

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al*,

Defendants.

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**TRUSTEE’S STATUS REPORT REGARDING SALE OF POLICIES  
AND SALE APPROVAL MOTION AND REQUEST TO TREAT  
DECEMBER 16, 2022 HEARING AS STATUS CONFERENCE**

Barry Mukamal, as Trustee (“Trustee”) of the Mutual Benefits Keep Policy Trust (“Trust”), submits this Status Report Regarding Sale of Policies and Sale Approval Motion, in connection with the Court’s *Order of Instructions for December 16, 2022 Sale Approval Hearing* (DE#3180), and requests that the Court treat the hearing scheduled for December 16, 2022 as a status conference. In support, the Trustee states:

1. On June 29, 2022, the Court entered its *Order Adopting Magistrate Judge’s Report and Recommendation and Granting Trustee’s Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination* (“Sale Procedures Order”) (DE#3142), authorizing the Trustee to proceed with the sale of the remaining Keep Policies held by the Trust in accordance with the procedures set forth in the *Trustee’s Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination* (“Sale Procedures Motion”) (DE#3065), as modified by the Sale Procedures Order.

2. Consistent with the Sale Procedures Order, the Trustee proceeded to take the steps set forth in the Sale Procedures Motion to consummate the sale of the remaining Keep Policies,

including establishing a “data room” to facilitate potential purchasers’ due diligence; extending Acheron Capital, Ltd. (“Acheron Capital”) and affiliated entities (collectively the “Acheron Parties”) the opportunity to submit an “Acheron Initial Bid;” division of the Keep Policies into “tranches” for sale; solicitation, negotiation and execution of “stalking horse” purchase offers; solicitation of competing qualified bids for the Policies; scheduling of an auction among qualified bidders; and review and negotiation of prospective bids.

3. The Trustee originally had scheduled the auction for September 15, 2022. (DE#3147). On August 29, 2022, this Court entered an *Order Granting Acheron Capital, Ltd.’s Expedited Motion to Stay Pending Appeal of Order (D.E. 3142)* (“Stay Order”) (DE#3157) which granted Acheron Capital’s July 7, 2022 motion for a stay of the Sale Procedures Order pending its appeal of that order to the Eleventh Circuit Court of Appeals. As a result of the Stay Order, the September 15, 2022 auction was cancelled.

4. The Eleventh Circuit Court of Appeals subsequently dismissed Acheron Capital’s appeal of the Sale Procedures Order on October 17, 2022 for lack of jurisdiction because it was not a final order. After the appeal was dismissed and the Stay Order was vacated, the Trustee rescheduled the auction for December 8, 2022. (DE#3169).

5. On November 30, 2022, this Court entered its *Order on DE 3174* (DE#3177), determining that Acheron Capital, even if selected as a successful bidder at auction, nonetheless could preserve the right to object to the entry of a sale approval order, and to seek to appeal and stay such an order.

6. Shortly prior to the rescheduled auction date, and after the Trustee’s receipt of all qualified bids for the auction, the Trustee and Acheron Capital engaged in meaningful discussions regarding resolution of issues relating to the sale, the sale process, and related matters. In light of

those discussions, as well as certain unresolved issues regarding the form and terms of certain bids submitted by bidders in connection with the auction, the Trustee made the determination that the auction should be rescheduled for a week. On December 7, 2022, the Trustee gave notice of the rescheduling of the auction to December 15, 2022. (DE#3178).

7. Following further extensive discussions and negotiations, on December 8, 2022, the Trustee and Acheron Capital, on behalf of itself and the Acheron Parties, entered into a Settlement Term Sheet memorializing an agreement that: (a) provides for the purchase and sale of all remaining Trust Policies (including Tranche “A,” Tranche “A-1,” and Tranche “B”) to the Acheron Parties on terms that are superior to any other offers that the Trustee has received; (b) obviates the need for an auction; (c) resolves and moots Acheron Capital’s potential objections to the sale; (d) addresses and resolves certain potential disputes regarding the allocation of the purchase price among the Keep Policies and distributions of the net proceeds; and (e) will facilitate a prompt closing of the sale and distribution of the net proceeds to the holders of the interests in the Keep Policies.

8. The Trustee and Acheron Parties are in the process of preparing appropriate documentation consistent with the Settlement Term Sheet, and expect to complete that documentation, and file a motion to approve the proposed sale and other settlement terms, by no later than **December 23, 2022**.

9. As a result, the Trustee has determined that the auction should be further postponed pending submission and consideration of a motion to approve the proposed sale and other settlement terms with the Acheron Parties, and accordingly requests that the deadline for the Trustee to submit a Report of Auction and Motion for Sale Approval Order be extended pending consideration of such a motion.

10. The Trustee further proposes that the hearing the Court has scheduled for December

16, 2022 to consider entry of a Sale Approval Order should be treated as a status conference to address timing and process for consideration of a motion to approve the sale and other settlement terms consistent with the Settlement Term Sheet.

11. Acheron Capital's counsel has requested, in light of the Trustee's request to treat the hearing as a status conference, that they be permitted to appear and participate in the hearing remotely by telephone or Zoom.

**WHEREFORE**, the Trustee respectfully requests that the Court (a) extend the time for the Trustee to submit a Report of Auction and Motion for Sale Approval Order; and (b) treat the hearing scheduled for December 16, 2022 as a status conference with regard to the sale, including with regard to the matters addressed by this Status Report.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on December 15, 2022 on counsel for all the parties by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*s/ David L. Rosendorf*  
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