

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.

**UNOPPOSED MOTION FOR ENTRY OF ORDER REGARDING
AMERICAN EXPRESS TAX AND BUSINESS SERVICES INC.
(n/k/a RSM McGLADREY TBS, LLC)**

Roberto Martínez, Esq., as Court-appointed Receiver of Mutual Benefits Corp. (“MBC”); Viatical Benefactors, LLC (“VBLLC”); Viatical Services, Inc. (“VSI”); and Anthony Livoti, Jr. individually and Anthony Livoti, Jr. P.A., solely in their capacity as trustee (collectively, the “Receivership Entities”), respectfully requests the Court to enter the attached proposed Order, which would authorize the Receiver to instruct MBC’s former Escrow Agent, American Express Tax and Business Services Inc. (n/k/a RSM McGladrey TBS, LLC) (“TBS”) regarding the execution of claims and payment of death benefits on insurance policies where TBS was made a nominal beneficiary, and would in turn provide certain protections from liability to TBS for following such instructions. TBS joins in the Receiver’s request. The Receiver states as grounds:

1. Pursuant to his obligations under the Order on Disposition of Policies and Proceeds, as life insurance policies mature, the Receiver has been submitting claims for the death benefits and facilitating the distribution of the death benefits to the investors who had interests in such policies.

2. For a period of time prior to the Receivership, TBS served as the Escrow Agent for MBC,. As a result, TBS was designated as the nominal beneficiary on a number of life insurance policies. In other words, prior to the Receivership, when the policies matured, TBS would submit the claims for the death benefits, receive payment of the death benefits into a designated account, and, at MBC's direction, distribute the death benefits to the investors.

3. At the beginning of the Receivership, in an Order dated June 4, 2004 [D.E. 109], the Court clarified the Receiver's powers to authorize the Receiver to require Union Planters Bank, N.A. ("Union Planters"), another Escrow Agent, to take all directions from the Receiver with respect to all accounts frozen pursuant to the Temporary Restraining Order dated May 4, 2004. This included the accounts into which matured death benefits would be deposited. The Order also provided protection to Union Planters by providing that "[t]o the extent Union Planters complies with the Receiver's directions, it will not incur liability to the Receiver or third parties from the date of this Order forward, as a direct result of complying with the Receiver's directions." A copy of the Order is attached for the Court's reference as Exhibit "A."

4. The same situation applies to TBS. TBS is prepared to follow the Receiver's instructions regarding the execution of claim forms and the payment of death benefits to investors, but requests the same protections that have previously been afforded Union Planters. The Receiver agrees that this request is reasonable. The entry of the proposed Order will facilitate the submission of death benefit claims for the matured policies on which AMEX is the nominal beneficiary.

WHEREFORE, the Receiver respectfully requests that the Court enter the attached proposed Order relating to American Express Tax and Business Services Inc. (n/k/a RSM McGladrey TBS, LLC).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail to the parties on the attached Receiver's Service List in *SEC v. Mutual Benefits Corp. et al*, Case No. 04-65073-Civ-Moreno, on this 7th day of November 2006.

S/ Curtis B. Miner

Curtis B. Miner

SERVICE LIST OF RECEIVER

Case No.: 04-60573 CIV-Moreno

<u>VIA ELECTRONIC MAIL</u>		
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