

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/GARBER

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORPORATION, *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

**RECEIVER'S MOTION FOR CLARIFICATION AND
AMENDMENT OF "BENEFICIAL INTERESTS ORDER"**

Roberto Martinez, Esq., as Court-appointed Receiver of Mutual Benefits Corporation, Viatical Services, Inc., Viatical Benefactors LLC and Anthony Livoti, Jr. and Anthony Livoti, Jr. P.A. solely in their capacity as trustee (collectively, the "Receivership Entities"), hereby moves for a clarification and modification of the Court's Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies, entered January 30, 2007 [D.E. 1837], and states as follows:

1. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds [DE#1339] (the "Disposition Order"). And, on November 22, 2005, the Court entered its Order Clarifying Disposition Order and Approving Form of Notice [DE#1474] (the "Clarification Order"). These Orders collectively directed that investors be provided an opportunity to vote on whether to keep, sell or surrender the policy(s) in which they had an

interest, and authorized the manner by which the Receiver was to solicit investors' elections.

2. In accordance with the foregoing Orders, voting on each of the Policies was conducted, the result of which is that approximately 3,037 policies with a face value of approximately \$1,05,421,059.67 were designated to be retained ("Keep Policies") and approximately 3,138 policies with face value of approximately \$383,850,782.72 were designated to be sold ("Sell Policies").

3. After completion of this voting process, and as part of the disposition process for the insurance policies that are being administered by the Receiver more generally, on January 30, 2007, the Court entered the Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies [D.E. 1837] (the "Beneficial Interests Order"). Among other things, the Beneficial Interests Order recognized that the disposition process necessarily required that changes in beneficiaries be made with respect to the Policies in many different circumstances. 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, and other situations. As a result, the Court found and concluded that "it is necessary and appropriate that an order be entered directing that the beneficial interests in all Policies administered through the receivership be changed to the Receiver, or his designee, as Nominal Beneficiary, so that necessary adjustments (either as a result of reallocations of interests in Keep Policies, or sale of the Sell Policies) can be made by the Receiver without having to process such changes through each of the insurance companies." Beneficial Interests Order at p. 5.

4. In addition, in order to implement this Disposition Process, the Court also directed

as follows:

All Insurers are authorized and directed to make payment of all proceeds, including death claim proceeds, to the Receiver or such party as the Receiver designates, following the earlier of the date of entry of this Order or the Receiver's submission of a requested change to an insurer.

Beneficial Interests Order at p. 7.

5. There are a limited number of policies that matured after the time that the Receiver began carrying out the Disposition Process but prior to the date of entry of the January 30, 2007 Beneficial Interests Order. For most of these policies, the Insurers have nevertheless been willing to pay the death benefits to the Receiver for the Receiver to pay out to the investor beneficiaries consistent with the Court's prior orders. For a limited number of policies, however, the Insurers have been unwilling to do so, citing the date restrictions in the language quoted above. These policies are listed in the attached Exhibit A.

6. This situation has led to the following problem for the Receiver in implementing the Disposition Process. In order to protect Sell Policies from lapsing before they could be sold, and in order to protect Keep Policies from lapsing before the investors could be billed for their administrative fees and their share of the premium payments, the Receiver has continued to pay premiums on policies that were beyond the original Life Expectancy assigned to the policies by MBC. When those policies have matured and the death benefits have been paid to the Receiver for distribution to the investors, the Receiver has been reimbursing the Receivership for the advanced premium payments (and the unpaid administrative fees) out of the death benefits before distributing them to the investors.

7. This is consistent with the directions of the Court in the Disposition Order, where

the Court held that the Receiver would recover premiums paid on policies that were beyond their MBC-assigned Life Expectancy at the time of sale. Disposition Order at ¶ 2. In addition, the Receiver gave notice in the Twentieth Report of Receiver [D.E. 1859] that “because (a) these premiums represent expenses that were incurred in order to conduct an orderly sale of these policies, and (b) because investors were entitled to the death benefits for those policies that matured prior to the sale . . . these premiums represent reimbursable expenses of the Receiver, which should be paid out of the sale proceeds. These reimbursements would be placed into the Receiver’s Premium Account.” Twentieth Receiver’s Report at 23-24. Because these policies have (fortuitously for the investors) matured before their sale could be effectuated, the only way to reimburse the Receivership is from the death benefit proceeds.

8. If the death benefits on the policies identified in Exhibit A are not paid to the Receiver for distribution, the Receiver will not be able to reimburse the Receivership. This is unfair to the broader pool of investors who do not have an interest in the death benefits on these particular policies. The money used to keep the particular policies from lapsing has come from general Receivership funds that will ultimately be distributed to the Receivership’s investors and creditors generally. The investors on the particular policies that have matured should not benefit from the use of the general Receivership funds.

