

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

VIATICAL BENEFACTORS, LLC,
VIATICAL SERVICES, INC.,
KENSINGTON MANAGEMENT, INC.
RAINY CONSULTING CORP.,
TWIN GROVES INVESTMENTS, INC.,
P.J.L. CONSULTING, INC., and
CAMDEN CONSULTING, INC.,

Relief Defendants.

FOURTH REPORT OF THE RECEIVER

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

Colson Hicks Eidson

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INTRODUCTION

This Report is filed primarily to provide the Court with information about some of the most critical financial issues facing the Receivership: the diminishing availability of monies to pay premiums, the slow pace of maturities of the insurance policies, and the diminishing availability of funds to operate MBC. The Report also summarizes certain steps taken to communicate with the investors.

In light of the rapidly diminishing monies available to pay premiums, maintaining the *status quo* is no longer affordable and reasonable while the litigation process goes forward. Immediate steps must be taken to determine the appropriate treatment of all policies. At a minimum, the process of evaluating the insurance policies portfolio by qualified experts should begin now, as the time involved in the evaluation necessitates immediate action, before such evaluation is rendered moot.

**THE FUNDS FOR THE PAYMENT OF PREMIUMS
ARE RAPIDLY DIMINISHING**

As of December 31, 2004, the Receivership Entities were administering 7,184 insurance policies, with a total face value of approximately \$1.55 billion, associated with approximately 31,434 different investors.¹

From May 5, 2004, through January 21, 2005, the Receiver has made all premium payments due on all of the policies and has processed 4,791 checks totaling \$ 23,903,834 for the payment of premiums. *See Summary of Premiums Paid*, attached as Exhibit A.

¹ The insurance policy data in this report is derived from the database of VSI as of January 10, 2005. The number of investors is derived from an analysis of that database and MBC's general ledger accounting system as of January 5, 2005. In the Second Report of Receiver, it was reported that the Receivership Entities were administering 7,323 policies. The decline of 139 policies can be attributed to policies that matured during to the Receivership, policies that matured prior to the Receivership but were identified during the Receivership and refinements to the policy data as a result of additional information that has come to the attention of the Receiver and his professionals.

As indicated in the Second Report of Receiver, the manner in which MBC arranged for the payment of the premiums changed over time, such that by the time of the appointment of the Receiver the policies were being paid essentially out of three accounts: the MBC Operating Account, the Livoti Accounts, and the UPBNA Accounts. The monies available for the payment of the premiums, however, are diminishing rapidly, and the monies in some of these accounts soon will be depleted. In summary:

- The MBC Operating and Money Market Accounts had a balance of \$1,770,219 as of January 21, 2005, and likely will be depleted by approximately August 2005, excluding the payment of the fees for the Receiver's professionals.² The Receiver is now using the monies from the VSI "Reserve Account" for the payment of premiums historically paid from the MBC Operating Account. Once those funds are depleted, these premiums will be paid from the UPBNA Premium Accounts.

- The Livoti Accounts had a balance of \$27,615, as of January 21, 2005. The Receiver has stopped making the payment of premiums from these accounts and is now using the monies from the UPBNA Premium Accounts for the payment of premiums historically paid from the Livoti Accounts.

- The UPBNA Premium Accounts had a balance of \$81,148,216 as of January 21, 2005, and the best estimate as to its approximate date of depletion, without any input from expert insurance and actuarial analysis, is sometime in the year 2007.

A. The MBC Operating Account

The policies whose premiums historically have been paid out of the MBC Operating Account do not have escrow accounts for the payment of premiums, and no monies appear ever

² This balance reflects the transfer of \$720,610 for the reimbursement and payment of insurance premiums from the monies in the VSI "Reserve Account" as authorized by the Court in its Order Granting Receiver's Motion for Authority to Pay Premiums, Address Other Operational Issues and Commence Collection Litigation dated June 29, 2004 [D.E. 219] ("the Operations Order"), which provides that the Receiver "shall have authority to pay premiums for all policies from the various premium escrow accounts, even those policies the premium payments for which are otherwise payable from the MBC operating funds." The Court's original order appointing the Receiver also grants this authority to the Receiver. At the inception of the Receivership the balance of the funds in the VSI "Reserve Account," which was held at Northern Trust Bank, was \$ 718,010. The balance, as of January 21, 2005, of the funds remaining from that account, which are now held at Bank of America, totaled \$95,611. After the VSI "Reserve Account" monies are depleted, as authorized by the Operations Order, the Receiver will use the monies in the "UPBNA Premium Accounts" to make the premium payments.

to have been escrowed by MBC for the payment of these premiums. The investors are either listed as the owners of the policies or are the named beneficiaries under the policies.³ As of December 31, 2004, there were 1,202 such policies, requiring annual premium payments of approximately \$900,000, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.⁴

While the Receiver continues to issue checks to pay premiums for these policies from the MBC Operating Account, these disbursements will be reimbursed first from the monies remaining from the VSI "Reserve Account" and, once those funds have been depleted, from the UPBNA Premium Accounts.

