

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.

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**RECEIVER'S MOTION FOR AUTHORIZATION TO ENTER  
INTO SETTLEMENT AGREEMENT IN ASSET FORFEITURE ACTION**

Roberto Martínez, Esq., as Court-appointed Receiver of Mutual Benefits Corp. ("MBC"); Viatical Benefactors, LLC ("VBLLC"); Viatical Services, Inc. ("VSP"); and Anthony Livoti, Jr. individually and Anthony Livoti, Jr. P.A., solely in their capacity as trustee (collectively, the "Receivership Entities"), hereby moves this Court for authority to enter into the attached settlement agreement relating to a pre-Receivership asset forfeiture action captioned *United States v. \$4,000,000*, Case No. 05-Civ-61399-Civ-Huck/Simonton, in the U.S. District Court for the Southern District of Florida. 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 Martínez, Esq., of the law firm Colson Hicks Eidson, as Receiver.

2. Paragraph 7 of the Receivership Order provides that the Receiver may "settle legal actions . . . 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."

3. Prior to the Receivership, the United States Attorney's Office for the Southern District of Florida issued a seizure warrant in an asset forfeiture proceeding involving \$4,000,000 in matured death benefits from a Southwestern Life insurance policy that were due to an MBC investor identified as Ynals Corporation ("Ynals"). Ynals allegedly represents a pooling of funds from Colombian investors and is owned by Jaime Rey Albornoz and Carlos Garcia Ramirez. The government alleges that the funds used to purchase the interest in the Southwestern Life policy in fact represent the proceeds of narcotics trafficking, making the policy and its associated death benefits subject to forfeiture. The forfeiture proceeding is currently pending before Judge Huck as *United States v. \$4,000,000*, Case No. 05-Civ-61399-Civ-Huck/Simonton.

4. Ynals is represented by counsel in the forfeiture case, the law firm of Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A. A review of MBC's records has determined that the investment interest in the Southwestern Life policy is held solely by Ynals. Because Ynals' interests are being represented in the forfeiture action, and because there are no other MBC investors with recorded interests in the policy, the Receiver

has taken the position that it is not necessary for him to contest the forfeiture of the *death benefits*.

5. However, the Receiver has reached a proposed settlement with the Government in which the *premium funds* that were used to keep the Southwestern Life policy in force would be returned to the Receivership. MBC's former principals commingled investor funds earmarked for the payment of premiums and did not segregate them or place them in sub-accounts for particular policies. As a result, it was the commingled funds of MBC's many victim investors that were used to keep this Southwestern Life policy in force.

6. The principal terms of the settlement are: (a) the Government agrees to pay to the Receiver \$169,166.67, representing the premium payments that were made on the policy by MBC, and (b) the Receiver agrees to use these funds for distribution to MBC's investors and creditors and not to run the Receivership.

7. The Receiver submits that it is in the best interests of the Receivership to enter into the proposed settlement. In light of the fact that Ynals is represented in the forfeiture action, there would be no purpose in the Receiver contesting the forfeiture of the death benefits. Under the Court's Order on Disposition of Policies and Proceeds [D.E. 1339], any portion of the death benefits recovered would be due to Ynals in any event. Under the proposed settlement, at a minimum, MBC's other investors' interests are protected by ensuring that their commingled premium funds that were used to keep the policy in force are returned to the Receivership estate.

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

Respectfully submitted,

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By:   
CURTIS MINER  
Florida Bar No. 885681

**CERTIFICATE OF SERVICE**

I 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 10th day of January 2006.

  
Curtis B. Miner

**SERVICE LIST OF RECEIVER**

Case No.: 04-60573 CIV-Moreno

<b>VIA ELECTRONIC MAIL</b>		
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**Proposed Settlement**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-61399-CIV-HUCK/SIMONTON

UNITED STATES OF AMERICA

Plaintiff,

vs.

FOUR MILLION DOLLARS  
(\$4,000,000.00) IN PROCEEDS  
FROM SOUTHWESTERN LIFE  
INSURANCE POLICY NO.  
1000028057 AND ACCRUED INTEREST,

Defendant.