CONCLUSION

The Receiver respectfully requests that the Court enter the attached proposed order clarifying and amending the Beneficial Interests Order to provide that the death benefits on the matured policies identified in Schedule A to the proposed order shall be paid to the Receiver for distribution consistent with this Court's prior orders in this matter.

Respectfully submitted,

COLSON HICKS EIDSON
255 Aragon Avenue
Coral Gables, FL 33134-5008
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
E-mail: curt@colson.com

By: s/ Curtis Miner
CURTIS MINER
Fla. Bar No.: 0885681

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 29, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Curtis B. Miner
Curtis Miner

SERVICE LIST OF RECEIVER

VIA ELECTRONIC MAIL		
<p>Alise Meredith Johnson, Esq. Linda Schmidt, Esq. Securities & Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 Fax: (305) 536-4154 E-mail: johnsona@sec.gov schmidtls@sec.gov almonti@sec.gov <i>Counsel for Securities & Exchange Commission</i></p>	<p>Michael A. Hanzman, Esq. Kenwin Love, Esq. Hanzman Criden Chaykin & Rolnick Commercebank Center 220 Alhambra Circle, Suite 400 Coral Gables, FL 33134 Fax: (305) 357-9050 E-mail: mhanzman@hanzmancriden.com klove@hanzmancriden.com <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>Brian J. Stack, Esq. Stack Fernandez Anderson & Harris, P.A. 1200 Brickell Avenue, Suite 950 Miami, FL 33131-3255 Fax: (305) 371-0002 E-mail: bstack@stackfernandez.com <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>David L. Rosendorf, Esq. Kozyak Tropin & Throokmorton 2525 Ponce de Leon, Suite 900 Coral Gables, Florida 33134 Fax: (305) 372-3508 E-mail: hni@kttlaw.com <i>Co-counsel for Receiver</i></p>	<p>Victor M. Diaz, Jr., Esq. Podhurst Orseck Josefsberg et al. City National Bank Building 25 West Flagler St., Suite 800 Miami, FL 33130 Fax: (305) 358-2382 E-mail: vdiaz@podhurst.com pdagher@podhurst.com <i>Counsel for Scheck Investments LP, et al.</i></p>	<p>J. David Hopkins, Esq. Lord, Bissell & Brook LLP Suite 1900, The Proscenium 1170 Peachtree Street, N.E. Atlanta, Georgia 30309 Fax: (404) 872-5547 E-mail: dhopkins@lordbissell.com <i>Counsel for Traded Life Policies Ltd.</i></p>
<p>George Mahfood, Esq. Ferrell Schultz Carter & Fertel 201 South Biscayne Boulevard 34th Floor, Miami Center Miami, Florida 33131 Fax: (305) 371-5732 E-mail: gmahfood@ferrellschultz.com <i>Counsel for Joel Steinger, Leslie Steinger, Peter Lombardi, PJL Consulting Co., Kensington Consulting Co.</i></p>	<p>Robert C. Gilbert, Esq. 220 Alhambra Circle, Suite 400 Coral Gables, FL 33134-5174 Fax: (305) 529-1612 E-mail: rgilblaw@aol.com <i>Special Counsel for Scheck Investments LP, et al.</i></p>	<p>Hilarie Bass, Esq. Jacqueline Becerra, Esq. Greenberg Traurig P.A. 1221 Brickell Avenue Miami, Florida 33131 Fax: (305) 579-0717 E-mail: becerraj@gtlaw.com bassh@gtlaw.com <i>Counsel for Union Planters Bank, N.A.</i></p>
<p>Edward M. Mullins, Esq. Daniella Friedman, Esq. Astigarraga Davis Mullins & Grossman, P.A. 701 Brickell Ave., 16th Floor Miami, FL 33131 Fax: (305) 372-8202 E-mail: emullins@astidavis.com dfriedman@astidavis.com <i>Co-counsel for Life Settlement Holding, A.G.</i></p>	<p>Angela Daker, Esq. White & Case, LLP 4900 Wachovia Financial Center 200 S. Biscayne Boulevard Miami, Florida 33131 Fax: (305) 358-5744 E-mail: adaker@whitecase.com <i>Former counsel for Steven Steiner</i></p>	<p>David Levine, Esq. Jeffrey Schneider, Esq. Tew Cardenas LLP The Four Seasons Tower, 15th Floor 1441 Brickell Avenue Miami, FL 33131 Fax: (305) 536-1116 E-mail: jcs@tewlaw.com dml@tewlaw.com <i>Counsel Patricia Cook, et al.</i></p>
<p>J. Raul Cosio, Esq. Holland & Knight 701 Brickell Avenue, Suite 3000 Miami, FL 33131 Fax: (305) 789-7799 E-mail: raul.cosio@hklaw.com <i>Counsel for Northern Trust Bank of Florida</i></p>	<p>Gary Timin, Esq. Mayra Calzadilla, Esq. Squire, Sanders & Dempsey, LLP 200 S. Biscayne Blvd, 41st Floor Miami, FL 33131 Fax: (305) 577-7001 E-mail: gary.timin@steelhector.com mayra.calzadilla@steelhector.com <i>Counsel for Transamerica Occidental Life</i></p>	
<p>Joseph A. Paella, Esq. Andrew & Kurth, LLP 450 Lexington Avenue New York, NY 10017 JosephPaella@andrewskurth.com <i>Counsel for American Express Tax & Business Services, Inc.</i></p>	<p>Christopher J. Klein Baur & Klein, P.A. 100 N. Biscayne Blvd. 21st Floor Miami, FL 33132 Fax: (305) 371-4380 E-mail: cklein@worldwidelaw.com <i>Co-counsel for Life Settlement Holding, A.G.</i></p>	

