

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO/SIMONTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORPORATION, *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER INTO
SETTLEMENT AGREEMENT WITH BRINKLEY, MCNERNEY,
MORGAN, SOLOMON & TATUM, LLP AND MICHAEL J. MCNERNEY**

Roberto Martínez, Esq., as Court-appointed Receiver of Mutual Benefits Corp. ("MBC"); Viatical Benefactors, LLC ("VBLLC"); Viatical Services, Inc.; and Anthony Livoti, Jr. individually and Anthony Livoti, Jr. P.A., solely in their capacity as trustee (collectively, the "Receivership Entities"), moves this Court for authority to enter into the attached settlement agreement to resolve the claims on behalf of the Receiver against MBC's former attorneys, the law firm of Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMS&T") and Michael J. McNerney, Esq., and their insurers. The Receiver states as grounds:

Colson Hicks Eidson

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

1. On May 4, 2004, this Court entered an Order Appointing Receiver (the "Receivership Order") in this case. The Receivership Order appointed Roberto Martinez, Esq., of the law firm Colson Hicks Eidson, as Receiver. Paragraph 7 of the Receivership Order provides that the Receiver may "[d]efend, compromise, enter pleas, or settle legal actions, including the instant proceeding, in which MBC, VBLLC and VSI or the Receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court."

2. On May 10, 2005, after extensive negotiations, the Receiver, Lead Plaintiffs in *Scheck Investments, L.P. v. Kensington Management, Inc., et al.*, Case No. 04-21160-Civ-Moreno (the "Investor Class Action"), and BMMS&T and McNerney, and their insurers, Westport Insurance Corporation ("Westport") and Liberty Surplus Insurance Corporation, Inc. ("Liberty") reached a proposed settlement of the Investor Class Action and all claims by the Receiver relating to BMMS&T's and McNerney's past legal representation of MBC.

3. On August 2, 2005, the parties (other than the Receiver) executed a formal Settlement Agreement. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit "A".

4. The primary terms of the Settlement Agreement are as follows.

- Westport shall pay Seven Million Dollars (\$7,000,000), and Liberty shall pay Three Million Dollars (\$3,000,000), for a total of **Ten Million Dollars (\$10,000,000)** (the "Settlement Fund") to the Class of MBC

investors.¹

- Lead Plaintiffs will release all claims asserted against BMMS&T and McNerney in the Investor Class Action.

- The Receiver will release all claims that could have been brought against BMMS&T and McNerney by the Receiver or on behalf of the Receivership Entities.

- BMMS&T and McNerney are each required to submit sworn affidavits representing that: (i) other than insurance policies already disclosed, there is no other potential available insurance coverage for the claims asserted in the Investor Class Action or claims that could have been brought by the Receiver; and (ii) neither BMMS&T nor McNerney have within its/his possession, custody or control, assets that would be subject to execution in excess of \$5,000,000.

- The Settlement Fund, net of attorneys' fees and expenses as awarded by the Court, and net of the expenses of administering the settlement, would be transferred to the Receiver for distribution to the Class. If the Court should grant final approval of this Settlement Agreement, the Receiver, in consultation with Lead Plaintiffs, will submit a proposed Distribution Plan to the Court. After proper notice to the Class, the Receiver shall seek final approval of its Distribution Plan.

- Counsel will apply for an award of: (1) attorneys' fees not to exceed thirty percent (30%) of the Settlement Fund, *i.e.*, not to exceed \$3,000,000, and (2) reimbursement of their reasonable expenses and costs incurred in connection with prosecuting this action (the "Fee Request"). Any award made by the Court in response to the Fee Request shall be paid from the Settlement Fund. The fairness, reasonableness, and adequacy of the Settlement may be considered and ruled upon by the Court independently of any award of attorneys' fees and costs. In addition, all costs for administration of the settlement shall be paid out of the Settlement Fund.

5. The Receiver submits that the Settlement Agreement is in the best interests of the Receivership Entities' investors. The Settlement Agreement provides

¹ The Class is defined as: "All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees."

for a substantial financial recovery for the MBC investors, exhausts the available professional liability insurance coverage for MBC's former lawyers, and minimizes the litigation costs to the Receivership estate in pursuing such recovery.

WHEREFORE, the Receiver respectfully requests that the Court enter the attached proposed Order authorizing the Receiver to enter into the attached Settlement Agreement.²

Respectfully submitted,

COLSON HICKS EIDSON
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Coral Gables, FL 33134-5008
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Facsimile: (305) 476-7444
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By: 
CURTIS MINER
Florida Bar No. 885681

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail, as set forth on the attached Receiver's Service List, on this 18th day of August 2005.

By: 
Curtis B. Miner

² Lead Plaintiffs and the Receiver have also contemporaneously moved in the Investor Class Action for entry of an order granting preliminary approval of the settlement, providing for issuance of Notice to the Class and scheduling a hearing to decide whether the Settlement Agreement should be granted final approval.

SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

VIA ELECTRONIC MAIL		
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Exhibit A
(Proposed Settlement Agreement)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement" or "Stipulation") is made and entered into among: (1) Lead Plaintiffs¹, individually and as representatives of the proposed Class, by and through Class Counsel; (2) Roberto Martinez, as court-appointed Receiver of Mutual Benefits Corp. and other related entities ("Receiver"); (3) Brinkley, McNerney, Morgan, Solomon & Tatum, LLP ("BMMST"); (4) Michael J. McNerney ("McNerney"); (5) Westport Insurance Corporation ("Westport"); and (6) Liberty Surplus Insurance Corporation, Inc. ("Liberty").

WHEREAS, on May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws;

WHEREAS, on May 4, 2004, the Court entered an Order appointing Roberto Martinez as receiver for MBC and related entities;

¹ Capitalized terms, unless otherwise noted, are defined below in Section I of this Settlement Agreement.

WHEREAS, on May 17, 2004, Lead Plaintiffs filed a class action complaint against certain defendants; an Amended Class Action Complaint ("Amended Complaint") being subsequently filed against BMMST, McNerney, and other certain defendants on January 28, 2005;

WHEREAS, on April 4, 2005, BMMST and McNerney filed an Answer to the Amended Complaint, denying all allegations of any wrongdoing;

WHEREAS, since the filing of this Action, both Class Counsel and the Receiver's Counsel have engaged in an investigation relating to the claims and underlying events alleged in the Amended Complaint, and are thoroughly familiar with issues relating to the claims asserted in the Amended Complaint and defenses asserted by BMMST and McNerney in their Answer;

WHEREAS, since the filing of this Action, both Class Counsel and the Receiver's Counsel have met several times with counsel for BMMST, counsel for McNerney, and counsel for their insurers (Westport and Liberty) to discuss the potential settlement of this action;

WHEREAS, on May 10, 2005, the Settling Parties reached a binding settlement resolving all issues relating to BMMST and McNerney's representation of MBC, which was memorialized in a letter agreement of the same date, and which contemplated execution of this formal Settlement Agreement;

WHEREAS, Class Counsel, the Receiver and the Receiver's Counsel all have concluded that it would be in the best interests of both the Class and the Receivership to enter into this Settlement Agreement with BMMST, McNerney, Westport and Liberty because the settlement would be a fair, reasonable and adequate resolution of this Action;

WHEREAS, BMMST and McNerney, while continuing to deny vigorously any allegations of wrongdoing in connection with their representation of MBC, and any liability with respect to any

and all claims asserted in the Amended Complaint, nevertheless recognize the costs and uncertainties attendant upon further litigation of the claims in this Action, and have therefore concluded that it is desirable to enter into this Settlement Agreement to avoid further expense;

WHEREAS, although Westport and Liberty each asserted a reservation of rights in response to the claims and suit made against BMMST and McNerney, they nevertheless recognize the costs and uncertainties attendant upon further litigation of these issues, and have therefore concluded that it is desirable to enter into this Settlement Agreement to avoid further expense; and

WHEREAS, it is the intention of all the parties to this Settlement Agreement to resolve, compromise and settle all claims of the Class and the Receiver against BMMST, McNerney, Westport and Liberty as more particularly provided below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties, through their undersigned counsel, subject to Court approval pursuant to Fed. R. Civ. P. 23(e), to all of the terms and conditions set forth herein, as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the following meanings:

A. "Action" shall mean *Scheck Investments, L.P. v. Kensington Management, Inc., et al.*, Case No. 04-21160-CIV-Moreno, which action includes cases consolidated into Case No. 04-21160-CIV-Moreno.

B. "BMMST Parties" shall mean Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, Michael J. McNerney, Westport Insurance Corporation and Liberty Surplus Insurance Corporation, Inc.

C. "BMMST" shall mean Brinkley, McNerney, Morgan, Solomon & Tatum, LLP and each and all of its preceding entities, its past, present and future officers, directors, shareholders, partners, agents, attorneys, representatives, heirs, executors, personal representatives, administrators and assigns, if any, past, present and future.

D. Subject to the Court's approval, and for the purposes of this Settlement Agreement only, the undersigned agree and consent to the certification of the following "Class":

All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

E. "Class Counsel" shall mean Hanzman & Criden, P.A. and Podhurst Orseck, P.A.

F. "Class Member" shall mean any person included in the Class.

G. "Class Notice" shall mean the notice directed by the Court in its Preliminary Approval Order to be sent and/or published to Class Members to advise them of this Settlement Agreement.

