. Other recoveries, though, should not be considered part of a common fund. Specifically, the payments received from the defendants in the SEC action total approximately $20,850,000. While the Receiver brought pressure to bear on the defendants to settle these actions by, among other things, bringing separate lawsuits against the defendants and certain of their assets (such as Joel Steinger's horse farms) and assisted in collection efforts against the defendants, the SEC is responsible for obtaining the judgments, and the Receiver does not "claim credit" for these sums.

And other amounts obtained by the Receiver that are now available for distribution reflect other benefits obtained for the victims, such as the skillful management of existing assets to preserve or create tens of millions of dollars in value, and the skillful disposition of other non-traditional assets to obtain maximum value. These factors should also be considered in determining the appropriateness of a fee award. For example, in *Gaskill v. Gordon*, 942 F. Supp. 382, 388 (N.D. Ill. 1996), the court awarded a fee based on 38% of the total fund available for distribution to victim investors generated by a Receiver and his counsel and plaintiffs' counsel in connection with a Ponzi scheme where investors were induced to purchase interests in phony or unrpofitable real estate partnerships. The court noted that the case did not involved a "typical fund scenario," because the common fund was comprised, in part, of "various neglected and

unprofitable properties that needed to be managed, improved, and sold before any money could be distributed." *Id.* at 387. Here, by analogy, the common fund is comprised of assets obtained as a result of successful management and sale of viatical settlements.

Perhaps most importantly, the Receiver and his counsel protected the investors' assets from a number of very serious risks, including the risk of loss of policies for non-payment of premiums, and the risk of loss of policies (or other damages) as a result of attacks from the Intervening Insurers. The Intervening Insurers were not precise in the exact amount of damages they sought through their collateral attacks on the assets administered by the Receiver. However, their claims, if recognized and borne out, threatened to deplete the Receivership of in excess of $100 million in existing insurance policy assets and a refusal to pay over **$**15 million in then-pending death benefits. These defensive monetary benefits are as significant as the offensive monetary recoveries.

These types of benefits can and should also be considered in determinig the appppropriateness of a final fee award in this case. When considering the total value of a result achieved for the victims for purposes of calculating a fee award under *Camden I*, the court should consider both the direct monetary benefits obtained and the indirect monetary benefits obtained or other non-monetary relief. *See Camden I*, 946 F.2d at 775. *See also Sheppard v. Consolidated Edison Co.*, 2002 WL 2003206, at *7 (E.D.N.Y. 2002) (in valuing total settlement for percentage-based attorney's fee award, court included "an estimated $5 million in non-monetary, injunctive relief"); *Steiner v. Williams*, 2001 WL 604035, at *4 (S.D.N.Y. 2001) ("Although the settlement in this action did not involve the payment of money by the defendants, counsel may nonetheless recover a fee if the settlement conferred a substantial non-monetary benefit."); *Kalan v. Rand*, 192 F.3d 60, 70 (2d Cir. 1999) (noting "well-established [rule] that

non-monetary benefits . . . may supprt a fee award").

9. *Experience, Reputation, and Ability of the Attorneys.*

The Receiver respectfully submits that his counsel, both at CHE and KTT, enjoy a fine reputation among the bench and bar in this District for their professionalism and work ethic. The Receiver's counsel are particularly experienced at receivership-related litigation and plaintiffs' class action litigation. CHE and KTT attorneys have served as receivers and trustees, as counsel to receivers and trustees, and as class counsel in many of the most noteworthy receiverships in this District, including *In re U.S. Oil & Gas*, *In re Premium Sales Corp.*, *In re Financial Federated Title & Trust, Inc.*, and *In re Lancer Offshore Fund.*

10. *The "Undesirability" of the Case.*

This case was not undesirable. The Receiver and his counsel have been privileged to work on this matter. Both CHE and KTT regularly represent the victims of frauds and other wrongdoing and take pride in their efforts to assist their clients in these types of matters.

However, it is worth noting that the case did come with certain risks attached. As noted above, the Receiver and his counsel spent substantial amounts of time and effort working on this matter during a period in which it was uncertain whether federal jurisdiction would be sustained over the SEC action and the Receivership – and thus a risk of non-payment or facing suit for recoupment of payments by MBC's former principals. The sheer size of the Receivership at the inception – 7,322 insurance policies with a face value in excess of $1.5 billion – also created risks to the Receiver of repercussions in the event that the Receiver was not successful in maintaining all of the policies in force.

In addition, in any case where the Receivership Entities perpetrated a fraud on "retail investors," the Receiver will inevitably face loads of criticism from the victims when he or she steps into the shoes of the wrongdoers. The victim investors were in many cases extremely angry to find out the scope of the fraud perpetrated upon them – and rightly so. The Receiver and his staff over a long period of time have done their best to respond to and address a truly vast number of investor complaints in every form from e-mails and letters to phone calls and personal visits to the Receivership Entities.

11. ***Nature and Length of the Professional Relationship with the Client***

This factor does not really apply in a Receivership case. The Receiver and his professionals, of course, had no prior professional relationship with MBC, VSI or any of their principals.

12. ***Awards in Similar Cases.***

There are no exact comparisons to the MBC Receivership. The Class Counsel in this matter has received awards of 25% to 30% of the settlement amounts in the actions they have pursued and in which the Receiver participated; however, they worked on a purely contingent fee basis, and the settlement amounts were traditional common funds.

The *Walco* (Premium Sales) case, which was also an SEC receivership, is perhaps the most analogous. A chart comparing and contrasting these two receivership is set forth on the following page:

MBC v. PREMIUM SALES

MBC RECEIVERSHIP	PREMIUM SALES RECEIVERSHIP
Receiver's counsel (including the Receiver) have received interim fee awards totaling **$3,876,081** at reduced rates	Receiver's counsel & class counsel received interim fee awards totaling **$7,525,200** at reduced rates
$117,500,000 fund to distribute	**$141,000,000** fund to distribute
Recovery is not entirely a traditional common fund	Recovery was a traditional common fund
Receiver's counsel preserved value by defending investors from potential losses of over $100 million in assets and $18.5 million in death benefits	No defensive aspect involved
Involved fragmented litigation against diverse defendants	Involved fragmented litigation against diverse defendants
Involved difficult and sometimes novel legal and factual issues	Involved difficult and sometimes novel legal and factual issues
Counsel agreed not to seek any fees for seeing case through to conclusion	Counsel agreed not to seek any fees for seeing case through to conclusion
Award of 15% of fund of approx. $100,705,695[6] = $15,105,854 (less $3,876,081 already paid = $11,229,273 in net new fee award).	Receiver & Class Counsel awarded 15% of common fund of $141 million = or $21,178,277 (less $7,525,200 already paid = **$13,653,077** net new fee award)

In other words, by comparison to the *Walco* case a net fee award of approximately $12.1 million would apply in this case. In the end, though, the MBC case is *sui generis*. The Receiver has submitted the declarations of two experts in support of this application. Bruce Greer, a

[6] This figure does not include the approximately $20,850,000 in funds obtained based on the SEC's disgorgement orders against the former MBC principals. That is, $117,555,695 + approx. $4,000,000 from MBC operating account - $20,850,000 = $100,705,695.

highly experienced litigator and mediator in matters of comparable size and complexity, has submitted a declaration analyzing the work performed by the Receiver and his counsel and the results obtained from a variety of perspectives. *See* Exhibit D. Mr. Greer's ultimate opinion is that a net fee award of **$11 to $12 million** would be fair and reasonable under all of the circumstances.

In addition, Fred Caruso, a highly experienced financial professional in bankruptcy and receivership proceedings, has submitted a declaration that sets forth two comparisons. *See* Exhibit E. First, it compares the MBC Receivership to another viatical receivership in which he served in the position analogous to the receiver and concludes that, even though the MBC Receivership was more complicated in many respects, it was completed with relevant costs that were approximately $5.9 million less than the RRL receivership. Second, it compares the MBC Receivership to a traditional bankruptcy proceeding and analyzes the maximum, additional net fee award that a trustee would have been entitled to seek if this case had been conducted as a bankruptcy, which would be between $13 and $15 million. Based on these comparisons, Mr. Caruso renders an opinion that a net fee award of **$10 to $12 million** would be fair and reasonable, subject to the court's discretion, under all of the circumstances.