<p>Charles H. Lichtman, Esq. Berger Singerman, Suite 1000 350 East Las Olas Blvd. Fort Lauderdale, FL 33301 Fax: (954) 523-2672 E-mail: clightman@bergersingerman.com <i>Counsel for Mutual Benefits Japan Co.</i></p>	<p>Joel L. Kirschbaum, Esq. Bunnell Wolfe Kirschbaum Keller McIntyre Gregoire & Klein, PA 100 SE 3rd Avenue Suite 900 Fort Lauderdale, FL 33394 E-mail: cxm@bunnellwolfe.com</p> <p><i>Counsel for Diana Steinger</i></p>	<p>Wendy L. Furman, Esq. Pett, Furman & Jacobson, P.L. 2101 N.W. Corporate Boulevard Suite 316 Boca Raton, FL 33431 Fax: 994-4311 E-mail: wfurman@pflaw.com <i>Counsel for American United Life Insurance Co.</i></p>
<p>J. Randolph Liebler, Esq. Liebler, Gonzalez & Porcundo, P.A. 44 West Flagler Street, 25th Floor Miami, Florida 33130 Fax: (305) 379-9626 E-mail: jrl@jglaw.com <i>Counsel for Bank of America</i></p>	<p>Rick Critchlow, Esq. Harry R. Schafer, Esq. Kenny Nachwalter, PA 201 South Biscayne Blvd. 1100 Miami Center Miami, Florida 33131 Fax: (305) 372-1861 Email: rcritchlow@kennynachwalter.com hschafer@kennynachwalter.com <i>Counsel for Citibank</i></p>	<p>Glenn Berger Joshua Reitzas Jaffe & Asher LLP 600 Third Avenue New York, NY 10016 E-mail: GBerger@jaffeandasher.com <i>Counsel for American Express Travel Related Services Company, Inc.</i></p>
<p>Daniel Small, Esq. Duane Morris, LLP 200 So. Biscayne Blvd., Suite 3400 Miami, FL 33131 Fax: (305) 960-2201 E-mail: dsmall@duanemorris.com <i>Counsel for Dr. Christine Walsh, et al. (the "Investors Group")</i></p>	<p>Bruce A. Zimet Esq. 100 S.E.3rd Avenue, Suite 2612 Ft. Lauderdale, FL 33394 Fax: (954) 760-4421 E-mail: bazimetlaw@aol.com <i>Counsel for Leslie Steinger</i></p>	<p>Kenneth D. Post, Esq. Shutts & Bowen 1500 Miami Center 201 S. Biscayne Boulevard Miami, FL 33131 E-mail: kpost@shutts-law.com</p> <p><i>Counsel for William Penn Life Insurance</i></p>
<p>John H. Genovese, Esq. Genovese Joblove & Battista, P.A. 100 S.E. 2nd Street, 36th Floor Miami, Florida 33131 Fax: (305) 349-2310 <i>Counsel for Great West Growth, LLC, et al.</i></p>	<p>Craig Rasile, Esq. Hunton & Williams E-Mail: azaron@hunton.com crasile@hunton.com rukowskik@whiteandwilliams.com ggitomer@mkbattorneys.com <i>Counsel for Charitable Concepts, Inc., et al.</i></p>	<p>Eric Ellsley, Esq. Krupnick Campbell Malone Roselli Buser et al 700 SE 3rd Ave Ste 100 Fort Lauderdale Florida 33161 E-Mail: ellslev@krupnicklaw.com <i>Counsel for Certain Investors</i></p>
<p>Sandra M. Upegui, Esq. Shutts & Bowen, LLP 201 South Biscayne Blvd. Suite 1500 - Miami Center Miami, Florida 33131</p> <p><i>Counsel for Instituto de Prevision Militar Inverna</i></p>	<p>Carla M. Barrow, P.A. 1395 Brickell Avenue 8th Floor Miami, FL 33129 E-Mail: carlabarrow@bellsouth.net</p> <p><i>Counsel for Claimants Maria Antonieta Mejia, et al.</i></p>	<p>Jack Dempsey, Esq. Susan Guerrieri, Esq. Drinker Biddle & Reath, LLP One Logan Square 18th & Cherry Streets Philadelphia, PA 19103 John.Dempsey@dbr.com Susan.guerrieri@dbr.com <i>Counsel for American United Life Insurance Co.</i></p>
<p>Charles E. Ray, Esq. 887 E. Prima Vista Blvd. Port St. Lucie, FL 34952 Email: charlescray@aol.com <i>Counsel for Aurora Bifulco</i></p>	<p>Edward Montoya, Esq. Montoya Law Firm, PA 2600 Douglas Road Penthouse 7 Coral Gables, FL 33134 Email: emontoya@fnclaw.com <i>Attorney for the Class</i></p>	<p>David P. Hartnett, Esq. Hinshaw & Culbertson 9122 S. Dadeland Blvd., Suite 1600 Miami, FL 33156 E-mail: dhartnett@hinshawlaw.com</p> <p><i>Counsel for Connecticut General, et al.</i></p>
<p>Carla M. Barrow, Esq. Pardo, Gainsburg & Barrow, LLP One Biscayne Tower - Suite 2475 2 South Biscayne Blvd. Miami, FL 33131 Email: cbarrow@pgrblaw.com <i>Attorney for NAI</i></p>	<p>Jay S. Blumenkopf, Esq. Adorno & Yoss 700 S. Federal Highway, suite 200 Boca Raton, FL 33432 E-mail: jblumenkopf@adorno.com</p> <p><i>Counsel for Allmerica Financial Life, et al.</i></p>	<p>Charles Wachter, Esq. Fowler white Boggs Banker 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 E-mail: cwachter@fowlerwhite.com</p> <p><i>Counsel for John Hancock Life Ins.</i></p>
<p>Jeffrey Rubinstein, Esq. Rubinstein & Associates, PA 1428 Brickell Avenue Penthouse Miami, FL 33131 Jeffrey@RubinsteinAssociates.com <i>Attorneys for Claimants</i></p>		

