

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

NIGHT BOX  
FILED

JUL 08 2004



CLARENCE MADDOX  
CLERK, USDC / SDF / 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.

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**KOZYAK TROPIN & THROCKMORTON, P.A.'S AMENDED FIRST  
REQUEST FOR INTERIM COMPENSATION TO PAY ATTORNEYS'  
FEES AND COSTS AND MEMORANDUM IN SUPPORT**

(May 4, 2004 - June 18, 2004)

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



David P. Milian, a Shareholder of Kozyak Tropin & Throckmorton, P.A. ("KTT") submits this Amended Application for an award of interim attorney's fees and costs incurred by KTT as counsel to the Receiver, Roberto Martínez (the "Receiver") for the period May 4, 2004 through June 18, 2004 (the "Application Period").<sup>1</sup>

KTT submits this Amended Application at the request of the Receiver. The amendment reflects KTT's agreement to reduce its fees as follows: (a) \$60,530 based on the reduction of KTT's billing rates from the firm's normal hourly rates (which reductions were reflected in the original fee application); (b) \$38,000 in fees written off for all work performed prior to May 4, 2004, and; (c) an additional \$40,000 reduction, which represents an across the board 10% reduction, above the already reduced hourly rates, for all work performed by KTT. Accordingly, KTT files this Amended Application to reflect a **combined reduction of approximately \$140,000**, in order to assist the Receiver and the Receivership Entities with the operational cash flow issues described in the Receiver's Second Report. These substantial reductions are without prejudice to KTT making a future application to recover the reduction based on results obtained and the success of the Receivership.

In support of this amended application, the undersigned submits the following:

1. Attached as **Exhibit "1"** is a Summary of the Fees incurred by KTT in its representation of the Receiver for the Application Period. Costs are posted through June 13, 2004. Costs paid after June 13, 2004 will be included in the next interim fee application.

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<sup>1</sup> The Initial Application inadvertently omitted time for June 16 through June 18, 2004. That time is included in this Amended Application.

2. Attached as **Exhibit "1-A"** is a summary of all KTT timekeepers, their billing rates and the total hours that were charged by each timekeeper. **Exhibit "1-B"** is a summary of each timekeeper broken down by category. All time has been billed at the reduced agreed upon rate. All partners other than Detra Shaw-Wilder are billed at \$350.00/hour. Ms. Shaw-Wilder is billed at her current hourly rate of \$310.00. All non-partner timekeepers are billed at 15% below their regular hourly billing rate. As set forth above, savings to the receivership reflected in these negotiated discounts is approximately \$60,530.00. In addition, KTT has discounted the amended fee application by **\$38,000.00** for all work performed by KTT prior to the Receiver's appointment.<sup>2</sup> While the Receiver has recognized that much of the pre-May 4<sup>th</sup> work performed by KTT was beneficial and permitted the Receiver to hit the ground running, by this Amended Application, KTT has nevertheless agreed to discount this time in its entirety. KTT has eliminated time for certain timekeepers, primarily partners, who assisted with this case but who will not have a continuing involvement in this case. Finally, KTT has made a 10% across the board reduction, on top of the already reduced rates, for all work performed by KTT. 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.

3. Attached as a Exhibit "2" is the summary of costs. Total costs for which KTT

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<sup>2</sup>KTT maintains detailed time records that are kept contemporaneously with the services performed. KTT will file, within 10 days, these detailed time records under seal with the Court for review *in camera*.

seeks reimbursement are \$22,252.52. This reflects a voluntary write-off of out-of-pocket costs advanced by KTT of \$922.00.

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

a. Asset Analysis and Recovery [**\$53,615.02**]. Time included in this category reflects the efforts of KTT professionals to identify and locate assets and maintain the status quo. KTT professionals interviewed key MBC, VSI and VBLLC employees, bank personnel, Mr. Livoti and Mr. Mc Nerney, 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.<sup>3</sup>

b. Business Operations. [**\$128,618.50**]. The efforts of KTT personnel in this area focused on understanding and stabilizing the operations of the Receivership Entities, meeting with banks, setting up accounts and, most significantly, understanding and assuring the uninterrupted payment of premiums for the policies. Initially several KTT timekeepers were on premises continuously at MBC and VSI interviewing personnel, overseeing organization, and putting in place systems to keep matters organized. For example, at MBC, KTT timekeepers assisted the Receiver in evaluating what staff should be maintained, what their duties should be, and how to organize matters as basic as opening and routing the mail. KTT timekeepers assisted the Receiver in operational matters such as arranging the logistics of payroll. A great deal of time was spent by KTT

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<sup>3</sup>There was one small time entry (\$175) for Asset Disposition. Due to the status of the case, almost no time has been spent on this category. The time spent was to review a preliminary question on asset disposition.