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STIPULATION AND SETTLEMENT AGREEMENT

Plaintiff, United States of America, by and through the undersigned Assistant United States Attorney, and claimant Receiver for Mutual Benefits Corporation, by and through his undersigned counsel, hereby enter into this stipulation and settlement agreement and stipulate resolving the claim of Receiver for Mutual Benefits Corporation.

1. On August 19, 2005, the United States filed a verified complaint for forfeiture in rem as to four million dollars (\$4,000,000.00) in proceeds from Southwestern Life Insurance Policy No. 1000028057 and accrued interest. On August 22, 2005, a warrant of arrest in rem was issued for the proceeds and accrued interest.



2. The complaint and arrest warrant in rem were duly served by the Bureau of Immigration and Enforcement on the proceeds on November 7, 2005, and accrued interest on November 10, 2005.

3. Public Notice of Action and Arrest was published in the Miami Daily Business Review on November 23, 2005. Proof of publication was filed with the Court on December 1, 2005.

4. Claimant Mutual Benefits Corporation filed a verified claim on or about October 5, 2005, and an amended verified claim on December 2, 2005. The amended claim seeks the return of funds used by Mutual Benefits Corporation to pay the premiums on Southwestern Insurance Policy 1000028057 in the amount of \$169,166.67. These funds kept the policy in force until the death of the insured. The funds in the "premium escrow accounts" used by Mutual Benefits Corporation to pay the premiums for the insurance policies, including the Southwestern Insurance Policy, involved money from many investors which money was commingled and was not placed in separate "escrow accounts" or sub-accounts. Claimant Receiver has filed a claim for a return of the \$169,166.67 in premium payments which would ultimately be distributed to the victim investors.

5. On May 4, 2004, claimant Mutual Benefits Corporation was placed into receivership by the Honorable Judge Moreno in the case of Securities and Exchange Commission v. Mutual Benefits Corp., et al, 04-60573-CIV-MORENO/GARBER. Mutual Benefits Corporation is now represented by a court-appointed receiver, Roberto Martínez.

6. Claimant Receiver for Mutual Benefits Corporation agrees to waive any further answer or defense in this action and to release and hold harmless the United States of America and all officers, agents or employees of the United States, from any and all claims or causes of action they may have arising from the seizure, detention, maintenance and disposition of the four million dollars (\$4,000,000.00) in proceeds from Southwestern Life Insurance Policy No. 1000028057 and accrued interest.

7. The United States hereby agrees to release to claimant Receiver for Mutual Benefits Corp. in the case of Securities and Exchange Commission v. Mutual Benefits Corp., et al, 04-60573-CIV-MORENO/GARBER the sum of \$169,166.67. As a condition of the release, claimant Receiver agrees to hold the \$169,166.67 in an interest-bearing account and agrees not to use the \$169,166.67 for the operation of the Receivership Entitites or any other purpose. The Receiver agrees that it will submit the \$169,166.67 to the Court in Securities and Exchange Commission v. Mutual Benefits Corp., et al, 04-60573-CIV-MORENO/GARBER to be distributed to the investors and/or creditors as part of any final distribution proposal/plan in Securities and Exchange Commission v. Mutual Benefits Corp., et al, 04-60573-CIV-MORENO/GARBER which is approved or directed by the Court.

8. The parties to this agreement further stipulate that each party shall bear its own attorney's fees and costs.

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Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By:

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By:

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**Proposed Order**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants.

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**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 in Asset Forfeiture Action. This Court, having reviewed the filings, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the Receiver is authorized to enter into the Stipulation and Settlement Agreement in *United States v. \$4,000,000*, Case No. 05-61399-Civ-Huck/Simonton.

DONE AND ORDERED in Chambers in Miami, Florida on this \_\_\_\_ day of January, 2006.

\_\_\_\_\_  
JUDGE FEDERICO MORENO  
UNITED STATES DISTRICT JUDGE

Copies to:

All counsel of Record

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