H. "Class Period" shall mean October 1, 1994 through May 4, 2004.

I. "Effective Date" shall mean the later of: (i) five (5) calendar days after the date when no appeal or reargument can be taken from the Final Judgment as defined herein; or (ii) if an appeal is taken or a review is sought from the Final Judgment, five (5) calendar days after the date when no subsequent appeal, motion for reargument or petition for certiorari can be taken from an order determining that the Final Judgment is final. If no objections to the Settlement Agreement are

asserted, then the Effective Date shall be five (5) calendar days after the Final Judgment is entered by the Court.

J. "Final Judgment" shall mean a final order and judgment issued by the Court.

K. "Lead Plaintiffs" shall mean Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe.

L. "Liberty Insurance Policy" shall mean Policy Nos. EJE-B71-078299-013 and EJE-B71-078299-014 issued to BMMST.

M. "Net Settlement Fund" shall mean the Settlement Fund in addition to any earned interest, less any award to counsel for fees and costs, and less any costs and expenses associated with sending out court-approved notice of this settlement, and less any costs, expenses and taxes associated with escrowing the Settlement Fund.

N. "Preliminary Approval Order" shall mean the order to be entered by the Court preliminarily approving the terms and conditions of this Stipulation.

O. "Receiver's Counsel" shall mean Colson Hicks Eidson.

P. "Releasees" shall mean the BMMST Parties; and each and all of their respective past, present or future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, insurers and reinsurers; and each and all of the preceding entities' past, present and future officers, directors, shareholders, partners, agents, employees, attorneys, representatives, heirs, executors, personal representatives, administrators, and assigns, if any, past, present and future.

Q. "Releasors" shall mean: (1) each Class Member who does not exclude themselves from the settlement, and shall include the Class Member and each and all of their respective past,

present or future parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and insurers, if any; and each and all of the preceding entities' officers, directors, shareholders, partners, agents, employees, attorneys, representatives, heirs, executors, personal representatives, administrators, and assigns, if any; and (2) Roberto Martinez, Esq., as Court appointed Receiver of Mutual Benefits Corp.; Viatical Benefactors, LLC; Viatical Services, Inc; and Anthony Livoti, Jr., individually, and Anthony Livoti, Jr., P.A., solely in their capacity as owner and/or trustee of the Livoti Policies and Livoti Accounts.

R. "Settlement Fund" shall mean the sum of Ten Million Dollars (\$10,000,000) to be paid as follows: (1) Westport shall pay Seven Million Dollars (\$7,000,000;) and (2) Liberty shall pay Three Million Dollars (\$3,000,000). The manner and timing of the payment of the Settlement Fund is discussed in Section II below.

S. "Settling Parties" shall mean Lead Plaintiffs, the Receiver and the BMMST Parties.

T. "Westport Insurance Policy" shall mean Policy No. FLL-003408-3 issued to BMMST.

II. SETTLEMENT FUND

A. As consideration for the Release provided in Section IX below, as well as for other promises and consideration set forth in this Agreement, Westport shall pay Seven Million Dollars (\$7,000,000) and Liberty shall pay Three Million Dollars (\$3,000,000) within thirty (30) calendar days following the entry of an order preliminary approving this settlement. Such payment shall be made by check or wire transfer to the Hanzman & Criden Trust Account, which shall be held in escrow by Hanzman & Criden, P.A. until the Effective Date.

B. Until the Effective Date, Hanzman & Criden, P.A. may deposit the Settlement Fund with a federal savings bank in order that the Settlement Fund can be invested in United States

Treasury Bills, United States Treasury Notes, or other like instruments; or accounts or money funds that invest in like securities that are insured or guaranteed by the full faith and credit of the United States. The Escrow Account is intended to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1. Class Counsel shall cause to be paid from the Settlement Fund any taxes or estimated taxes due on any income earned on the Settlement Fund, as well as any and all related costs and expenses associated with escrowing the Settlement Fund. The Releasees shall not be responsible for any loss of funds after payment is made to Class Counsel in accordance with Section II.A. above.

C. After the Effective Date, Hanzman & Criden, P.A., subject to Court approval, shall transfer the Net Settlement Fund to the Receiver for future distribution to class members. Class Counsel, the Receiver and its counsel shall agree, subject to Court approval, to the timing and the transfer of the Net Settlement Fund.

D. If the Settlement Agreement shall terminate, then the Settlement Fund shall be returned to Westport and Liberty as outlined in Section VIII below.

III. BMMST COOPERATION

A. BMMST, and its principals (including, but not limited to, McNerney), hereby agree that they will fully cooperate with any investigation conducted by the Receiver or Class Counsel, subject to receiving assurances from the United States Securities and Exchange Commission ("SEC") either by way of a no-action letter, or other assurances acceptable to BMMST and McNerney, that it, or he, is not the subject or target of any SEC investigation or potential action.

B. BMMST and McNerney's duty to cooperate shall not require them to expend out-of-pocket amounts in excess of a total of Five Thousand Dollars (\$5,000). Upon BMMST and

McNerney collectively expending that amount in out-of-pocket costs, any further out-of-pocket expenditures shall be paid by the Receiver. This provision does not include time expended by BMMST and McNerney's attorneys and personnel, which time shall be reasonable both in time and scope.