B. The Livoti Accounts

As of December 31, 2004, there were 5,039 policies whose premiums were paid from the Livoti Accounts, requiring annual premium payments of approximately \$14 million, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.⁵ Approximately \$1.1 million in premiums has been paid monthly. As of January 21, 2005, and reflecting checks printed through January 19, 2005, a total of \$27,615 remains in the Livoti Accounts available to pay premiums.

An analysis of the anticipated premiums to be paid from the Livoti Accounts shows that, after recording all checks printed through January 19, 2005, a total of \$88,547 remains to be paid on policies with due dates in January 2005, and \$1,101,608 remains to be paid on policies with due dates in February 2005.

³ MBC also owns an interest in certain policies and receives distributions when certain policies mature, as well as other payments or distributions made to owners of insurance policies.

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

⁵ See fn. 4.

The Livoti Accounts thus do not have sufficient funds to pay the remaining January and February 2005 premiums.⁶

To avoid the inadvertent overdraft of the Livoti Accounts, the Receiver has stopped making payment of premiums from these accounts and is now using the monies in the UPBNA Premium Accounts for the payment of these premiums.

C. The UPBNA Premium Accounts

As of December 31, 2004, there were 943 policies to be paid from monies in the UPBNA Premium Accounts, requiring annual premium payments of approximately \$22 million, assuming no maturities and excluding dividends or other credits that may be received which reduce premiums due.⁷ The balance of the premium monies at UPBNA to pay these policies totaled \$81,148,216, as of January 21, 2005.

The best estimate as to the approximate date of depletion of the monies in the UPBNA Premium Accounts, without any input from expert insurance and actuarial analysis, is sometime in the year 2007, as set forth below.

It is estimated that the remaining VSI "Reserve Account" monies will be depleted by approximately February 2005. Thereafter, as stated above, all the premiums that historically were paid from the MBC Operating Account and the Livoti Accounts will be paid out of the UPBNA Premium Accounts. Without taking into consideration a) reductions in total annual premiums caused by maturities, or b) increases in total annual premiums caused by either

⁶ In the Second Report of Receiver, it was estimated that there would be sufficient funds to continue to pay premiums from the Livoti Accounts for approximately 15 months. This estimate was overstated due to changes in projected premiums relied upon by the Receiver and his professionals. For example, premiums are currently being paid in connection with two \$5 million dollar life insurance policies for which MBC estimated a life expectancy of 24 months. Based on the insurance carrier's initial projections, a \$90,000 premium payment was made per quarter, per policy, or \$720,000 per year for the two policies. In May 2004, the carrier's re-projections for continuation of coverage increased from \$90,000 to \$217,769 per policy, per quarter, or \$1,742,756.00 per year for the two policies, an increase in excess of \$1 million per year. This insured is already two years beyond life expectancy as estimated by MBC.

⁷ See fn. 4.

premium increases or the depletion of the cash value balances of specific policies, premiums historically paid out of the MBC Operating Account, the Livoti Accounts and the UPBNA accounts total approximately \$36 million per year, or \$3 million per month. Based on a balance in the UPBNA Premiums Accounts, as of January 21, 2005, of \$81,148,216, without any changes to current aggregate premium payment levels, a rough estimate is that there are sufficient funds in the UPBNA Accounts to pay premiums for approximately 27 months.

**ONLY 176 INSURANCE POLICIES ARE KNOWN TO HAVE MATURED
FROM JANUARY 1, 2004 THROUGH DECEMBER 31, 2004**

Given the uncertainty surrounding the expected maturities of the 7,184 active policies under the control of the receivership, it is difficult to predict a depletion date with any precision. The following sets forth pertinent data relating to the maturities:⁸

- From the period from January 1, 2004 through December 31, 2004, there were only 176 insurance policies that are known to have matured.⁹
- The Receiver is currently monitoring and/or processing a total of 193 policies that matured, in the years 2002 – 2004, as follows:
 - 47 policies - the insurance benefits paid to the Receiver and the interest earned on these policies total \$ 6,215,548 as of January 21, 2005, and have been deposited in a segregated interest bearing account at Bank of America. This includes benefits related to policies that matured prior to the Receivership but were collected during the Receivership.

