

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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.

**COLSON HICKS EIDSON'S
FIFTH REQUEST FOR INTERIM COMPENSATION
TO PAY ATTORNEYS' FEES AND COSTS
AND THE RECEIVER'S FEES
AND MEMORANDUM IN SUPPORT**

(June 1, 2005 through September 30, 2005)

**Pursuant to Court Order, all objections to this Application
must be filed and served within ten (10) days of this
Application.**

Colson Hicks Eidson

255 Aragon Avenue, 2nd Floor, Coral Gables, Florida 33134-5008 Telephone: (305) 476-7400 Fax: (305) 476-7444

Roberto Martínez, as court-appointed receiver (the "Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. ("VSI") and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as trustee (collectively the "Receivership Entities"), through undersigned counsel and pursuant to the Court's Order Appointing Receiver dated May 4, 2004 (the "OAR"), hereby requests the Court to enter an order authorizing the Receiver to pay to Colson Hicks Eidson ("CHE") (i) reasonable attorneys' fees and costs incurred by CHE; and (ii) the Receiver's fees, between June 1, 2005 and September 30, 2005, and in support thereof states the following:

1. Attached as Exhibit 1 is a Summary of the Fees incurred by CHE in its representation of the Receiver, and the Receiver's fees, from June 1, 2005, through September 30, 2005 (the "Application Period"). Costs are posted through September 27, 2005.
2. Attached as Exhibit 2 is a summary of all CHE timekeepers, including the Receiver, their billing rates and the total hours charged by each timekeeper.
3. Exhibit 3 is a summary of each timekeeper broken down by category. In certain instances, time billed to one category could also have been appropriately billed to a different category or several different categories; however, in some instances, it was very difficult, if not impossible, to divide the time between categories. All time has been billed at the reduced agreed upon rate. Lawyers are billed at \$350/hour or \$300/hour, representing a reduction from their normal hourly rates of 30% for Mr. Martinez, 15% for Ms. Kane and Mr. Miner. In addition, the paralegal fees have been reduced by 15%. The total savings to the receivership reflected in these negotiated discounts for this time period is **\$51,040.50**. In

addition, Mr. Martínez and Mr. Miner have not charged for numerous hours spent in responding to a variety of e-mails and telephone calls received daily from investors and other interested parties relating to the receivership.

4. Attached as Exhibit 4 is a breakdown of the costs. Total costs for which CHE seeks reimbursement are **\$20, 537.69**.

5. The services rendered in each major category can be summarized as follows:¹

I.
COLSON HICKS EIDSON
LAWYERS and PARALEGALS

a. Asset Analysis and Recovery. **\$34,373.00**. Time included in this category reflects the efforts of CHE professionals to identify and locate assets that properly belong to, or should be returned to, the Receivership Entities. Among other things, CHE professionals have investigated the books and records of MBC and VBLLC and have identified several million dollars in payments directly from MBC and VBLLC to vendors for the personal benefit of certain of the individual Defendants in the SEC Action. Many of these payments were disguised in MBC's and VBLLC's books and records as being for "purchaser commissions," when in fact they were for horse- and farm-related expenses for the personal benefit of certain of the individual Defendants.

In addition to carrying out these investigations, CHE professionals have initiated legal actions to recover these assets by bringing (1) an action against the insider Defendants to seek to recover the millions of dollars in MBC and VBLLC assets that they drained from the companies in "consulting" fees or converted from the company for their personal uses, (2)

¹ CHE maintains detailed time records that are kept contemporaneously with the services performed. CHE will file, within 10 days, these detailed time records under seal with the Court for review *in camera*.

