

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60473-CIV-MC CRENO

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D.C.
CERENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants,

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

Relief Defendants.

THIRD REPORT OF RECEIVER

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

**Combined Balance Sheet
of the
Receivership Entities and Accounts under the Control of the Receivership**

Attached at Tab A is a Combined Balance Sheet of the Receivership Entities and Accounts under the Control of the Receivership as of June 30, 2004. The balance sheet is unaudited and reflects the preliminary work of the Receiver's forensic accountants. The data is derived from the companies' accounting records and bank statements.

Inventory of Insurance Policies

Attached at Tab B is a chart containing the inventory and summary of all insurance policies over which MBC has direct or indirect control, beginning with the earliest policies (purchased in 1994) through policies purchased as recently as May 4, 2004.¹ This chart does not include matured policies. This same chart was included at Tab A in the Second Report of Receiver; another copy is being produced herein, however, since it was not fully printed in the reproduction process during the Second Report.

Summary of Policies by Year of Closing

Attached at Tab C are three charts that provide a summary of policies by year of closing: Total Policies, Non-Hiv Policies, and Hiv Policies. The source of this data is the VSI database as of June 11, 2004. According to the principals at VSI, VSI classifies the policies either as Hiv or Non-Hiv based upon VSI's review of the medical summary contained in the insured's file.

As of June 11, 2004, approximately 23% of MBC's active non-Hiv policies were already beyond their life expectancy ("LE"), by an average of 552 days. There are 153 policies that have matured within the LE assigned by MBC. By contrast, there are 299

¹ The data is derived from the VSI database as of June 11, 2004.

policies (114 matured and 185 active) that are beyond the LE assigned by MBC. There are thus nearly twice as many policies (matured or active) beyond LE than there are matured policies within LE.

The disparity is also reflected when the face values of the policies are compared. Non-Hiv Policies with a face value of \$58,646,959 have matured within LE as compared with policies (matured or active) with a face value of \$163,842,597 that are beyond LE. Thus, there are approximately 2.8 times the face dollar value in policies (matured or active) beyond LE than there are matured policies within LE. Significantly, there are still 624 policies (\$879,705,995 in face value) that are active and within the assigned LE. Such policies may mature within or beyond the LE assigned by MBC. If the pattern for previous policies continues, the substantial majority of these policies will be beyond LE when they actually mature.

“Reserves”

As indicated in Paragraph 21 of the State of Florida Viatical Settlement Purchase Agreement,

Mutual Benefits Corp. has agreed that the accrued interest and any unused premiums may be retained as a reserve for payment of premiums on those policies where the insured outlives his/her projected life expectancy. Such reserves shall be used as needed to timely pay premiums.

Paragraph 22 of the State of Florida Viatical Settlement Purchase Agreement goes on to say that,

Viatical Services Inc., in conjunction with its agreements with the trustees to provide post-closing services, has agreed to establish a premium reserve account to pay any unpaid premiums on a policy that exceeds the estimated life expectancy of the insured. Payments from this account are to be made only after the reserve of any unused interest

or unused premium referenced in paragraph 21 above are exhausted.

The Receiver's forensic accountants have performed a preliminary analysis of the premium escrow accounts paid out of the Livoti Accounts and the UPBNA accounts in an attempt to compute the "reserves" referenced in the above-quoted paragraphs 21 and 22. The Livoti Accounts are the funds used by Anthony M. Livoti, Jr., P.A., as trustee, to make the premium payments on 5,129 policies (as of June 11, 2004). The UPBNA accounts are the funds held at Union Planters Bank used to make the premium payments on 966 policies (as of June 11, 2004). These accounts were not divided into separate sub-accounts to track the balance of each policy. Premiums for all of the policies were aggregated and paid out of the general funds held in the various premium escrow accounts.

In performing their preliminary analysis, the forensic accountants relied on information regarding escrow balances contained in a database maintained by VSI. This database included the original escrow balance established by MBC for each policy, checks written to pay premiums on each policy and other credits that would increase the escrow balance of each policy. These credits, among other things, were related to dividends paid by insurance companies, returns of premium for matured policies, credits received at policy conversions, and cash received in connection with paid up additions.

In addition, the VSI database also identified general credits to the premium escrow accounts that were not matched to specific policies. Among other things, these general credits included interest, dividends, proceeds from the demutualization of insurance companies, class action settlements, surrender proceeds, refunded premiums, excess death benefits and cash received in connection with paid up additions.

Per discussions with VSI management, while this database represents the best information available regarding the premium escrow balances on each policy, there may have been some errors or omissions regarding the original escrow balances of certain policies. VSI management was not able to quantify these errors or omissions and, to the extent there were such errors or omissions, believed that they related to older policies.

