

**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.

TRUSTEE’S APRIL 2021 STATUS REPORT REGARDING WIND DOWN

Barry Mukamal, as Trustee (“Trustee”) of the Mutual Benefits Keep Policy Trust (“Trust”), submits this Status Report in accordance with the Court’s *Report and Recommendation on Motion by Acheron Capital, Ltd. for Order Directing (A) the Wind Down and End of the Mutual Benefits Keep Policy Trust and (B) Disbursement of Certain Assets to the Non-Acheron Related Investors in Keep Policies (“Acheron’s Wind Down Motion”) (DE 2593) and on Trustee’s Amended Motion to Authorize the Initiation of Trust Wind Down and Termination (“Trustee’s Amended Wind Down Motion”) (DE 2640) [D.E. 2723]*, and the Court’s *Order Adopting Magistrate Judge’s Report and Recommendation and Denying Acheron’s Wind Down Motion and Granting the Trustee’s Amended Motion to Authorize Initiation of Trust Wind Down and Termination [D.E. 2825]* (collectively, the “Wind Down Order”), and the Court’s *Omnibus Order Setting Status Conference, Requiring Conferral, and Setting Forth Other Directives Pertaining to Wind Down of the Trust (“Omnibus Order”) [D.E. 2886]*.

Attached hereto as Exhibit "A" is an updated report of the information provided to the Court in accordance with the Wind Down Order since the Trustee's last Status Report was filed on March 15, 2021 [D.E. 2882].

Progress on Wind Down Steps

In the Trustee's last Status Report, the Trustee advised the Court of the updated timeline for the wind down and the steps proposed to be taken by the Trustee in furtherance of winding down the Trust. In furtherance of those efforts, and pursuant to the Omnibus Order, the Trustee advises of the following steps taken since the last Status Report:

- The Trustee prepared a proposed Notice to Investors of the anticipated wind down of the Trust and sale of the Keep Policies, provided it to counsel for Acheron, Litai, and the SEC, attempted to confer with Acheron with regard to the Notice, and on March 26, 2021 filed a Motion to Approve Form of Notice Regarding Trust Wind Down [D.E. 2890].
- Pursuant to the Court's April 1, 2021 Order [D.E. 2895], the Trustee, pursuant to the Court's directions in the Order, prepared a revised form of Notice, provided it to counsel for Acheron, Litai, and the SEC, conferred with Acheron regarding the form of Notice and attempted to resolve disagreements on April 7, 2021, received further comments on the Notice from counsel for Acheron and Litai in the afternoon of April 8, 2021, further considered and evaluated those comments and further revised the proposed form of Notice in response thereto, and on April 9, 2021 filed a Motion to Approve Proposed Final Revised Notice Regarding Trust Wind Down [D.E. 2900]. The Trustee has also conferred with SEC counsel regarding the proposed form of Notice.
- The Trustee has established the proposed modes of investor communications with the Trust relating to any questions about the wind down Notice and anticipated sale process.

- The Trustee has continued his conferral with industry experts regarding sale structures and processes.
- The Trustee has had discussions with an actuarial firm regarding the post-sale allocation of sale proceeds on a policy-by-policy basis.
- The Trustee has provided Litai with a detailed list of the documentation requirements of the Trust for preparing the Keep Policies for sale¹ and has requested a proposal from Litai to the extent Litai claims any portion of the services fall outside of its responsibilities under the Servicing Agreement. Litai has not yet confirmed that it will provide these services or on what terms, and accordingly the Trustee has initiated requests to third parties to fulfill these critical documentation requirements.
- The Trustee has solicited a proposal from Litai to obtain updated HIPAA authorizations from insureds for selected policies. Litai has not indicated its willingness to do so or on what terms, and accordingly the Trustee is in the process of preparing solicitations for proposals from third parties if Litai does not provide a proposal. If the Trust is required to engage third parties, Litai must provide an acknowledgment to the insureds that they may speak with the third party provider.
- The Trustee has obtained and is reviewing a proposal from a securities intermediary firm to provide security intermediary services in connection with an anticipated sale.
- The Trustee has obtained and is reviewing a proposal from a third-party firm to administer a sale process.

