

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.

**ORDER REGARDING FUTURE ADMINISTRATION OF CERTAIN INSURANCE
POLICIES SUBJECT TO THIS PROCEEDING AND BAR ORDER**

THIS CAUSE came before the Court upon Receiver's Motion for Entry of Order in Furtherance of Order Granting Receiver's Motion to Join Additional Insurers In Order Approving Settlement Regarding Future Administration of Certain Insurance Policies Subject to this Proceeding and Bar Order (D.E. No. 2333), filed on September 14, 2009.

Background

Roberto Martinez, the court-appointed receiver (the "Receiver") of Mutual Benefits Corporation ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. and, solely in their capacity as trustee, Anthony Livoti, Jr., P.A. and Anthony Livoti, Jr. (the foregoing entities, referred to collectively as the "Receivership Entities") filed a motion for the Court to establish and approve further procedures for the administration of certain life insurance policies that have been and remain subject to the Court's jurisdiction through this receivership proceeding. Of all policies that MBC or VBLLC viaticated, this Order applies only with respect

to those policies that (a) are considered part of the Receivership Estate (as defined below), (b) under which any life insurance company listed on Exhibit A to this Order is obligated, and (c) either (i) remain in force on the date of this Order or (ii) have matured, but for which the insurers thereunder have not disbursed all death benefit proceeds payable thereunder. This Order refers to any life insurance policy satisfying clauses (a), (b), and (c) of the immediately preceding sentence as a "Policy" and all such policies collectively as the "Policies." For purposes of this Order, a Policy is deemed to "mature" at the time when the only or the last surviving insured thereunder dies.

The Receiver's motion and proposed order reflect the results of extensive discussions between counsel of record for the Receiver and attorneys representing the insurance companies listed on Exhibit A hereto (each a "Listed Insurer" and collectively the "Listed Insurers"). The guiding purposes of the proposed order are (a) to implement and amplify the Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies (**D.E. No. 1837**) (the "Beneficial Interests Order"), as it will apply to the Listed Insurers and the Policies; (b) to establish detailed procedures for future administration of the Policies of the Listed Insurers, including those that are or will be among the "Sell Policies" or the "Keep Policies," as those terms are defined in the Beneficial Interests Order, and Policies that mature; and (c) to resolve consensually and expeditiously a variety of questions and issues that Listed Insurers might otherwise need or choose to present to the Court for decision by responding or objecting to, and seeking modification of, the Beneficial Interests Order, as permitted by its final paragraph (¶6 at pg. 8). More generally, the proposed order is designed to be consistent with and to effectuate the September 14, 2005, Order on Disposition of Policies and Proceeds (**D.E. No. 1339**) and November 22, 2005, Order Clarifying Disposition Order and Approving Form of Notice (**D.E. No. 1474**) (together, the "Disposition Orders"), and to establish

appropriate and convenient procedures respecting any Policies constituting Sell Policies the Receiver from time to time sells or transfers, for use by the Listed Insurers, those persons that acquire Sell Policies from the Receiver with this Court's approval, and as specified in this Order any future transferee or owner of such Sell Policies.

The Receiver's motion (**D.E. No. 1835**) that sought entry of the Beneficial Interests Order acknowledged that insurers obligated under policies the Receivership Entities viaticated could have legitimate concerns about aspects of the relief that motion requested. For example, the Beneficial Interests Order provides that insurers shall change the record owner, beneficiaries, or both of all policies subject to this proceeding, and remove or replace the beneficiaries of record of any policies the Receiver sells, without the Receiver or the buyer obtaining further consent of such beneficiaries, whether or not any previous or current beneficiary designations were or are irrevocable or were intended to be such. Counsel for the Listed Insurers expressed concern that making such changes to the Policies might expose insurers to some risk, prospect, or threat of potential claims by beneficiaries of or other investors in the Policies. (Following common usage of the Receivership Entities and in the viatical industry, the term "investors" is used to mean persons who purchased from the Receivership Entities an interest, usually an undivided fractional interest, in a viaticated insurance policy and its proceeds for cash, by entering into agreements with the Receivership Entities. For policies the Receivership Entities viaticated, typically the designated record beneficiary or beneficiaries is or are the same as, or nominee(s) or agent(s) for, the investor(s) in the policy.) In his motion for entry of the Beneficial Interests Order, the Receiver indicated he would move this Court to enter an appropriate bar order, precluding any such claims against insurers that would forgo objecting to, and agree to comply with, that Order.

Findings and Conclusions

A. The Court has exclusive jurisdiction over this matter and over all property of the estates of the Receivership Entities (collectively, the "Receivership Estate"). This Court previously ruled that it has and will exercise jurisdiction over all insurance policies the Receivership Entities viaticated, except such policies that had matured, and the death benefit proceeds of which the insurer in question had fully disbursed, before the Receiver was appointed (or before the insurer first learned of such appointment.) The rights and interests of any and all of the Receivership Entities in and to each such policy are property and assets of the Receivership Estate, until such time as the policy proceeds are disbursed in full or such earlier time (if ever) as the Receiver sells the policy to a third party or the policy lapses, is surrendered, or otherwise ceases to be in force before it would otherwise mature.

B. On May 4, 2004, at the motion of the Securities and Exchange Commission, the Court entered a Temporary Restraining Order and Other Emergency Relief and an Order Appointing Receiver. On February 14, 2005, this Court entered its Order Granting Motion for Preliminary Injunction. The Order Appointing Receiver (**D.E. No. 26**) authorized and directed the Receiver to "take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of [them] of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI" and further authorized and directed the Receiver to "administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court." That Order also declares, "Title to all property, real or personal, all contracts, rights of action and all books and records of MBC, VBLLC and VSI and their principals, wherever located within or without this state, is vested by operation of law in the Receiver."

