

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No.: 04-60573-CIV-MORENO

IN RE:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants,

and

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

Relief Defendants.

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**SECOND INTERIM APPLICATION FOR COMPENSATION OF FEES  
AND COSTS OF ACCOUNTANTS FOR RECEIVER**

**Pursuant to Court Order, any objections to this Application  
must be filed on or before ten days from the date of service  
indicated on the Certificate of Service attached hereto.**

Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants,  
LLP ("BDPB"), accountant to 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 requests the Court to enter an order authorizing the Receiver to pay the reasonable accountant's fees and costs incurred by BDPB between June 19, 2004 and September 30, 2004 inclusive from the receivership estate, and in support thereof states the following.

By this Application, BDPB requests compensation for services rendered June 19, 2004 through September 30, 2004 (the "Application Period") in the amount of \$193,806.45 for fees to be paid by the Receivership Entities. This amount reflects the application of a 10% discount to our standard rates for all professionals and paraprofessionals working on this matter, totaling \$21,534.05.

#### **DESCRIPTION OF SERVICES**

During the Application Period, BDPB has rendered extensive and necessary services for and on behalf of the receivership estate, as set forth below.

The following summarizes the services rendered by BDPB during the Application Period:

- Continued analysis of pre-Receivership accounting information for defendant and relief defendant entities.
- Continued analysis of pre-Receivership transactions, including payments to relief defendants, potential related parties and certain others.
- Continued analysis of Viatical investor / insured accounting, flow of funds through various bank accounts.
- Continued assistance with Receivership administration, including development of operating budgets, evaluation of operating expenses, investigation, evaluation and processing of premium payments, preparation of accounting schedules and

financial analyses performed in connection with requests by the Receiver.

- Assist Receiver in the preparation of reports filed with the Court and preparation of various Motions filed with the Court.
- Analysis of various tax issues in connection with the preparation and filing of tax returns.
- Analysis and development of investor database and response to related inquiries.
- Continued analysis of policies, life expectancies, mortalities, reserves, and other policy related statistics.
- Daily backup and maintenance of information technology assets.

#### **COMPENSATION:**

The determination of fees to be awarded is largely within the discretion of the trial court. *Monaghan v. Hill*, 140 F.2d 31 (9th Cir. 1944). This discretion is, however, predicated on the assumption that careful consideration is given to all evidence of the value of the accountants' services in the light of the factors relevant to a determination. These factors are set forth in *In re Gypsum Cases*, 386 F.Supp. 959 (N.D. Cal. 1974) and *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988), as follows: (1) the time and labor properly employed in the servicing of the case; (2) the quality of services rendered; (3) the scope of the activity and conspiracy under attack; (4) the financial risk involved; (5) the magnitude, complexity and novelty of the issues involved; (6) the beneficial results obtained; and (6) the degree to which, if any, efforts were supported by prior governmental action. BDPB requests the Court to

consider these factors in determining reasonable compensation for the services rendered to date by BDPB, as summarized below:

a. Time and Labor Required - The exhibits attached to this application include the Summary of Second Interim Application for Compensation of Fees and Costs of Accountants for the Receiver, Exhibit 1-A Summary of Professional and Paraprofessional Time, Exhibit 1-B Summary of Professional and Paraprofessional Time by Activity Code Category and Exhibit 2 Summary of Requested Reimbursement of Expenses.<sup>1</sup>

b. Novelty and Difficulty of Services and Skills Requisite to the Accounting.

The issues presented in this case are novel given the size of the Receivership entities, the difficulty of dealing with the records and the unique nature of the Receivership Entities' businesses. Additionally, Raquel Kohler, the Chief Financial Officer of MBC, and certain key accounting staff left the employ of the MBC prior to or in connection with the appointment of the Receiver, and were not available to assist the Receiver during this application period.