The forensic accountants also relied upon Excel spreadsheets evidently prepared by an outside accountant retained by MBC to reconcile premium escrow account balances to the VSI database. These spreadsheets identified accrued interest earned on the escrow accounts through March 2004 and other reconciling adjustments. The outside accountant and MBC's chief financial officer have not been made available to speak with the Receiver or his professional staff despite several requests. It should be noted, however, that the Receiver has been advised that the outside accountant has been seriously ill for some time. As of this filing, another request has been made by the Receiver to speak with MBC's chief financial officer. That request is pending.

The forensic accountant's preliminary analysis is summarized as follow as reflected in the chart attached at Tab D:

Through June 2004, there was approximately \$5.7 million related to policies with positive escrow balances upon maturity. This was offset by approximately \$2.1 million related to policies with negative escrow balances upon maturity. This resulted in approximately \$3.6 million in "unused funds." The VSI premium reserve account referenced in the State of Florida Viatical Settlement Purchase Agreement, as of June 30, 2004, had a balance as of \$718,610. This money is held in an escrow account at Northern Trust Bank. This is the only reserve account at any bank for the Receivership Entities.

Pursuant to MBC worksheets and bank statements, there is accrued interest and additional credits related to, among other things, dividends paid by insurance companies, returns of premium for matured policies, credits received at policy conversions, and cash received in connection with paid up additions accounted for approximately \$2.3 million. This results in a potential “reserve” of approximately \$6.7 million available to pay active policies with negative escrow balances. However, active policies with negative escrow balances account for approximately \$14.9 million, resulting in a “reserve” shortfall of approximately \$8.2 million. This shortfall has been funded out of proceeds escrowed to pay premiums on active policies.

It has come to the attention of the Receiver that MBC recently began to identify the funds placed in the premium escrow account into two categories on its closing disbursement instructions: 1) Policy Specific Premium Reserve, based on the projected life expectancy, and 2) General Premium Reserve, based on the amount of funds escrowed for the payment of premiums above that which was required to fund premiums based on the life expectancy estimated by MBC. While these classifications were identified on Case File Disbursement Directions prepared prior to closing, funds identified as Policy Specific Premium Reserve and funds identified as General Premium Reserve were deposited commingled and without any means of differentiation into the same premium escrow account at closing. There are no separate “reserve” accounts. Given the number of policies that have exceeded their life expectancies, it is not possible to accurately identify what portion of the money identify as General Premium Reserve will be available, if any, to fund the payment of premiums of other policies.

The analysis performed by the forensic accountants assumes that unused funds, as discussed in the State of Florida Viatical Settlement Purchase Agreement, can not be determined until a policy matures. As such, to the extent that MBC deposited funds into an escrow account above that which was required to fund policy premiums based on the insured's life expectancy as estimated by MBC, these additional funds were not included in the analysis performed by the forensic accountants unless the policy had matured.

Policies in Process

Reference was made in the Second Report of Receiver, on page 11 and in Tabs A and G, to 7 policies in process having a face value of \$58,440,0000 that either were not fully funded or not fully closed at the time of the Receivership. Subsequent to the filing of this report, the Receiver has undertaken additional investigation regarding these and other policies.

Based on a review of the underlying case files created by MBC in connection with these insurance policies, discussions with MBC employees and discussions with officers at Union Planter's Bank N.A. we have determined the following:

- a) Of the seven files identified, three of these policies having a combined face value of \$2,300,000 were fully funded and closed, but had not been updated in VSI's system.
- b) Of the remaining four files, we have determined the following:
 - Case File 99-7778 (\$50,000,000 – Face Value): Only the insured and brokers have been paid on this policy. The premium escrow of \$5,815,096, payments to third parties of \$20,700 and the payment to MBC of \$18,033,971 were not funded.
 - Case File 99-8590 (\$500,000 – Face Value): Only the insured has been paid on this policy. The premium escrow of \$10,800, payments to third parties of \$48,200 and the payment to MBC of \$112,739 were not funded.

- Case File 99-8595 (\$5,000,000 – Face Value): The insured, broker and collateral assignee have been paid on this policy. The premium escrow of \$710,895, payments to third parties of \$20,700 and the payment to MBC of \$1,174,655 were not funded.
 - Case File 99-8607 (\$640,000 – Face Value): The premium escrow of \$57,179 and the amounts owed to third parties in the amount of \$27,000 have not been funded.
- c) Additional shortfalls in the funding of other policies have been identified subsequent to the filing of the Second Report of Receiver, as follows:
- Case File 99-7763 (\$15,000,000 – Face Value): The payment to MBC of \$542,000 was not funded.
 - Case File 99-7777 (\$5,000,000 – Face Value): The payment to MBC of \$105,601 was not funded.
 - Case File 99-8568 (\$9,107,500 – Face Value): The premium escrow of \$2,639,930 and the payment to MBC of \$2,086,913 were not funded.
 - Case File 99-8569 (\$296,800 – Face Value): The payment to MBC of \$12,000 was not funded.