C. The parties of record and other interested persons have been adequate notice of,

and an opportunity to be heard regarding, the Receiver's motion for entry of the order set forth below. In particular, the Receiver (a) served copies of his motion and proposed order by U.S. Mail on all parties shown on the service list attached to the motion, (b) sent copies of this Order to all beneficiaries of and investors in the Listed Insurers' Policies (i) by U.S. mail to such persons with addresses in the United States and elsewhere except South America and (ii) by a reliable delivery service to addresses in South America, and (c) posted copies of the motion and proposed order, and will post and maintain this Order as entered, on the website the Receiver maintains regarding the Receivership Entities and this proceeding. The Policies' investors and beneficiaries were afforded twenty (20) days after entry and service of this Order on them to file any objections and suggested modifications to this Order for the Court's consideration. No objections, timely or otherwise, were filed. The identities and addresses of investors in and other beneficiaries of the Policies used for this purpose are those reflected in books and records that the Receiver and Receivership Entities maintain, and the Receiver obtained from the Listed Insurers such information about record beneficiaries of the Policies as reflected in their files as he deemed necessary and sufficient. No act or omission in the provision of notice in this matter shall be imputable to the Listed Insurers.

D. Pursuant to the Disposition Orders, the Receiver solicited investors' written preferences or "votes" and their authorization regarding disposition of all policies then in force, as a result of which the Receiver has classified policies as Sell Policies or Keep Policies. The Receiver sent to all investors a notice approved by the Court describing the intended disposition process and its consequences for investors, and inviting investors to inform the Receiver of their respective preference for either (a) retaining a policy in which they had invested and assuming all attendant payment obligations, including for premiums and servicing fees, or (b) authorizing the Receiver to attempt to sell the policy, or (c) surrendering the policy for any cash value it

might have at the time of surrender. The decision as to the manner in which to dispose of each policy was determined by the vote of a majority in interest (determined by dollar amount) of investors in that policy who properly submitted effective votes respecting such policy.

E. The ownership of or title to all or essentially all policies subject to this proceeding is to be changed in accordance with earlier orders of the Court including the Beneficial Interests Order. That Order provides that ownership of all policies is to be transferred to the Receiver's name as sole owner or absolute assignee, to be held subject to further orders of this Court and for the benefit of investors or of future purchasers of policies from the Receiver. In addition, if, when, and as the Receiver conveys Sell Policies to third parties, subject to the Court's approval, ownership of policies sold will be transferred to their respective buyers. Thus, insurers will be asked to change the record ownership of all or essentially all policies (other than those that mature or any that are surrendered or lapse before any such change is effected) at least once to facilitate the disposition process the Court established.

F. As the Disposition Orders, the notices sent to investors, the Beneficial Interests Order, and the Receiver's motion for entry of the latter Order detail, by virtue of the disposition of policies including both Sell Policies and Keep Policies, the pre-receivership and pre-disposition interests of many investors in the policies in which they invested will unavoidably be altered, curtailed, forfeited, or extinguished in some circumstances. As the Court summarized in the Beneficial Interests Order (at pp. 4-5), "those circumstances include the sale of Sell Policies to a purchaser, so that the purchaser may substitute beneficiaries; the forfeiture of investor interests in Keep Policies as a result of failure to pay administrative fees or premium obligations when due; the transfer of interests pursuant to the investor-to-investor sale process directed by this Court . . .; and transfers at the request of existing beneficiaries, to the extent that VSI establishes procedures for the processing of such requests." Similarly, if the Court ultimately

approves the sale of certain Sell Policies, such as those subject to the Order Granting Receiver's Motion to Approve Stalking Horse Purchase Agreement and Bidding Procedures (**D.E. No. 1840**) (the "Bidding Procedure Order"), all investors' interests in policies that are sold will be extinguished, whether or not an investor in a policy that is sold voted to authorize the Receiver to try to sell it or objects to the sale transaction or terms.

G. The Court has determined that the manner of disposing of policies authorized or approved by its previous orders, including those identified above, and by the Order set forth below, is fair, equitable, and in the best interests of the Receivership Entities, the Receivership Estate, and their creditors and claimants, including specifically but without limitation the investors in and beneficiaries of the policies. As a number of Court orders and filings by the Receiver have indicated, the Receiver will eventually propose, and the Court will ultimately approve and supervise, a claims process by which investors, beneficiaries, and other claimants and creditors of and against the Receivership Estate will have an opportunity to submit claims to receive or share in an equitable distribution of such assets of the Receivership Estate as are available and approved for distribution to creditors or claimants of the class and priority in question. Among those assets will be the net proceeds of future sales of Sell Policies, although the amount of such proceeds and their availability for distribution to any given group of creditors or claimants are not now known.

H. The bar order provisions in paragraph 18 of the following Order are lawful, proper, and necessary to effectuate the disposition process, to secure the agreement and cooperation of the Listed Insurers, to resolve issues that might be disputed and could delay the disposition process including the sale of policies pursuant to the Bidding Procedures Order, and to protect the Listed Insurers from potential claims by investors and other beneficiaries by virtue of the Listed Insurers' acting in compliance with the Disposition Orders, the Beneficial Interests

Order, the Order set forth below, and future orders that may be entered regarding the administration and disposition of their Policies or policies generally and regarding the sale or transfer of Sell Policies. The bar order provisions contained in the following Order are within this Court's jurisdiction and equitable authority to enter and enforce, as confirmed by precedents including *Matter of Mumford, Inc.* 97 F.3d 449 (11th Cir. 1996); *In re U.S. Oil and Gas Litigation*, 967 F.2d 489, 493 & n. 2 (11th Cir. 1992); *Securities and Exchanged Comm'n v. Wencke*, 622 F.2d 1363 (9th Cir. 1980); *Sec. & Exch. Comm'n v. United Financial Group*, 576 F.2d 217, 200 (9th Cir. 1978); *In re Grau*, 267 B.R. 896 (Bankr. S.D. Fla. 2001); *In re Reliance Financial & Investment Group*, No. 02-33249-BKC-PGH (Bankr. S.D. Fla. Sept. 19, 2006), and as permitted by federal law including 28 U.S.C. §1651(a) and 28 U.S.C. §2283.