The extensive experience and capabilities of the professionals involved with this case possess the accounting, financial analysis, tax and consultation skills required for the successful completion of the objectives of the Receiver.

c. The Skill Requisite to Perform the Services Properly. BDPB has staffed the engagement with personnel experienced in accounting, auditing, financial analysis, reporting and disclosure, tax compliance and information technology.

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<sup>1</sup> BDPB maintains detailed time records that are kept contemporaneously with the services performed. Receiver's counsel will, within ten days, seek to file these detailed records under seal to the Court for review in camera and ex parte.

d. The Preclusion of Other Employment by the Professional Due to Acceptance of this Case. BDPB has not been precluded from any other employment due to the acceptance of this case.

e. The Customary Fee. The customary fee for services of the type rendered herein BDPB charges commercial clients on one or more of the following criteria: reasonable fee for services rendered, hourly charges, or fixed fee. To the extent hourly charges are relevant, BDPB commands from commercial clients hourly rates ranging from \$95 an hour to \$315 per hour depending on the level of professional skill required.

f. Whether the Fee is Fixed or Contingent. The fee is contingent inasmuch as the Receiver relies upon a Court Order approving the fee. BDPB has not entered into any agreement to fix a fee.

g. Time Limitations Imposed by the Client or Other Circumstances. BDPB was directed to commence work by the Receiver on May 4, 2003 to assist the Receiver as forensic accountants with respect to any and all litigation consulting services, investigatory accounting services, forecasts, advise on the accounting aspects of litigation matters, tax considerations, valuations and other services as required. In addition to BDPB's assistance in accounting for the operations of the Receivership entities, the Receiver had requested significant assistance from BDPB in connection with the preparation of the Third Report of Receiver, filed on July 16, 2004, assistance in connection with testimony by Receiver at hearing on July 20, 2004 and assistance in connection with the investigation, processing and payment of premiums on insurance policies.

h. The Amount Involved and the Results Obtained - The above summary, together with exhibits, details the time, nature and extent of the professional services rendered by BDPB for the benefit of the investors and creditors.

i. The Experience, Reputation, and Ability of the Professional. BDPB is an established accounting firm comprised of thirteen directors and over 100 personnel. Its professionals and staff working on this case are experienced in matters of this kind. Richard A. Pollack has testified as an expert witness in similar matters where accounting fees were awarded on the same basis as those sought in this application.

j. Undesirability of Case. This case is not undesirable. BDPB is privileged to have the opportunity to serve the Receiver and appear before the Court in this proceeding.

k. Nature and Length of Professional Relationship With Client. BDPB's relationship with the Receiver began on May 4, 2004.

l. Awards in Similar Cases. The amount requested by BDPB is reasonable in terms of awards in cases of similar magnitude and complexity. The compensation which BDPB requests comports with the mandate of the Bankruptcy Code, which directs that services be evaluated in light of comparable services performed in non-bankruptcy cases in the community. Considering the results obtained thus far, this fee request is appropriate. Likewise, as with all major accounting firms, BDPB's overhead expenses are substantial. Much of the fee, which the Court awards BDPB, will merely defray such significant overhead expenses already incurred and paid during the pendency of this case.

k. Government Support - Although the SEC investigated and filed the initial pleadings in this case, BDPB has assisted the Receiver to secure and protect the assets of the Receivership Entities and investigate the operations of the Receivership Entities through investigation and analysis.

**CONCLUSION**

The Applicant respectfully requests that this Court authorize the Receiver to compensate BDPB for their accountants' fees for reasonable and necessary services rendered during the Application Period in the amount of \$193,806.45 to be paid by the estate of the Receivership Entities.

Respectfully submitted,

Berkowitz Dick Pollack & Brant  
Certified Public Accountants and Consultants, LLP  
*Accountants for the Receiver*  
200 South Biscayne Boulevard, Sixth Floor  
Miami, FL 33131  
Tel: (305) 379-7000 Fax: (305) 379-8200

  
Scott M. Bouchner



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Berkowitz Dick Pollack & Brant's Second Interim Petition for Fees and Costs, together with all exhibits, was mailed this 10<sup>th</sup> day of December, 2007 to counsel on the attached service list.