Finally, the Receiver is also mindful of the Court's comments in *Walco* regarding the fee experts presented in that case:

> While the witnesses' legal backgrounds are impressive, it is extremely difficult for even a respected practicing attorney or an academic with the highest credentials to review the voluminous files for a few hours or even days and reach a definite conclusion on the value of the attorneys' work. Because the Court continually evaluated the case over a period of four years, and is intimately familiar with the facts and circumstances surrounding its progress, the Court's assessment of the reasonable fee is based upon an independent analysis.

Walco, 975 F. Supp. at 1471. Ultimately, this Court itself, having presided over numerous and frequent hearings on a variety of matters, having received an untold number of letters from investors, is in the best position to judge the results in this case.

THE RECEIVER'S REQUESTED FEE ENHANCEMENT AWARD

Based on all of the information set forth above, and the supporting exhibits and affidavits from experts, the Receiver is requesting the Court make a net final fee award to his counsel, CHE and KTT, in the form of a joint award for counsel to divide, of **$11,000,000** in new fees.

As with any request for fees from a fund that is intended to be distributed to compensate the victims of a fraud, there is an inherent tension between maximizing the recovery for the victims and fairly compensating the professionals whose work generated the pool of funds to be distributed. The Receiver is mindful of this tension. However, the Receiver also respectfully submits that, without the successful efforts of his counsel, the amounts that he would have available to distribute to the victim investors would be far less and the damage to the portfolio of insurance policies through loss or collateral attack from insurers would be far greater.

A. Where Would the Fee Award Come From?

The Receiver notes that the MBC Operating Account currently has a balance of approximately $4 million. These funds are comprised principally of interest that has been earned on the MBC premium accounts and the MBC asset recovery account over the past several years. Unlike VSI, MBC will not continue to operate when the Receivership is formally dissolved. The funds in the MBC Operating Account are not needed to fund ongoing operations and can be used towards paying the fee award requested. The balance of the award ($7,000,000) would come from the Asset Recovery Pool. And assuming that the sale of VSI closes on September 15 – as it should – the Receiver will receive the $1,000,000 in consideration paid for VSI. So, a total of

approximately $6,000,000 would be depleted from the Asset Recovery Pool's current balance.

B. How Would This Affect the Investors' Recovery?

The net effect of the final fee award on the investors' recovery would not be significant. Based on the Receiver's best current estimates, in the absence of any fee award, the Sell Investors can expect to recover approximately 23.23% of their dollars invested, and the Keep Investors can expect to recover approximately 13.04% of their dollars invested plus whatever they end up receiving from their policies. With the payment of the award, the Sell Investors can still expect to recover approximately 22.29% and the Keep Investors can still expect to recover approximately 12.10%. In other words, their recovery would be reduced by less than 1% (0.94%). By way of example, a Sell Investor who invested $10,000 (a fairly typical amount) with MBC can expect to receive approximately $2,322 in the absence of any fee award. The requested final fee award would result in a recovery of approximately $2,228 to the investor. In other words, it would cost the investor $94. The Receiver, of course, does not lightly request any award that results in a reduction of the recovery to the investors who were the victims of MBC's fraud, no matter how small the reduction. However, in light of the extraordinary efforts that went into this Receivership, and the extraordinary results produced, the Receiver respectfully submits that the requested award is appropriate in this case.

CONCLUSION

For all of the reasons set forth above and in the accompanying expert affidavits and exhibits, the Receiver respectfully requests that the Court authorize the payment to Colson Hicks Eidson and to Kozyak Tropin & Throckmorton of a final fee award of $11,000,000.

Respectfully submitted,

ROBERTO MARTINEZ, AS RECEIVER

___s/ Roberto Martínez_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served via CM/ECF to all parties of record in accordance with the attached Receiver's Service List on September 1, 2009.

s/ Curtis B. Miner
Curtis B. Miner

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"EXHIBIT A"

MUTUAL BENEFITS CORPORATION
Account Balances
As of August 31, 2009

Asset Recovery Accounts

Account Title	Bank	Book Balance	Notes
MBC Asset Recovery Account	Northern Trust	$74,564,896	
MBC Premium Recoupment Account	Northern Trust	$21,233,211	
Anticipated Proceeds - Sale of VSI		*$1,000,000*	
Anticipated Recovery - Auction 7 Profit		*$462,854*	
MBC Travel Account	Wachovia	$1,244	
VBLLC Operating Account	SunTrust	$3,003	
VBLLC Money Market Account	SunTrust	$3,446	
Total Asset Recovery Funds		**$97,268,654**	
Sell Policy Account			
MBC Portfolio Proceeds Account	Northern Trust	**$20,287,041**	
Total Available for Distribution		$117,555,695	
Operating Accounts			
MBC Operating Account	Northern Trust	$3,992,882	
VSI Operating Account	Northern Trust	2,371,974	
Total Operating Funds		$6,364,856	

"EXHIBIT B"

Colson Hicks Eidson Fee Chart

COLSON HICKS EIDSON

FEE APP. NO.	DATES OF WORK	TOTAL FEES BILLED	DISCOUNT FROM NORMAL HOURLY RATES	TOTAL FEES PAID	TOTAL DISCOUNT
1	5/4/04-6/18/04	$220,751.50	$87,317.50	$220,751.00	$87,318.00
2	6/19/04-9/30/04	$287,905.00	$64,541.25	$287,905.00	$64,541.25
3	10/1/04-1/31/05	$371,496.00	$58,468.75	$371,496.00	$58,468.75
4	2/1/05-5/31/05	$320,323.75	$65,996.25	$300,000.00	$86,320.00
5	6/1/05-9/30/05	$244,126.50	$66,003.75	$240,000.00	$70,130.25
6	10/1/05-12/31/05	$215,142.50	$55,327.50	$205,000.00	$65,470.00
7	1/1/06-5/31/06	$372,588.50	$79,666.50	$300,000.00	$152,255.00
8	6/1/06-1/31/07	$148,498.00	$27,255.00	$135,306.69	$40,446.31
9	2/1/07-11/30/07	$294,900.00	$47,540.00	$250,000.00	$92,440.00

10	12/1/07-7/31/08	$81,022.50	$55,381.00	$70,000.00	$66,403.50
11	8/1/08-12/31/08	$54,954.00	$38,069.00	$50,000.00	$43,023.00
12	1/1/09-5/31/09	$50,871.00	$30,261.80	$45,000.00	$36,132.80
TOTAL		**$2,662,579.25**	**$675,828.30**	**$2,475,458.69**	**$862,948.86**

"EXHIBIT C"

Kozyak Tropin & Throckmorton Fee Chart

KOZYAK TROPIN & THROCKMORTON

FEE APP. NO.	DATES OF WORK	TOTAL FEES BILLED	DISCOUNT FROM NORMAL HOURLY RATES	TOTAL FEES PAID	TOTAL DISCOUNT
1	5/4/04-6/18/04	$353,813.47	$138,530.00	$353,813.00	$138,530.47
2	6/19/04-9/30/04	$196,416.65	$24,242.35	$170,948.59*	$49,710.41
3	10/1/04-1/31/05	$103,976.05	$17,306.95	$100,000.00	$21,283.00
4	2/1/05-6/30/05	$146,465.25	$36,062.25	$100,000.00	$82,527.50
5	7/1/05-9/30/05	$70,213.75	$16,576.25	$50,000.00	$36,790.00
6	10/1/05-12/31/05	$63,935.00	$12,925.00	$48,101.95*	$28,758.05
7	1/1/06-5/31/06	$89,429.50	$7,013.00	$80,000.00	$16,442.50
8	6/1/06-12/31/06	$104,951.50	$5,396.00	$99,000.00	$11,347.50
9	1/1/07-10/31/07	$209,069.00	$6,223.50	$180,000.00	$35,292.50

10	11/1/07-2/09/08	$75,744.25	$1,575.75	-	-
11	3/1/08-4/30/08	$45,969.50	$1,015.50	$45,969.50	$1,015.50
12	5/1/08-6/30/08	$12,790.00	$645.00	$12,790.00	$645.00
13	7/1/08-8/31/08	$101,670.63	$4,396.87	$80,000.00	$26,067.50
14	1/1/09-5/31/09	$81,584.50	$22,800.50	$80,000.00	$24,385.00
TOTAL		**$1,656,029.25**	**$294,708.92**	**$1,400,623.04**	**$472,794.93**

*Order grants sum certain and does not # amount of fees and costs awarded. The total amount of costs sought in the fee application was assumed to have been awarded and subtracted from the awarded amount in order to determine the fee award.