Order

1. **IT IS HEREBY ADJUDGED** that, from and after the date of this Order, for every Policy as defined above:

A. Regardless of the person(s) currently or previously shown as the Policy's owner(s) in the books and records of the Receiver, the Receivership Entities, and the Insurer that issued or most recently assumed the Policy, the sole owner of each individual Policy, and the sole and absolute assignee of the viaticated interest in any group Policy, shall henceforth be and be deemed to be the Receiver, in his representative capacity as receiver for MBC and not personally, to hold and preserve such Policy and title thereto subject to this Court's orders in this proceeding, unless and until disposed of in accordance with such orders;

B. The sole but nominal beneficiary of each Policy shall henceforth be and be deemed to be the Receiver in such representative capacity, and the Receiver shall hold and preserve the beneficial interests in all Policies subject to this Court's orders in this proceeding, unless and until such interests are transferred, modified, terminated, or replaced in accordance

with such orders, regardless of the person(s) currently or previously shown in the books and records of the Receiver, the Receivership Entities, and/or the Insurer that issued or most recently assumed the Policy as its beneficiary or beneficiaries, or as the investor(s) in that Policy, and regardless of whether any designation of any such beneficiary or investor is or ever was “irrevocable”; and

C. The interests of all investors in and beneficiaries of each such Policy, however those interests may have been created, transferred, or characterized, including specifically but without limitation investors’ interests in the proceeds of a Policy or of its disposition, are and shall continue to be subject to this Court’s exclusive jurisdiction and orders, and, subject to procedures, terms, and conditions this Court establishes from time to time, may be subject to modification, sale, liquidation, forfeiture, or termination as the Court may expressly determine, prescribe, or permit by order, including specifically but without limitation by the Disposition Orders, as they may be modified or amended from time to time, and by any future orders authorizing, approving, or directing that specified Policies shall be sold, transferred, surrendered, or permitted to lapse.

2. **IT IS FURTHER ADJUDGED** that, for all in-force Policies issued or assumed by any Listed Insurer (as defined above), at such time as the Receiver desires the Listed Insurer obligated under any such Policy to record in its books and records, including its official Policy file, that the Receiver is the sole owner or assignee, and the sole but nominal beneficiary, of such Policy, the Receiver shall deliver to such Listed Insurer either (i) a written notice to that effect (a “Receiver’s Notice”) specifically referencing this Order and identifying the Policy by the number designated by the Listed Insurer, its face amount, the insured(s) thereunder, and its record beneficiaries as and to the extent shown in the Receivership Entities’ records, together with any other identifying information the Receiver may be able and elect to furnish, or (ii) that Listed

Insurer's then standard change of ownership and change of beneficiary form(s) for policies similar to the Policy in question, properly completed and executed by or on behalf of the Receiver. Upon its receipt of a proper Receiver's Notice, the Listed Insurer may, at its sole option and discretion, either (a) thereupon change or supplement its records to reflect the Receiver as sole owner or assignee and as sole but nominal beneficiary of the Policy in question or (b) within thirty (30) business days after its actual receipt of the Receiver's Notice, send to the Receiver, and request that the Receiver complete and submit, a copy of the Listed Insurer's standard change of record ownership and change of beneficiary forms as then in use for life insurance policies similar to the Policy. In the latter event, the Receiver shall complete and submit to the Listed Insurer the request change form(s). Regardless of whether the Receiver uses alternative (i) or (ii) specified in the first sentence of this paragraph 2, within seventy five (75) days after receiving standard change form(s) for a Policy properly completed and executed by the Receiver, the Listed Insurer shall change or supplement its records as specified by such change form(s). If, though no fault of the Receiver or someone acting for him, the Listed Insurer obligated under a Policy does not send to the Receiver, within thirty (30) business days after receiving a proper Receiver's Notice, a standard change form or forms for the Policy, then the Listed Insurer shall change or supplement its records to reflect the Receiver as sole owner or assignee and as sole but nominal beneficiary of the Policy. All Receiver's Notices, and all policy change forms, that the Receiver submits to Listed Insurer shall be duly executed by the Receiver or by an agent acting for him under a written power of attorney then in full force and effect, and the Receiver or such agent shall furnish evidence of such appointment. No Receiver's Notice and no such change form need be signed or consented or agreed to by or on behalf of any beneficiary (whether or not ever designated an irrevocable beneficiary) or of any investor in a Policy or any other person except the Receiver.

3. **IT IS FURTHER ADJUDGED** that, as to every Policy of which this Court, by future order, approves a sale or transfer by the Receiver (including specifically but without limitation any sale or transfer either (i) contemplated by the Order Granting Receiver's Motion to Approve Stalking Horse Purchase Agreement and Bidding Procedures (**D.E. No. 1840**), as amended or modified from time to time (the "Bidding Procedures Order"), or (ii) authorized by any future order that empowers the Receiver to auction or sell Policies that might otherwise lapse due to nonpayment of premium), and the sale or transfer of which is in fact effected on terms and conditions this Court ultimately approves or authorizes:

A. By virtue of the closing of the sale or transfer of such Policy to its purchaser or other transferee (the "Buyer") in compliance with a written agreement with the Receiver and an order of this Court (including any future order that may authorize the Receiver to sell Policies if and when he determines certain specified conditions and circumstances are met, a "Sale Order"), on and as of the effective date of the closing of the transaction: (i) the sole owner of such individual Policy, or sole assignee of the viaticated interest in any group Policy as the case may be, shall be and be deemed to be its Buyer or, if the Buyer assigns a given Policy or Buyer's right to acquire that Policy directly to one other entity as owner (the "Assignee"), and Assignee in fact acquires such Policy within fifteen (15) business days after the Receiver's sale of such Policy closes and before a Buyer's Notice (as defined in paragraph 3.B) is delivered to the Listed Insurer for that Policy, then the sole owner of such Policy shall be deemed to be Assignee (as used hereinafter, unless the context otherwise requires, as to any given Policy the Receiver sells, "Buyer" shall mean Buyer as defined above if no such assignment is effected but shall mean Assigned if such an assignment is effected); and (ii) the Policy's sole beneficiary shall be and be deemed to be its Buyer unless and until such time as the Buyer, as rightful owner, effectively designates one or more new beneficiaries in accordance with the Policy's terms, this

Order, and the Sale Order approving the Receiver's sale or transfer of the Policy to the Buyer.