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By CBMin  
Curtis Miner  
Florida Bar No. 885681

SERVICE LIST OF RECEIVER

December 10, 2004

Case No.: 04-60573 CIV-Moreno

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# EXHIBIT 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

IN RE:

Case No.: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

vs.

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.,  
SKS CONSULTING, INC., and  
CAMDEN CONSULTING, INC.

Relief Defendants.

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SUMMARY OF SECOND INTERIM APPLICATION FOR COMPENSATION OF FEES  
AND COSTS OF ACCOUNTANTS FOR RECEIVER

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- |  |  |
|--|--|
| 1. Name of applicant:  | Berkowitz Dick Pollack & Brant Certified Public Accountants & Consultants, LLP |
| 2. Role of applicant:  | Accountants for Receiver   |
| 3. Name of certifying professional:                                | Scott Bouchner   |
| 4. Date receiver appointed:  | May 4, 2004  |
| 5. Date of application for employment:                             | May 26, 2004   |
| 6. Date of order approving employment:                             | June 3, 2004   |
| 7. If receiver's counsel, date of Disclosure of Compensation form: | N/A  |
| 8. Date of this application:                                       | December 1, 2004   |
| 9. Dates of services covered:                                      | June 19, 2004 through September 30, 2004                                       |

**Fees...**

10. Total fee requested for this period (from Exhibit 1)	\$ 193,806.45
11. Balance remaining in fee retainer account, not yet awarded	\$ -
12. Fees paid or advanced for this period, by other sources	<u>\$ -</u>
13. <b>Net amount of fee requested for this period</b>	<b>\$ 193,806.45</b>

**Expenses...**

14. Total expense reimbursement requested for this period	\$ -
15. Balance remaining in expense retainer account, not yet received	\$ -
16. Expenses paid or advanced for this period, by other sources	<u>\$ -</u>
17. <b>Net amount of expense reimbursements requested for this period</b>	<b>\$ -</b>
18. <b>Gross award requested for this period (#10 + #14)</b>	<b>\$ 193,806.45</b>
19. <b>Net award requested for this period (#13 + #17)</b>	<b>\$ 193,806.45</b>
20. If <u>Final</u> Fee Application, amounts of net awards requested in interim applications <u>but not previously awarded</u> (total from History of Fees and Expenses, following pages):	
21. <b>Total fee and expense award requested (#19 + #20):</b>	<b><u>\$ 193,806.45</u></b>

**History of Fees and Expenses**

1. Dates, sources, and amounts of retainers received:	\$ 0.00				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; text-align: center;">Dates</td> <td style="width: 25%; text-align: center;">Sources</td> <td style="width: 25%; text-align: center;">Amounts</td> <td style="width: 35%; text-align: center;">For Fees or costs?</td> </tr> </table>	Dates	Sources	Amounts	For Fees or costs?	
Dates	Sources	Amounts	For Fees or costs?		
2. Dates, sources, and amounts of third party payments received:	\$ 0.00				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; text-align: center;">Dates</td> <td style="width: 25%; text-align: center;">Sources</td> <td style="width: 25%; text-align: center;">Amounts</td> <td style="width: 35%; text-align: center;">For Fees or costs?</td> </tr> </table>	Dates	Sources	Amounts	For Fees or costs?	
Dates	Sources	Amounts	For Fees or costs?		