(2) fraudulent conveyance actions against Joel Steingers' horse farms, (3) an action against Steven Steiner for the recovery of a loan, and (4) by moving to expand the receivership to include a farm belonging to the individual defendants that appears to have been funded entirely with funds converted from MBC and VBLLC. CHE professionals have also been involved in investigating the viability of additional actions against third parties for the recovery of assets for the benefit of the Receivership estate, by subpoenaing relevant documents, reviewing documents, and conducting investigations.

b. Asset Disposition: **\$3,810.00**. Time included in this category primarily reflects the efforts of CHE personnel to comply with this Court's Order on Disposition of Policies and Proceeds. In particular, counsel have had numerous telephone conferences with counsel for insurers regarding the distribution of death benefits and pending interpleader actions and numerous telephone conferences with investors and their counsel regarding the procedures for distribution of death benefits. In addition, CHE personnel have participated in conferences with all interested parties regarding revisions to the proposed notice forms to be used in connection with the Court's Order and conferences with the staff of MBC and VSI regarding procedures for the disposition of death benefits and the procedures for carrying out the Court's Order.

c. Business Operations. **\$14,465.50**. CHE professionals assisted the Receiver on site at the MBC office in administering the operations of the Receivership Entities, including addressing personnel issues, advising on miscellaneous bookkeeping and accounting issues, analyzing insurance policies and the premium obligations, assuring the uninterrupted payment of premiums for the policies and other operating expenses, effectuating bank transfers, and generally keeping in place systems to keep matters organized. During this

application period in particular, CHE professionals provided assistance to the Receiver and the Receiver's operational representatives in issues related to the move of the Receivership Entities into new, less expensive space; review of financial statements; funding and insurer issues.

d. Litigation - SEC. \$101,108.00. All time associated with the pending SEC litigation is included in this category. While this time includes work specifically related to the SEC's action against the Defendants, it also includes work more generally related to the carrying out of the Receiver's responsibilities that must be carried out through Court proceedings in the SEC Action. This includes, generally, the review of pleadings, motions and memoranda, the preparation of motions and memoranda, assisting the Receiver in the preparation of reports, attendance at hearings, and production of documents and responses to other discovery requests. This category also includes, to some extent, work associated with efforts to make sure that death benefits are paid promptly by insurance companies and addressing related motions, disputes and interpleader actions that have arisen as a result of certain insurance companies' reluctance to pay out death benefits to the Receiver on matured policies.

During this period, CHE professionals also spent time investigating the Receivership Entities' relationship with The Life Settlement Alliance, Inc., a viatical broker, and based on that investigation, have jointly brought with the SEC a motion for an order to show cause why Joel and Leslie Steinger should not be held in contempt for violation of this Court's asset freeze order.

In addition, during this application period, CHE professionals have spent significant time assisting the Receiver and working with co-counsel at Kozyak Tropin &

Throckmorton P.A. to analyze and prepare the Receiver's proposal to the Court for procedures to be used in the disposition of the MBC insurance policy portfolio in light of the finite pool of premium funds available.

e. Litigation-Third Party. \$26,233.00. The OAR stayed all third party private litigation against the Receivership Entities and their investors and required that litigation be brought ancillary to the Receivership action. CHE professionals have nonetheless had to periodically appear at status conferences, provide reports to the courts regarding the status of the SEC Action, or otherwise manage litigation against the Receivership Entities. There are presently 65 cases in 27 different states involving the Receivership Entities. The Receiver's counsel has continued to coordinate with MBC's outside counsel in each of these cases to ensure that this Court's stay order is enforced. In addition, new actions continue to be filed periodically against the Receivership Entities, particularly individual investor actions. CHE professionals have been involved in insuring that these actions are either stayed or dismissed without prejudice in light of the ongoing Receivership proceedings and pending Investor Class Action in which lead counsel was appointed by the Court.

In addition, the Receivership Entities have received subpoenas in connection with arbitrations and court actions related to MBC and its former sales agents, though not directly against the Receivership Entities. CHE professionals have been involved in preparing appropriate responses to such subpoenas.