B. Within seventy-five (75) days after the later of entry of the Sale Order with respect to a given Policy or the closing of the sale or transfer of the Policy, the Buyer or its Authorized Designee¹ shall send to the Listed Insurer obligated under the Policy either (i) a written notice of Buyer's purchase of the Policy, a copy of the Sale Order, and a copy of any bill of sale or comparable instrument memorializing such sale or transfer (all such documents referred to collectively as a "Buyer's Notice"), or (ii) that Listed Insurer's standard change of ownership forms, properly and fully completed and executed, together with a copy of any bill(s) of sale or comparable instrument(s) memorializing such sale or transfer to Buyer. If for a given Policy neither of the sets of documents that clauses (i) and (ii) of this paragraph 3.B. specify are delivered to a Listed Insurer within the time permitted, then the Buyer or its Authorized Designee shall thereafter furnish those that clause (ii) specifies in lieu of those allowed by clause (i), but no party shall be liable for noncompliance with this Order for that reason alone;

C. Upon its receipt of a proper Buyer's Notice, the Listed Insurer may, at its sole option and discretion, either (i) thereupon change or supplement its records to reflect the Buyer as sole owner or assignee and as sole beneficiary of the Policy in question or (ii) within thirty (30) business days after actual receipt of the Buyer's Notice, send to the Buyer, and request that the Buyer complete and submit, a copy of the Listed Insurer's standard change of record ownership and change of beneficiary forms as then in use for life insurance policies similar to the Policy. In the latter event, the Buyer or its Authorized Designee, shall complete and submit to

¹ Paragraph 14 below defines "Authorized Designee" and provides, in part, that for some Policies the Authorized Designee of the Buyer or its Assignee may be the Receiver. Also, if a Buyer's agreement with the Receiver approved by a Sale Order for purchase of policies provides that the Receiver will submit the Buyer's Notice or a change of ownership form for a given Policy that the Buyer in fact acquires pursuant to such agreement, then either the Receiver or the Buyer or its Authorized Designee may submit such Buyer's Notice or change of ownership form, without thereby modifying the obligations of the parties to such purchase agreement.

the Insurer the requested change form(s). Regardless of whether a Listed Insurer uses alternative (i) or (ii) in the first sentence of this paragraph 3.C for a given Policy, within seventy five (75) days after receiving standard change form(s) for that Policy properly completed and executed by the Buyer or its Authorized Designee, the Listed Insurer shall change or supplement its records as specified by such change form(s). If, through no fault of the Receiver, the Buyer, or anyone acting for either of them, the Listed Insurer obligated under a Policy does not send to the Buyer or Authorized Designee within thirty (30) business days after receiving a proper Buyer's Notice, a standard change form or forms for the Policy, then the Listed Insurer shall change or supplement its records to reflect the Buyer as sole owner or assignee and as sole beneficiary of the Policy.

D. All Buyer's Notices and policy change forms a Buyer submits to a Listed Insurer shall be duly executed by the Buyer or its Authorized Designee, or an agent acting for one or both of them under a written power of attorney then in full force and effect, and the Buyer, its Authorized Designee, or such agent shall furnish evidence of such appointment. Each Buyer's Notice shall also be duly executed by the Receiver or an agent acting for him under a written power of attorney then in full force and effect. No Buyer's Notice and no change form utilized pursuant to this paragraph 4 need be signed or consented or agreed to by or on behalf of any record beneficiary (whether or not ever designed as in irrevocable beneficiary) of or any investor in the Policy in question or any other person except the Receiver and the Buyer or its Authorized Designee; and

E. In connection with recording the new owner or assignee and new beneficiary of a Policy in accordance with a Buyer's Notice or policy change forms, the Listed Insurer shall also record the address of the new owner, assignee, or beneficiary specified therein.

4. **IT IS FURTHER ADJUDGED** that, until such time as the Receiver conveys

title to a Sell Policy to a Buyer, only the Receiver shall be entitled to obtain information from a Listed Insurer about any of its Policies, by requesting verification of coverage or the like. Thereafter, for such period of time as a Buyer is the owner or assignee of a Policy under which a Listed Insurer is obligated: (a) as evidence of the Listed Insurer's authority to perform acts respecting such Policy that the Buyer as owner or assignee duly requests, and the Listed Insurer is permitted to take in compliance with the Policy's terms and applicable law, the Buyer or its Authorized Designee may furnish a copy of this Order, the Sale Order governing the Policy in question, and any bill(s) of sale or comparable instrument(s) reflecting the purchase of the Policy from the Receiver and any assignment thereto to the Assignee; and (b) after receiving such evidence, the Listed Insurer shall comply with proper and reasonable requests of the Buyer or its Authorized Designee within a commercially reasonable time, including specifically but without limitation providing if so requested a completed Verification of Coverage ("VOC").² For any Policy that provides coverage under a group policy or certificate, such as a group life policy issued to an employer, in lieu of completing a VOC upon request of a Buyer or its Authorized Designee, the Listed Insurer shall furnish (i) the current or last known contact information for the employer or other group policy holder as shown in its records, and (ii) such other coverage specific information, if any, as the Listed Insurer possesses and reasonably believes, other than solely for reason of the passage of time, to be sufficiently reliable, but without thereby warranting its accuracy. The Buyer or its Authorized Designee shall thereafter direct to the employer or other group policy holder, rather than the Listed Insurer, any inquiries for additional information requested by a VOC. For purposes of clarity, this paragraph 4 is not intended to (x)

