

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

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

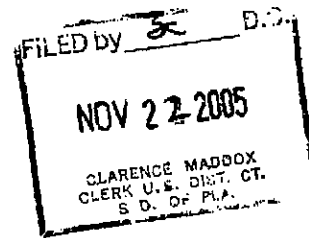
vs.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.



**ORDER CLARIFYING DISPOSITION ORDER AND APPROVING FORM FOR
NOTICE**

THIS CAUSE came before the Court upon the Receiver's Motion for Clarification of the Disposition Order (D.E. No. 1363), filed on September 26, 2005; the Receiver's Motion to Approve Proposed Notice Form (D.E. Nos. 1370 & 1371 - filed twice), filed on October 2 and October 3, 2005; and the various responses, objections, and comments filed by the Intervening Insurers,¹ Connecticut General Life Insurance Company, Traded Life Policies Limited, Life Settlement Holdings, Charitable Concepts, Inc., George Owens, Great West Growth, LLC, the John C. Dorn Life Settlement Trust, Kenneth D. Fly, Vincent C. Raymond, Ken Waite, Richard J. Dunseith, the Redd 1996 Trust, Duane F. Baumert (IRA), and the North American Individual Investors.

¹ In addition to their objections to the Receiver's proposed notice, the Intervening Insurers also filed a motion for clarification, reconsideration, and modification of the Court's disposition order. The Court granted in part that motion in a separate order.

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THE COURT has considered the motions, the objections, the responses, the comments, the replies, and the pertinent portions of the record, and is otherwise fully advised in the premises. For the reasons set forth below, this Court's order on disposition of policies and proceeds (**D.E. No. 1339**), entered on **September 14, 2005**, is clarified as explained below. Further, notice shall be issued consistent with the Receiver's proposal as modified by this order.

Introduction

The Receiver seeks clarification on several issues arising out of this Court's disposition order. The Receiver's motion to approve the form and procedures for notice incorporates several of his positions from his motion for clarification. Thus, because the issues are intertwined, this order addresses both motions. In particular, sections 1. through 5. address issues raised specifically by the Receiver in his two motions and the responses and objections to those issues. Sections 6. through 10. address the parties' remaining objections and comments.

1. Payment of Premiums through Life Expectancy

First, the Receiver seeks clarification regarding the Court's instruction that premiums shall be paid through life expectancy, and for those policies for which premiums have been paid past life expectancy, that the investors will be responsible for paying back those premiums. In his motion, the Receiver states that virtually all of the policies are already past the life expectancies calculated by MBC. Further, the Receiver notes that of those policies past life expectancy, 1660 have allocable premium funds remaining, and the remainder either never had funds set aside or the funds have been exhausted. As a result, the Receiver proposes that, instead of life expectancy, the benchmark should

be exhaustion of premium deposits. In their objections to the Receiver's proposed notice, Traded Life Policies Limited, Life Settlement Holdings, Charitable Concepts, Inc., and George Owens argue that life expectancy is a more equitable measure and urge the Court to reject the Receiver's proposal. As stated in its initial disposition order, the Court determines that life expectancy is a more equitable measure given the lack of uniformity in how premium funds were set aside, if funds were set aside at all. The Court shares the Receiver's concern that because almost all of the policies are past life expectancy, using life expectancy as the cut-off would result in most investors having to pay back premiums. Moreover, the Court agrees that imposition of a surcharge is not practicable under the circumstances here. Accordingly, the Court determines that investors will not be charged for premium funds paid by the Receiver past life expectancy.

2. Third Option - Surrender of Policy to Insurance Company

In its disposition order, the Court indicated that investors should be given three options, the third of which was to allow the policy to lapse. The Court agrees with the Receiver's interpretation that by choosing the third option, the investor directs the Receiver to surrender the policy to the insurance company, an affirmative act (which, in rare circumstances may result in a small cash surrender value).

3. Unused Premium Funds

In his motions, the Receiver states his understanding that for policies that are sold, for which there is a balance in the premium escrow account, the premium funds should not be sold but should remain in the escrow accounts. Further, the Receiver states that the balance of excess premium funds

should go into the general receivership funds for use by the Receiver, including for distribution to investors. The Court agrees with the Receiver's position. Excess premium funds shall remain in the escrow accounts and shall be available for use by the Receiver, including for distribution to investors.

4. Matured Death Benefits

The Court agrees with the Receiver's interpretations regarding matured death benefits. Policies that the Receiver is currently holding shall be distributed to investors *pro rata* as their interests appear in the policies, regardless of whether those interests are revocable, irrevocable, or held through nominee beneficiaries. Proceeds currently interplead with the Court shall be similarly distributed, as shall policies that mature prior to the completion of the disposition process. Thus, the Court's disposition order (as clarified by this order) supersedes this Court's May 20, 2004 order regarding the Receiver's maintenance of insurance policies (D.E. No. 48).

Further, interest accrued on death benefits shall be distributed to investors *pro rata* as their interests appear in the proceeds that generated the interest.

5. Administration of Policies After the Receivership Is Concluded

The Court confirms the Receiver's understanding that the procedures outlined in the disposition order shall continue until the policies mature, even if maturity occurs after the conclusion of the Receivership.