¹ The list is attached as Exhibit “B”.

Other Matters

In Paragraph 11 of the last Omnibus Order, the Court directed the Trustee to also report on several other matters. The Trustee does so here, using the numbers identified by the Court:

(2) The status of the arrangement with Acheron for the Trustee’s sale to Acheron of defaulted policy interests to include:

- a. The date of the last sale to Acheron: March 11, 2021.²
- b. The number of policy interests sold to Acheron at the last sale: 1.
- c. The total face value of the policy interests sold to Acheron at the last sale: \$100,000.
- d. The number of policy interests that have defaulted since the last sale of policy

interests to Acheron:19.

e. The total face value of the policy interests that have defaulted since the last sale of policy interests: \$649,098.

(3) The number of policy interests for which the Trust is paying the premiums: 19.³

(4) The face value of the policy interests for which the Trust is paying the premiums: \$649,098.

² On March 1, 2021 the Trustee sold Acheron 17 defaulted policy interests with a \$1,103,838 total face value.

³ These figures represent the amounts advanced in connection with the most recent proposed disposition, for which Acheron has refused to pay customary pricing. The Trustee only extends contingency funds for a policy or fractional interest in a policy to ensure that the policy does not lapse. The contingency funds are not deployed on a continuous basis for a policy – the funds are only advanced until the shortfall interests are sold or other non-lapse options are utilized. To the extent the Court’s direction was intended to encompass *all* policies and interests for which the Trustee has advanced premium and not to date been reimbursed, the current amount is \$468,330.30, in connection with 86 policy interests. The face amount of the interests associated with those advances is still in process of being reconciled. The net reduction in that balance from the approximately \$636,000 referenced in the last Status Report includes \$253,593 in recoveries deposited or to be deposited into the Contingency Account in early April 2021 (after the “as of April 1, 2021” date of the monthly report attached as Exhibit “A”, and therefore not included in the balances reflected therein).

(5) The estimated annual premium cost for the policy interests for which the Trust is paying the premiums: \$25,766.⁴

The number and face value of policy interests listed above represent those policy interests which have been identified by the Trust's servicer, Litai, as being ready for disposition. The offering list for those policy interests was provided to Acheron on April 8, 2021, which on April 12, 2021 advised that Acheron Portfolio Trust was not willing to pay the prices that have been historically paid for the acquisition of interests from the Trust. The Trustee is evaluating its other options and reserves the right to assert that this constitutes a breach of Acheron's obligations under Paragraph 7 of the March 2015 Agreement between the Trustee and Acheron.

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⁴ As noted above, this is not a continuing annual premium obligation of the Trust but rather represents a single payment to preserve policies until sale or other non-lapse options can be completed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on April 15, 2021 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
David L. Rosendorf

Mutual Benefits Keep Policy Trust

As of April 1, 2021 ^[1]

3a The amount of Overpayment Balance account ^[2] 2,097,393

3b Amount of funds currently available to pay expenses ^[2]

Cash / Money Market Accounts	993,494
Fixed Income investments	1,103,899
Total Overpayment Funds	2,097,393

3c The most recent total amount of monthly operating expenses ^[3] 294,144

3d Estimated average run-rate of monthly Trust operating expenses

	Apr - Jun 2021	Jul - Dec 2021
Operating Expenses	67,400	67,400
Enhanced Oversight	29,000	29,000
Investor Subsidy ^[4]	18,000	-
Subtotal	114,400	96,400
Litigation ^[5]	48,750	48,750
Estimated Average Monthly Run-Rate	163,150	145,150

3e Total amount of money owed to Trustee and other professionals 205,064

3f Estimated minimum number of policy interests needed to rationalize costs for those interests 150 - 300

The current number of policies and policy interests the Trust is servicing:			
Current # of policies the Trust is servicing ^[6]			1,289
Total Face Value	MBC Victims	Acheron ^[6]	Total
HIV	52,986,094	79,545,911	132,532,005
Non-HIV	28,866,985	75,584,654	104,451,639
Total	81,853,079	155,130,565	236,983,644
%	34.54%	65.46%	
Current number of policy interests the Trust is servicing			
	MBC Victims	Acheron ^{[7] [8]}	Total
	2,089	1,064	3,153