² At Buyer's request pursuant to this paragraph 4 respecting a given Policy, a Listed Insurer shall complete the NAIC standard Verification of Coverage for Life Insurance Policies. Alternatively, if the Buyer expressly requests the pertinent Listed Insurer to complete a different form of VOC as to a given Policy, and if at the time of such request that Listed Insurer routinely honors such requests for its policies similar to the Policy in question, then the Listed Insurer may complete such other form of VOC instead of the NAIC version.

limit any rights of a buyer or subsequent rightful owner of a Policy, or excuse performance by a Listed Insurer or its executory duties under a Policy under which it is obligated, which rights or duties arise under such Policy's express terms or applicable law, or (y) except as this Order may otherwise provide, limit the manner in which a Listed Insurer acts respecting a Policy under which it is obligated to the extent consistent with the established manner in which such Listed Insurer ordinarily and consistently acts in the normal course of its business respecting its life insurance policies similar to the Policy in question.

5. **IT IS FURTHER ADJUDGED** that nothing in this Order, the Bidding Procedures Order, or the Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficiary Interests in Insurance Policies (**D.E. No. 1837**), as amended or modified from time to time (the "Beneficiary Interests Order"), shall operate or be construed as a release or waiver by any Listed Insurer of any of its rights, remedies, defenses, or claims under the Policies or at law. Nevertheless, each Listed Insurer shall continue to perform its ordinary and customary duties as a life insurer under each Policy under which it is obligated, until the earlier of (a) such time as the death benefit proceeds payable under the Policy are paid or (b) such earlier time as the Policy ceases to remain in effect, whether by surrender, lapse, or otherwise; but nothing in this Order, the Disposition Orders, the Beneficial Interests Order, or any sale Order shall prevent or preclude any Listed Insurer from (i) selling, transferring, reinsuring, co-insuring, or ceding any Policy or any of its interests, rights, or duties (including in particular but without limitation its payment obligations) thereunder or from (ii) arranging with any person to perform policy administration services on behalf or in the place of the Listed Insurer or any successor insurer.

6. **IT IS FURTHER ADJUDGED** that, after a Buyer acquires a Policy from the Receiver, at its option and in its discretion, the Buyer or its Authorized Designee may change the

Policy's beneficiary or beneficiaries of record on the books of the Listed Insurer obligated thereunder. A Listed Insurer shall effect and record changes in beneficiaries of a Policy pursuant to proper, duly executed written instructions of the Buyer or its Authorized Designee in the manner described herein. Within thirty (30) business days after the later of entry of the Sale Order governing a given Policy or closing of the sale or transfer of that Policy, either the Buyer or its Authorized Designee, if but only if the written agreement by which the Buyer acquired the Policy so permits, the Receiver shall deliver written instructions (the "Instructions") to the Listed Insurer obligated under the Policy, adequately and unambiguously identifying the Policy's new beneficiary or beneficiaries (whether one or more, and whether natural or legal persons, the "New Beneficiaries"). Such Instructions may but need not be combined or delivered together with a Buyer's Notice, and may but need not, be in the form of a fully completed and executed standard change of beneficiary form then routinely used and accepted by the pertinent Listed Insurer for life insurance policies similar to the Policy in question (a "Change Form"). Upon its receipt of proper Instructions, the Listed Insurer shall either (i) change or supplement its records to reflect the New Beneficiaries identified in the Buyer's Instructions. or, unless the Instructions are in the form of a fully completed and executed Change Form, (ii) within thirty (30) business days after actual receipt of the Instructions, send to the Buyer, and request that the Buyer complete and submit, a copy of the Listed Insurer's standard Change Form(s). In the latter event, the Buyer or its Authorized Designee shall complete and submit to the Listed Insurer all requested Change Form(s); and within one hundred twenty (120) days after receiving such Change Form(s) as to a Policy properly completed and executed by the Buyer, the Listed Insurer shall change or supplement its records to reflect the Policy's New Beneficiaries. If, through no fault of the Receiver, the Buyer, the Assignee, or anyone acting for any of them, the Listed Insurer obligated under a Policy does not send to the Buyer or Authorized Designee, within thirty

(30) business days after receiving proper Instructions, standard Change Form(s) for the Policy, then the Listed Insurer shall change or supplements its records to reflect the New Beneficiaries. If, through no fault of the Listed Insurer, the Buyer or Assignee, as appropriate, does not deliver proper Instructions within the 30 business day period specified in the third sentence of this paragraph 6, the Listed Insurer need not change the record beneficiary of the Policy unless and until it receives properly completed and effective standard Change Forms for that Policy.

7. **IT IS FURTHER ADJUDGED** that, notwithstanding anything in this Order, the Disposition Orders, the Beneficial Interests Order, or any Sale Order to the contrary, with respect to all Policies under which Listed Insurer is obligated: (a) a Listed Insurer shall not be obligated to recognize or record more than five (5) New Beneficiaries of any Policy at any one time; (b) always subject to that limit of five, a Buyer or subsequent owner of a Policy may remove or replace designated New Beneficiaries in such manner as the Policy's terms, the Listed Insurer's standard procedures and requirements, and applicable law permit; (c) for its initial designation of New Beneficiaries first made after acquiring a Policy from the Receiver, the Buyer shall not be required to obtain the signature or consent of any person or entity other than the Buyer or its Authorized Designee in its capacity as purchaser and record Policy owner; (d) any desired changes in a Policy's beneficiary designations subsequent to, in addition to, or different than the New Beneficiaries identified in the first Instructions delivered to a Listed Insurer regarding a given Policy will be effective and recognized if and only if the change request satisfies all standard requirements, procedures, forms, and criteria of the Listed Insurer for such changes and complies with applicable law; (e) without limiting the generality of the foregoing, if the Buyer or any subsequent owner of a Policy at any time designates any New Beneficiary as an irrevocable beneficiary, then the Listed Insurer shall not be obligated to recognize, record, effect, or acknowledge any subsequent change to said irrevocable beneficiary's status, rights, or interest in

and to the Policy or its proceeds unless and until the Policy's owner obtains and delivers to the Listed Insurer that beneficiary's express written consent, in such form and manner as satisfies the Listed Insurer's standard requirements and procedures, and any other requirements imposed by or arising under applicable law, for recognizing and making changes in the designations and interests of irrevocable beneficiaries in life insurance policies similar to the Policy in question; and (f) at the written request of a Buyer or its Authorized Designee regarding a given Policy, the Listed Insurer shall set forth its requirements and procedures for additional or subsequent changes of beneficiaries for that Policy.