Disbursements to Defendants and Relief Defendants

Attached at Tab E is a Summary of Disbursements from MBC to Defendants and Relief Defendants from January 1, 2004 through May 4, 2004. The source of this data is MBC's accounting records.

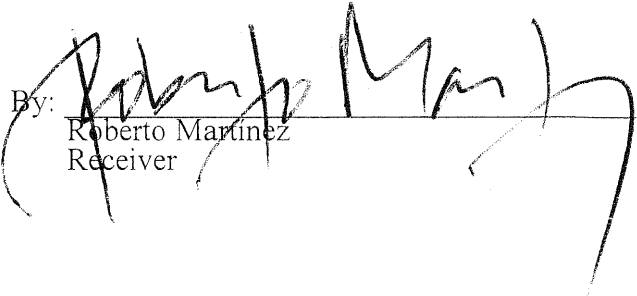
CONCLUSION

The Receiver has made every effort to secure the assets of the Receivership Entities, and, to the extent practicable, maintain the status quo pending resolution of the preliminary injunction.

DATED this 16th day of July, 2004.

Respectfully submitted,

By:


Roberto Martinez
Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by facsimile and U.S. regular mail on this 16th day of July, 2004 upon the following:

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By: 

Marc Cooper

EXHIBIT A

**Receivership Of Mutual Benefits Corporation &
Other Entities And Accounts Under Receivership Control (Note 1)
Combined Balance Sheet (Unaudited)
At June 30, 2004**

		Combined Financial Statement
Assets		
Cash Available For Operations (Note 2)	\$	7,922,733
Checks Held For Deposit (Note 3)		349,992
Due From Officer & Others (Note 4)		1,541,097
Prepaid Expenses (Note 5)		1,627,191
Cash Held For Restricted Use (Note 6)		1,145,535
Cash For Premiums On Viaticals Sold To Investors (Notes 7 & 8)		100,696,574
Cash From Investors Held in Purchase Escrow Accounts		104,958,761
Fixed Assets, Net Of Accumulated Depreciation (Note 9)		479,275
Inter-Receivership Receivable/(Payable) (Note 8)		-
Other Assets (Note 10)		2,812,515
Total Assets	\$	221,533,672
Liabilities & Equity		
Liabilities		
Accounts Payable (Note 11)	\$	1,943,328
Checks Held For Deposit Payable (Note 3)		349,992
Accrued Professional Fees		1,163,634
Other Accrued Expenses (Note 12)		2,387,476
Other Liabilities (Note 13)		1,597,658
Funds Held For Restricted Use (Note 6)		1,145,535
Funds Held For Premiums On Viaticals Sold To Investors (Note 5)		99,864,904
Funds Held For Investors Pending Viatical Purchase		104,958,761
Total Liabilities		213,411,287
Unearned Viatical Management Services (Note 14)		3,670,724
Equity		4,451,661
Total Liabilities & Equity	\$	221,533,673

Preliminary
Subject to Change

EXHIBIT 1
Receivership Of Mutual Benefits Corporation &
Other Entities And Accounts Under Receivership Control (Note 1)
Combined Balance Sheet (Unaudited)
At June 30, 2004