"EXHIBIT D"

Declaration of Bruce Greer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORPORATION, *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.
_____/

DECLARATION OF BRUCE GREER

1. I am an attorney admitted to practice law in the State of Florida. Prior to attending law school, I graduated from the University of Florida with Honors in 1970. I received my J.D. from Columbia University Law School in 1973. I began the practice of commercial litigation in 1973 and have been lead counsel in many high profile cases in various Federal and State courts. I have received the rating of "AV" from Martindale & Hubbell. My experience in commercial litigation has included many complex commercial cases in the Federal Courts involving, for example, class actions, mergers, securities law, broker/dealers, real estate finance, internet business, antitrust, financial institutions, business dissolutions, and regulated entities. Since 1993, I have primarily been involved in many privately held investment partnerships.

2. Based upon my education and experience I make this Affidavit in support of the

Receiver's application for a final fee enhancement award for him and his two primary counsel, the law firms of Colson Hicks Eidson and Kozyak Tropin and Throckmorton, in this case. The information and opinions in this Affidavit are based on knowledge I have received from reviewing materials, speaking with the Receiver and his counsel, meeting with the Receiver's operational representatives at their place of work and other sources. I have been engaged by the Receiver to provide an independent analysis and review of the work performed by the Receiver and his counsel in this case and provide an expert opinion on the propriety and amount of a "fee enhancement" award for them, consistent with the terms of their engagement in this case, based on all of the facts and circumstances of the case. The terms of my engagement have been that I am being paid $500 per hour for my work. I understand that the firms of Colson Hicks Eidson and Kozyak Tropin & Throckmorton are paying for the costs of my engagement directly and that none of the costs are being billed to the Receivership.

3. To gain an understanding of this case and of the work performed by the Receiver and his counsel, I have undertaken a number of things. First, I have reviewed a variety of pleadings, filings and orders from the MBC case, including (a) the Receiver's reports submitted to the Court, (b) the fee applications submitted to the Court by Colson Hicks Eidson and Kozyak Tropin & Throckmorton, (c) various Court orders relating to the substantive decisions in the MBC case and the procedural decisions governing the handling of the Receivership. Second, I have met and held conference calls on a number of occasions with the Receiver and his counsel to discuss their work in this case and to gain a better understanding of that work. Third, I have visited the operational offices of VSI and MBC and received briefings from the Receiver's operational representatives there to gain a better understanding of the business aspects of the

Receivership. Fourth, I have spoken to Fred Caruso, another of the fee experts engaged by the Receiver, for a comparative perspective and have reviewed materials prepared and relied upon by him.

BACKGROUND ON THE MBC RECEIVERSHIP

4. The following is an overview of the history of the MBC based on the information provided to me by the Receiver and his counsel. Prior to the Receivership, MBC was in the business of selling viatical settlement contracts. In a viatical settlement contract, a provider like MBC would purchase the rights to the death benefits on a life insurance policy from an insurance policyholder who was terminally ill or of advanced age, and would then sell fractional interests in those death benefits to investors, who would realize a return on their investment when the policyholder died.

5. This Receivership began in May 2004 as a result of the action brought by the Securities and Exchange Commission ("SEC") against MBC and its former principals, Joel Steinger, Leslie Steinger, Steven Steiner and Peter Lombardi for violations of the federal securities laws by selling unregistered securities and making fraudulent misrepresentations in the sale of those securities.

6. At the inception of the Receivership, the Receiver's immediate task was to get his "arms around" MBC's and VSI's operations, which were then in full gear in three different locations with a substantial number of employees. MBC occupied a full floor (and part of a second) of a major downtown office building in Fort Lauderdale; VSI had its own office space at a separate location; and VBLLC had a small office in Atlanta, Georgia. MBC had sold viatical

settlements to over 30,000 investors around the world, and VSI was administering over 7,000 insurance policies with a face value in excess of $1.5 billion.

The SEC Action.

7. The SEC's action was hotly contested from the start by MBC's former principals. At the inception of this case, there was a substantial period of time in which there was significant doubt as to whether the SEC's action (and thus the Receivership) would be dismissed for lack of federal jurisdiction. This Court held that the viatical settlements sold by MBC were indeed "securities" under the federal securities laws, and the Eleventh Circuit eventually upheld that decision in May 2005 in *SEC v. Mutual Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005).

8. In addition, a lengthy evidentiary hearing was held before Magistrate Judge Garber on the SEC's motion for a preliminary injunction, throughout which the Receiver and his counsel participated in discovery and other matters related to the hearing. The Receiver was called as a witness at the hearing and cross-examined at length by defense counsel. Magistrate Judge Garber eventually entered a 47-page Report & Recommendation in November 2004 finding that MBC and its principals had engaged on a Ponzi-type scheme and recommending granting the SEC's motion for a preliminary injunction. The preliminary injunction was subsequently affirmed by this Court in February 2005 in an Order Granting Preliminary Injunction [D.E. 712]. The Receiver also pursued litigation to have Joel and Leslie Steinger held in contempt for violating the Court's Asset Freeze Order, which included an evidentiary hearing before Magistrate Judge Simonton.

9. In the SEC Action, the Defendants all eventually agreed to the entry of Consent Orders and to pay disgorgement and civil fines of varying amounts to settle the SEC Action. (a)

Joel Steinger agreed to pay $9,500,000 in disgorgement and fines, of which the entire amount has now been paid, including post-judgment interest, after the successful litigation of interpleader actions by the SEC and the Receiver in New Mexico and in Minnesota and litigation over the proper calculation of the post-judgment interest due before this Court. (b) Leslie Steinger agreed to pay $9,500,000 in disgorgement and fines, of which only $4,605,590.89 has been paid. (Leslie Steinger is deceased, and the SEC, among others, has a collection action pending against his Fort Lauderdale home). (c) Peter Lombardi agreed to pay $6,000,000 in disgorgement and fines, all of which has been paid. (d) Steven Steiner, in a joint settlement of the SEC action and the Receiver's lawsuits against him, agreed to the payment of $3,925,000 in disgorgement and fines, of which only $750,000 was ever voluntarily paid. The payments received from these judgments total approximately $20,850,000.

The "Policy Disposition" Process.

10. The fundamental dilemma in this Receivership was that the enormous portfolio of insurance policies serviced by VSI also required an enormous sum in premiums to be paid to keep the policies in force. While there were substantial sums available in "premium escrow accounts" to pay these premiums at the inception of the Receivership, the "burn rate" as a result of the cost of paying those premiums was also very high. This put a fuse on a problem that could eventually result in massive lapses of policies for non-payment of premiums if steps were not taken. This required a process for disposition of the policies, either by sale or otherwise, before the money available to pay the premiums ran out.

11. After extensive briefing, hearings and input and objections from diverse parties in interest, this Court eventually entered an order authorizing a disposition process. Under the

Court's Order on Disposition of Policies and Proceeds [D.E. 1339], a voting process was implemented in which the investors were allowed to vote whether they wanted to sell their policy, keep their policy by assuming the responsibility for payment of premiums themselves, or allow their policy to lapse. The weighted majority vote (based on amount invested) controlled the decision as to each policy.

12. The disposition process ultimately resulted in 3,052 policies being kept by the investors, representing over $1 billion in face value. This required the Receiver to scramble to implement an entirely new system for VSI to handle the Keep Policies. Prior to the Receivership, VSI and MBC had never billed investors to pay premiums and were not set up to do so. The issue was further complicated by the problem that, inevitably, some investors on any given policy (and some policies have over 100 different investors on them) would inevitably default on paying their share of the premiums, which in turn required systems in place for handling "shortfall" situations. A process and computer software system were developed and put in place to handle all of this. This has resulted in all of the Keep Policies being successfully managed to maximize their value by keeping them in force or, where shortfalls occurred, allowing other investors on the policy to take on a larger portion of the policy, selling the fractional interests in the policy or selling the entire policy through an auction process. No Keep Policy has been lapsed as a result of inadvertence or mistake during the course of this Receivership.

Receivership Litigation.

13. MBC was also involved in a wide variety of defensive litigation around the country when the Receivership began. This included investor litigation in state and federal

courts, regulatory investigations and actions from various state insurance departments, and other miscellaneous litigation. Prior to the Receivership, MBC had engaged some 72 lawyers and firms around the country, and had expended over $5.2 million in legal fees in 2003 alone, just to manage its various litigation and regulatory actions. The Receiver's counsel successfully managed this litigation to bring it to a conclusion at a minimum of cost without any funds being required in the form of settlements, penalties or fines.