8. **IT IS FURTHER ADJUDGED** that, as to all those Policies as to which one or more irrevocable beneficiary designations existed of record or were made or agreed to be made under a Policy at any time before entry of the Beneficiary Interests Order, that is, on or before January 30, 2007: (a) designation of the Receiver as sole but nominal beneficiary of all Policies shall not be deemed or considered an irrevocable designation, and no Listed Insurer shall record or reflect the Receiver's nominal beneficial interest therein as irrevocable; (b) following receipt of proper Instructions or beneficiary Change Forms in accordance with paragraph 6 of this Order first designating New Beneficiaries after a Buyer acquires a Policy (but not for any subsequent changes in beneficiary designations or interests, whether by the Buyer or a subsequent owner), Listed Insurers shall change all then existing beneficiary designations, including specifically but without limitation irrevocable beneficiary designations, in accordance with said Instructions or Change Forms (as the case may be) submitted by the Buyer or its Authorized Designee in accordance with paragraph 6 above, without requesting or requiring the Buyer to obtain signatures or consent of any then presently designated beneficiaries, whether or not such designations when made were, or were ever intended or agreed to be, irrevocable; and (c) after this Court establishes or authorizes a claims process by which investors in and beneficiaries of

policies viaticated by the Receivership Entities or their predecessors may submit claims to receive distributions or an equitable portion of available assets of the Receivership Estate, including specifically but without limitation proceeds of the sale or surrender of Policies in which such investors acquired or held direct or indirect interests, then when and if the Court ultimately approves or authorizes an equitable distribution of such available assets (if any), it shall take into consideration, according for the purpose such weight and significance to such facts and circumstances as it may deem appropriate, and among other factors it determines are pertinent, whether the interest of a given investor in or beneficiary of a Policy was reflected or evidenced, or was intended or agreed to be reflected or evidenced, through designation of the investor or its nominee or agent as an irrevocable beneficiary of the Policy in question.

9. **IT IS FURTHER ADJUDGED** that each Listed Insurer shall disburse to the Receiver, in lieu of any other person, the death benefit proceeds (including any interest due and accrued thereon) of each Policy that either (a) matured on or before January 30, 2007, but not all death benefit proceeds of which were distributed by a Listed Insurer before the date of this Order, in which case the Listed Insurer shall disburse the remaining proceeds to the Receiver, or (b) matures after January 30, 2007, but before the Receiver completes a sale of the Policy to a Buyer pursuant to a Sale Order. Disbursement of proceeds to the Receiver in accordance with the immediately preceding sentence shall not modify any obligation of the Receiver to hold such proceeds for the benefit of, or to remit such proceeds to, a Buyer if so required by the terms of an agreement for the Receiver's sale of a Policy approved by a Sale Order. Clause (b) of the first sentence of this paragraph 9 includes each Policy the sale of which a majority in interest of investors therein did not authorize or consent to through voting conducted pursuant to the Disposition Orders (including specifically but without limitation all Keep Policies), and all Policies the Receiver does not hold subject to sale, attempt to sell, or succeed in selling before

they mature. Death benefit proceeds payable pursuant to the terms of a Policy that the Receiver sells to a Buyer, to whatever extent not earlier disbursed to the Receiver in accordance with the first sentence of this paragraph 9, shall be disbursed to (i) the Buyer, if the Buyer is the sole beneficiary of record or has never designated a beneficiary other than itself, unless otherwise expressly provided by the Sale Order or the agreement approved by a Sale Order for Buyer's purchase from the Receiver of the Policy in question, and (ii) in all other cases, to the new Beneficiaries of record as their interests may appear and as they are identified in the files of the Listed Insurer on the date of the pertinent insured's death. Nothing in this Order, the Disposition Orders, the Beneficial Interests Order, or any Sale Order shall preclude or constrain a Listed Insurer from commencing (or shall alter any basis or requisite for commencing) an interpleader action, action for declaratory judgment, or other legal proceeding in a court of competent jurisdiction respecting entitlement to and proper disbursement of the death benefits or other proceeds of any Policy under which it is obligated, or the proper and lawful ownership of or beneficiaries under a Policy, or the Listed Insurer's rights or obligations under or respecting a Policy, if the Listed Insurer learns or considers that it is subject to, or has been threatened with, conflicting claims, a dispute, or the concrete prospect of such a conflict or dispute as to any such matter, or from defending or asserting any claim, counterclaim, cross-claim, or third-party claim, in any action brought against it relating in any manner to a Policy, any Receivership Entity, this receivership proceeding, any order entered therein, or otherwise. Nothing in this paragraph 9 shall operate or be construed to limit or modify any rights or protections provided to a Buyer by a Sale Order, and no Listed Insurer shall contest or dispute a Buyer's ownership of, or its title to, any Policy by virtue of the Buyer's acquiring it from the Receiver or the Receivership Estate in accordance with a Sale Order or a written agreement with the Receiver approved by a Sale Order. A Listed Insurer may, but shall not be obligated to, commence any such legal proceeding

in, or seek to remove or transfer any such proceeding to, this Court.

