

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

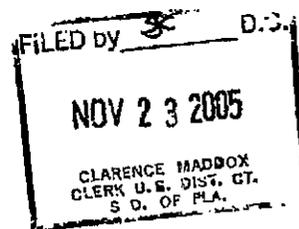
vs.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.



**ORDER REQUIRING HOLLAND AND KNIGHT LLP TO TURN OVER REMAINING  
RETAINER DEPOSITS**

THIS CAUSE came before the Court upon a *sua sponte* review of the record.

On October 3, 2005, this Court ordered Holland and Knight LLP to return all of the retainer deposits except an amount equal to the fees for services rendered between May 25, 2004 and June 3, 2004. In that order, the Court took the parties' arguments under advisement and reserved ruling with regard to the retainer deposits for that time period. Pursuant to this Court's order, H&K has filed an invoice for fees and costs incurred during that period. Neither party filed a supplemental brief regarding H&K's entitlement to fees from the retainer deposits during this time.

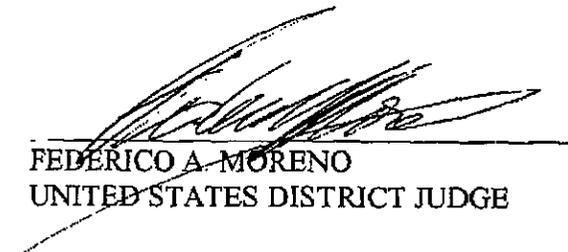
The Court has considered the Receiver's motion, the response, the reply, the parties' representations at oral argument, and is otherwise fully advised in the premises. As described in the earlier order regarding turnover of retainer deposits, the weight of authority under both receivership

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and bankruptcy law makes clear that pre-receivership security retainers are the property of the estate. See, e.g., *Indian Motorcycle Assocs. III Ltd. Partnership v. Massachusetts Housing Finance Agency*, 66 F.3d 1246, 1255 (1st Cir. 1995); *SEC v. Credit Bancorp, Ltd.*, 109 F. Supp. 2d 142, 144 (S.D.N.Y. 2000). Florida law maintains a presumption that prepaid retainers are security retainers. See, e.g., *In re Keller Financial Services of Florida, Inc.*, 248 B.R. 859, 904 (Bankr. M.D. Fla. 2000). The parties do not dispute that the retainers held by H&K are security retainers.

Although the Court allowed H&K to intervene from May 25, 2004 to June 3, 2004, based on the authority cited above and the fact that the work H&K performed during that time actually opposed the relief sought by the SEC, the Court orders that H&K turn over the remaining retainer deposits to the Receiver without deducting its fees and costs. H&K can file a claim against the Receivership estate like other creditor law firms to pursue its fees.

DONE AND ORDERED in Chambers at Miami, Florida, this 22<sup>nd</sup> day of November, 2005.

  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:

Magistrate Judge Andrea Simonton  
All Counsel of Record