

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO

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
RECEIVER'S MOTION TO APPROVE STALKING HORSE
PURCHASE AGREEMENT AND BIDDING PROCEDURES

Roberto Martínez, court-appointed receiver ("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"), has filed a motion for this court to approve the Receiver's entry into an Asset Purchase Agreement for the sale of a group of insurance policies with a face value of approximately \$119,355,247.06 and all related rights free and clear of all liens, claims, interests and encumbrances, including beneficial

3298/101/272239.5



interests, to SPCP Group, LLC, an affiliate of Silver Point Capital (“Buyer”) for \$13,350,000 (subject to adjustment pursuant to the terms of the Purchase Agreement), or to another higher bidder at auction in accordance with the proposed bidding procedures described in this Motion. The Court has considered the Motion, the representations of the Receiver therein, the attached Asset Purchase Agreement between the Receiver and Buyer, the record in this case, relevant authorities, and any objections filed, and makes the following findings and conclusions:

1. Adequate notice of the Motion has been provided to all parties in interest and/or will be provided pursuant to the additional notice approved by this Order. This Court has jurisdiction over this matter and the property of the Receivership estate.

2. On May 3, 2004 the Securities and Exchange Commission (“SEC”) filed an action seeking entry of a temporary restraining order, preliminary injunction, permanent injunction and other relief with respect to the Receivership Entities (DE#1). On May 4, 2004, the Court entered a Temporary Restraining Order and Other Emergency Relief (DE#25), and entered an Order Appointing Receiver (DE#26). On February 14, 2005 this Court entered its Order Granting Motion for Preliminary Injunction (DE#711), sustaining the Report and Recommendation of Judge Garber dated November 10, 2004 (DE#522), as supplemented on November 16, 2004 (DE#529).

3. The Order Appointing Receiver (DE#26) authorizes and directs the Receiver to “take immediate possession of all MBC, VBLLC and VSI property, assets and estate, and all other property of MBC, VBLLC and VSI of every kind whatsoever and wheresoever located belonging to or in the possession of MBC, VBLLC and VSI,” and further authorizes and directs the Receiver to “administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court.” The Order provides that “[t]itle to all property, real or personal, all contracts, rights of action and all books and records of MBC,

VBLLC and VSI and their principals, wherever located within or without this state, is vested by operation of law in the Receiver.” It further authorizes the Receiver to “make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging the Receiver’s duties. . .”.

4. On September 14, 2005, this Court entered its Order on Disposition of Policies and Proceeds (DE#1339)(the “Disposition Order”). 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. The decision as to how to dispose of each policy was to be determined by the vote of the majority of the interests in a policy that properly submitted votes with respect to the policy.

5. In accordance with these Orders, voting on each of the policies was conducted, the result of which was that approximately 3,138 policies with a face value of approximately \$383,850,782 were designated to be sold (the “Salable Policies”).

6. The Receiver has reasonably and appropriately determined that the best method to sell the Salable Policies, consistent with the Disposition Order, is to divide them into portfolios that will be subject to a competitive bidding process after the selection of a “stalking horse” bidder who is willing, able and committed to close on a sale at a specified purchase price that will establish the minimum value to be offered for the portfolio.

7. The first group of Salable Policies marketed for sale by the Receiver (the “Initial Auction Portfolio”) consists of those Salable Policies that have net cash values of five percent (5%) or higher. This Initial Auction Portfolio consisted of approximately 1,405 policies with an aggregate

face value of \$119,355,247 and an approximate net cash surrender value of \$12,728,867. The Initial Auction Portfolio is comprised primarily but not exclusively of HIV-positive viators; it includes 1,373 HIV-positive policies with aggregate face value of \$103,967,499 and an approximate cash value of \$11,437,498, and 32 non-HIV policies with aggregate face value of \$15,387,748 and approximate cash value of \$1,291,373.¹

8. The Receiver's actions in soliciting proposals to serve as the "stalking horse" bidder for the Initial Auction Portfolio, as described in the Motion, were reasonable and appropriate.