Counsel for the Receiver also has participated and managed all ancillary proceedings filed subsequent to the Receivership. In particular, an action was filed by a group of insurance companies, captioned *American United Life Insurance Co., et al. v. Mutual Benefits Corp, et al.*, seeking to void an unspecified number of policies currently being

administered by the Receivership Entities. In addition, an action was filed by an insured, captioned *Gerald Krigel v. Anthony Livoti, Jr., P.A., et al.*, seeking to rescind the sale of a \$1,000,000 life insurance policy to MBC on the grounds that it was procured without the insured's knowledge and in violation of the Florida Viatical Settlement Act.

f. Litigation – Regulatory/Criminal. **\$10,313.00**. CHE timekeepers continue to meet and confer regularly with regulatory and criminal law enforcement agencies in connection with ongoing regulatory and criminal law enforcement actions and have worked to abate and manage those actions during the receivership. Since the entry of the Court's orders authorizing the Receiver to enter into consent orders and/or to allow MBC's and VBLLC's licenses to lapse, CHE professionals have been dealing with numerous regulatory agencies around the country as and when they contact the Receiver regarding upcoming hearing dates in an effort to resolve the numerous pending regulatory matters involving the Receivership Entities. In addition, CHE professionals and paralegals have spent considerable time in responding to numerous discovery requests from regulators around the country relating to MBC's former sales agents.

g. Investor and Agent Communications. **\$16,541.00**. While the Receiver did retain a claims administrator, the Garden City Group, who took over the function of answering thousands of e-mails and voice mails in English, Spanish and several other languages, the Receiver and his professionals during this time period continued to receive thousands of telephone calls, letters, e-mails, and numerous unannounced visits at his office. These varied inquiries were from investors, sales agents, lawyers, promoters, and others, from North America, South America, Asia and Europe, inquiring about the status of the investments, the maturity of individual policies, how to obtain the return of monies, or

obtaining general information about the receivership and the status of the SEC litigation. These inquiries, whenever possible, have been handled by professionals and staff members working with the receivership, including primarily the timekeepers at CHE. Many of the inquiring parties have been provided written responses that set forth general information about the receivership. The Garden City Group also has received numerous written communications that have been forwarded to CHE for individual written responses.

h. Fee Applications: **\$4,933.00**. All the time associated with preparing the fee applications. This includes the review of fee applications by all professionals retained by the Receiver.

i. Employee Matters. **\$150.00**. Counsel at CHE has assisted the Receiver as requested in addressing personnel and employee relations, including investigation of an automobile accident.

II.

RECEIVER

The Receiver is responsible for administering the Receivership Entities pursuant to the terms of the OAR and overseeing the work of the professionals and staff working on the receivership. The Receiver has spent considerable time reviewing documents, records, and contracts, conducting witness interviews, corresponding, e-mailing and communicating with various entities, lawyers, bankers, employees, dealing with employee issues, as well as managing and overseeing the assets. Since his appointment, the Receiver has worked extensively on litigation, regulatory, and criminal law enforcement issues, including meeting and communicating with lawyers, drafting reports and memoranda, preparing for court

hearings, and involved in motion practice. The Receiver has participated extensively in court proceedings, litigation decisions, meetings and conferences regarding strategy and case administration as well as case management decisions.

Because of the nature of the businesses of the Receivership Entities, the Receiver has spent a substantial amount of his time dealing with the management of the inventory of insurance policies. This has included many meetings with the principals and employees of VSI, the entity involved in tracking the insureds, directing the payments of premiums, administering changes in beneficiary designations as required by the tax laws, and submitting death claims to the insurance companies upon the maturity of the policies.

The Receiver is requesting **\$32,200.00** for his hours.

6. For this application period CHE seeks reimbursement for 542.15 hours of time for lawyers, including the Receiver, and 695.15 hours of paralegal time. The total amount of fees sought during the application period is **\$244,126.50** reflecting the reductions totaling approximately \$51,040.50. Total expenses sought by CHE for this application period is \$20,537.69.

7. I have carefully reviewed the attached exhibits and I am responsible for supervising all of the attorneys in my firm on the case. I certify that the hours expended and the costs incurred were necessary and reasonable to represent the Receiver during the Application Period.