C. The law firm of Brinkley, McNerney, Morgan, Solomon & Tatum, LLP and McNerney shall each provide Class Counsel with an affidavit attesting that they do not have within their possession, custody or control, assets that would be subject to execution in excess of Five Million Dollars (\$5,000,000), and shall further affirm that the Westport Insurance Policy and the Liberty Insurance Policy constitute the only potential available insurance coverage for the claims asserted by Class Counsel or the potential claims that could have been raised by the Receiver.

IV. APPROVAL AND NOTICE

A. Motion for Preliminary Approval

No later than ten (10) business days after execution of this Settlement Agreement, Class Counsel shall submit to the Court a motion for preliminary approval of the settlement set forth in this Settlement Agreement with exhibits. Class Counsel and the Receiver may extend this deadline by thirty (30) calendar days if, in good faith, they believe a settlement is imminent with another defendant that could be presented to the Court in conjunction with this settlement.

B. Notice

In the event that the Court preliminarily approves the terms set forth in this Settlement Agreement, Class Counsel and the Receiver shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, provide those members of the Class who have been identified by a reasonable search with notice by first class mail (and/or by e-mail if addresses are

available) of the pendency of this Action, the conditional certification of the Class and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement. Class Counsel and the Receiver shall take all necessary and appropriate steps to ensure that such notice is provided in accordance with the order of the Court. Notice to Class Members shall also be given by publication if ordered by the Court. Notice of the settlement shall also be posted on the Receiver's website.

C. Costs of Notice

All costs in connection with the dissemination of notice and any related expenses, as ordered by the Court, shall be paid out of the Settlement Fund. In no event shall the BMMST Parties be responsible for the costs associated with notifying the Class of this settlement.

D. Motion for Final Approval

At or before the final hearing, and upon the Court's approval of this Stipulation, the parties shall present to the Court for entry, and shall obtain as a condition precedent of this settlement, an order and final judgment that will, among other things:

1. approve the Stipulation and the proposed settlement as fair, reasonable and adequate;
2. direct the settling parties and their counsel to comply with and consummate the terms of the Agreement;
3. declare the Stipulation to be binding on all Class Members who have not validly excluded themselves from the Class and preclusive on all pending and future lawsuits or other proceedings;
4. finally certify the Class for settlement purposes;
5. find that the Class Notices and the Notice methodology implemented pursuant to this Stipulation and the order preliminary approving this Stipulation:

- (a) constitutes reasonable and the best practicable notice, reasonably calculated under the circumstances to appraise Class Members of the pendency of the Action, the right to object or exclude themselves from the proposed Stipulation and appear at the Final Hearing; and
 - (b) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice and meets the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable laws;
- 6. find that the Lead Plaintiffs and Class Counsel fairly and adequately represent the interests of the Class for purposes of entering into and implementing the Stipulation;
- 7. dismiss the Action on the merits and with prejudice as to BMMST (and McNerney if he is a party at the time of the Final Hearing), and without fees or costs to any party, except as provided in this Stipulation;
- 8. incorporate the release set forth in this Stipulation and forever discharge the Releasees from any and all Released Claims;
- 9. bar and enjoin all Class Members who have not excluded themselves from the Class from filing or continuing to prosecute any lawsuit, action, or arbitration in any jurisdiction based on or relating to the facts and circumstances underlying the Released Claims;
- 10. bar and enjoin any non-settling defendant in the Action from commencing, prosecuting or asserting any claim for contribution or indemnity against BMMST or McNerney, individually, arising out of, or in any way related to, the Action or their legal representation of MBC or affiliated entities or to any future action filed by the Receiver or the receivership entities; in addition, BMMST and McNerney, individually, shall be barred from commencing, prosecuting or asserting any claim for contribution or indemnity against any non-settling defendant arising out of, or in any way related to, the Action or their legal representation of MBC or affiliated entities; in addition, notwithstanding any provision of Florida law to the contrary, the total damages awarded against the non-settling defendants as a result of a trial of this Action, or any related lawsuit, including but not limited to, any pending or future action filed by the Receiver, shall be reduced dollar-for-dollar up to the full amount of the Settlement Fund (\$10,000,000) (or by another amount as ordered by the Court); and

11. retain jurisdiction over the administration of the Stipulation.

E. Dispute Regarding Exhibits

Any dispute regarding the content or form of this Stipulation or of any exhibits or motions referenced in this Stipulation shall be resolved by the District Court. The Settling Parties agree that the Court's decision regarding these issues shall be final and non-appealable.