6. The Intervening Insurers' Objections to the Proposed Notice

In their objection to the Receiver's proposed notice, the Intervening Insurers argue that the

notice should include an extensive warning that some of the policies are subject to a lawsuit on appeal before the Eleventh Circuit (04-61143-CIV-MORENO). Further, they argue that the forms should include information regarding the date on which the viator completed the policy application, the date on which the viator was diagnosed with a terminal condition, the responses of the viators to questions on the application related to current health conditions, and the date on which the viator viaticated the policy. The Intervening Insurers argue that the investors need this information to accurately assess whether a policy was viaticated as part of a "wet-ink" transaction and, thus, whether the policy might be challenged by the insurance company in the future. Finally, the Intervening Insurers argue that the Court should require the Receiver to furnish notice as described above or should require the Receiver to provide the Intervening Insurers' counsel with the names and contact information of the investors so that they can communicate with the investors regarding the ancillary proceeding.

In his reply, the Receiver states that the Intervening Insurers are simply continuing their campaign of "delay and scare tactics." Further, the Receiver states that the information sought by the Intervening Insurers is only relevant to their fishing expedition in their now dismissed lawsuit.

The Intervening Insurers' objections are overruled because, as explained in this Court's order denying their motion for clarification, reconsideration, and modification, they have only identified five policies in the ancillary proceeding, and those policies are not subject to disposition at this time.

7. Connecticut General Life Insurance Company's Response to Proposed Notice Forms

CGLIC objects to the proposed notice on three grounds. First, it proposes that the notice should indicate that if an investor opts to sell his interest, the investor forever relinquishes and waives any rights or claims against the insurance company. Similarly, CGLIC proposes that the notice

should indicate that if an investor opts to surrender his interest, he also relinquishes and waives any rights or claims against the insurance company. Finally, CGLIC objects to the notice identifying the specific insurance company that issued the policy. CGLIC states that including the name of the issuing insurance company makes it likely that investors will contact the insurance company to get additional information regarding the policy. Moreover, because the investors are not owners or policyholders, CGLIC argues that the insurance companies will not be able to release additional information.

The Court agrees with CGLIC regarding the first two proposed modifications, and the Receiver shall make the appropriate changes in the notice. As for withholding the name of the issuing insurance company, it makes little sense to include the information about waiving rights against the insurance company, but then to exclude any information regarding the company against which the investor is waiving his rights. Accordingly, the final objection is overruled and this aspect of the proposed notice shall remain unchanged.

8. Traded Life Policies Limited and Life Settlement Holdings' Response/Objections

Besides their argument that life expectancy rather than exhaustion of premium deposits should be the relevant benchmark (discussed above and with which the Court agreed), Traded Life Policies Limited and Life Settlement Holdings ask the Receiver to provide more information regarding policy sale procedure, policy financial information, and future premium information. In his reply, the Receiver states that he cannot decide on the sale procedure before the investors complete the selection process, as he does not yet know what he will be selling. He states that he will file a motion to approve the sale procedure at the appropriate time, and interested parties can raise objections at

that point. With regard to providing more information on the policies, the Receiver states that he has already included all the information that he can extract without going through the costly and time consuming exercise of examining all 7000 policy files. Further, he states that investors do not need the additional information in making their decisions. Regarding premium detail, the Receiver states that some of the information sought is already included, and as for future premium information, the Receiver cannot predict future premiums for any policies other than universal policies. The Court finds the Receiver's positions convincing and, accordingly, overrules these proposals.

9. North American Individual Investors' Response/Objections

NAII is a group of individual investors from various states. NAII states that investors are concerned that, in choosing among the three options, they may unknowingly lose their right to make a claim against the receivership estate, or that their claim may receive unfair treatment because of their choice. NAII states that this fear arises from the fact that investors do not know what recovery rights they will have in the receivership estate. NAII recognizes that it is too early for the Court to formulate a distribution plan setting forth details of a claims process. Accordingly, NAII asks the Court to insert the following language in the notice in place of the current language regarding filing of a claim:

Your choice will not prevent you from also filing a claim in the Receivership. Your choice will not constitute a basis for your claim in the Receivership to be denied. Your choice will not result in unfair treatment of you in determining the ultimate recovery on your claim in the Receivership. However, the financial return of loss resulting from your choice will affect the amount of your claim in the Receivership. The Court has not yet ordered a Plan of Distribution for the Receivership.

The language proposed by NAII appears instructive for investors. Further, the Receiver has not

expressed any opposition since NAI filed its response on October 12, 2005. Accordingly, the notice shall include the suggested language.

10. Great West Growth, LLC, the John C. Dorn Life Settlement Trust, Kenneth D. Fly, Vincent C. Raymond, Ken Waite, Richard J. Dunseith, the Redd 1996 Trust, and Duane F. Baumert (IRA)'s Comments/Objections

Great West, *et al.* make several additional objections not addressed above. First, they ask the Court to impose a deadline for sale of the policies. The Court, however, agrees with the Receiver's position that a deadline could depress the value of possible offers and overrules this objection. Great West, *et al.* also ask the Receiver to provide additional policy and premium detail. As discussed above, the Court finds the Receiver's position convincing and overrules this objection. Great West, *et al.* object to some of the Receiver's positions regarding VSI fees. The Court agrees with the Receiver and overrules this objection. Great West, *et al.* also ask the Court to impose stricter deadlines in the notice procedure. The Court agrees with the Receiver's reasonable proposal and overrules this objection.

Finally, Great West makes several other comments relating to issues upon which the Court already ruled in the disposition order (selection of VSI as administrator, voting procedure, etc.). Accordingly, the Court will not readdress these issues.

Conclusion

For the reasons just stated, this Court's order on disposition of policies and proceeds (**D.E. No. 1339**), entered on **September 14, 2005**, is clarified. Further, notice shall be issued consistent

with the Receiver's proposal as modified by this order.

DONE AND ORDERED in Chambers at Miami, Florida, this 21⁴ day of November, 2005.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Magistrate Judge Andrea Simonton

All Counsel of Record