	Combined Financial Statement	Mutual Benefits Corp.	Mutual Benefits Corp Escrow Accounts (Note 6)	Viatical Services, Inc.	Lavoti PA Escrow Accounts (Note 6)	Viatical Benefactors LLC	Viatical Benefactors LLC Escrow Accounts (Note 6)
Assets							
Cash Available For Operations	\$ 7,922,733	\$ 3,876,323	\$ -	\$ 3,764,748	\$ -	\$ 281,662	\$ -
Checks Held For Deposit	349,992	247,978	-	-	98,567	3,447	-
Due From Officer & Others	1,541,097	1,518,122	-	22,975	-	-	-
Prepaid Expenses	1,627,191	1,626,646	-	545	-	-	-
Cash Held For Restricted Use	1,145,535	-	426,925	718,610	-	-	-
Cash For Premiums On Viaticals Sold To Investors	100,696,574	-	78,044,203	-	7,828,602	-	14,823,769
Cash From Investors Held in Purchase Escrow Accounts	104,958,761	104,958,761	-	-	-	-	-
Fixed Assets, Net Of Accumulated Depreciation	479,275	459,212	-	20,063	-	-	-
Inter-Receivership Receivable/(Payable)	-	844,002	(756,503)	(12,332)	-	-	(75,167)
Other Assets	2,812,515	2,812,515	-	-	-	-	-
Total Assets	\$ 221,533,672	\$ 116,343,559	\$ 77,714,625	\$ 4,514,609	\$ 7,927,169	\$ 285,109	\$ 14,748,602
Liabilities & Equity							
Liabilities							
Accounts Payable	\$ 1,943,328	\$ 1,909,165	\$ -	\$ -	\$ -	\$ 34,163	\$ -
Checks Held For Deposit Payable	349,992	247,978	-	-	98,567	3,447	-
Accrued Professional Fees	1,163,634	1,163,634	-	-	-	-	-
Other Accrued Expenses	2,387,476	2,387,476	-	-	-	-	-
Other Liabilities	1,597,658	1,479,869	-	117,789	-	-	-
Funds Held For Restricted Use	1,145,535	-	426,925	718,610	-	-	-
Funds Held For Premiums On Viaticals Sold To Investors	99,864,904	-	77,287,700	-	7,828,602	-	14,748,602
Funds Held For Investors Pending Viatical Purchase	104,958,761	104,958,761	-	-	-	-	-
Total Liabilities	213,411,287	112,146,882	77,714,625	836,399	7,927,169	37,610	14,748,602
Unearned Viatical Management Services	3,670,724	-	-	3,670,724	-	-	-
Equity	4,451,661	4,196,676	-	7,487	-	247,499	-
Total Liabilities & Equity	\$ 221,533,673	\$ 116,343,558	\$ 77,714,625	\$ 4,514,609	\$ 7,927,169	\$ 285,109	\$ 14,748,602

Preliminary
Subject to Change

EXHIBIT 2
Receivership Of Mutual Benefits Corporation &
Other Entities And Accounts Under Receivership Control (Note 1)
Summary Of Combined Balance Sheet Cash Accounts (Unaudited)
At June 30, 2004

Company	Account Type	Bank	Balance
Cash Available For Operations			
MBC	Operating	Bank Of America	\$ 1,653,317
MBC	Operating	Bank Of America	2,220,542
MBC	Operating	South Trust	2,464
VSI	Operating	CitiBank	94,024
VSI	Operating	CitiBank	3,670,724
VBLLC	Operating	Suntrust	277,434
VBLLC	Operating	Suntrust	4,228
			<u>\$ 7,922,733</u>
Checks Held For Deposit			
MBC	Operating		\$ 247,978
Livoti	Operating		98,567
VBLLC	Operating		3,447
			<u>\$ 349,992</u>
Cash For Premiums On Viaticals Sold To Investors			
Livoti	Premium Escrow	CitiBank	\$ 195,893
Livoti	Premium Escrow	CitiBank	5,744
Livoti	Premium Escrow	CitiBank	287,300
Livoti	Premium Escrow	First Southern	5,116,816
Livoti	Premium Escrow	RBC Centura	2,222,746
Livoti	Premium Escrow	Union Planters	103
MBC	Premium Escrow	Union Planters	78,044,203
VBLLC	Premium Escrow	Union Planters	14,823,769
			<u>\$ 100,696,574</u>
Cash From Investors Held in Purchase Escrow Accounts			
MBC	Purchase Escrow	Bank Of America	\$ 784,803
MBC	Purchase Escrow	Bank Of America	52,651
MBC	Purchase Escrow	Bank Of America	232,083
MBC	Purchase Escrow	Bank Of America	337,850
MBC	Purchase Escrow	Northern Trust	70,876
MBC	Purchase Escrow	RBC Centura	3,370
MBC	Purchase Escrow	Union Planters	101,550,753
MBC	Purchase Escrow	Union Planters	27,000
MBC	Purchase Escrow	Union Planters	1,899,374
			<u>\$ 104,958,761</u>
Other Assets - CDs			
MBC	CD	Bank Of America	\$ 30,697
MBC	CD	RBC Centura	128,774
MBC	CD	Citibank	60,020
MBC	CD	Citibank	40,035
MBC	CD	RBC Centura	40,965
MBC	CD	RBC Centura	10,239
MBC	CD	Wachovia	25,000
Restricted Cash			
VSI	Escrow	Northern Trust	\$ 718,610
MBC	Escrow	Northern Trust	426,925
			<u>\$ 1,145,535</u>