9. Buyer has made an offer to purchase all of the interests in the policies included in the Initial Auction Portfolio, together with all rights attended thereto, including all of the beneficial interests therein, as reflected in the Asset Purchase Agreement attached to the Motion as Exhibit "A".² The Receiver's selection of Buyer as the highest and best initial proposal to serve as a "stalking horse" bidder was a reasonable exercise of the Receiver's business judgment in light of all facts and circumstances known to the Receiver.

10. The terms of the Purchase Agreement between the Receiver and Buyer are reasonable and appropriate and represent an appropriate means of maximizing the value of the Initial Auction Portfolio and other Purchased Assets, as defined further in the Purchase Agreement.

11. The Receiver has the sole and absolute authority to convey all claims, options, privileges, right, title and interest in, to and under the Purchased Assets, including all beneficial interests, free and clear of all Encumbrances.

12. The sale of the Purchased Assets is not precluded by or contrary to any prior Order issued by the Court and no further consents by any Person (including any Governmental Authority or

¹ These figures were adjusted downward slightly after the solicitation was sent out due to maturities.

² Capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement unless

holder of any beneficial interest) are required to convey the Purchased Assets to Buyer (or another higher and better bidder) in accordance with the Purchase Agreement.

13. The Bidding Procedures incorporated into the Purchase Agreement, including the Termination Fee, are reasonably designed to maximize the value of the Receivership assets, which is the appropriate goal of any such procedure. The Bidding Procedures and the Termination Fee are appropriately crafted to encourage competitive bidding for the Purchased Assets, while compensating Buyer for costs it has incurred and will incur in connection with the Asset Purchase Agreement should Buyer fail to be the winning bidder at auction. The Bidding Procedures and the Termination Fee were material inducements for, and a condition of, the Buyer's entry into the Purchase Agreement. The Termination Fee induced the Buyer to research the value of the Purchased Assets and submit a bid that will serve as a minimum or floor bid on which other bidders and the Receiver can rely and thus provides a benefit to the Receivership estate by providing assurances that the Purchased Assets will be sold for a price that reflects their true worth. As such, the Termination Fee is an actual and necessary cost of preserving and maximizing the value of the Receivership estate and is reasonable and appropriate in light of the size and nature of the sale.

14. The form and manner of the further notice (the "Notice") to be provided to interested parties, including insurers and beneficiaries of the policies, as attached to the Motion and as described in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale and the Bidding Procedures and with ample opportunity to object to the sale, including to the free and clear nature of the sale.

15. The entry of this order is in the best interests of the Receivership estate.

In accordance with the foregoing, it is –

otherwise indicated.

ORDERED as follows:

1. The Purchase Agreement (and all of its terms and conditions and transactions contemplated thereby) is approved and the Receiver is authorized to enter into the Purchase Agreement and, subject to final approval of Buyer or another higher and better bidder as the successful purchaser at the Sale Hearing set by this Order, is authorized to take all steps necessary to consummate the transactions contemplated thereby.

2. The Bidding Procedures incorporated into the Purchase Agreement, and attached hereto as Exhibit "A", are approved. The Termination Fee is hereby approved and payment of such amount, if it becomes due, shall be treated as an administrative expense of the Receivership estate.

3. The form and manner of further Notice to be provided to interested parties, including insurers and beneficiaries of policies included in the Initial Auction Portfolio, as attached to the Motion and as described in the Motion, is approved and the Receiver is authorized to cause the publication of such Notice in the national edition of the Wall Street Journal and to incur the expense associated therewith. The Notice shall indicate that any objections to the proposed sale shall be filed and served on Receiver's counsel at least fifteen (15) days prior to the Sale Hearing.

4. The Auction Date shall be on or before April 6, 2007. The Receiver shall incorporate the Auction Date into the Notice and Bidding Procedures.

5. The Sale Hearing to approve the sale of the Purchased Assets to Buyer or such higher and better bidder determined after Auction shall be conducted on April ____, 2007 at _____ a.m./p.m. at the United States District Court, 99 N.E. 4th Street, Courtroom 4, Room 1041, Miami, Florida.