⁸ The data set forth in this section is as of January 10, 2005 and reflects information regarding policy maturities per VSI.

⁹ The maturity of these 176 policies likely understates the total maturities for 2004 given that it may take from 3 to 6 months before the death of an insured becomes known to VSI.

- 82 policies – death benefits claims have been filed for these policies, representing \$16,693,267 in face value, and are currently pending at the insurance companies.
- 11 policies – the death claims for these policies, representing \$811,098 in face value, are currently in the process of preparation have not been presented to the insurance companies.
- 37 policies – these policies, representing \$19,078,608 in face value, have been interpleaded.
- 16 policies – these policies, representing \$5,383,000 in face value, are under “legal review” at the insurance companies.
- The annual premium payments for the 176 policies that are known to have matured in 2004 was approximately \$216,000, or \$18,000 per month, representing less than 1% of the current average monthly obligation of approximately \$3 million.
- The face value of the 176 maturities is approximately \$36.3 million, representing approximately 2.3% of the \$1.55 billion face value of the policies currently administered by the Receiver. Some of this amount was paid out prior to the Receivership.
- For policies that matured in 2004 prior to the Receivership, MBC collected death benefits of \$2,003,741 related to 19 insurance policies and the Receiver has collected death benefits of \$4,466,033 related to 36 insurance policies (a portion of which includes interest and returned premium), resulting in a total of

\$6,469,774 related to 55 policies.¹⁰

- It goes without saying that it is not known how long any insured will live; and, therefore, the premiums estimated for policies that are currently beyond life expectancies can not be known. However, there are a total of 6,624 active policies currently beyond the life expectancies estimated by MBC for which the aggregate annual premium is estimated to be approximately \$15.3 million.¹¹

**THE FUNDS AVAILABLE FOR THE OPERATION OF MBC
ARE RAPIDLY DIMINISHING**

As previously stated, the combined cash balances, as of January 21, 2005, for the MBC Operating Account and unrestricted Money Market Account totaled \$1,770,219.¹² All of the

¹⁰ The \$1,749,515 difference between the \$ 6,215,548 collected by the Receiver in total and the \$4,466,033 collected on policies that matured in 2004 are related to death benefits on policies that matured in 2002 and 2003.

¹¹ VSI estimates annual premiums based on the amount paid in the prior year and includes group policy premiums subject to reimbursement based upon the 2004 disbursements. These estimates do not take into consideration other policy variations. For instance, policies with escalating premiums are assumed to remain fixed in the above analysis, which would underestimate premiums due. Policies on disability waiver may be subject to change should the insured be denied reinstatement. Policies where premiums are being paid with cash value may be subject to change due to depletion of these funds. In addition, group policies often require conversion to individual life policies - which result in substantial premium increases. VSI has historically been required to convert an average of 150 group policies per year. Since the Receivership, there have been approximately 40 group policy conversions. To the extent that dividends are used to offset or reduce premiums due, such reductions are not reflected above.

The Defendants have requested data regarding the policies that are still within their life expectancies as estimated by MBC. Although this data is not useful to the management of the policies, the Receiver provides that information herein to accommodate the Defendants' request. Of the 7,184 active policies, only 560 policies are still within MBC's designated life expectancies. The annual amount of premiums for these 560 policies is approximately \$21.7 million. The estimated funds needed to pay premiums through MBC's estimated life expectancy date on these 560 policies is approximately \$47.1 million, however, as evidenced by experience, this amount may be unreliable as it based upon historical payments that may not accurately reflect the premiums to be paid within the estimated life expectancy period. This, also, does not reflect any premium payments that will need to be made beyond the estimated life expectancies, which experience with the entire portfolio indicates undoubtedly will occur based upon MBC's track record at projecting life expectancies. For example, if an insured has an estimated life expectancy date of February 2005, with monthly premiums of \$20,000, should this insured live beyond December 2005, there would be an additional \$220,000 of premium required to satisfy the annual premium on this policy for the year 2005 that would not be reflected in the \$47.1 million estimate.