Preliminary
Subject to Change

**Receivership Of Mutual Benefits Corporation &
Other Entities And Accounts Under Receivership Control
Combined Balance Sheets (Unaudited)
At June 30, 2004**

Note 1. Basis Of Preparation. The *Combined Balance Sheet of Mutual Benefits Corporation & Other Entities And Accounts Under Receivership Control* include the following entities and accounts: Mutual Benefits Corporation ("MBC"), Mutual Benefits Corporation Escrow Accounts, Viatical Services, Inc ("VSI"), Anthony Livoti PA ("Livoti") Escrow Accounts, Viatical Benefactors LLC ("VBLLC"), and Viatical Benefactors LLC Escrow Accounts (referred to collectively as "MBC et. al."). Refer to Exhibit 1 which presents the Combining Balance Sheets reflecting the respective company or fund balances. Exhibit 2 provides a summary of the bank accounts comprising Cash Available For Operations, Cash For Premiums On Viaticals Sold To Investors, and Cash From Investors Held in Purchase Escrow Accounts. The financial statements were prepared based upon MBC et. al. continuing as a going concern wherein the assets will be realized and liabilities will be paid in the ordinary course of business.

Note 2. Cash Available for Operations. A portion of MBC's operating funds are used to pay policy premiums on policies purchased by MBC, primarily from 1994-1997. These funds come from MBC's operating account at Bank of America. Existing accounting records fail to provide sufficient detail to quantify premium liability for these policies. MBC did not set aside escrow funds for the payments of premiums on these policies, which are estimated at approximately \$900,000 per year. Payment of the premiums for these policies has been funded by MBC's continued operations.

Note 3. Checks Held For Deposit & Checks Held For Deposit Payable. Proceeds from insurance companies are being held for deposit pending determinations of ultimate disposition as of June 30, 2004. These funds represent, among other things, proceeds from matured policies, dividends, interest and other revenues. Historically, these funds were disbursed to investors (beneficiaries of matured policies) or used to pay existing policy premiums (dividends, interest, or excess policy proceeds payable to MBC). Subsequent to June 30, 2004 these policies were deposited into an escrow account set up by the Receiver.

Note 4. Due From Officer & Others. Due From Officer & Others includes a demand note receivable from Steven Steiner of \$1,160,000 dated February 28, 2002. This amount does not include interest accrued at the IRS blended annual rate as specified in the note, which was equal to \$56,976 thru June 30, 2004. Also included is an account receivable to VSI from Oxford Financial Group, in connection with the servicing of viatical policies. There is an outstanding balance of \$22,975 on the original amount of \$26,975.

Note 5. Prepaid Expenses. Prepaid Expenses included approximately \$1,005,000 in professional fees that were prepaid prior to the Receivership. Impairment testing, which could result in an adjustment of prepaid expenses, has not been performed.

Note 6. Restricted Cash. Consists of: (1) \$426,925 in a Holland & Knight escrow trust account for the benefit of Mutual Benefits, which are restricted pending legal matters, and (2) \$718,610 in a Brinkley McNernéy trust account for the benefit of VSI, which contains premium reserves set aside at closing. \$100 from each viatical closing was placed in this account as a reserve for future premium payments.

Note 7. Cash For Premiums On Viaticals Sold To Investors & Funds Held For Premiums On Viaticals Sold To Investors. At the time life insurance policies were sold to investors, a portion of the investors' funds were paid into an escrow account to pay life insurance policy premiums during the insured's life expectancy. Information has come to the attention of the Receiver that suggests that: (a.) a significant number of insureds outlived the life expectancy that was represented to the respective investors by MBC; (b.) funds set aside for the payment of premiums on such policies have been exhausted; (c.) in order to continue to fund the payment of premiums on these insurance policies, MBC used escrowed premium funds that were received from other investors that purchased other policies and to a lesser extent other sources of funds (e.g., policy dividends, proceeds from demutualization of insurance policies, etc.); and (d.) significant additional insureds are expected to outlive the life expectancies represented by MBC. The financial statements do not reflect any additional liability accruals related to these potential circumstances.

Beginning in 1996, Anthony M. Livoti, Jr. (P.A.) ("Livoti"), as trustee, entered into an agreement with MBC whereby, in addition to serving, at times, as the owner of most of the policies, Livoti also agreed to make the payment of premiums from funds escrowed at the time of closing and transferred to Livoti's control. According to VSI and Livoti, the funds used by Livoti to make the premium payments on these policies are maintained in four money market accounts located at three different banks. The money market accounts are referred to by MBC, VSI, and Livoti as MMI for one of the accounts or MMII collectively for a group of three money market accounts (the "Livoti Accounts").