14. The Receiver also initiated a variety of proactive litigation to attempt to recover assets for the Receivership estate. This litigation included (a) actions against MBC's former principals and other insiders, (b) actions against MBC's former sales agents, (c) an action against MBC's outside auditors, and (d) actions against the recipients of various fraudulent transfers from MBC. These actions resulted in successfully augmenting the amounts the MBC principals agreed to disgorge in the SEC action (as well as assisting in collecting upon those amounts), the repayment of commissions by former sales agents, the settlement of various fraudulent transfer actions, and an eve-of-trial settlement for $3,500,000 against MBC's former auditors.

15. A Class Action was also brought on behalf of the MBC investors against a number of defendants. The Receiver's counsel worked jointly with the Class Counsel to assist in achieving a number of substantial settlements, including a settlement with MBC's former outside counsel Brinkley, McNerney Morgan Solomon & Tatum ($10,000,000), a settlement with a number of banks that served as MBC's "escrow agents" ($9,750,000), and a settlement with certain MBC insiders including Peter Lombardi ($1,684,624).

The Claims Process

16. The Receiver also initiated a claims process to determine who should be permitted to share in the pool of funds to be distributed by the Receiver and on what basis. On April 3, 2008, the Court entered its Order Authorizing Claims Process [D.E. 2058]. The Receiver subsequently sent out 49,127 Claim Forms to every MBC investor whose policy had not yet matured, as well as to other potential claimants and creditors. 36,922 Claim Forms were ultimately returned. The Claim Form indicated that the Receiver intended to recommend to the Court that the amount invested by each investor should be recognized as the investor's claim amount (a "dollars invested" approach), but gave the investor an opportunity to disagree with that amount and seek additional or different damages as his or her claim amount.

17. The great majority of the Claim Forms (87.7%) were returned without any objection to the Receiver's recommended claim amount. The Receiver's professionals and the staff at VSI worked to minimize the number of Claim Forms that would be objected to by working directly with the investors to resolve issues with numerous deficient Claim Forms that were returned. The Receiver also successfully objected to claims brought by various trade creditors in order to maximize the recovery to the investor victims (by subordinating roughly $600,000 in trade creditor claims).

18. Eventually, after briefing and hearing before the Court, the Court entered its Order Granting Receiver's Motion for Final Determination of Allowed Claims [D.E. 2188] in October 2008. The Court determined that the basis for all investors' claims would be the amount invested. The Court also determined that investors whose policies have matured before the date when the distribution of the Receivership assets is made will not be entitled to share in the

distribution (having received the benefit of their investment). The Court also determined that claims from trade creditors would be subordinated to the investor claims.

The Sale of VSI.

19. Finally, the Receiver has also undertaken extensive efforts to sell VSI to a new owner and operator. Because VSI is still administering approximately 2,700 "Keep Policies", and because many of those policies will likely continue to need to be administered well into the future, VSI needs to continue to function after this Receivership has concluded. Thus, this was not a situation where VSI could simply be dissolved and its fixed assets sold. In addition, the Receiver was concerned that, once sold, VSI would be "on its own" as a commercial enterprise and out of the control of the Receivership and the supervision of the Court. Thus, equally as important as a goal was attempting to find an operator that could continue to run the business in a way that will provide the best possible security and protections to the "Keep Investors" going forward. After an open auction process that has been completed, the Receiver has filed a motion seeking approval of the sale of VSI to a new owner for $1,000,000, which sale will include provisions (such as a Trustee to serve as the owner of the Keep Policies) intended to accomplish that goal.

KEY RESULTS ACHIEVED BY THE RECEIVER AND HIS COUNSEL

20. The Receiver has a total of approximately **$118 million** to distribute to the victim investors. This sum is comprised of two pools of assets. In what the Receiver refers to as the "Asset Recovery Pool," there is a balance of $93,069,311.[1] In the "Policy Proceeds Pool," there

[1] This figure is not a final figure and will continue to increase. The Receiver has a current balance

is a balance of $20,287,041 that the Receiver has realized from the sale of insurance policies for the Sell Investors.

21. The following is an overview of what I view to be some of the key results achieved by the Receiver and his counsel both in creating this pool of assets and in defending the pool of assets from loss and from collateral attacks.

Defensive Litigation to Protect the Investors.

22. A short time after this Receivership was ordered by the Court, a group of seventeen insurance companies (known as the "Intervening Insurers") that issued life insurance policies within the scope of the Receivership brought an ancillary complaint against the Receiver and the Receivership Entities. The Intervening Insurers made broad allegations of a portfolio held by MBC filled with insurance policies procured by fraud. The Intervening Insurers eventually filed an 84-page, 25-count Amended Complaint alleging claims for fraud, civil conspiracy, RICO and violations of the Florida Viatical Settlement Act in which they sought compensatory damages, treble damages under RICO, punitive damages, and a declaration that an unspecified number of the policies they issued were void *ab initio*.

23. According to the Intervening Insurers, "an astounding percentage of policies sold to investors were actually procured by fraud," and "perhaps as many as 40% to 50% of [MBC's] policies are tainted by fraud." *See* Plaintiff Insurers' Brief in Opposition to Receiver's Motion to Dismiss [D.E. 49] in Case No. 04-6113-Civ-Moreno. The Intervening Insurers calculated that

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of approximately $4,953,984 in the MBC operating account that can be included in the distribution; there is consideration that the Receiver is expecting from the sale of VSI of $1,000,000; and there are other sums that the Receiver still expects to obtain and add to this pool.

they had issued 1,700 of the policies administered by the Receiver and that "a substantial proportion of their policies, perhaps as many as 40%, had been procured through fraud." *American United Life Insurance Co. v. Martinez*, 480 F.3d 1043, 1049 (11th Cir. 2007).

24. The Intervening Insurers were not precise in the exact amount of damages they sought. However, by the Receiver's analysis, the Intervening Insurers' claims, if recognized and borne out, threatened to deplete the Receivership of in excess of $100 million in existing insurance policy assets and a refusal to pay over $15 million in pending death benefits.

25. This litigation ultimately resulted in an across-the-board victory for the victim investors. The Eleventh Circuit issued a 62-page decision affirming this Court's dismissal of the Intervening Insurers' claims. *See American United Life Insurance Co. v. Martinez*, 480 F.3d 1043 (11th Cir. 2007). Instead of having an unspecified number of insurance policies voided or an award of tens or hundreds of millions of dollars in damages as sought, the lawsuit resulted in the Intervening Insurers eventually paying out $3,550,000 in death benefits on four of the specific insurance policies they originally challenged.

26. This defensive litigation effort preserved and created substantial monetary value for the victim investors. Just the $3,550,000 in death benefits that the insurers agreed to pay (and would not have paid otherwise) standing alone nearly covers the fees paid to the Receiver's counsel for the entire five-year history of this Receivership. More broadly, if the Intervening Insurers' claims had prevailed even in part, the Receiver would now be distributing a far smaller pool of assets to the victim investors.

Offensive Litigation Recoveries.

27. As with any Receivership, the Receiver's counsel engaged in a variety of offensive litigation to attempt to recover assets for the victims. The Receiver's counsel cooperated with Class Counsel in a class action brought by the MBC investors to achieve a number of noteworthy settlements. These include (a) a settlement with attorney Michael J. McNerney and the law firm of Brinkley McNerney Morgan Solomon & Tatum, LLP, the former primary counsel to MBC, for, among other claims, professional malpractice, for $10,000,000, (b) a settlement with Peter Lombardi (the former President of MBC), Anthony Livoti, Jr. (the former Trustee for MBC), and Mark Pettyjohn (an MBC sales agent), for a total amount of $1,684,624, and (c) a settlement with certain banks that had served as escrow agents for MBC for $9,750,000.

28. The Receiver's counsel also undertake a variety of "solo" actions, including (a) actions to recover fraudulent transfers in the form of payments made from MBC funds to pay for the former principals' personal expenses (which resulted in over $300,000 in recoveries), *see, e.g., Martinez v. American Express Travel Related Servs. Co.*, 2007 WL 1695339 (S.D. Fla. June 8, 2007) (Cohn, J.) (denying American Express' motion for summary judgment); (b) litigation with MBC's former outside law firms to recover pre-paid retainers in the possession of the firms (which resulted in over $800,000 in recoveries); (c) actions to recover certain commissions paid to MBC's former sales agents (which resulted in over $140,000 in recoveries); and (d) collection efforts to collect on the judgments entered against MBC's former principals (which added over

$340,000 to the amounts disgorged by the former principals). The total litigation recoveries from these various sources added $1,666,649 to the Receivership's asset pool.