10. **IT IS FURTHER ADJUDGED** that, within twenty (20) business days after entry of a Sale Order respecting a Policy, the Buyer or its Authorized Designee shall notify the Listed Insurer obligated thereunder in writing of its mailing address for purposes of receiving from such Listed Insurer all future notices of premium payments due and other written communications from the Listed Insurer respecting the Policy. Any such written notice of address may be combined or delivered together with a Buyer's Notice, Instructions, or Change Form, all as defined above. Within fifteen (15) business days after receiving such address notice from the Buyer or its Authorized Designee, the Listed Insurer shall then note the specified address in its records and shall thereafter send all premium payment notices and other written communications respecting such Policy to the Buyer or its Authorized Designee at the specified address (unless and until notified of a later change of such address). However, nothing in this order or a sale Order shall limit the Receivership entities or Listed Insurers from communicating with one another as they may find convenient respecting Policies that become subject to Sale Orders or are transferred to a Buyer. The Listed Insurers shall not be required to process more than thirty (30) address notices per day.

11. **IT IS FURTHER ADJUDGED** that a Listed Insurer shall provide any and all information properly and reasonably requested by a Buyer or its Authorized Designee regarding a Policy the Buyer acquires from the Receiver, and to which information the Buyer is legally entitled as Policy owner, within a commercially reasonable time of the receipt of such request, but in no event later than thirty (30) business days from receipt of the request. The Listed Insurer may require that request for information be submitted in writing, if it customarily requires requests for information of the nature in question be made in writing. Similarly, the Listed Insurer may insist that its response to a request for information be in writing, if it would

customarily respond to such a request in writing, or if it considers that a written respond is appropriate in the circumstances. However, if a Listed Insurer customarily honors or responds to telephonic requests for information of the nature in question, then it shall do so for purposes of this paragraph 11 as well. In no event however shall a Listed Insurer be obligated to provide information to a Buyer or Authorized Designee beyond that which the owner or group certificate assignee of a Policy is entitled to properly and reasonably request and obtain in accordance with the Policy's terms and applicable law; but nothing contained in this paragraph 11 is intended to (i) alter or limit a Listed Insurer's obligation to provide a VOC in accordance with paragraph 4 above or (ii) except as this Order may otherwise provide, limit the manner in which a Listed Insurer acts respecting a Policy under which it is obligated to the extent consistent with the established manner in which such Listed Insurer ordinarily and consistently acts in the normal course of its business respecting its life insurance policies similar to the Policy in question.

12. **IT IS FURTHER ADJUDGED** that, from and after the closing of the Receiver's sale to a Buyer of a Policy under which a Listed Insurer is obligated, and for so long thereafter as the Buyer remains owner of the Policy, the Buyer or its Authorized Designee is authorized to file death benefit claims on behalf of persons and entities entitled to receive life insurance proceeds if and when such proceeds become payable under the Policy's terms. However, nothing in the Order shall prohibit a Buyer from allowing or requiring a Policy's New Beneficiaries to submit a death claim or a Listed Insurer from processing a death claim submitted by a Policy's New Beneficiaries. Death claims shall be submitted on forms acceptable to the Listed Insurer, provided that the Buyer or its Authorized Designee shall only be required to obtain signatures of the Buyer or its Authorized Designee, and any beneficiary thereunder to the extent required by

the Policy, the Listed Insurer's then standard claim forms and procedures, or applicable law.³ A Buyer or its Authorized Designee is authorized to do any and all acts necessary, or as the Buyer or Authorized Designee deems appropriate, to file such death benefit claims, including but not limited to, requesting and receiving claim benefits forms from Listed Insurers and any and all acts deemed necessary and appropriate by the Buyer or Authorized Designee to arrange for life insurance proceeds payable upon the death of an insured under a Policy the Buyer owns to be paid to the proper beneficiaries under such Policy.

13. **IT IS FURTHER ADJUDGED** that, upon the maturity of a Sell Policy after its sale to a Buyer, and receipt of written request from its Buyer or its Authorized Designee, a Listed Insurer shall promptly release to such requesting party any and all information requested by, and typically available to, the owner of Policy or a group certificate assignee, relative to insurance proceeds payable as the result of the death of the insured, including but not limited to: (a) the total proceeds payable as a result of the death of the insured; (b) the total principal amount payable as a result of the death of the insured; and (c) the total interest payable on any insurance proceeds payable from the death of an insured. Any and all proceeds of a Policy payable after its sale to a Buyer as a result of the death of the insured(s) shall be paid to the beneficiary or beneficiaries of record (or to the legal successor to or representative of any such beneficiary) as then most recently effectively designated by the Buyer or its Authorized Designee or by a subsequent owner of the Policy.

³ Upon request of the Buyer or Authorized Designee, the Insurer shall promptly provide acceptable forms for filing death benefit claims.

14. **IT IS FURTHER ADJUDGED** that, if and when a Buyer duly authorizes one or more third parties to perform acts the Buyer deems necessary or appropriate in connection with servicing or administering one or more Policies it acquires, the Buyer shall provide an original letter of authorization signed and notarized by the Buyer and addressed to such third party explicitly authorizing the third party to perform specified acts or to take certain actions as the Buyer may request. Any such third party, for such period of time as it is authorized to act on behalf or in the name of a buyer for purposes of this Order or any Sale Order, is referred to herein as an "Authorized Designee." If, on such terms and conditions as, and for such period of time as the Receiver in its discretion expressly so agrees with a Buyer, the Receiver may serve as Authorized Designee of that Buyer, but, without modifying any agreement for purchase of policies approved by a Sale Order, this Order shall require neither the Receiver to accept such appointment or role nor any Buyer to so appoint the Receiver. An Authorized Designee may provide an original of its letter,⁴ together with a copy of this Order and the Sale Order for the Policy or Policies in question, to any Listed Insurer evidencing the Authorized Designee's authority to do the act or take the action authorized by the Buyer respecting such Policy or Policies, and the Listed Insurer shall thereafter respond to the Authorized Designee.