V. PROCEDURE FOR EXCLUSION OR OBJECTION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to Class Counsel, received by Class Counsel no later than forty (40) calendar days after Notice is sent out, or as the Court may otherwise direct. All original requests for exclusion shall be filed with the Court by Class Counsel at or before the final hearing. Class Counsel shall also forward (within 3 business days of receipt) copies of any exclusions to BMMST, McNerney and their respective Counsel. Any potential Class Member who has not filed a timely complete written request for exclusion, as provided for herein, shall be bound by all proceedings, orders and judgments in this Action, even if he, she or it has pending, or subsequently initiates, litigation against any or all of the Releasees asserting Released Claims.

B. Any Class Member who has not filed a written request for exclusion from the Class and who wishes to object to the fairness, reasonableness, or adequacy of this Stipulation, must serve upon Class Counsel, the Receiver's Counsel, and BMMST's Counsel, and file with the Court, received by Counsel and the Court no later than forty (40) calendar days after notice is mailed, or as the Court may otherwise direct, a statement of objection, as well as the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's

attention and any evidence the Class Member wishes to introduce in support of the objection. Class Members may do so either on their own or through an attorney hired at their own expense.

C. Any Class Member who files and serves a written objection, as described above, may appear at the final hearing, either in person, or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Settlement Agreement. Class Members, or their attorneys, intending to make an appearance at the final hearing, must serve on Class Counsel, the Receiver's Counsel and the BMMST Parties' Counsel, and file with the Court, received by Counsel and the Court no later than forty (40) calendar days after notice is mailed, or as the Court may direct, a notice of intention to appear.

D. Any Class Member who fails to comply with the provisions of the preceding Paragraphs B and C shall waive and forfeit any and all rights the Class Member may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in this Action.

VI. PAYMENT OF ATTORNEY'S FEES AND ADMINISTRATIVE EXPENSES

A. Class Counsel and the Receiver's Counsel intend to seek from the Court a reasonable attorney's fee and reimbursement of reasonable costs incurred in the prosecution of this Action. Class Counsel and the Receiver's Counsel shall seek an attorney fee not to exceed thirty percent (30%) of the Settlement Fund (and any accrued interest). Payment of any award of fees and costs to Class Counsel and Receiver's Counsel shall not be paid from the Settlement Fund until at least five (5) business days after the Effective Date.

B. All administrative expenses associated with this Settlement Agreement including, but not limited to, the cost of direct notice, publication notice (if any), all expenses associated with the escrowing of the Settlement Fund, shall be paid out of the Settlement Fund.

VII. INCENTIVE PAYMENTS TO CLASS REPRESENTATIVE

Class Counsel shall not at this time request that the Court approve incentive awards for each Lead Plaintiff. Class Counsel reserves the right to petition the Court at a later date in the proceedings for incentive payments for each Lead Plaintiff.

VIII. TERMINATION OF THE STIPULATION

A. This Settlement Agreement and the proposed settlement shall terminate:

1. At the sole option and discretion of either party if the Court, or any appellate court(s) rejects, modifies or denies approval of any portion of the Stipulation or any exhibit to the Stipulation (other than the amount of attorney's fees and costs to be awarded to Class Counsel and Receiver's Counsel), that counsel in their sole judgment and discretion reasonably determine to be material, including, without limitation, the amount of the Settlement Fund, all notice provisions, the definition of the Class, and the scope or terms of the release; or

2. At the sole option and discretion of either party if the Court, or any appellate court(s), does not enter or completely affirm any portion of the Final Order and Judgment (other than the amount of attorney's fees and costs to be awarded to Class Counsel and Receiver's Counsel), counsel in its sole judgment and discretion reasonably believes to be material.

3. The Settling Parties agree that BMMST shall have the right to terminate this Settlement in the event investors holding claims for net out-of-pocket losses in the aggregate of a

confidential number (the number is specified in the May 10, 2005 Letter Agreement and is available for the Court's review) elect to opt out of the settlement.

4. The terminating party must exercise the option to withdraw from and terminate this Stipulation by written notice to all other parties to this Stipulation no later than five (5) business days after receiving notice of the event prompting the termination.

B. If an option to withdraw from and terminate the Stipulation arises under any provision in this section, and the Stipulation is appropriately terminated, then:

1. this Stipulation shall be null and void and shall have no force or effect, and no party to this Stipulation shall be bound by any of its terms, except for the terms of this Section;
2. this Stipulation of Settlement, all of its provisions, and all negotiations, statements and proceedings related to it shall be without prejudice to the rights of the Settling Parties or any putative Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Stipulation;
3. neither this Stipulation nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever;
4. any order or judgment entered after the date of this Stipulation pursuant to the terms hereof, will be vacated and will be without any force and effect;
5. and all rights and defenses asserted or maintainable by the party shall be restored without prejudice as if this Stipulation had never been entered into; and
6. Class Counsel shall return within ten (10) business days (or as soon as is practicable) the Settlement Fund with any accrued interest less any and all costs, expenses, taxes, etc. previously paid out of the Settlement Fund (and less any necessary estimated costs or taxes needed to be paid in the future) in accordance with this Stipulation.