29. Most notably, in a lawsuit against MBC's former accountants, Spear Safer & Harmon, for accounting malpractice the Receiver faced a number of hurdles to bringing the case, including defeating challenges to the Receiver's standing and overcoming the "*in pari delicto* defense". In addition, the Receiver relied on an aggressive "deepening insolvency" theory (that is, that Spear Safer's conduct allowed MBC to continue in existence and deepen its own insolvency thereby causing it damages) in its claims. Judge Dmitrouleas, in an order denying Spear Safer's motion for summary judgment, stated that "the trend in recent cases appears to cast doubt on the continuing validity of the deepening insolvency theory as a viable cause of action or damages theory," but nonetheless allowed the Receiver to proceed if he could show damages that were in fact caused by Spear Safer's negligence. *See* Order Denying Motion for Summary Judgment [Doc. 61] at pp. 8-9, in Case No. 06-60727. By pressing this case to the eve of trial despite these obstacles, the Receiver obtained $3,500,000 for the investors that would not otherwise have been part of the pool of assets to distribute.

Other Asset Recoveries.

30. The Receiver has also amassed significant assets for distribution through other sources. The Receiver managed to preserve the policies held by Sell Investors by, among other things, advancing premiums to keep them in force, so that they could be sold for their highest value. By strategically dividing the policies up into portfolios, the Receiver conducted multiple auction processes through which all of the sellable policies were successfully sold. In

connection with the sale of one particularly large policy (the B_ C_ policy), the Receiver took the position that an initial auction was not completed or closed despite having received an offer from a buyer (which the Receiver deemed insufficient). The potential buyer objected and sought to compel the Receiver to close on the sale. The Receiver litigated this position before the Court and prevailed, which ultimately resulted in a higher offer by $1,500,000 for the policy. In total, the Receiver obtained a gross amount of $28,903,970 from the sale of policies held by Sell Investors.

31. The Receiver also generated substantial value for the investors by stepping in to protect Keep Policies where investors on the policy defaulted on their premium obligations. As a result of the disposition process, there were 3,052 insurance policies where a majority of the investors decided to keep the policy in the voting process. However, when these investors were sent an invoice for their share of the premiums to keep the policy in force, some or all of them declined to pay their share of the premiums. (To date, there have been defaults by investors on approximately 15,859 investment interests, representing approximately $300 million in interests in death benefits.) So, the policies became either completely "unsubscribed" policies or "partially subscribed" policies. For these policies, instead of allowing them to lapse, the Receiver took various steps to try to preserve the value of the policies, including by surrendering the policy to receive some cash value for it. For the partially-subscribed policies, the Receiver used Receivership funds to preserve the fractional interests in the policies. These fractional interests were then subsequently sold at auction or, fortuitously, the policy matured and the Receivership received that portion of the death benefit. These actions resulted in preventing a

large number of policies from lapsing and instead generated approximately $27,000,000 in value for inclusion in the assets to be distributed by the Receiver.

"Operational Successes".

32. I would also include the following among the "operational successes" of the Receiver in his counsel that either (a) created value for the investors, (b) protected the investors from losses, or (c) saved the investors money.

33. The Ability to Sell Fractional Interests. One of the situations that resulted from investors deciding to keep their policies going forward is that many policies ended up with investors defaulting on their obligation to pay their share of the premiums. In some cases, the Receiver was able to get other investors on the same policy to pick up the shortfall and take over the defaulting investor's interest. However, in many cases the Receiver was left with policies where "fractional interests" in the policy were not taken over. In fact, I am told there have been defaults by investors on approximately 15,859 investment interests, representing approximately $300 million in interests in death benefits to date. It is my understanding that there is little to no market for "fractional interests" in viatical settlement contracts from institutional-type investors, because they are only willing to invest in whole policies where they are not subject to the decisions of other investors on the policy.

34. Thus, the Receiver was left with a position where there was a significant risk of widespread defaults on payments of premiums on policies and potential lapses of policies. However, the Receiver was able to identify an institutional investor who, fortuitously, was willing to purchase such fractional interests. That investor has since purchased fractional

interests on 1,219 policies administered by VSI. These policies have a total face value of $733 million. Not only did the Receiver prevent these policies from potentially lapsing (or having to be sold in a hurry at a fraction of their face value), the institutional investor also has been given a strong incentive to purchase any additional fractional interests that come up in the future due to defaults on those same policies in order to preserve the value of its investment. This represents an enormous protection of value for the investors.

35. Operational Cost Savings. The Receiver also took steps to save the investors money (which can be as important as the Receiver's steps to gather assets for the investors). For example, prior to the Receiver's decision to consolidate the operations of MBC and VSI and move them into a less expensive facility, MBC was paying over $61,000 per month in rent. VSI was also paying $8,000 per month in rent at a separate building. In the past four years, since the Receiver consolidated and moved the operations to less expensive warehouse-type space, the Receiver has been paying an average of about $14,000 per month in rent. This represents a savings of $55,000 per month – or $2.6 million over a four-year period.

36. Value From the Sale of VSI. The sale of VSI to an independent operator is also a noteworthy achievement. In the typical receivership, a business is simply wound down and its fixed assets sold for liquidation value. Here, by contrast, the Receiver saw the "platform" provided by VSI as a valuable business that could be sold for value. Based on a motion that the Receiver currently has pending for approval of the sale of VSI, the Receivership will realize $1,000,000 in cash that will be included with the funds to be distributed to the victim investors. Since VSI has little to nothing in the way of fixed assets, this value is almost entirely from the business platform that it provides. This also, incidentally, preserved jobs. VSI had 22

employees at the inception of the Receivership, all of whom easily could have found themselves without a job and with a liquidated business; instead, VSI will have 33 employees going forward in a viable and stable business that generated $1,000,000 in a sale to new owner.

THE APPLICABLE LAW

37. I have reviewed the leading case in the Eleventh Circuit on the award of attorney's fees in common fund-type cases, *Camden I Condominium Association, Inc. v. Dunkle,* 946 F.2d 768, 774-75 (11th Cir. 1991). In *Camden I*, the Eleventh Circuit held that attorneys' fees in common fund-type cases should be based on a reasonable percentage of the fund established for the benefit of the victims. The Eleventh Circuit noted that while "[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee," 25% of the common fund is a "benchmark" which "may be adjusted in accordance with the individual circumstances of each case." *Id.* The Eleventh Circuit listed the non-exclusive factors a court should consider in awarding a fee, which were: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 775. The Eleventh Circuit also held that courts must also consider "any non-monetary benefits conferred upon the class by the settlement," and any additional factors unique to the particular case. *Id.*

38. I have also reviewed the leading case in this District regarding an award of attorney's fees in a comparable receivership case -- *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468 (S.D. Fla. 1997) (Moreno, J.). In that case, the receiver and his counsel and plaintiffs' class counsel worked together to obtain recoveries for victim investors who had been defrauded into investing in a grocery diverting operation that was in fact a Ponzi scheme. The receiver's counsel and plaintiffs' counsel worked under a "hybrid fee arrangement whereby the attorneys would receive interim payments at a substantially reduced hourly rate with a final enhancement or reduction of fees based on the amount recovered." *Id.* at 1470. The Court ultimately awarded the law firms involved a fee enhancement in the form of 15% of the common fund of $141 million that they had generated they had generated (or $21,178,277 in fees). *See id.* at 1469.[2]

39. The MBC case is most analogous to *Walco* in several respects. As in *Walco*, the Receiver's counsel here were engaged on a similar "hybrid fee arrangement"; the Receiver's counsel engaged in a "fragmented litigation against [a] diverse group of defendants"; the matter presented difficult and sometimes novel legal and factual issues; and the Receiver's counsel likewise agree that they will not seek any additional fees. *Cf. Walco*, 975 F. Supp. at 1470. There are also material differences with *Walco* that should be noted, including the fact that the value generated by the Receiver's counsel in this case is not solely in the form of a "common fund," and the funds available for distribution are not all or solely a result of the Receiver's work.

[2] The law firms had been paid $7,525,200 in interim attorney fees already, so the net additional amount awarded was $13,653,077.

40. I have reviewed the Receiver's analysis of the *Camden I* factors in his motion, and I set out below certain of the factors which I find to be particularly relevant to my analysis here.