timekeepers meeting with the banks and Mr. Livoti to set into place a process to assure that premium payments had been made, to identify premium payments that were interrupted by entry of the Temporary Restraining Order's bank account freeze, and to arrange for release of adequate funds to continue the payment of premiums.

c. Investor and Agent Communications [\$7,868.88]. It was critical to set up a process to provide information to investors and agents as quickly as possible. Accordingly, KTT timekeepers handled or supervised the handling of "hot lines" in English and Spanish until the Receiver, with the assistance of KTT, was able to identify and retain a claims administrator who, among other things, did take over the function of answering thousands of emails and voice mails in English and Spanish and several other languages.

d. Case Administration [\$17,058.15]. Time billed to this category includes the efforts associated with the administration of the receivership including the initial logistics of setting up the receivership, leasing, staffing and general database issues.

e. Claims Administration [\$687.51]. The actual claims administration has not yet begun. The limited time included in this category relates primarily to preliminary database setup.

f. Employee Matters. [\$1,614.90]. KTT professionals assisted the Receiver as requested in addressing the appropriate treatment of employees under the circumstances of the Receivership. KTT assisted the Receiver in his initial meeting with the labor and employment counsel and the follow up based on that meeting.

g. Fee/Employment Applications (Professionals). [\$5,890.50]. KTT professionals prepared retention applications and proposed orders for Receivership professionals. Time in this category includes review of KTT time in preparation of this interim application.

h. General Litigation [\$6,574.14]. To the extent possible, KTT has divided litigation efforts into specific categories as illustrated below. However, some litigation efforts relate to all litigation including set up for discovery responses, which time is generally included here.

i. Litigation SEC. [\$69,881.13]. 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 and attendance at hearings. By prior agreement with the Receiver, approximately 22 total partner hours were **not** billed for attendance by all but one KTT partner at the hearing on June 10, 2004.

j. Litigation Third-Party. [\$5,197.54]. Timekeepers at KTT have assisted the Receiver and co-counsel at Colson Hicks Eidson in coordinating outside litigation. KTT also began a preliminary analysis of third party -litigation focused primarily on asset analysis/recovery.

k. Litigation - Administrative [\$3,303.00]. KTT timekeepers met with regulatory agencies in connection with ongoing regulatory actions and have assisted in efforts to abate regulatory actions during the Receivership.

l. Takeover and Logistics. [\$53,504.50]. As described in the Receiver's First Report, KTT 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 over 25 employees. A great deal of time and personnel were needed to effectuate the takeover while avoiding the compromise of assets and records, particularly MBC's and VSI's voluminous computer records. The time charged to this category also includes the costs associated with the initial set up of the Receivership website, which was critical for investor communications. KTT timekeepers were required to be on site at this

locations from early morning to late evening over a period of several days in order to obtain and continue control over documents, including original checks and original insurance contracts. KTT timekeepers also assisted in exit interviews for employees on the initial takeover and assisted in securing all the locations.

KTT began preparing the logistics of takeover prior to the filing of the Complaint or Motion to Appoint Receiver. While these efforts clearly benefitted the Receiver and the Receivership, some time did not. KTT has not sought compensation for \$38,000.00 in fees, which is 100% of the amount of fees that accrued prior to May 4, 2004.

5. The Amended Application includes an additional 10% across the board reduction, on top of the already reduced rates, for all work performed by KTT during the Application Period. For the Application Period, KTT seeks reimbursement for 1,517.10 hours of attorney and paraprofessional time. The total amount of fees sought during the application period is **\$353,813.47**, reflecting the write down of \$38,000.00, a 10% discount of \$39,312.63, and negotiated discounts totaling approximately \$60,530.00. Total expenses sought by KTT for the application period are **\$22,252.52**. No prior applications for compensation have been filed and no compensation has been paid to KTT.

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 11<sup>th</sup> Circuit articulated in *In re Norman v. Housing Authority of*

*City of Montgomery*, 836 F.2d 1292 (11<sup>th</sup> 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 (6) the degree to which, if any, effort were supported by prior governmental action. KTT respectfully suggests that its application meets all of the criteria for this interim request for compensation. The Receiver, with the assistance of KTT, has stabilized operations, secured assets, and, to the extent possible, maintained the status quo, while communicating regularly with all parties in interest, especially investors.

**WHEREFORE**, KOZYAK, TROPIN & THROCKMORTON, by and through the undersigned counsel, respectfully requests that this Court enter an Order Authorizing the Payment of \$353,813.47 in fees and reimbursement of \$22,252.52 in costs for the Application Period. A proposed form of Order is attached.