C. The Settling Parties agree and acknowledge that the Receiver and Lead Plaintiffs, individually and on behalf of the Class, have not asserted certain claims against BMMST and

McNerney, as a result of ongoing negotiations. The BMMST Parties therefore agree to toll any statute of limitations, laches, or other time-related defense to any claims the Receiver or the Lead Plaintiffs, individually and on behalf of the Class, may assert as of May 10, 2005. In the event this settlement is not concluded for any reason, and the Receiver or the Lead Plaintiffs, individually and on behalf of the Class, bring any such claims against BMMST or McNerney, the BMMST Parties acknowledge that such claims will be deemed filed as of May 10, 2005 for statute of limitation or any other time-related defense purposes.

IX. RELEASE

Upon the Effective Date, each Releasee shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which Releasors, whether or not they make a claim on or participate in the Settlement Fund, ever had, now have or hereafter can, shall or may have, which arise out of McNerney's, BMMST's or any of its partners or its employees' representation of MBC, and all of its past, present or future parent companies, subsidiaries, divisions, affiliates, predecessors or successors; and each and all of the preceding entities' officers, directors, shareholders, employees, partners, agents, attorneys, representatives, heirs, executors, personal representatives, administrators and assigns, if any.

The claims covered by the foregoing release are referred to herein collectively as the "Released Claims." Each Releasor hereby covenants and agrees that it shall not, hereafter, seek to establish liability against any Releasee based in whole or in part on any Released Claims.

X. MISCELLANEOUS

A. Reasonable Best Efforts to Effectuate This Settlement Agreement

The parties to this Settlement and their counsel agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement. Pending final approval of this settlement, the Settling Parties will cease and desist all litigation related activities, other than actions necessary to promptly conclude this matter.

B. No Public Comment

The Settling Parties agree and acknowledge that this settlement will be a matter of public record, but the Receiver, its counsel and Class Counsel agree not to make any public comment, issue any press release, or otherwise publicize in any way, including but not limited to, newspapers, publications of any kind, e-mail or websites, the fact of this settlement, or its terms and conditions; provided that nothing in this section prevents the Receiver, its counsel and Class Counsel from publicly acknowledging the fact that the parties have settled, describing the terms and conditions of the settlement, or explaining the process of approval for the settlement either on the Receiver's Website, in direct communications with investors, or as ordered by the Court.

C. Dismissal of Declaratory Action

Upon the Effective Date, Liberty agrees to dismiss its declaratory relief action with prejudice, each party to bear their own attorney's fees and costs.

D. No Admission

Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority present or future, by McNerney, BMMST or any of its partners or employees. Neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or any arbitration, except in connection with the parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto, including requests for attorney's fees, costs and disbursements and compensation to the Class.

E. Consent to Jurisdiction

The Settling Parties, and their respective counsel, hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement, the applicability of this Settlement Agreement or any issue related to fees and costs.

F. Resolution of Disputes: Retention of Jurisdiction

Any disputes between or among the Settling Parties and any Class Member concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement.

G. Enforcement of Settlement Agreement

Notwithstanding paragraph B above, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

H. Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

I. No Party Is the Drafter

None of the parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

J. Choice of Law

All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Florida without regard to its choice of law or conflict of laws principles.

K. Amendment; Waiver

This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

L. Execution in Counterparts

This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date thereof.

M. Integrated Agreement

This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties (excepting only the Letter Agreement of May 10, 2005).

N. Notice

Any and all notices intended for any party of this Settlement Agreement shall be in writing and shall be sent by fax and postage prepaid mail as follows:

To Lead Plaintiffs, the Class or Class Counsel:

Michael A. Hanzman, Esq.
Hanzman & Criden, P.A.
220 Alhambra Circle, Suite 400
Coral Gables, FL 33134
(Fax: 305-357-9050)

Victor M. Diaz, Jr., Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
(Fax: 305-358-2382)

To the Receiver:

Curtis B. Miner, Esq.
Colson Hicks Eidson
255 Aragon Ave., 2nd Floor
Coral Gables, FL 33134
(Fax: 305-476-7444)

To BMMST and McNerney:

Thomas R. Tatum, Esq.
Brinkley, McNerney, Morgan, Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301
(Fax: 954-522-9123)

&

Michael J. McNerney, Esq.
Brinkley, McNerney, Morgan, Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301
(Fax: 954-522-9123)

&

R. Hugh Lumpkin, Esq.
Ver Ploeg & Lumpkin, P.A.
100 S.E. Second Street, Suite 2150
Miami, FL 33131
(Fax: 305-577-3558)

&

Maurice M. Garcia, Esq.
Greenspoon, Marder, Hirschfeld, Rafkin,
Ross, Berger & Abrams Anton, P.A.
P.O. Box 229010
Hollywood, FL 33022
(Fax: 954-925-7013)

To Westport Insurance Corp.:

