

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

FILED BY _____
2004 JUL -2 PM 4: 15
CLARENCE HADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA
D.C.

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.

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

(May 4, 2004 through June 18, 2004)

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, court-appointed receiver (the “Receiver”) of Mutual Benefits Corp. (“MBC”), Viatical Benefactors, LLC (“VBLLC”) and Viatical Services, Inc. (“VSI”), (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 him to pay to Colson Hicks Eidson (“CHE”) (i) reasonable attorneys’ fees and costs incurred by CHE; and (ii) the Receiver’s fees, between May 4, 2004 and June 18, 2004, and in support thereof states the following:

1. Attached as Exhibit “A” is a Summary of the Fees incurred by CHE in its representation of the Receiver, and the Receiver’s fees, from May 4, 2004, through June 18, 2004 (the “Application Period”). Costs are posted through June 18, 2004. Costs incurred after June 18, 2004 will be included in the next interim fee application

2. Attached as Exhibit “A-1” is a summary of all CHE timekeepers, including the Receiver, their billing rates and the total hours that were charged by each timekeeper. Exhibit “A-2” is a summary of each timekeeper broken down by category.¹ All time has been billed at the reduced agreed upon rate. Partners are billed at \$350/hour or \$300/hour, representing a reduction from their normal hourly rates of 30% for Mr. Martinez, 27% for Mr. Cooper, 20% for Ms. Silverman, and 15% for Ms. Kane. In addition, the paralegal fees have been reduced by 15%. Also, although CHE law partners Dean Colson and Joseph Matthews contributed 45 hours, representing \$22,917.50 in legal fees, all of their time was written off by CHE and contributed *gratis* and *pro bono* to the

¹ In certain instances time billed to one category could 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.

receivership. The total savings to the receivership reflected in these negotiated and voluntary discounts is \$92,965.50.²

3. Attached as Exhibit "B" is a breakdown of the costs. Total costs for which CHE seeks reimbursement are \$6,709.88.

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

I. Colson Hicks Eidson Lawyers and Paralegals

a. Asset Analysis and Recovery. **\$5,600.00**. Time included in this category reflects the efforts of CHE professionals to identify and locate assets and maintain the status quo. CHE professionals spent considerable time reviewing the inventory of insurance policies, discussing with experts the analysis and valuation of the inventory, and exploring the retention of insurance and actuarial experts to analyze the insurance policies. CHE professionals also interviewed MBC, VSI and VBLLC employees, bank personnel, Anthony Livoti and Michael McNerney, and began the identification, review and analysis of pertinent documents and law, to understand the extent of the assets of the Receivership Entities, the extent and nature of the interest of various parties to the funds held or controlled by the Receivership Entities, directly or indirectly, and the nature of the various interests in the insurance policies.

Because of the nature of the business of the Receivership Entities, CHE professionals spent a substantial amount of time dealing with the management of the inventory of insurance policies. As stated in the Receiver's reports, it quickly became

² 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*.

apparent that the Receiver needed substantial expert assistance in understanding and analyzing the portfolio of more than 7000 active insurance policies related to MBC and the premium obligations related to those policies through their maturities. As such, the Receiver undertook interviewing, in person and telephonically, with experts in these areas.

b. Business Operations. **\$14,415.00**. CHE professional assisted the Receiver on site at the MBC office in administering the operations of the Receivership Entities, including addressing personnel issues, analyzing the premium obligations, understanding the banking relations, assuring the uninterrupted payment of premiums for the policies and other operating expenses, and putting in place systems to keep matters organized.

c. Investor and Agent Communications. **\$25,418.00**. It was critical to set up a process to provide information to investors and agents as quickly as possible. Accordingly, CHE timekeepers assisted in handling communications in English and Spanish with investors and agents, until the Receiver, with the continuing assistance of CHE, was able to identify and retain a claims administrator, the Garden City Group, who, among other things, did take over the function of answering thousands of e-mails and voice mails in English and Spanish and several other languages. As set forth in the Receiver's Second Report, the Receiver has received thousands of inquiries, in the form of telephone calls, letters, e-mails, and numerous unannounced visits at his office, from investors, sales agents, lawyers, promoters, and others, from North America, South America, Asia and Europe, inquiring as to a variety of matters, including the status of the investments, the maturity of the policies, requesting the return of monies, or seeking 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, and many of them have been provided written responses that set forth general information about the receivership. In order to assist in answering and responding to these inquiries, the Receiver retained, with the authorization of the Court, the services of the claims administrator, the Garden City Group. The Garden City Group has received and responded to approximately 2,500 e-mails both from investors and their representatives as well as 1,600 live telephone calls. Additionally, over 6,000 additional callers have received information from Garden City Group's voice recording system. The Garden City Group also has received numerous written communications which have been forwarded to CHE for individual written responses.