Mutual Benefits Keep Policy Trust

As of April 1, 2021 ^[1]

Notes:

- 1) Provided pursuant to the Court's Report and Recommendation dated July 27, 2020 (ECF #2723) affirmed and adopted by the Court November 16, 2020 (ECF #2825).
- 2) The report as of March 1, 2021 previously filed with this Court inadvertently labeled the Overpayment Balance amounts as March 1, 2021 but reflected the February 1, 2021 Overpayment Balance of \$2,880,629. This current report reflects the current Overpayment Balance as of April 1, 2021 and further reflects a two month reduction in the Overpayment Balance from the last report filed with the Court. The March 1, 2021 Overpayment Balance was \$2,447,094.
- 3) March expenses were greater than average due to significant litigation expenditures incurred.
- 4) The investor subsidy was discontinued effective March 15, 2021. The estimated average monthly subsidy reflected above is solely for Acheron-owned policy interests invoiced prior to March 15, 2021.
- 5) Estimated litigation expenditures for 2021 are generally unchanged from prior reports to the Court. However, the estimated amounts have been spread over the remainder of the year to account for the fact that the trial in the 2018 litigation is now scheduled for September and the arbitration relating to servicing is not scheduled to complete until as late as December 2021.
- 6) Includes 290 policies with a combined \$30.4 million face value 100%-owned by Acheron. Policy transfer documents required by the carriers to effect the ownership change from the Trust to Acheron Portfolio Trust continue to be processed by the servicer.
- 7) Includes the 290 policies 100%-owned by Acheron. Without those policies, the Acheron column would reflect approximately 60% face value.
- 8) Some policy interests owned by former Acheron entities Avernus Portfolio Trust, Lorenzo Tonti 2006 Trust and Styx Portfolio Trust have not yet been retitled as and merged with Acheron Portfolio Trust by the Servicer. The Servicer has advised that the retitling/merger will occur as applicable invoices are prepared.

DRAFT FOR DISCUSSION PURPOSES**Mutual Benefits Keep Policy Trust****Litai Task List for Portfolio Sale**

Description
Monthly between now and final disbursement of sale proceeds to investors, Litai to timely update PBTS for any changes in investor or insured contact information. Updated information will also be updated in any and all reports provided to the Trust in which such information is routinely reflected.
Provide all current and historic policy-level data in an industry-standard format to be incorporated into a master offering list.
Extract all applicable documents from Viator Files (e.g. - policy, sale to MBC docs, original meds, original LE's, etc...) and save according to the agreed-upon file-naming methodology. <i>(See Documents from Litai list attached.)</i>
Organize all policy documents by AP# and clearly labeled (e.g. - Illustration, Annual Statement, etc...) according to an agreed-upon file-naming methodology. <i>(See Documents from Litai list attached.)</i>
When making routine, periodic verification of coverage ("VOC") calls to carriers, obtain current policy illustrations, as applicable, from carriers reflecting level death benefit through maturity or age 100 (whichever is longer). All pages must be legible and unredacted.
When making routine calls to carriers (for VOC or otherwise), request carrier to provide its current set of change of ownership / change of beneficiary forms. Once received, retain for mass transfer of files to the securities intermediary ("SI").
Subsequent to policy transfer to SI, when making routine calls to carriers (for VOC or otherwise), Litai to confirm the policy owner and the beneficiary have been changed to SI as securities intermediary.