6. The Receiver is authorized and empowered to take all steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and

requirements established by this order.

7. This order shall become effective and enforceable immediately upon entry.

8. To the extent of a conflict in the terms of the Motion and this order, the terms of this order shall control and the terms of this order shall include for all such purposes the terms and conditions of the Bidding Procedures and the Purchase Agreement.

DONE AND ORDERED in the Southern District of Florida on February _____, 2007.

HONORABLE FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record

EXHIBIT "A"

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the Asset Purchase Agreement, dated as of January 25, 2007 (the "Agreement"), by and between Roberto Martinez, as the receiver (in such capacity, "Seller" appointed by the United States District Court for the Southern District of Florida (the "Court") for Mutual Benefits Corp., Viatical Services, Inc. and Viatical Benefactors, LLC, and SPCP Group, LLC ("Buyer"). Unless otherwise defined herein, all capitalized terms have the meanings ascribed to such terms in the Agreement.

The sale of the Purchased Assets under the Agreement to Buyer (the "Sale") is subject to competitive bidding upon the terms and conditions set forth in these Bidding Procedures and approval by the Court. No later than two (2) Business Days following the date hereof, Seller shall file with the Court one or more motions (collectively the "Bidding Procedures Motion"), in form and substance reasonably satisfactory to Buyer, (i) seeking approval from the Court of (A) the Agreement and all of the terms and conditions thereof and transactions contemplated thereby and (B) the Bidding Procedures, (ii) requesting the Court to enter an order approving the Purchase Agreement and Bidding Procedure Motion no later than February 16, 2007; and (iii) setting a hearing for the first available date after the Auction to approve the sale of the Purchased Assets contemplated hereby to Buyer and enter the Sale Order.

The Sale Hearing

Unless the Agreement has been terminated, the Court shall conduct a hearing (the "Sale Hearing") to consider entry of an order authorizing and approving the Sale to the Successful Bidder (defined below) pursuant to the terms and conditions of the Agreement or the agreement of the Successful Bidder. The Sale Hearing shall occur on the first available date following the Auction (defined below). The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Sale Hearing.

Determination of Seller

Seller shall (i) determine whether any person, other than Buyer, is an Overbidder (defined below), (ii) coordinate the efforts of Overbidders, if any, in conducting their respective due diligence regarding the Purchased Assets, (iii) receive Bids (defined below) from Overbidders, if any, and (iv) negotiate any Bid made to purchase the Purchased Assets (collectively, the "Bidding Process"). No person other than an Overbidder will be allowed to participate in the Bidding Process and Seller shall not have the authority to supply any information regarding the Purchased Assets to any person who is not an Overbidder.

Participation Requirements

In order to participate in the Bidding Process, each person other than Buyer (such person, a "Potential Bidder") must deliver to Seller:

(i) an executed confidentiality agreement in the same form as the confidentiality agreement executed by Buyer; and

(ii) current financial statements (audited if available) of (A) the Potential Bidder or (B) if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current financial statements (audited if available) of the equity holder(s) of the Potential Bidder who shall either guarantee the obligations of the Potential Bidder or provide such other form of financial disclosure or credit-quality support information or enhancement acceptable by the Seller.

An "Overbidder" is a Potential Bidder (a) that delivers the documents described in subparagraphs (i) and (ii) above, (b) whose financial information or credit-quality support information or enhancement demonstrate to the satisfaction of Seller the financial capability of the Potential Bidder to consummate the Sale on the terms of the Agreement, and (c) that Seller determines based on its business judgment (based on availability of financing, experience and other considerations) has the wherewithal to consummate the Sale on the terms of the Agreement, including the timing of the Closing, if selected as the Successful Bidder.

Within two (2) Business Days after a Potential Bidder delivers all of the materials described by subparagraphs (i) and (ii) above, Seller shall determine and shall notify the Potential Bidder and Buyer whether such Potential Bidder is an Overbidder. Buyer shall be an Overbidder.