41. The Time and Labor Required. This Receivership has indisputably taken a huge amount of time and effort to handle and now bring to a conclusion. The Receivership has been in place since May 2004 – 5 years from start to finish. More importantly though, the time spent has been extremely efficient in light of the nature and complexity of this Receivership, the pressures and complexities entailed in preserving the value of the Receivership assets, and the results achieved. At KTT, there has been one principal attorney handling the matter throughout. At CHE, in addition to the Receiver, there has been one principal attorney handling offensive and defensive litigation throughout the receivership and one attorney handling operational and investor issues. This is a very small number of attorneys to have working on a matter of this scope and complexity.

42. The Novelty and Difficulty of the Questions. This type of Receivership required a high level of skill due to the nature of the fraudulent scheme, the complexity of the operations necessary to preserve the value of the over 7,000 insurance policies originally administered by the Receiver, and the vigorous and aggressive opposition the Receiver encountered from other litigants, including the Intervening Insurers. The case involved novel and difficult legal issues, such as the accounting malpractice litigation against Spear Safer and the defensive litigation against the Intervening Insurers.

43. The Customary Fee. In my view, the Receiver and his counsel have achieved the

successful results described above at substantially reduced fees. The Receiver retained CHE and KTT, with the Court's approval, at substantially reduced hourly rates based on 2004 rates with the ability to seek a fee enhancement at an appropriate juncture. In addition, neither the Receiver nor his professionals have sought to increase their rates since 2004 in this matter, as would have been done with an ordinary commercial client. The reduced rate represents a reduction of approximately 40-45% based on current hourly rates. CHE has worked on this matter at an average hourly rate of $218 per hour. Based on these reduced rates, and based upon reduced fee awards by the Court, the total reduced payments to CHE are thus approximately $826,816.

44. Similarly, KTT billed at the agreed-upon reduced hourly rate from its 2004 rates and has not sought to increase its rates since 2004 in this matter as would have been done with an ordinary commercial client. The reduced rate represents a reduction of approximately 40-45% based on current hourly rates. KTT has worked on this matter at an average hourly rate of $264 per hour. Based on these reduced rates, and based upon reduced fee awards by the Court, the total reduced payments to CHE are thus approximately $411,637.45.

45. As a point of comparison, I have reviewed the schedule prepared by Fred Caruso, who was also engaged by the Receiver as an expert in this case. In the viatical settlement conservatorship handled by Mr. Caruso, the professionals in comparable position to the Receiver's counsel here, were paid nearly $6 million more in fees. Moreover, I understand that the conservatorship handled by Mr. Caruso was less complicated and less involved than the MBC receivership.

46. As a second point of comparison, I have reviewed the schedule prepared by Mr. Caruso comparing the fees a trustee would have been entitled to request if MBC had been a

bankruptcy as opposed to a common law receivership. These fees for the trustee alone would potentially represent as much as $15 million in fees above and beyond those paid to the Receiver and his counsel in this case.

47. Amount Involved and the Results Obtained. Based on the claims submitted, and measured by the dollars invested, the loss to investors is approximately $746 million. Based on the size and quantity of the assets involved, the Receiver had to administer over 7,000 insurance policies with a face value of over $1.5 billion at the inception of this case. The Receiver has over $118 million available for distribution. The amounts involved in this case are extraordinary by any measure.

48. As far as results obtained, in my view they have been excellent. The Receiver has, directly and indirectly, amassed a substantial pool of assets (over $118 million) to distribute to the victim investors. This sum was generated in large part through the successful offensive and defensive litigation discussed above and the successful management and defense of the Receivership assets. More broadly, this Receivership, at its inception, presented a number of risks of resulting in an abject failure. The Receiver was required to step in to a business operation administering over 7,000 insurance policies that required substantial payments in premiums to be kept in force. Instead of resulting in the inadvertent loss of any policy, however, the Receiver has successfully implemented a disposition process that will result in investors receiving a substantial percentage of their investments back despite having been victims of MBC's Ponzi-type scheme.

CONCLUSIONS

49. Based on all of the above, it is my professional opinion that the Receiver and his counsel are entitled to and deserving of a fee enhancement award in this case. It is my professional opinion that a fair, reasonable and appropriate fee enhancement award would fall in the range of eleven to twelve million dollars in additional fees from those already paid.

***

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: July 8, 2009

BRUCE W. GREER

"EXHIBIT E"

Declaration of Fred Caruso

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORPORATION, *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.
_____/

DECLARATION OF FRED CARUSO

1. I make this Affidavit in support of the Receiver's application for a final fee enhancement award for himself and his two primary counsels, the law firms of Colson Hicks Eidson and Kozyak Tropin and Throckmorton. The information and opinions in this Affidavit are based on knowledge that I have received from reviewing materials, speaking with the Receiver and his counsel and other sources.

Professional Background

2. I am a certified public accountant in Illinois and Wisconsin and a certified insolvency and reorganization accountant. I am a vice president of Development Specialists, Inc. ("DSI"), which primarily provides management and consulting services for financially troubled businesses. Since 1982, I have served in the capacity as the Chapter 11 or 7 Trustee, as the Chief

Restructuring Officer ("CRO"), as the President or CFO, or as the financial advisor in literally hundreds of cases for manufacturers, retailers, wholesalers and financial services companies. Please see the attached Exhibit C for a detailed summary of my case experience.

Background on Expert Engagement

3. I have been engaged by the Receiver to provide an analysis and review of the work performed by the Receiver and his counsel in this case and, in particular, to provide an expert opinion as to the professional fees that would have been awarded had this case been handled as a Chapter 11 Bankruptcy and by analogy to another viatical settlement case in which I served as conservator.

4. The terms of my engagement have been that I am being paid $575.00 per hour for my work. I understand that the firms of Colson Hicks Eidson and Kozyak Tropin & Throckmorton are paying for the costs of my engagement directly and that none of the costs are being billed to the Receivership.

5. To gain an understanding of this case and of the work performed by the Receiver and his counsel, I have taken a number of steps. First, I have reviewed a variety of pleadings, filings and orders from the MBC case, including (a) the Receiver's reports submitted to the Court, (b) the fee applications submitted to the Court by Colson Hicks Eidson and Kozyak Tropin & Throckmorton, (c) various Court orders relating to the substantive decisions in the MBC case and the procedural decisions governing the handling of the Receivership. Second, I have spoken on a number of occasions with the Receiver and his counsel to discuss their work in this case and to gain a better understanding of that work.

6. I have personally been involved in several other insolvency cases with the various lawyers at KT&T. I was employed by Harley Tropin, as Receiver for Premium Sales, as his financial advisor. As the post confirmation trustee for Model Imperial, I hired him as litigation counsel for the estate's accounting malpractice claim. Recently, as the financial advisor to Solar Cosmetics, I negotiated the sale of this company to a potential buyer, who was represented by David Rosendorf, a partner with KT&T. I have had no prior contact or perform any services for Mr. Martinez or Colson Hicks Eidson.

The RRL Matter

7. In 2006, I became employed as the financial advisor for a hedge fund in Illinois, which owned two special purpose entities that made a substantial investment in life settlement policies. In October, 2006, the New York Attorney General filed a complaint against the third party "originator" that sold these policies to my client, which put a "cloud" on the title of these policies. In June, 2007, I became the CRO for Ritchie Risk-Linked Strategies Trading (Ireland), Ltd. ("RRL 1") and Ritchie Risk-Linked Strategies Trading (Ireland) II, Ltd. ("RRL 2") when they both filed for Chapter 11 petitions in the U.S. Bankruptcy Court for the Southern District of New York, Case Nos. 07-11906 and 07-11907.

8. RRL 1 and RRL 2 were incorporated as special purpose vehicles in Ireland to take advantage of certain tax treaties between the United States and Ireland. From June, 2005 thru November, 2006, these two entities acquired approximately 1,100 life settlement policies at a combined face value of approximately $2.8 billion. Unlike the MBC portfolio of policies, the weighted average RRL policy was substantially larger in size and the underlying insured had a longer life expectancy, estimated at approximated $6,400,000 and 10.2 years, respectively.

Although their respective portfolio characteristics were different, the goal of their respective insolvency proceeding was the same: maximize the value the assets for it's' creditors and investors.