3. Prior fee and expense awards:

**First interim application**

Dates covered by first application: May 4, 2004 through June 18, 2004

	Prior Fee Awards	Prior Expense Awards
Amount of fees requested:	\$ 228,589.43	
Amount of expenses requested:		\$ -
Amount of fees awarded:	\$ 228,589.43	
Amount of expenses awarded:		\$ -
Amount of fee retainer authorized to be used:	\$ -	
Amount of expense retainer authorized to be used:		\$ -
Fees award, net of retainer:	\$ 228,589.43	
Expense award, net of retainer:		\$ -
Date of first award:		
Amount of fees actually paid:	\$ 228,589.43	
Amount of expenses reimbursement actually paid:		\$ -
Portion of fees requested but not awarded, which applicant wishes to defer to final fee application:	\$ -	
Portion of expenses requested but not awarded, which applicant wishes to defer to final fee application:		\$ -

EXHIBIT 1-A

**Summary of Professional and Paraprofessional Time  
Total per Individual for these Period Only  
Exhibit 1-A**

Name	Director, Associates or Paraprofessional	Total Hours	Agreed Upon Hourly Rate	Fee
Richard Pollack	Director	1.20	\$ 283.50	\$ 340.20
Scott Bouchner	Director	134.00	256.50	34,371.00
John Young	Director	0.70	256.50	179.55
Lee Hediger	Director	1.00	256.50	256.50
Joseph Schirra	Associate	457.00	238.50	108,994.50
Douglas Campbell	Associate	2.75	238.50	655.88
Robert Aceituno	Associate	13.75	216.00	2,970.00
Humberto Comellas	Associate	2.00	202.50	405.00
Greg Brogna	Associate	15.00	202.50	3,037.50
Joel D. Glick	Associate	1.70	193.50	328.95
Richard Fechter	Associate	92.25	166.50	15,359.63
Martin Prinsloo	Associate	39.50	166.50	6,576.75
Jeffrey Chamoff	Associate	98.75	148.50	14,664.38
Lourdes Ruiz	Associate	20.50	130.50	2,675.25
Greg Lacina	Associate	1.25	126.00	157.50
Felipe Guaquet	Associate	5.00	121.50	607.50
Denise Stubbs	Associate	19.25	103.50	1,992.38
Lena Eljaiek	Paraprofessional	4.00	58.50	234.00
		909.60		
<b>Total</b>				<b>\$ 193,806.45</b>



EXHIBIT 1-B

**Summary of Professional and Paraprofessional Time by Activity Code Category  
for these Time Period Only  
Exhibit 1-B**

Name	Director, Associate or Paraprofessional	Agreed Upon Rate	Hours	Fee
<b>Activity Code Category: Case Management</b>				
Richard Pollack	Director	283.50	1.20	\$ 340.20
Scott Bouchner	Director	256.50	14.60	3,744.90
			<u>15.80</u>	<u>\$ 4,085.10</u>
<b>Activity Code Category: Accounting / Auditing</b>				
Scott Bouchner	Director	256.50	26.00	\$ 6,669.00
John Young	Director	256.50	0.70	179.55
Joseph Schirra	Associate	238.50	457.00	108,994.50
Richard Fechter	Associate	166.50	85.25	14,194.13
Martin Prinsloo	Associate	166.50	39.50	6,576.75
Greg Brogna	Associate	202.50	1.50	303.75
Denise Stubbs	Associate	103.50	19.25	1,992.38
			<u>629.20</u>	<u>\$ 138,910.05</u>
<b>Activity Code Category: Tax Issues</b>				
Scott Bouchner	Director	256.50	3.05	\$ 782.33
Lee Hediger	Director	256.50	1.00	256.50
Douglas Campbell	Associate	238.50	2.75	655.88
Richard Fechter	Associate	166.50	4.50	749.25
Greg Lacina	Associate	126.00	1.25	157.50
Lourdes Ruiz	Associate	130.50	20.50	2,675.25
Robert Aceituno	Associate	216.00	13.75	2,970.00
			<u>46.80</u>	<u>\$ 8,246.70</u>
<b>Activity Code Category: Fee Employment Application</b>				
Scott Bouchner	Director	256.50	7.10	\$ 1,821.15
Lena Eljaiek	Associate	58.50	4.00	234.00
			<u>11.10</u>	<u>\$ 2,055.15</u>
<b>Activity Code Category: Data Analysis</b>				
Scott Bouchner	Director	256.50	74.30	\$ 19,057.95
Joel D. Glick	Associate	193.50	1.70	328.95
Richard Fechter	Associate	166.50	2.50	416.25
			<u>78.50</u>	<u>\$ 19,803.15</u>
<b>Activity Code Category: Depositions/Hearings</b>				
Scott M. Bouchner	Director	256.50	7.00	\$ 1,795.50
			<u>7.00</u>	<u>\$ 1,795.50</u>
<b>Activity Code Category: Information Technology Operations and Analysis</b>				
Scott M. Bouchner	Director	256.50	1.95	\$ 500.18
Humberto Comellas	Associate	202.50	2.00	405.00
Greg Brogna	Associate	202.50	13.50	2,733.75
Jeffrey Chamoff	Associate	148.50	98.75	14,664.38
Felipe Guaquet	Associate	121.50	5.00	607.50
			<u>121.20</u>	<u>\$ 18,910.80</u>
			<u>909.60</u>	<u>\$ 193,806.45</u>