15. **IT IS FURTHER ADJUDGED** that it is the intention of this Order that Policies the Receiver sells or transfers to a Buyer pursuant to a Sale Order be preserved to the fullest extent possible for the benefit of the Buyer and its legal successors and lawful assigns, but nothing in this Order, the Disposition Orders, or a Sale Order shall operate or be construed to relieve a Buyer, an Assignee, or their respective successor or assigns, from paying or arranging for payment in full of all premiums on Policies it acquires as and when due in accordance with

⁴ A duplicate or counterpart manually executed original of such a letter shall be considered an original for this purpose.

their terms.

16. **IT IS FURTHER ADJUDGED** that this Order shall apply with equal force to any successor in interest to any Listed Insurer, and any successor in interest to each Buyer, each Assignee, and their respective Authorized Designees. In addition, the following specified paragraphs and provisions of this Order shall also apply with equal force to all persons that acquire ownership of, or an ownership interest in, a Policy from any Buyer or Assignee or from any subsequent acquirer or owner of a Policy and to the respective successors in interest of all such persons: paragraphs 5, 7, 9 (but only its third through last sentences, inclusive), 14, 16, 18 (but only its first sentence), and 19.

17. **IT IS FURTHER ADJUDGED** that, except as expressly set forth herein, nothing set forth herein shall be construed as requiring Listed Insurers to limit communications with a Buyer or its Authorized Designee to writing or as requiring that the dissemination of information to a Buyer or its Authorized Designee be solely in writing. A Listed Insurer may from time to time designate a specific representative to receive all requests and coordinate all responses from one or more Buyers and their respective Authorized Representatives on the Listed Insurer's behalf regarding any of its Policies. A Buyer and its respective Authorized Designee shall thenceforth direct all communications to that representative. Any such designation shall be in writing and shall be effective upon receipt by the Buyer or its Authorized Designee. A Listed Insurer may designate one representative per Buyer at any time and may, in its discretion and from time to time, revoke a designation or change its representative by written notice to Buyer or its Authorized Designee as appropriate.

18. **IT IS FURTHER ADJUDGED** that no Listed Insurer shall be liable for any conduct, act, or omission taken in good faith in compliance with any or all of the orders, injunctive provisions, or instructions contained in any order entered in this proceeding that calls

for, authorizes, or directs insurers to take or refrain from any action, conduct, or business practice, including specifically but without limitation this Order, the Disposition Orders, the Beneficial Interests Order, or any Sale Order. Without limiting the last sentence of this paragraph 18, no person that ever is or was or becomes an investor in or beneficiary of a Policy at or during any time (if ever) before a Buyer closes its purchase of that Policy from the Receivership Estate shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body of panel, or assert any claim or cause of action in any such proceeding or forum, against a Listed Insurer or any of its predecessors, successors, assigns, or affiliates, or against the respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to, (A) any Listed Insurer having complied with any order entered in this proceeding or (B) any such investor or beneficiary having either (i) dealt or contracted with any of the Receivership Entities or the Receiver, (ii) invested or agreed to invest in a Policy, in a viatical contract related to a Policy, or in rights to or a fractional interest in a Policy or such a viatical contract, or (iii) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of a Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any such claim or cause of action may be asserted and prosecuted only in this Court as a claim against the Receivership Estate, including but not limited to a claim to an equitable share, as this Court may determine, or the net proceeds the Receivership Estate realizes through sale or other disposition of Policies, in accordance with a claims process that this Court subsequently establishes or approves by future order. Without limiting the last sentence of this paragraph 18, any and all claims and causes of action held by or accruing to any such investors or beneficiaries against any of the Listed Insurers within the scope of this paragraph 18, however denominated, regardless of the allegations, facts, law, theories, or

principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against the Listed Insurers by any current or former investor or beneficiary, and by any person who acquired or acquires an interest in a Policy from or through a current or former investor or beneficiary, including but not limited to persons that are parties to this receivership proceeding and all other investors and beneficiaries that receive or obtain notice of this Order or of this paragraph 18, whether such claims now exist or have accrued or may in the future exist or accrue, are hereby extinguished, discharged, satisfied, and are otherwise unenforceable. However, nothing in this paragraph 18 or Order shall relieve a Listed Insurer from its obligations set forth in a Policy for which it is the insurer (i) to the Receiver as sole owner and nominal beneficiary as this Order provides, (ii) to a Buyer, its Assignee, or subsequent owner that acquires the Policy pursuant to a Sale Order, (iii) to New Beneficiaries properly named by a Buyer or Assignee, as the case may be, or by a subsequent owner in accordance with this Order and the Policy terms, or (iv) to the respective legal successors in interest to the persons specified in the preceding clauses (i), (ii) and (iii) of this sentence.

19. **IT IS FURTHER ADJUDGED** that, as to each of the Listed Insurers and all Policies under which any Listed Insurer is obligated, this Order shall take precedence over and govern the Beneficial Interests Order to the extent of any inconsistency or conflict between them, but the Beneficial Interests Order shall be interpreted, construed, and enforced in such a manner as to be consistent with this Order to the greatest extent possible.

DONE AND ORDERED in Chambers at Miami, Florida, this 8th day of October, 2009.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Counsel of Record

EXHIBIT A – LISTED INSURERS

CitiCorp Life Insurance Company
Cova Corporation
Cova Life Management
Cofirst
CitiCorp Life Insurance Company
First CitiCorp Life Insurance Company
Genamerica Management Corporation
MetLife Life and Annuity Company of Connecticut
Travelers Insurance Company
Travelers Life and Annuity Company
MetLife Investors Insurance Company
MetLife Investors Insurance Company of California
MetLife Investors USA Insurance Company
MetLife Insurance Company of Connecticut
Metropolitan Life and Annuity Company
Metropolitan Life Insurance Company
Metropolitan Tower Life Insurance Company
New England Life Insurance Company
New England Mutual
Texas Life Insurance Company

For purposes of this proceeding, counsel for the Listed Insurers are:

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