At the same time Seller notifies a Potential Bidder that it is an Overbidder, Seller shall provide the Overbidder (i) access to the same confidential evaluation materials provided by Seller to Buyer containing data regarding the Purchased Assets and/or such other information as the Overbidder may reasonably request (provided that such additional informational be provided immediately to Buyer) and (ii) a copy of the Agreement without reference to the Termination Fee as such amount is payable only to Buyer.

Due Diligence

Only Overbidders may conduct due diligence. If any Overbidder receives any information related to the Purchased Assets from Seller or any of its designees not previously provided to Buyer, Seller shall immediately provide such information to Buyer.

Bid Deadline

An Overbidder that desires to make a Bid shall deliver written copies of its Bid to (i) Seller at Colson Hicks Eidson, 255 Aragon Avenue, Second Floor, Coral Gables, FL 33134, Telefacsimile: (305) 476-7444, Email: bob@colson.com, and (ii) Seller's counsel at, Kozyak Tropin & Throckmorton, P.A., at 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, FL 33134, Attention: David L. Rosendorf, Esq., Telefacsimile: (305) 372-3508, Email: drosendorf@kttl.com, not later than 5:00 p.m. (prevailing Eastern time) on April 2, 2007 (the "Bid Deadline"). Seller shall immediately provide Buyer with a copy of any Bids submitted by the Bid Deadline.

Bid Requirements

A bid ("Bid") is a letter from an Overbidder (other than Buyer) stating that (i) the Overbidder offers to purchase the Purchased Assets upon the terms and conditions set forth in the Agreement, other than with respect to the Termination Fee, which shall only apply to Buyer (the "Overbid Agreement"), and (ii) the Overbidder's offer as set forth in the Overbid Agreement is irrevocable until the earlier of (a) 48 hours after closing of the sale to the Successful Bidder or (b) 20 days after the Sale Hearing. An Overbidder (other than Buyer) shall accompany its Bid with written evidence of an unconditional commitment for financing or other evidence of financial ability to consummate the transaction acceptable to the Seller and a cash deposit equal to 10% of the purchase price set forth in the Overbid Agreement (the "Good Faith Deposit").

Seller will consider a Bid as a higher and better offer (an "Overbid") only if in Seller's business judgment the Bid meets all of the following requirements:

- (i) the Bid is all cash and does not contain any form of contingent consideration or consideration that is dependent upon the maturity of the Policies;
- (ii) the Bid would produce value to the Seller that is at least \$100,000 greater than that produced by the Agreement, taking into consideration the Termination Fee and the speed and certainty of consummating the Sale;
- (iii) the Overbid Agreement is in the form of the Agreement other than with Respect to the identity of the Overbidder and the Termination Fee provisions;
- (iv) the Bid is not subject to a financing or due diligence contingency; and
- (v) the Bid is accompanied by such other information as reasonably requested by the Seller.

Seller may seek clarification of any Bid from an Overbidder after the Bidding Deadline. However, no Overbidder shall be allowed to revise or increase its Bid after the Bidding Deadline or submit any additional documents, materials or information that would have caused such Bid to be an Overbid had such documents, materials or information been submitted or supplied prior to the Bidding Deadline.

Auction

If Overbids have been received from at least one Overbidder (other than the Buyer), Seller will conduct an auction (the "Auction"). The Auction shall take place at 10:00 a.m. (prevailing Eastern time) on April 6, 2007 (the "Auction Date"), at the offices of Kozyak Tropin & Throckmorton, P.A., 2525 Ponce De Leon, 9th Floor, Coral Gables, Florida 33134, or such other place as Seller shall notify Buyer and each of Overbidder (if any) that has submitted an Overbid.

Only Overbidders who have submitted an Overbid and Buyer shall be allowed to participate in the Auction. Each Overbidder who has submitted an Overbid other than Buyer must inform Seller

one (1) Business Day prior to the Auction Date of its intent to participate in the Auction (Buyer and any such Overbidder, an "Auction Participant"). Seller will inform each Auction Participant of the identity of the other Auction Participants. In addition, not later than 5:00 p.m. (prevailing Eastern time) on the Business Day prior to the Auction Date, Seller will give Buyer and the other Auction Participants a copy of the highest and best Overbid received as determined by Seller in accordance with these Bidding Procedures (the "Initial Successful Bid").