¹² Proceeds from insurance companies are being deposited into a separate Receiver's Supplemental Account, consisting of dividends, class action proceeds, and unearned premiums from matured policies. The balance of this account as of January 21, 2004 totaled \$149,892.

monies used to pay the operating expenses of MBC come from these accounts. These expenses include rent, payroll, security guards, health benefits for the MBC remaining employees, and general administrative expenses.

Since the premiums that historically have been paid out of the MBC Operating Account are now paid using monies from the VSI "Reserve Account" and shortly will be paid out of the UPBNA Premium Accounts, and in light of the expenditure reductions made by the Receiver as authorized by the Court, the average monthly expenses for the operation of MBC currently have been reduced to approximately \$261,000 per month. This amount, however, *excludes* the payment of professional fees to run the Receivership, as approved by the Court pursuant to fee applications, and also excludes the payment of the pre-Receivership accounts payable. Without new funding, MBC's cash balance available to pay solely the operating expenses will be depleted in approximately seven (7) months.

Because of the current status of the S.E.C. enforcement proceedings, since May 4, 2004, the Receiver has sought to maintain the *status quo* wherever possible in light of the circumstances. This has limited the amount of the reductions to the operating expenses of MBC. In light of the current limited working capital resources of MBC, however, the Receiver can no longer maintain the *status quo* on numerous operational issues as that has become unaffordable and unreasonable. As such, the Receiver is currently exploring all options for reducing costs.

For example, MBC continues to pay rent for the same amount of floor space as it did prior to the Receivership, two full floors in a Class A office building on Broward Boulevard across the street from the Fort Lauderdale Federal Courthouse, although MBC only uses a small area of those two floors since its operations have changed significantly under the Receivership. The Receiver needs to reduce this amount of floor space under lease.

Balanced against these potential reductions in costs, however, are the continuing necessary tasks that the Receiver must undertake to operate the Receivership Entities and to manage and defend the multitude of regulatory and civil litigation matters and cases throughout the United States. Further, to offset the expenses, the Receiver has begun the process to recover assets and improper payments made to insiders and third parties, including demanding payment of a demand promissory note in the amount \$1,160,000 from Steven Steiner. It is anticipated that the asset recovery process will require investigations and the filing of numerous lawsuits. These actions will necessitate the use of financial resources to pay for the work of the professionals retained by the Receiver.

INVESTOR COMMUNICATIONS

The Receiver continues to receive thousands of inquiries from all over the world, in the form of telephone calls, letters, emails and visits, from investors in the viatical settlement contracts sold by MBC. These inquiries continue to be handled by the Receiver's professionals and staff members and by the Garden City Group, specialists in legal administration services. The various inquiries can be categorized as set forth below.

Correspondence with the Receiver

Since June, 2004, the Receiver has responded to over 2,500 letters from investors requesting specific information about their investments. Initially, investors were only provided with general information about the Receivership, as the Receiver and his professionals had not determined the extent or accuracy of information available from MBC and VSI.

Since November, 2004, the Receiver's professionals have responded to over 1,500 inquiries from investors regarding the status of insurance policies in which MBC has advised the investor that the investor has some interest. The responses provide individual status reports

setting forth the date of the last contact with the insured, whether the policy has matured or is in full force and effect, and whether the policy is currently paid. There are approximately an additional 1,500 inquiries the responses to which are currently pending. Also, there are a number of outstanding policy status requests made by agents that will be responded to once, and if, the Receiver receives the corresponding individual investors' authorizations to release the information.

Additionally, there are over 500 other investors that have made specific written inquiry into funds not yet placed in policies and which funds those investors believe are held at Union Planters Bank (UPBNA) in the Pre Purchase Account. Within the last month the Receiver's professionals received a database from UPBNA containing this information. The Receiver's professionals and staff will be trained in the use of that database this week and plan to respond to these inquiries as soon as possible thereafter.

On-Site Visitors

The Receiver is not meeting with individual investors. Nevertheless, approximately fifty (50) individual investors and/or their agents have appeared in the offices of the Receiver without appointments. The Receiver's staff and some of the Receiver's professionals have met with these individuals and taken their basic information and whatever documents they have brought with them.

The Receiver's professionals at VSI also have met with approximately twenty (20) brokers who appeared at VSI without appointments.

The Receiver does not provide any information to on site visitors. As such, these visits are unproductive and the Receiver does not recommend this practice. Information is provided to investors through the other means mentioned herein.