Comparison of Fees Awarded in the RRL Matter

9. Attached Exhibit A is a comparison of the "debtor side" professional fees paid by RRL 1 and RRL 2 as compared to the similar category of fees paid in the Mutual Benefits Corp. ("MBC") Receivership. The following are brief explanations for the salient points for this exhibit:

- The debtor side professional fees incurred by RRL 1 and RRL 2 (the "Debtors") for its CRO, counsel, conflicts counsel and evaluation expert incurred 13,944 hours at an average hourly billing rate of $545.19 for total fees of $7,602,604. This amount excludes $3,005,543 for fees incurred by the Debtors for their investment banker, who where not required to provide detailed time records for their final fee application. The total time span for these services was approximately 22 months.
- In comparison, MBC's debtor side professionals the same services incurred 19,163 hours at an average hourly rate of $243.92 hours for total fees of $4,674,356. MBC was able to sell its policies without the use of an investment banker.
- The far right hand column of Exhibit A indicates that if MBC's professionals had charged the same average hourly rate as those incurred in the RRL matters, the increase in their collective allowed fees would be $5,773,237. Despite the fact that MBC's case lasted approximately 62 months as opposed to 22 months for RRL 1 and RRL 2 (see

paragraph 5 for reasons why), the RRL fees exceeded MBC's by $5,933,790.

- These figures exclude debtor incurred fees for policy servicing, claims agents and investigative matters for good reason. In the RRL matters, a third party servicer was already in place to service the policies (pay premiums, monitor insured's lives, collect death benefits, etc.). Although the total gross fees paid by MBC for policy servicing exceed those by the RRL matters because the cases had durations of 62 months and 22 months, respectively, the average monthly cost incurred by MBC was approximately $221,000 versus $258,000 for the RRL matters. Since the RRL matters had a total of 5 creditors and investors, it did not need a claims agent. Although there were allegations of fraud in the RRL matters as it related to the New York's Attorney General's complaint against the originator of the policy (who was also the third party servicer of the policies), this allegation did not require the retention of an investigative agent.

10. Although MBC's gross debtor fees were almost $6 million less than those incurred by the RLL matters, the MBC case was at least as complex, if not more, for the following reasons:

- First and foremost, MBC was an "investor" case. By that, I mean that the creditors were primarily individuals rather than businesses, who invested a substantial amount of their savings in the MBC enterprise. I have been the Chapter 11 Trustee, Chapter 7 Trustee or financial advisor in at least four investor cases, and I absolutely believe these cases require a substantial increase in time involvement by the debtor's professionals in order to complete the case. As Exhibit A illustrates, the RRL matters had a total of only 5

creditors (a bank, the servicing agent and several layers of hedge fund investments) and did not even have an unsecured creditors committee.

- As an illustration of the complexity caused by investor cases, the Court in the MBC case determined that it was in the best interest of investors to be able to decide for themselves whether to "sell" or "keep" their policies. As I am sure all participants in the case recognize, this added a significant complexity in the servicing aspects for the policies. In the RRL matters, by comparison, all policies were sold in two bulk sales held on the same day.

Comparison to Chapter 11 Trustee Fees

11. I believe another way to determine the proper fee award for the MBC professionals is to compare it to a hypothetical fee calculation for a Chapter 11 Trustee. Attached Exhibit B analyzes this proposition.

12. A bankruptcy fee calculation is fairly straight forward and simple. The maximum allowable trustee's fee is basically 3% of cash disbursements made by the trustee during the duration of the case plus the value distributed to creditors per the terms of the plan. The following is a brief explanation of my conservative calculation for a Trustee's fee as calculated per Exhibit B:

- The cash disbursements made by the Receiver for the indicated categories total $431,187,020.
- The amount of assets to be disbursed under the plan includes cash on hand (primarily from the sale of "Sell" policies and the value of the "Keep" policies; as footnoted on the

exhibit, the value of the "Keep" policies was conservatively estimated at the actual net recovery value of the "Sell" policies, which may have been of lesser quality in the market place).

- The Receiver's cash disbursements and estimated value distributed under the plan total $626,086,126. I subtracted from this amount the amount of cash on hand ($103,413,749) at the Receivership inception date. I have seen trustee's fee calculations that did not exclude this amount, but I believe it is warranted here due to the materiality of this amount.
- Based upon this total fee basis of $522,672,377, the maximum trustee's fee in a bankruptcy proceeding is $15,703,421. From this amount, the total hourly fees of Mr. Martinez included in his firm's fee applications over the past five years, totaling $426,020, should be subtracted, yielding a net incremental Chapter 11 Trustee's fee of $15,703,421. Again, to be conservative, I have seen instances were the Trustee not only had to deduct his individual time incurred in the case but also the entire time of his firm. Although I do not believe it is warranted to do so here (if Colson Hicks Eidson were not to be separately enumerated for their time in a Chapter 11 proceeding, I believe they would have delegated all legal services to Kozyak Tropin & Throckmorton), if the entire fees of Colson Hicks Edison were subtracted from the trustee's fee calculation, the incremental fees due them would still be $13,091,713.

13. After reviewing the factors described above, I conclude the appropriate enhancement should be in the range of ten to twelve million dollars, subject to the Court's

discretion.

* * *

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

FRED CARUSO Dated: July 30, 2009

Exhibit A

Fee Comparison to Similar Case
Mutual Benefit Corp., et al., ("MBC")
vs.
Ritchie Risk-Linked Strategies Trading (Ireland), LTD ("RRL 1") and
Ritchie Risk-Linked Strategies Trading (Ireland) II, LTD ("RRL 2")

		RRL 1 and RRL 2 Combined					MBC						
		RRL 1	RRL 2	Total Fees	Total Hrs	Ave Rate	Professional	Role	Total Hrs	Ave Rate	Total Fees		
Debtor's Professionals	**Role**												
DSI	CRO	871,437.99	280,114.15	1,151,552.14	2,308.50	498.83	CHE	Receiver/Counsel	11,938.64	218.76	2,611,708.25		
Dewey LeBoeuf	Lead Counsel	4,795,353.08	1,370,923.50	6,166,276.58	10,761.39	573.00	KT&T	Counsel	6,042.60	260.56	1,574,444.55		
Stevens & Lee	Conflicts Counsel	32,390.95	5,716.05	38,107.00	77.90	489.18	Bilzin, et al	Tax	1,056.80	433.25	458,729.68		
Lewis & Ellis	Valuation Expert	208,113.51	38,554.29	246,667.80	796.99	309.50	AN&B	Employment	123.05	239.53	29,473.75		
Subtotal		5,907,295.53	1,695,307.99	**7,602,603.52**	**13,944.78**	**545.19**			**19,163.09**	**243.92**	**4,674,356.43**	5,773,237.14	*Difference in Rates*
Houlihan Lokey	Investment Banker	2,084,869.16	920,674.00	3,005,543.16	n/a		Inv Banker	Not Employed			-		
Totals		**7,992,164.69**	**2,615,981.99**	**10,608,146.68**							**4,674,356.43**	5,933,790.25	*Difference in Gross Fees*
Other Services:													
Servicing Policies:					**# of Mos**	**Per Mo**						**# of Mos**	**Per Mo**
Third Party Service Provider		2,630,938.00	489,412.00	3,120,350.00	14	222,882.14	Berkowitz, et al	Servicing Issues			4,927,623.33		
"In house" staff	Mgt/Board/Admin	480,700.00	293,800.00	774,500.00	22	35,204.55	Cost for Servicing				8,706,502.00		
		3,111,638.00	**783,212.00**	**3,894,850.00**		**258,086.69**	Rachlin Cohen	IT Issues			41,320.78		
											13,675,446.11	62	**220,571.71**
Claims Agent & Investigative:													
None							Garden City	Claims Admin			1,171,202.45		
							Intergrity	Investigator			565,092.80		
											1,736,295.25		

Case Summary:	**RRL 1**	**RRL 2**	**Totals**	**"Sold" Policies**	**"Keep" Policies**	**Totals**
# of Policies at Inception	883	182	1,065	3,411	3,108	6,519
# of Creditors/Investors	3	2	5			30000+
Face Value of Policies Sold	2,262,066,000	398,507,000	2,660,573,000	329,727,793	899,856,316	1,229,584,109
Selling Price for Policies Sold (see note below)	387,809,387	56,411,458	444,220,845	27,741,775		
Start Date for Debtor's Professionals			Dec '06			May '04
Bk Petition/Receiver Date			June '07			May '04
Sale Date			January '08			July 07 thru Dec '08
Case Completion Date			Sept '08			July '09
Total # of Mos "Start to Finish"			22			62

Exhibit B

Mutual Benefit Corporation
Hypothetical Computation for Chapter 11 Trust Fee
As of June 11, 2009