d. Employee Matters. **\$1,166.00**. Paralegal Mari Rodriguez assisted the Receiver as requested in addressing personnel matters and working with the labor lawyers to provide them with appropriate information and follow up on matters related to employee relations.

e. Litigation-Third Party. **\$15,105.00**. As detailed in the Receiver's reports, the OAR stayed all third party private litigation involving the Receivership Entities and their investors and required that litigation be brought ancillary to the Receivership action. To effectuate this provision, counsel at CHE filed and served this Court's order in 41 cases in 17 different states as well as 1 case in Canada.

After filing the order, CHE counsel contacted MBC's outside counsel in each of these cases to determine the nature and status of each case. There are presently 33 active cases in 14 different states. The Receiver's counsel also coordinated with MBC's outside

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counsel in each of these cases to ensure that this Court's stay order is enforced. Although the Court's stay order does not stay the pending case in Canada, the Receiver's CHE counsel was able to coordinate with MBC's outside counsel in Canada so as to maintain the status quo with respect to that litigation.

To the extent possible, CHE has divided litigation efforts into specific categories as illustrated below. However, some litigation efforts relate to all litigation including filing the court's order staying litigation and setting up for discovery responses, which time is generally included here.

f. Litigation - SEC. **\$31,554.00**. All time associated directly to the pending SEC litigation is included in this category including review and modification of the freeze order, review of pleadings, preparation of receiver reports, attendance at hearings, and production of documents and responses to other discovery requests.

g. Litigation – Regulatory/Criminal. **\$32,770.50**. CHE timekeepers met 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. In addition, considerable time has been spent by CHE paralegals in responding to numerous discovery requests from the regulators.

As stated in the Receiver's reports, the OAR did not stay litigation or other regulatory actions involving state and federal regulators and law enforcement agencies. Counsel at CHE obtained lists of all such actions from MBC's outside counsel. Those lists detailed 10 regulatory actions in 7 different states. CHE counsel filed and served this Court's order in those actions and corresponded with MBC's counsel in each of these cases to obtain information concerning each of these actions. Again, these contacts led to

numerous phone calls from MBC counsel as well as numerous phone calls from state regulatory agencies. Counsel at CHE has undertaken to respond to these phone calls and answer the questions and concerns expressed by counsel.

In addition, CHE counsel has undertaken to establish lines of communication with state regulators throughout the United States, working with the North American Association of Securities Administrators (NAASA) to establish a way of communicating with all state securities regulators so as to address their concerns and at the same time minimize the costs of such communication to the Receivership and also working with the National Association of Insurance Commissioners (NAIC) to establish similar lines of communication with all state insurance regulators. One goal of these communications is to eliminate, or at least minimize, the need to respond to regulatory requests and regulatory actions from securities administrators and insurance commissioners in each of the states in which the Receivership Entities did business.

Furthermore, counsel at CHE, together with MBC's outside counsel, has taken steps necessary to maintain the status quo with respect to the State of Florida Department of Insurance Cease and Desist Order. The Cease and Desist Order was entered the day before the TRO was entered. CHE counsel has taken steps to preserve MBC's rights to seek appellate review of the Cease and Desist Order if the TRO is dissolved. After consultation with Mr. Goldman and MBC's outside regulatory counsel, the Receiver filed both a Notice of Appeal pursuant to Fla.R.App.P. 9.110(a)(3) and a Petition for Review pursuant to Fla.R.App.P. 9.1100(c)(3). The appellate court granted the extension. Pursuant to that extension, the amended petition for review is due to be filed by July 5,

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2004. In light of the current posture of this case, CHE counsel is now working to seek a further extension of time.

h. Takeover and Logistics. **\$13,638.00**. As described in the Receiver's First Report, CHE timekeepers and other personnel assisted in securing four locations in Fort Lauderdale and one in Atlanta. The Fort Lauderdale locations included the corporate offices of MBC, with over 80 employees, and the corporate offices of VSI, with approximately 20 employees. A great deal of time and personnel were needed to effectuate the peaceful and orderly takeover while avoiding the compromise of assets and records, especially computer records. CHE timekeepers were required to be on site at this location over a period of several days in order to obtain and continue control over documents, including original investor files, and original insurance contracts and other records.