Dated: July 8<sup>th</sup>, 2004

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, P.A.  
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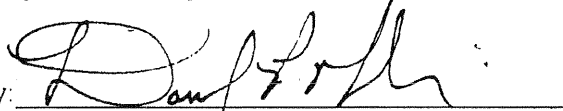
David P. Milfan, FL Bar No. 844421  
Laurel M. Isicoff, FL Bar No. 350923  
Kenneth R. Hartmann, FL Bar No. 664286  
Detra Shaw-Wilder, FL Bar No. 037184  
Carmen Contreras-Martinez, FL Bar No. 0093475



**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served via facsimile & U.S. Mail this 8<sup>th</sup> day of July, 2004 to all parties on the attached Service List.

By:



David P. Milian

3298/101/241128.2

**SERVICE LIST**

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**EXHIBIT 1-A**

## Summary of Professionals And Paraprofessional Time

Attorney Name		Licensed	Hours	Rate	Fee
AVELLO, ALEX	Paralegal		65.50	110.50	7,237.75
CONTRERAS-MARTINEZ, CARMEN	Associate	1996	251.60	170.00	42,772.00
CARDILLO, CHRIS J.	Paralegal	n/a	26.00	110.50	2,873.00
ROSENDORF, DAVID L.	Partner	1994	6.80	350.00	2,380.00
MILIAN, DAVID P.	Senior Partner	1990	299.60	350.00	104,860.00
SHAW-WILDER, DETRA P	Partner	1994	182.80	310.00	56,668.00
SHAW-WILDER, DETRA P	Partner	1994	11.00	N/C	0.00
HARTMANN, KENNETH R.	Senior Partner	1987	250.00	350.00	87,500.00
ALMESTICA, LIZA	Paralegal	n/a	57.90	110.50	6,397.95
ISICOFF, LAUREL M.	Senior Partner	1982	172.90	350.00	60,515.00
ISICOFF, LAUREL M.	Senior Partner	1982	11.80	N/C	0.00
MENDEZ, MARIA C.	Paralegal	n/a	137.40	110.50	15,182.70
KUBS, MINDY	Associate	1995	23.60	191.00	4,507.60
PAZ, YAMILE C.	Paralegal	n/a	20.20	110.50	2,232.10
Total Hours by Professionals and Paraprofessionals:					1,517.10
"Blended" Hourly Rate:					259.13
Subtotal Professionals and Paraprofessionals Fees:					393,126.10
Less 10% Reduction:					(39,312.63)
Total Professionals and Paraprofessionals Fees:					<b>353,813.47</b>

\* Indicate any changes in hourly rates during this Application and the date of such change

\*\* Indicate "blended" hourly rate.

**EXHIBIT 1-B**

Summary of Professional And Paraprofessional Time by Activity Code Category

Attorney Name	Licensed	Hours	Rate	Fee
AVELLO, ALEX	n/a	5.00	110.50	552.50
CONTRERAS-MARTINEZ, CARMEN	1996	6.20	170.00	1,054.00
MILIAN, DAVID P.	1990	64.00	350.00	22,400.00
SHAW-WILDER, DETRA P	1994	1.80	310.00	558.00
HARTMANN, KENNETH R.	1987	13.00	350.00	4,550.00
ALMESTICA, LIZA	n/a	37.50	110.50	4,143.75
ISICOFF, LAUREL M.	1982	73.00	350.00	25,550.00
KUBS, MINDY	1995	4.00	191.00	764.00
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Subtotal for Category		204.50	291.31	59,572.25
Less 10% reduction:				(5,957.23)
Total for Category		204.50	291.31	<b>53,615.02</b>

**SET ANALYSIS AND RECOVERY**

AVELLO, ALEX	n/a	14.00	110.50	1,547.00
CONTRERAS-MARTINEZ, CARMEN	1996	150.00	170.00	25,500.00
MILIAN, DAVID P.	1990	41.40	350.00	14,490.00
SHAW-WILDER, DETRA P	1994	117.80	310.00	36,518.00
HARTMANN, KENNETH R.	1987	155.90	350.00	54,565.00
ALMESTICA, LIZA	n/a	1.30	110.50	143.65
ISICOFF, LAUREL M.	1982	0.70	350.00	245.00
MENDEZ, MARIA C.	n/a	89.10	110.50	9,845.55
PAZ, YAMILE C.	n/a	0.50	110.50	55.25
		-----	-----	-----
Subtotal for Category		570.70	250.41	142,909.45
Less 10% reduction:				(14,290.95)
Total for Category		570.70	250.41	<b>128,618.50</b>