MEMORANDUM OF LAW

When determining the award of attorneys' fees, the Court should give consideration to the factors for compensation that the 11th Circuit articulated in *In re Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir. 1988) - (1) the time and labor properly employed by the attorneys in processing 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 (7) the degree to which, if any, effort were supported by prior governmental action. CHE respectfully suggests that its application meets all the criteria for this interim request for compensation. The Receiver, with the assistance of CHE, has stabilized operations, secured assets, and, to the extent possible, maintained the status quo, while communicating regularly with all parties in interest.

WHEREFORE, COLSON HICKS EIDSON, by and through the undersigned counsel, respectfully requests that this Court enter an order authorizing the payment of **\$244,126.50** in fees and reimbursement of \$20,537.69 in costs for this Application Period.

A proposed order is attached.


DATED: November 4th, 2005 at Miami, Florida.

Respectfully submitted,

By: 
Roberto Martínez
Receiver

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on November 9th, 2005, the foregoing was electronically filed with the Clerk of the Court, and a notice of electronic filing was sent to all those individuals on the attached Service List.

By: 
CURTIS B. MINER
Fla. Bar No. 0885681
Attorney for Receiver

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Coral Gables, Florida 33134
Telephone: (305) 476-7400
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SERVICE LIST OF RECEIVER

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EXHIBIT 1

EXHIBIT 1

**SUMMARY OF INTERIM APPLICATION FOR COMPENSATION OF
FEES AND COSTS OF COLSON HICKS EIDSON, P.A.**

1. Name of Applicant	Colson Hicks Eidson, P.A.	
2. Role of Applicant	Receiver	
3. Name of certifying professional	Roberto Martínez	
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. Dates of services recovered	June 1, 2005 through September 30, 2005	
8. Fees requested for this period		\$244,126.50
9. Total expense reimbursement requested for this period		<u>20,537.69</u>
10. Total fee and expense award requested		<u>\$264,664.19</u>

HISTORY OF FEE APPLICATIONS

(See Attached Chart)

COLSON HICKS EIDSON'S

HISTORY OF FEE APPLICATIONS

App. #	Application Period	Date Submitted	Fees Requested	Costs Requested	Amount Requested	Fees Awarded	Costs Awarded	Date Awarded	Total Amt. Awarded	Date Paid	Amount Paid
1	5/4/04 - 6/18/04	7/2/2004	\$220,751.50	\$6,709.88	\$227,461.38	\$74,000.00	\$6,709.00	10/22/2002	\$80,709.00	11/5/2004	\$80,709.00
						\$146,751.00	\$0.00	12/15/2004	\$146,751.00	1/6/2005	\$146,751.00
2	6/19/04 - 9/30/04	12/15/2004	\$287,905.00	\$9,771.19	\$297,676.19	\$287,905.00	\$9,771.19	6/1/2005	\$297,676.19	9/7/05	\$297,676.19
3	10/1/04 - 1/31/05	3/17/2005	\$371,496.00	\$30,264.16	\$401,760.16	\$371,496.00	\$30,264.16	6/1/2005	\$401,760.16	9/7/2005	\$401,760.19
4	2/1/05 - 5/31/05	7/20/2005	\$320,323.75	\$16,565.65	\$336,889.40	\$300,000.00	\$16,565.00	8/18/2005	\$316,565.00	9/7/2005	\$100,563.62
										11/2/2005	\$216,001.35
5	6/1/06 - 9/30/05		\$244,126.50	\$20,537.69	\$264,664.19						
TOTALS			\$1,444,602.75	\$83,848.57	\$1,528,451.32	\$1,180,152.00	\$63,309.35		\$1,243,461.35		\$1,243,461.35

EXHIBIT 2

EXHIBIT 2

SUMMARY OF TIME BY TIMEKEEPER

PROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	100.30	35,105.00
Julie Braman Kane	\$300.00	22.95	6,885.00
Curtis Miner	\$300.00	418.90	125,670.00
TOTAL BY PROFESSIONAL		542.15	\$167,660.00

PARAPROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Ellie G. Futterman	\$110.00	4.50	495.00
Maria A. Rodriguez	\$110.00	41.30	4,543.00
Jennie Hausler	\$110.00	56.20	6,182.00
Carol Endres	\$110.00	593.15	65,246.50
TOTAL BY PARAPROFESSIONAL		697.65	\$76,466.50

LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Total Professional		542.15	167,660.00
Total Paraprofessional		697.65	76,466.50
TOTAL LEGAL SERVICES		<u>1,239.80</u>	<u>\$244,126.50</u>

EXHIBIT 3

EXHIBIT 3**SUMMARY OF PROFESSIONAL AND PARAPROFESSIONAL
TIME BY ACTIVITY CODE CATEGORY**

ACTIVITY CODE CATEGORY: Asset Analysis & Recovery			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	17.30	5,190.00
Ellie G. Futterman	\$110.00	4.50	495.00
Carol Endres	\$110.00	260.80	28,688.00
ACTIVITY CODE TOTAL		282.60	\$34,373.00

ACTIVITY CODE CATEGORY: Asset Disposition			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	12.70	3,810.00
ACTIVITY CODE TOTAL		12.70	\$3,810.00

ACTIVITY CODE CATEGORY: Business Operations			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$300.00	2.60	780.00
Curtis Miner	\$300.00	17.00	5,100.00
Carol Endres	\$110.00	78.05	8,585.50
ACTIVITY CODE TOTAL		97.65	\$14,465.50

ACTIVITY CODE CATEGORY: Litigation SEC			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	8.30	2,905.00
Curtis Miner	\$300.00	251.15	75,345.00
Carol Endres	\$110.00	207.80	22,858.00
ACTIVITY CODE TOTAL		467.25	\$101,108.00

ACTIVITY CODE CATEGORY: Litigation – Third Party			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$300.00	.85	255.00
Curtis Miner	\$300.00	83.55	25,065.00
Carol Endres	\$110.00	8.30	913.00
ACTIVITY CODE TOTAL		92.70	\$26,233.00

ACTIVITY CODE CATEGORY: Litigation-Regulatory/Criminal			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	20.70	6,210.00
Carol Endres	\$110.00	37.30	4,103.00
ACTIVITY CODE TOTAL		20.70	\$10,313.00

ACTIVITY CODE CATEGORY: Investor/Agent Communications			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$300.00	19.00	5,700.00
Curtis Miner	\$300.00	15.20	4,560.00
Carol Endres	\$110.00	.90	99.00
Jennie Hausler	\$110.00	56.20	6,182.00
ACTIVITY CODE TOTAL		93.80	\$16,541.00

ACTIVITY CODE CATEGORY: Fee Applications			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Curtis Miner	\$300.00	1.30	390.00
Mari Rodriguez	\$110.00	41.30	\$4,543.00
ACTIVITY CODE TOTAL		42.60	\$4,933.00

ACTIVITY CODE CATEGORY: Employee Matters			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Julie Kane	\$110.00	.50	150.00
ACTIVITY CODE TOTAL		.50	\$150.00

ACTIVITY CODE CATEGORY: Receiver			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Roberto Martínez	\$350.00	92.00	\$32,200.00
ACTIVITY CODE TOTAL		92.00	\$32,200.00

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.,
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.

**ORDER GRANTING
COLSON HICKS EIDSON'S
FIFTH REQUEST FOR INTERIM COMPENSATION**

THIS CAUSE came before the Court on Colson Hicks Eidson's Fifth Request for Interim Compensation to Pay Attorneys' Fees and Costs and the Receiver's Fees. The Court has heard

comments by interested parties, carefully reviewed the Petition and case file and is otherwise fully advised in the premises.

ORDERED and **ADJUDGED** that Colson Hicks Eidson's Fifth Interim Petition for Fees and Costs is hereby **GRANTED** and Receiver, Roberto Martínez is hereby authorized to pay to Colson Hicks Eidson the sum of \$ _____, (which represents reasonable fees of \$ _____ and costs of \$ _____), incurred during this Application Period.

DONE and **ORDERED** in Chambers at Miami, Florida, this ____ day of _____, 2005.

FEDERICO A. MORENO
United States District Judge

Copies furnished to all counsel
on the attached Service List.