Prior Cash Disbursements Paid by Receivership:					
Total Loan Repayments		34,107,378			
Total Policy Premium Payments		156,381,740			
Total Operating Expenses		15,255,443			
Total Professional Fees Paid		8,468,793			
Total Other Disbursements (Death Benefits)		216,973,666			
Total Actual Cash Disbursements			431,187,020		
Estimated Amount Available for Distribution:					
Cash On Hand:					
Asset Recovery Accounts		93,069,311			
Sell Policy Accounts		20,287,041			
Operating Accounts (excludes VSI's operating acct)		4,953,984			
Cash On Hand Available for Distribution		118,310,336			
Pending Selling Price for VSI		1,000,000			
Estimated Value for "Keep" Policies		75,588,770			*See Note Below*
Total Estimated Value Available for Distribution			194,899,106		
Total Disbursements and Value Available for Investors			626,086,126		
Less Cash on Hand at Inception of Receivership			(103,413,749)		
Net Cash Disbursements and Value Available for Investors			**522,672,377**		
Bankruptcy Trustee's Fee Calculation:					
	%	**$ Disbursed**	**Fee**		
	25.0%	5,000	1,250		
	10.0%	45,000	4,500		
	5.0%	950,000	47,500		
	3.0%	521,672,377	15,650,171		
Bankruptcy Trustee Fee		522,672,377	**15,703,421**	**15,703,421**	
Less:					
Hourly Fees for Roberto Martinez			(426,020)		
Hourly Fees for Colson Hicks Eidson			-	(2,611,708)	
Net Chapter 11 Trustee Fee in Excess of Receiver's Hourly Fee Application			**15,703,421**	**13,091,713**	

Note:
The value of the "Keep" Policy represents a conservative value calculated at the selling price of the "Sold" Policies as a % of the Face Value.

EXHIBIT C

FRED C. CARUSO

Development Specialist, Inc.

Summary of Valuation, Insolvency and Reorganization Experience

Oasis Corporation, Columbus, OH
Hired as the financial consultant for this $150 million manufacturer of water coolers, with plants in the United States, Mexico, Ireland and Poland. Assisted Oasis in downsizing its operations, created cash availability under its' existing line of credit and completed a sale of the business thru an "article 9 friendly foreclosure".

Valeo Electrical Systems of North America, Auburn Hills, MI
Hired as the financial consultant for the parent of this $8 billion worldwide tier-one automotive supplier to renegotiate certain long-term labor contracts with the UAW and act as an advisor for the Company's Chapter 11 filing.

Outboard Marine Corporation, Waukegan, IL
Hired as a financial consultant to this $1.2 billion manufacturer of outboard engines and recreational boats. Assisted in the shutdown of all engine and boat manufacturing locations and the sale of all assets within 60 days from the filing of a Chapter 11 petition.

A Michigan Tier-One Automotive Supplier
Hired as a financial consultant to this $1.1 billion automotive supplier to assist it in restructuring $500 in secured debt and raise an additional $70 million in order to survive the then current automotive recession.

Breed Technologies Inc., Lakeland, FL
Hired as the Chief Restructuring Officer for this $1.3 billion tier-one supplier that operates 32 plants in seven countries. Negotiated a $90 DIP agreement, renegotiated platform contracts and security and access agreements with key customers, refinanced the Company's Italian operations and managed a sale process for the Company as a whole. Due to the low valuations for the entire automotive supply chain, proposed and confirmed an internal plan of reorganization within 18 months of the filing of a Chapter 11 petition, which involved restructuring $1.0 billion in debt.

Commercial Financial Services, Inc., Tulsa, OK
Hired as the President of this debt collection firm after allegations of fraud caused the bond rating agencies to withdraw their ratings on $1.5 billion of asset-backed securities. Within 60 days upon arrival, a downsizing was implemented to reduce the workforce by 50% (2000 employees) and lowered monthly operating expenses by $10 million without causing an impairment of collections. Efforts to sell the Company failed, and the Company's operations were closed in July 1999, during which I managed the transition of the collection servicing for eight "ABS Trusts" to the back up servicers.

EXHIBIT C

Wendy's Franchisees, Nationwide
Managed and/or advised eight separate Wendy's franchisees totaling over 350 units in their Chapter 11 proceedings, including the preparation of financial projections, landlord negotiations, development of reorganization plans and provided expert testimony for plan confirmation.

Restaurant Management Services, Inc., Macon, GA
Hired as the financial adviser to assist this 120 unit Shoney's and Captain D's franchisee in it's' out of court restructure, including preparation of financial projections and negotiations with landlords and senior lenders.

Mercury Finance Company, Inc., Lake Forest, IL
Hired as the Chief Operating Officer for this 285-branch sub-prime auto lender after a fraud discovery caused a one-day $2.0 billion stock market drop. Through branch closing and the sale on non-core assets, outstanding indebtedness was paid down by $400 million. An internal plan of reorganization paying all creditors in full was confirmed in early 1999.

Educational Loan Services, Inc., Boston, MA
Hired by Nellie Mae, the Company's parent, to assist in the orderly cessation and transition of all loan-servicing functions for ELSI's $3.0 billion student loan portfolio. Negotiated with the 20 owners of the portfolio (primarily northeastern banks) to fund their pro-rata share of the $20 million transition budget and successfully transferred all loan servicing to the new servicing agents within the 15 month budgeted time period.

Benchmark Carpets, Inc., Carpentersville, GA
Assisted the Chapter 7 Trustee to orderly liquidate all equipment and inventory and collect outstanding receivables from the dealer network, who made substantial damage claims for the diminution of their inventory values caused by Benchmark's shutdown.

Colfor, Inc. and Colmach, Inc., Canton, OH
Appointed the CEO and Debtor-in-Possession for these tier-one auto suppliers after discovery of a $15 million inventory overstatement. Negotiated a consensual cash collateral agreement with 28 lenders and turned a $1.0 million monthly operating loss into a $.25 monthly profit within four months without receiving any price concessions from customers. Sold the Debtors as a going concern in a "363" sale within five months of the bankruptcy petition.

Brake Pro, Inc., Atlanta, GA
Consultant to this Company's major shareholder, Tenneco Automotive, involving the out-of-court sale of this brake lining manufacturer.

Fort Wayne Foundries, Fort Wayne, IN
Consultant to the creditors' committee in the Company's out-of-court TDR with GECC and General Motors.

Tune-Up Masters, Inc., Los Angeles, CA
Hired as the CFO for this 250-store automotive repair chain, formerly owned by Andy Granatelli, in its Chapter 11 proceeding. Closed 70 locations prior to its bankruptcy petition in order to avoid post-petition environmental claims on these former gasoline station locations. Generated $6.0 million in cash profits and confirmed an internal plan of reorganization.

Shape, Inc., Portland, MA
Hired as CFO for this domestic manufacturer of audio and video tapes, with facilities in 10 states and one foreign country. Sold two plants as going concerns and liquidated two others in order to maximize the operating results for the remaining core business. Obtained exit financing from Foothill Capital and paid creditors 100% in Shape's Chapter 11 plan of reorganization.

Other Significant Cases
Sudbury, Inc. ($800 million tier-one auto supplier)
Findlay Industries ($500 million tier-one auto supplier)
Diamond Mortgage/AJ Obey (sub-prime mortgage lender)
U.S. Lending (sub-prime automotive lender)
Madigan Brothers, Inc. (retail department stores)
Richman Gordman Department Stores
Half Price Department Stores
Swallen's, Inc. (electronics retail chain in Ohio)
Keller Oil Company (40 unit gasoline-convenient store chain)
Model Imperial (distributor of health and beauty aid products)
(provided expert valuation testimony)
United Wholesale, Inc. (consumer products distributor)
Pride Industries, Inc. (metal fabrication)
Western Sizzlin, Inc. (casual steakhouse franchisor)
Kobacker Company (350-unit shoe store chain)
Gentry (men's clothing stores)

Other Relevant Employment Experience

For approximately two years, served as President for Hilco Appraisal Services, LLP, the country's largest provider of inventory, machinery and intangible valuations for the asset based lending community.

EXHIBIT C

Education:

University of Wisconsin-Madison (1977)
Bachelors in Accounting and Finance

Licenses & Memberships:

Certified Public Accountant in Illinois and Wisconsin
Certified Insolvency and Reorganization Accountant
American Institute of Certified Public Accountants
Illinois Society of Certified Public Accountants
Association of Insolvency and Reorganization Accountants
American Bankruptcy Institute