EXHIBIT A

MBC AP/CF#

INSURER

POLICY#

99-0004777

Jackson National Life

28933840

99-0002334

Minnesota Life

2277969

99-0001280

Minnesota Life

2203940

99-0007146

Union Fidelity Life

011B30681092

99-0003390

United of Omaha

DR6069911

99-0002663

United of Omaha

AAA6369382

99-0001199

United of Omaha

6127653

99-0000411

UNUM Provident Corp

LAL 127775

PROPOSED ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

**ORDER GRANTING RECEIVER'S MOTION FOR CLARIFICATION
AND AMENDMENT OF "BENEFICIAL INTERESTS ORDER"**

THIS CAUSE is before the Court on the Receiver's Motion for Clarification and Amendment of this Court's Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies [DE 1837], entered on January 30, 2007 (the "Beneficial Interests Order"). This Court, having reviewed the filings, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. Paragraph 6 (on page 7) of the Beneficial Interests Order is hereby clarified and amended to provide that, for the insurance policies identified on Schedule A of this Order, the insurers are authorized and directed to make payment of all proceeds, including death claim proceeds, to the Receiver or such party as the Receiver designates.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida on this ____ day
of December, 2007.

JUDGE FEDERICO MORENO
UNITED STATES DISTRICT JUDGE

Copies to: All Counsel of Record

SCHEDULE A

MBC AP/CF#

INSURER

POLICY#

99-0004777

Jackson National Life

28933840

99-0002334

Minnesota Life

2277969

99-0001280

Minnesota Life

2203940

99-0007146

Union Fidelity Life

011B30681092

99-0003390

United of Omaha

DR6069911

99-0002663

United of Omaha

AAA6369382

99-0001199

United of Omaha

6127653

99-0000411

UNUM Provident Corp

LAL 127775