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

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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, and submitting death claims to the insurance companies upon the maturity of the policies.

The Receiver is requesting **\$78,225.00** for his hours.

5. For this application period CHE seeks reimbursement for 526.00 hours of time for lawyers, including the Receiver, and 350.15 hours of paralegal time. The total amount of fees sought during the application period is \$220,751.50 reflecting the reductions totaling approximately \$92,965.50. Total expenses sought by CHE for the application period \$6,709.88. No prior applications for compensation have been filed and no compensation has been paid to CHE.

6. 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)

Colson Hicks Eidson

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

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 (6) 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 **\$220,751.50** in fees and reimbursement of **\$6,709.88** in costs for the Application Period.

A proposed form of order is attached.

Dated: _____

7/2/04

Miami, Florida

Respectfully submitted,

By: _____

Roberto Martinez
Receiver

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that a true and correct copy of the foregoing was mailed this 2nd day of July, 2004 to the following:

Bruce A. Zimet Esq.
BRUCE A. ZIMET, PA
100 S.E.3rd Avenue, Suite 2612

Colson Hicks Eidson

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

Ft. Lauderdale, FL 33394
Attorneys for Leslie Steinger

Faith E. Gay, Esq.
White & Case LLP
4900 Wachovia Financial Center
200 So. Biscayne Blvd.
Miami, FL 33131-2352
Attorneys for SKS Consulting, Inc. & Camden Consulting, Inc.

Richard Ben-Veniste, Esq.
Lee Rubin, Esq.
Mayer Brown Rowe & Maw
1909 K. Street, N.W.
Washington, DC 20006
Attorneys for Joel Steinger & Relief Def. Kensington

Jon A. Sale, Esq.
Ben Kuehne, Esq.
Sale & Kuehne, P.A.
BankAmerica Tower, Suite 3550
100 S.E. 2nd Street
Miami, FL 33131-2154
Attorneys for Peter Lombardi & Relief Def. PJJ Consulting

Teresa Jacqueline Verges, Esq.
Chedly Charles Dumornay, Esq.
Alise Meredith Johnson, Esq.
Linda S. Schmidt, Esq.
Ryan Dwight O'Quinn
SECURITIES & EXCHANGE COMMISSION
801 Brickell Avenue
Suite 1800
Miami, FL 33131
Tel: (305) 982-6322
Attorneys for Securities & Exchange Commission

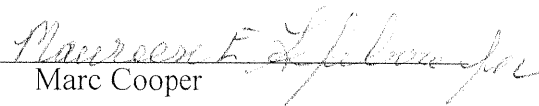
By: 
Marc Cooper

EXHIBIT A**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	May 4, 2004 through June 18, 2004	
8. Total fee requested for this period		\$220,751.50
9. Total expense reimbursement requested for this period		<u>6,709.88</u>
10. Total fee and expense award requested		<u>\$227,461.38</u>

EXHIBIT A-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	223.50	\$ 78,225.00
Marc Cooper	\$350.00	167.80	58,760.00
Julie Braman Kane	\$300.00	103.20	30,960.00
Barbara Silverman	\$300.00	38.20	11,460.00
TOTAL BY PROFESSIONAL		532.70	\$179,405.00

PARAPROFFESIONAL LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Ellie G. Futterman	\$110.00	155.65	\$ 17,121.50
Maria A. Rodriguez	\$110.00	194.50	21,395.00
TOTAL BY PARAPROFESSIONAL		350.15	\$38,516.50

LEGAL SERVICES RENDERED (TOTAL)			
<u>NAME</u>	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL FEES</u>
Total Professional		532.70	\$179,405.00
Total Paraprofessional		350.15	38,516.50
TOTAL LEGAL SERVICES		882.85	\$217,921.50

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