**BUSINESS OPERATIONS**

AVELLO, ALEX	n/a	6.00	110.50	663.00
CONTRERAS-MARTINEZ, CARMEN	1996	7.00	170.00	1,190.00
ROSENDORF, DAVID L.	1994	0.20	350.00	70.00
MILIAN, DAVID P.	1990	5.60	350.00	1,960.00
SHAW-WILDER, DETRA P	1994	2.00	310.00	620.00
ALMESTICA, LIZA	n/a	12.40	110.50	1,370.20
ISICOFF, LAUREL M.	1982	8.20	350.00	2,870.00
		-----	-----	-----
Subtotal for Category		41.40	211.19	8,743.20
Less 10% reduction:				(874.32)
Total for Category		41.40	211.19	<b>7,868.88</b>
INVESTOR AND AGENT COMMUNICATIONS				

AVELLO, ALEX	n/a	12.00	110.50	1,326.00
CONTRERAS-MARTINEZ, CARMEN	1996	6.50	170.00	1,105.00
MILIAN, DAVID P.	1990	14.60	350.00	5,110.00
SHAW-WILDER, DETRA P	1994	0.20	310.00	62.00
HARTMANN, KENNETH R.	1987	0.40	350.00	140.00
ALMESTICA, LIZA	n/a	4.30	110.50	475.15
ISICOFF, LAUREL M.	1982	25.40	350.00	8,890.00
MENDEZ, MARIA C.	n/a	13.00	110.50	1,436.50
PAZ, YAMILE C.	n/a	3.70	110.50	408.85
		-----	-----	-----
Subtotal for Category		80.10	236.62	18,953.50
Less 10% reduction:				(1,895.35)
Total for Category		80.10	236.62	<b>17,058.15</b>
CASE ADMINISTRATION				

ISICOFF, LAUREL M.	1982	0.60	350.00	210.00
BS, MINDY	1995	2.90	191.00	553.90
		-----	-----	-----
Subtotal for Category		3.50	218.26	763.90
Less 10% reduction:				(76.39)
Total for Category		3.50	218.26	<b>687.51</b>
CLAIMS ADMINISTRATION AND OBJECTIONS				

CONTRERAS-MARTINEZ, CARMEN	1996	7.40	170.00	1,258.00
SHAW-WILDER, DETRA P	1994	0.60	310.00	186.00
ISICOFF, LAUREL M.	1982	1.00	350.00	350.00
		-----	-----	-----
Subtotal for Category		9.00	199.33	1,794.00
Less 10% reduction:				(179.40)
Total for Category		9.00	199.33	<b>1,614.60</b>
EMPLOYEE MATTERS/PENSION				

MILIAN, DAVID P.	1990	16.30	350.00	5,705.00
HARTMANN, KENNETH R.	1987	1.20	350.00	420.00
ISICOFF, LAUREL M.	1982	1.20	350.00	420.00
		-----	-----	-----
Subtotal for Category		18.70	350.00	6,545.00
Less 10% reduction:				(654.50)
Total for Category		18.70	350.00	<b>5,890.50</b>
FEE/EMPLOYMENT APPLICATIONS (PROFESSIONALS)				

CONTRERAS-MARTINEZ, CARMEN	1996	2.40	170.00	408.00
MILIAN, DAVID P.	1990	0.40	350.00	140.00
SHAW-WILDER, DETRA P	1994	1.60	310.00	496.00
HARTMANN, KENNETH R.	1987	9.20	350.00	3,220.00
ISICOFF, LAUREL M.	1982	0.10	350.00	35.00
MENDEZ, MARIA C.	n/a	27.20	110.50	3,005.60

Subtotal for Category		40.90	178.60	7,304.60
Less 10% reduction:				(730.46)

Total for Category		40.90	178.60	<b>6,574.14</b>
LITIGATION				

CONTRERAS-MARTINEZ, CARMEN	1996	21.20	170.00	3,604.00
MILIAN, DAVID P.	1990	89.10	350.00	31,185.00
SHAW-WILDER, DETRA P	1994	49.80	310.00	12,028.00
HARTMANN, KENNETH R.	1987	54.80	350.00	19,180.00
ISICOFF, LAUREL M.	1982	44.70	350.00	11,515.00
KUBS, MINDY	1995	0.70	191.00	133.70

Subtotal for Category		260.30	298.29	77,645.70
Less 10% reduction:				(7,764.57)

Total for Category		260.30	298.29	<b>69,881.13</b>
LITIGATION - SEC				

CONTRERAS-MARTINEZ, CARMEN	1996	0.50	170.00	85.00
MILIAN, DAVID P.	1990	12.80	350.00	4,480.00
ISICOFF, LAUREL M.	1982	0.90	350.00	315.00
MENDEZ, MARIA C.	n/a	8.10	110.50	895.05

Subtotal for Category		22.30	258.97	5,775.05
Less 10% reduction:				(577.51)

Total for Category		22.30	258.97	<b>5,197.54</b>
LITIGATION - THIRD PARTY				