Michael P. Tone, Esq.
Ross Dixon & Bell, LLP
55 W. Monroe St., Suite 3000
Chicago, IL 60603
(Fax: 312-759-1939)

To Liberty Surplus Insurance Corporation, Inc.:

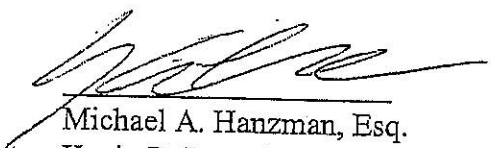
Ronald L. Kammer, Esq.
Hinshaw & Culbertson, LLP
P.O. Box 569009
9155 South Dadeland Blvd., Suite 1600
Miami FL, 33256
(Fax: 305-577-1063)

O. Construction

This Settlement Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Settlement Agreement, for a complete resolution of the Released Claims with respect to the Releasees.

THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
have executed this Settlement Agreement as of the date first herein above written.


Michael A. Hanzman, Esq.

Kevin B. Love, Esq.

Hanzman & Criden, P.A.

220 Alhambra Circle, Suite 400

Coral Gables, FL 33134

8/2/05

Date

Victor M. Diaz, Jr., Esq.

Podhurst Orseck, P.A.

25 West Flagler Street, Suite 800

Miami, FL 33130

Date

COUNSEL FOR LEAD PLAINTIFFS AND THE PROPOSED CLASS

Roberto Martinez, Esq.

Colson Hicks Eidson

255 Aragon Ave., 2nd Floor

Coral Gables, FL 33134

Date

**ROBERTO MARTINEZ, AS COURT-APPOINTED RECEIVER FOR MUTUAL BENEFITS CORP;
VIATICAL BENEFACTORS, LLC; VIATICAL SERVICES, INC.; AND ANTHONY LIVOTI, JR.,
INDIVIDUALLY AND ANTHONY LIVOTI, JR., P.A., SOLELY IN THEIR CAPACITY AS
TRUSTEE**

Curtis B. Miner, Esq.

Colson Hicks Eidson

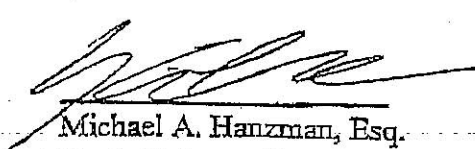
255 Aragon Ave., 2nd Floor

Coral Gables, FL 33134

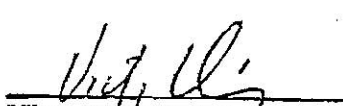
Date

**COUNSEL FOR ROBERTO MARTINEZ, AS COURT-APPOINTED RECEIVER FOR MUTUAL
BENEFITS CORP; VIATICAL BENEFACTORS, LLC; VIATICAL SERVICES, INC.; AND
ANTHONY LIVOTI, JR., INDIVIDUALLY AND ANTHONY LIVOTI, JR., P.A., SOLELY IN
THEIR CAPACITY AS TRUSTEE**

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
have executed this Settlement Agreement as of the date first herein above written.


Michael A. Hanzman, Esq.
Kevin B. Love, Esq.
Hanzman & Criden, P.A.
220 Alhambra Circle, Suite 400
Coral Gables, FL 33134

8/2/05
Date


Victor M. Diaz, Jr., Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130

8/2/05
Date

COUNSEL FOR LEAD PLAINTIFFS AND THE PROPOSED CLASS

Roberto Martinez, Esq.
Colson Hicks Eidson
255 Aragon Ave., 2nd Floor
Coral Gables, FL 33134


Date

**ROBERTO MARTINEZ, AS COURT-APPOINTED RECEIVER FOR MUTUAL BENEFITS CORP;
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TRUSTEE**

Curtis B. Miner, Esq.
Colson Hicks Eidson
255 Aragon Ave., 2nd Floor
Coral Gables, FL 33134

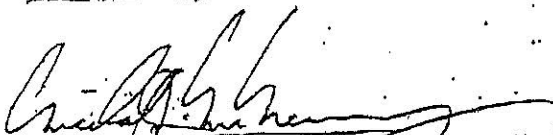
Date

**COUNSEL FOR ROBERTO MARTINEZ, AS COURT-APPOINTED RECEIVER FOR MUTUAL
BENEFITS CORP; VIATICAL BENEFACTORS, LLC; VIATICAL SERVICES, INC.; AND
ANTHONY LIVOTI, JR., INDIVIDUALLY AND ANTHONY LIVOTI, JR., P.A., SOLELY IN
THEIR CAPACITY AS TRUSTEE**


Phillip E. Morgan, Managing Partner
Brinkley, McNerney, Morgan,
Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301

7/27/05
Date

BRINKLEY, MCNERNEY, MORGAN, SOLOMON & TATUM, LLP



Michael J. McNerney, Esq., individually,
Brinkley, McNerney, Morgan,
Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301