Telephone Calls

The Garden City Group has handled over 29,200 telephone calls from investors and their agents through a toll free phone number specific to the MBC Receivership. Of those telephone calls, most callers have received the information they sought from the voice recording system. Over 7,575 investors have spoken with a representative of The Garden City Group directly.

The Receiver and his professionals also have received hundreds of phone calls in the offices of the Receiver and at VSI, each of which has received a personalized response.

E-mail Communications

The Garden City Group continues to receive and respond to most e-mails on behalf of the Receiver. The Responses are provided to The Garden City Group by the Receiver's professionals. To date, the Receiver and his professionals have received and responded to over 7,400 investors e-mail inquiries through The Garden City Group.

Website Communications

The Receiver and his professionals update the Receiver's website, www.mbcreceiver.com, regularly. The information is provided in English and Spanish. Additionally, significant pleadings, orders, and other court documents from the SEC litigation are posted on the website for the convenience of the investors. While the website has received some complaints from investors, the vast majority of the complaints stem from the complainers' dislike of the information communicated rather than from technical difficulties in accessing the information.

Investors' Changes of Address or Contact Information

The personal contact information of many of the investors has changed since the beginning of the Receivership. The Receiver's professionals have prepared a standard Change of

Address form, which is available from either The Garden City Group or the Receiver's website, which the investors are encouraged to use. Using that standard form, the Receiver's professional have processed over 330 changes of address for investors.

RECOMMENDATIONS

In light of the finite and rapidly diminishing monies available to pay insurance premiums and to operate the Receivership Entities, the Receiver stresses that maintaining the *status quo* is no longer affordable and reasonable while the S.E.C. litigation process goes forward. Immediate steps must be taken to determine the appropriate treatment of all policies, including whether the payment of premiums for some policies should be discontinued, whether some policies should be surrendered for cash value, whether some policies should be allowed to lapse (or provide an alternative that involves participation by investors), and whether some or all of the portfolio of policies should be sold. All of these matters require the input of qualified experts.

The Receiver continues to believe that a qualified expert should be retained immediately to assist the Receiver and the Court in evaluating these matters and recommending the optimal course or courses of action.

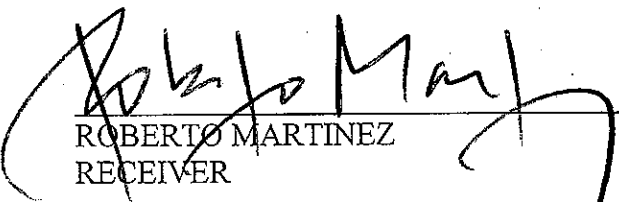
The Receiver is mindful that the Court repeatedly has denied this request to date, without prejudice to renew the application. The Receiver is sensitive to the Court's concerns about the expenditure of professional fees, particularly in light of the status of the S.E.C. enforcement proceedings, including the pending appeal. However, because the course or courses of action that may be recommended by such experts may be complex and time consuming, and since the Receivership funds are rapidly diminishing, the Receiver believes that to delay this evaluation and recommendations ultimately will prove more costly and prejudicial to the investors.

As such, the Receiver respectfully requests the Court set an evidentiary hearing as soon

as possible to receive evidence and recommendations on this issue, including submissions regarding the scope of such professional engagements and the estimated cost of such services, and to afford all interested parties the opportunity to express their various and possibly competing positions on the timing and necessity of the engagements. Regardless of the course of action that the Court may adopt after such hearing, the Court will be better informed on this critical matter which lies at the crux of the Receiver's responsibilities.

Dated: January 26, 2005.

Respectfully submitted,


ROBERTO MARTINEZ
RECEIVER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail or facsimile, as set forth on the attached Receiver's Service List, on this 26th day of January, 2005.

COLSON HICKS EIDSON
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By: 

Curtis Miner
Florida Bar No. 885681

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Case No.: 04-60573 CIV-Moreno

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EXHIBIT “A”

Summary of Premiums Paid
May 5, 2004 to January 21, 2005

	<u># of Checks</u>	<u>Amount</u>
Union Planters - VBLLC	395	\$ 2,901,571
Union Planters - MBC/Livoti	245	11,060,588
Livoti Citibank Account	3,394	9,295,070
MBC Operating Account	755	645,999
VBLLC Operating Account	<u>2</u>	<u>606</u>
Totals	<u><u>4,791</u></u>	<u><u>\$ 23,903,834</u></u>