DRAFT FOR DISCUSSION PURPOSES

Mutual Benefits Keep Policy Trust – Documents to be provided by Litai

Documents to extract from each viator file and save using an agreed-upon file naming methodology:

- Each policy including the application for life insurance (i.e., Part A or 1) and the Health Questionnaire (i.e., Part B or 2), all amendments and endorsements thereto, or, a valid Lost Policy Affidavit produced and confirmed by the carrier;
- Any and all medical records pertaining to the insured;
- Complete copies of all life expectancy reports issued by all life expectancy providers from which such a report was ordered since the policy was first sold as a life or viatical settlement;
- The fully executed original Life Settlement Purchase and Sale Agreement and all documents related to each transaction involving a sale/purchase of the policy from the first/original seller (e.g., the original policy owner) to the most recent transfer;
- The executed Application for Life Settlement issued and executed by the original policy owner, insured, and licensed life settlement provider that entered into the transaction;
- Any and all executed Beneficiary Waivers from each beneficiary named in respect of each policy for each transaction through which the policy was transferred over time;
- Any and all executed Spousal Waiver and Consent forms, as applicable;
- Each Offer Acceptance Letter signed by the policy owner/seller and the insured (if different) for each transaction through which the policy was transferred over time;
- Photographic and other governmentally-accepted forms of identification for the policy seller, its authorized signatories, the insured and their respective Tax Identification numbers for each transaction through which the policy was transferred over time;
- Any and all transaction documents related to any sales or transfers of the policy since its date of issue (e.g. - court documents, copies of trusts, decrees or discharge documents and other records confirming the current owner's title to and rights in the policy as well as their right to sell and transfer the policy);
- Legible and complete copies of confirmations issued by the respective carrier with respect to each change of owner or beneficiary related to the policy over time;
- Any and all executed Authorizations to Obtain a Death Certificate for each insured covered by a policy;
- Any and all additional documents included in the original secondary life settlement transaction between a licensed provider and a consumer seller, including copies of forms of identification, disbursement forms, correspondence, intermediary licenses, etc. as may be available in support of the transaction(s) related to the policy over time;
- Copies of any documents related to the policy owner which is a Trust, Corporation or other entity (e.g. – not a natural person);

DRAFT FOR DISCUSSION PURPOSES

- Any statement, acknowledgement or attestation from the policy owner and the insured, that the policy in question was or was not issued pursuant to any form of premium finance arrangement, understanding or scheme, and if the policy was issued in such a manner, copies of all the documents and information in any way related to the premium finance arrangement; and
- Copies of any and all documentation in any way related to any form of premium financing in any way related to the issuance of the policy or the payment of premiums in respect thereof at any time since the issuance of the policy.

Documents to be provided by Litai and saved according to the same agreed-upon file naming methodology contemplated for the viator file extractions listed above:

- A recent (e.g. - issued within the last 90 days), legible and complete "in-force" illustration issued by the respective life insurance company, which illustrates the level premiums to be paid in all years from the date of the illustration through the age of maturity as defined in the policy or the insured's age 100, whichever is longer;
- A complete premium payment history for each policy in electronic format showing all premiums paid from the date of issue of the policy to present and the aggregate premiums paid to date;
- Legible and complete copies of all annual statements issued by the insurance carrier at each policy anniversary since the date of issue;
- Legible and complete copies of all life expectancy reports issued by all life expectancy providers from which such a report was ordered since the policy was first sold as a life or viatical settlement (relates to policies for which investors used Optional Services);
- A recent, legible, valid and signed copy of the HIPAA authorization form(s) signed by the insured (also relates to policies for which investors used Optional services);
- Copies of all third-party authorization forms and corresponding confirmation (excluding, of course, other than the form letter used by Litai on behalf of the Trust) filed with the respective carrier, each of which identifies parties holding the right to request and receive policy-related information directly from the carrier;
- Any and all executed Designation of Contacts form and confirmation that each Designee's whereabouts and willingness to be contacted has been confirmed;
- An indication as to whether the insured and their designee(s) are compliant and cooperative such that they can be contacted if necessary (to be indicated on the monthly Active report provided to the Trust by Litai);
- Currently dated verification of coverage (e.g. – within 30 days of sale date) written confirmation from the insurance carrier as to the policy status, values, net death benefit, the existence of liens, assignments or loans and all other policy characteristics; and
- A report setting forth the date and other details related to the most recent contact with each insured or their respective designee, such contact to confirm the insured's residence address and other contact information.