7/27/05
Date

MICHAEL J. MCNERNEY, INDIVIDUALLY

R. Hugh Lumpkin, Esq.
Ver Floeg & Lumpkin, P.A.
100 S.B. Second Street, Suite 2150
Miami, FL 33131

Date


Maurice M. Garcia, Esq.
Greenspoon, Marder, Hirschfeld, Rafkin,
Rosa, Berger & Abrams Anton, P.A.
2021 Tyler Street
P.O. Box 229010
Hollywood, FL 33022

Date

COUNSEL FOR MICHAEL J. MCNERNEY, INDIVIDUALLY, AND COUNSEL FOR
BRINKLEY, MCNERNEY, MORGAN, SOLOMON & TATUM, LLP

Thomas R. Tatum, Esq., on behalf of
Brinkley, McNerney, Morgan,
Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301

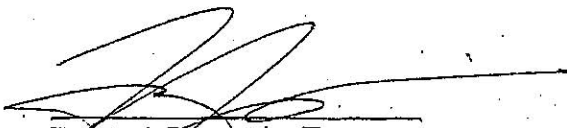
Date

BRINKLEY, MCNERNEY, MORGAN, SOLOMON & TATUM, LLP

Michael J. McNerney, Esq., individually,
Brinkley, McNerney, Morgan,
Solomon & Tatum, LLP
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301


Date

MICHAEL J. MCNERNEY, INDIVIDUALLY


R. Hugh Lumpkin, Esq.
Ver Plog & Lumpkin, P.A.
100 S.E. Second Street, Suite 2150
Miami, FL 33131

Date

7/21/05


Maurice M. Garcia, Esq.
Greenspoon, Marder, Hirschfeld, Rafkin,
Ross, Berger & Abrams Anton, P.A.
2021 Tyler Street
P.O. Box 229010
Hollywood, FL 33022

Date

COUNSEL FOR MICHAEL J. MCNERNEY, INDIVIDUALLY, AND COUNSEL FOR
BRINKLEY, MCNERNEY, MORGAN, SOLOMON & TATUM, LLP

Sign Name: John P. Sterneck
Print Name: ROBIN P. Sterneck
Print Title: VP
Print Address: GE INSURANCE
5200 Metcalf
Overland Park KS 66211

7.21.05

Date

WESTPORT INSURANCE CORPORATION

[Signature]

Michael P. Tone, Esq.
Ross Dixon & Bell, LLP
55 W. Monroe St., Suite 3000
Chicago, IL 60603

7/25/05

Date

COUNSEL FOR WESTPORT INSURANCE CORPORATION

Sign Name: [Signature]
Print Name: _____
Print Title: _____
Print Address: _____

Date

LIBERTY SURPLUS INSURANCE CORPORATION, INC.

Ronald L. Kammer, Esq.
Hinshaw & Culbertson, LLP
P.O. Box 569009
9155 South Dadeland Blvd., Suite 1600
Miami FL, 33256

Date

COUNSEL FOR LIBERTY SURPLUS INSURANCE CORPORATION, INC.

L:\2979\Settlement Lawfirm\final revised stipulation of settlement.wpd

July 6, 2005 (4:54pm)

Sign Name _____
 Print Name _____
 Print Title _____
 Print Address _____

Date _____

WESTPORT INSURANCE CORPORATION

Michael P. Tene, Esq
 Ross Dixon & Bell, LLP
 55 W. Monroe St., Suite 3000
 Chicago, IL 60603

Date _____

COUNSEL FOR WESTPORT INSURANCE CORPORATION

Sign Name Carol Bombardi
 Print Name Carol Bombardi
 Print Title Claims Manager
 Print Address Liberty International Underwriters
55 Water Street
New York, NY 10041

7/20/05
 Date

LIBERTY SURPLUS INSURANCE CORPORATION, INC

Ronald L. Kammer
 Ronald L. Kammer, Esq
 Hinshaw & Culbertson, LLP
 P O Box 569009
 9155 South Dadeland Blvd., Suite 1600
 Miami FL, 33256

8/1/05
 Date

COUNSEL FOR LIBERTY SURPLUS INSURANCE CORPORATION, INC.

L:\2970\Settlements\Lawfirm\Final revised settlement of settlement.wpd
 July 6, 2005 (e-jepm)

Proposed Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573 CIV-MORENO/GARBER

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

**ORDER AUTHORIZING RECEIVER TO
ENTER INTO SETTLEMENT AGREEMENT**

THIS CAUSE is before the Court on the Receiver's Motion for Authorization to Enter Into Settlement Agreement with Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, and Michael J. McNerney, and their insurers. This Court, having reviewed the filings, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. The Receiver is authorized to enter into the Settlement Agreement attached to the Receiver's Motion for Authorization.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida on this _____ day of August, 2005.

JUDGE FEDERICO MORENO
UNITED STATES DISTRICT JUDGE

Copies to: All Counsel of Record