**Summary of Requested Reimbursement of Expenses  
for these Time Period Only  
Exhibit 2**

1. Filing Fees	\$	-
2. Process Service Fees	\$	-
3. Witness Fees	\$	-
4. Court Reporter Fees and Transcripts	\$	-
5. Lien and Title Searches	\$	-
6. Photocopies		
(a) In-house copies	\$	-
(b) Outside copies - Legal Impressions	\$	-
7. Postage	\$	-
8. Overnight Delivery Charges	\$	-
9. Outside Courier/Messenger Services	\$	-
10 Long Distance Telephone Charges	\$	-
11. Long Distance Fax Transmissions	\$	-
12. Computerized Research	\$	-
13. Out-of-Southern-District-of-Florida Travel	\$	-
14. Other Permissible Expenses		<hr/>
<b>Total Expense Reimbursement Requested</b>	<b>\$</b>	<b>-</b>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO  
Magistrate Judge Garber

SECURITIES AND EXCHANGE COMMISSION,

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

Defendants,

*Proposer*

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

Relief Defendants.

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**ORDER GRANTING  
BERKOWITZ DICK POLLACK & BRANT'S  
REQUEST FOR COMPENSATION**

**THIS CAUSE** came before the Court on Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP's Second Interim Application for Fees and Costs. The Court has heard comments by interested parties, carefully reviewed the Application and case file and is otherwise fully advised in the premises.

**THE COURT** notes that by prior Order this Court authorized the Receiver to "appoint one or more special agents, employ legal counsel, actuaries, accountants, claims administrators, clerks,

consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and expenses" subject to the approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation.

Pursuant to that provision, by prior Order the Court approved Receiver's application to employ Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP ("BDPB") as Receiver's accountants in this action. In the instant Application, BDPB seeks to have the Court authorize the Receiver to compensate BDPB for services rendered for the period from June 19, 2004 through September 30, 2004. In total, the Application seeks approval of the payment of **\$193,806.45** consisting of \$193,806.45 in fees and \$0.00 in costs.

Accordingly, after due consideration, it is

**ORDERED** and **ADJUDGED** that Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP's Second Interim Application for Fees and Costs is hereby **GRANTED** and Receiver, Roberto Martínez is hereby authorized to pay Berkowitz Dick Pollack & Brant, Certified Public Accountants and Consultants, LLP the sum of **\$193,806.45** which represents reasonable fees and costs incurred during the Application Period.

DONE and ORDERED in Chambers in the Southern District this \_\_\_\_ day of \_\_\_\_\_, 2004, in Miami, Florida.

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FEDERICO A. MORENO  
United States District Judge

Copies furnished to:

All parties on the attached service list.