At the Auction (i) each Auction Participant will be permitted to increase its Bid, and (ii) all Bids shall be made and received in one room, on an open basis, and all other Auction Participants shall be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant shall be fully disclosed to all other Auction Participants and that all material terms of each Bid will be fully disclosed to all other Auction Participants throughout the entire auction process. The bidding shall be in increments of not less than \$100,000 greater than the value proposed in the Initial Successful Bid and shall continue thereafter in cash increments of not less than \$100,000 and shall be on an all cash basis and shall not contain any form of contingent consideration or consideration that is dependent upon the maturity of the Purchased Assets. Buyer shall be entitled to credit bid the Termination Fee.

The Auction shall continue until such time as each Auction Participant has indicated its unwillingness to increase its Bid in accordance with these Bidding Procedures. Upon conclusion of the Auction, Seller shall identify the Overbid that in its business judgment based on the requirements of these Bidding Procedures is the highest and best Overbid (the "Successful Bid"). Seller shall notify all Auction Participants, prior to the adjournment of the Auction, of the identity of the maker of the Successful Bid (the "Successful Bidder"). At the Sale Hearing, Seller shall present the Successful Bid and the next highest and best Overbid (the "Back-Up Bid") to the Court for approval. The amount of the Back-Up Bid shall equal the highest and best bid solicited at the auction after excluding any bids made by the Successful Bidder at the Auction. No Overbidder shall be allowed to increase or otherwise modify any Overbid after the adjournment of the Auction or during the Sale Hearing.

Acceptance of Overbids

Subject to Court approval at the Sale Hearing, Seller shall effect the sale of the Purchased Assets in accordance with the terms of the Agreement (if Buyer is the Successful Bidder) or the Overbid Agreement (if Buyer is not the Successful Bidder) submitted by the Successful Bidder. If Buyer is the Successful Bidder, it shall be permitted to deduct from the Purchase Price the Termination Fee; provided, however that if the Successful Bid is the Purchase Price and bid as originally submitted by Buyer in the Agreement, the Termination Fee shall not be deducted. If the Successful Bidder fails to consummate a sale of the Purchased Assets approved by the Court because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bid, as approved at the Sale Hearing, shall be deemed to be the Successful Bid and Seller shall be authorized to effect such sale without further order of the Court. Seller's presentation of the Successful Bid and the Back-Up Bid to the Court does not constitute Seller's acceptance thereof, except with respect to the bid of Buyer evidenced by the Agreement. Seller shall have accepted any other Overbid only when such Overbid has been approved by the Court at the Sale Hearing.

Failure to Consummate Purchase

If a Successful Bidder fails to consummate the sale of the Purchased Assets, and such failure is the result of a breach by the Successful Bidder, the Good Faith Deposit shall be forfeited to Seller and, except to the extent provided in the Agreement or the agreement of the Successful Bidder, Seller expressly reserves all rights to seek damages from such person.

Return of Good Faith Deposit

Good Faith Deposits of the Successful Bidder and the maker of the Back-Up Bid shall be held in escrow until the earlier of (A) the later of (x) two (2) Business Days after consummation of the sale of the Purchased Assets or (y) twenty (20) days after the Sale Hearing or (B) the date upon which the Agreement or the Overbid Agreement is terminated in accordance with its terms. All other Good Faith Deposits shall be returned within two (2) Business Days of the entry of the order approving the sale of the Purchased Assets.

Modifications

Seller may (a) determine, in its business judgment, which Overbid, if any, is the highest and best offer and (b) reject, at any time before entry of an order of the Court approving an Overbid, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with these Bidding Procedures, any prior order of the Court or the terms and conditions of the Agreement or (iii) contrary to the best interests of the Seller; provided, however, that these provisions shall not apply to the bid made by Buyer in the Agreement or any subsequent bid made by Buyer.