

**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 AUGUST 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”).

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 July 15, 2021 [D.E. 2956].

Progress on Wind Down Steps

The Trustee advises of the following steps taken in furtherance of the wind down of the Trust since the last Status Report:

- The Trustee has continued to receive inquiries through the MBKPT investor portal, email, or phone from Keep Policy Investors, which are typically responded to within 24 hours or less. Since July 15, 2021 and through the date of this Report, the Trustee's personnel have received and responded to nine emails (directly or through the portal), and have received 40 phone calls, for which the Trustee's personnel have spoken to 29 of the investors, left messages on voice mails for ten, and one is pending a further response as of this Report. The communications continue to generally fall into the following groups: (a) inquiries as to whether investors must continue to make premium payments; (b) inquiries as to the percentage that will be distributed to investors; (c) inquiries if the investor's policy has matured or requesting an accounting of premiums paid; (d) inquiries as to whether investors may retain their policies; (e) disappointment about the determination that the policies must be sold; (f) requests for W-9 / W8BEN tax forms; (g) issues logging into the investor portal; (h) a request to send the MBC Trust Wind Down Notice in Spanish;¹ (i) interest in bidding for policies; (j) inquiries as to what happens when the servicer is unable to contact the insured; and (k) inquiries as to transferring of ownership of a policy interest due to an investor's death or divorce.²

¹ The Trustee has had the notice translated into Spanish to accommodate all such requests.

² Several of these, including inquiries as to policy maturities, accounting for premium payments, tax forms, and transfers of ownership, are matters that should routinely be handled by the servicer in the ordinary course.

- The Trustee, with the assistance of his advisors, has continued to review and process the data and document deliveries provided by the Trust's servicer, Litai Assets, LLC ("Litai") after the Trustee filed and pursued a motion for injunctive relief to compel Litai to provide the Trustee with all of the Trust Data and Policy Documents relating to the Keep Policies in a state court action originally filed by Litai. The Trustee and his advisors are engaged in the process of assembling, reviewing, sorting and organizing the available data and documents on the Keep Policies to be placed into a "data room" to be made available to prospective purchasers for due diligence, and then supplementing and enhancing the available information as it changes over time.
- The process of assembling the "data room" has taken longer than anticipated due to the condition of the Trust Data and Policy Documents received from Litai. Litai has provided the Trust with basically two sets of materials: an electronic delivery of the Trust Data maintained in Litai's "PBTS" system, which has been converted to "JSON" format; and copies of policy files, primarily in .pdf format, for the Trust's Keep Policies. Unfortunately, much of the documentation and data that a policy owner, and any purchaser of a policy, would expect a servicer to maintain and have readily available – the policy itself, a recent policy illustration, any life expectancy reports obtained on the insured, the current cash surrender and accumulation value of the policy, estimated premium payments to the termination of the policy, a current in-force illustration, premium payment history and other documents used to evaluate a policy – is either not contained in, input into, or linked to, Litai's "PBTS" system, or was not provided in the data delivery. Moreover, the Policy Documents provided by Litai either are not maintained, or were not provided, in any organized fashion that would enable the Trustee to either identify or associate a particular

document with a particular policy, i.e., they are not named, labeled or organized so that it is possible, other than by manually opening and reviewing each individual file among over 500,000 PDF files, to know either what type of document it is (e.g., a policy illustration, an annual carrier statement, etc.), the policy with which it is associated, or the degree to which a document is current, complete or relevant to the process of evaluating a policy for purchase.

- The Trustee nonetheless expects the process of assembling the data room to be largely completed with respect to the most valuable policies within the next thirty days at which point it can be made available to prospective “stalking horse” bidders for review in order to submit bids.
- The Trustee and his advisors have continued to seek prospective “stalking horse” purchaser candidates for the Trust portfolio, and will, subject to appropriate confidentiality and non-disclosure agreements, share the data room when available, engage in substantive discussion and negotiations with prospective purchasers, and select and move forward with approval of a stalking horse proposal.
- The Trustee, at Litai’s request, re-sent to Litai on August 5, 2021 the Trustee’s comments and feedback on Litai’s revised proposal for an option of providing continued servicing of “100% owned” policies (i.e., policies in which one Keep Policy Investor owns 100% of the beneficial interests in the policy) outside of the Trust. The Trustee awaits Litai’s response to those comments and anticipates a further discussion.
- The Trustee has received and is reviewing another proposal to provide continued servicing of “100% owned” policies.

- The Trustee has not received any further response from Litai regarding his initial concerns with Litai's proposal for servicing "<100% owned" policies (i.e., policies in which multiple investors own beneficial interests in the policy) outside of the Trust, as identified in the Trustee's last Status Report [D.E. 2947]. The Trustee continues to believe, for the reasons expressed therein, that such a proposal is unlikely to be feasible.
- The Trustee has been advised by the U.S. Attorney's office that there may be additional restitution funds available, which could potentially provide an opportunity to defer, for a period of months, Trust liquidation. The Trustee will further update as additional information is available.

GENOVESE JOBLOVE & BATTISTA, P.A.

s/ John Arrastia
John Arrastia
Fla. Bar No. 0072461
Jarrastia@gjb-law.com
100 S.E. Second Street, 44th Floor
Miami, FL 33131
Tel: (305) 349-2300
Fax: (305) 428-8832

KOZYAK TROPIN & THROCKMORTON, LLP
2525 Ponce de Leon, 9th Floor
Coral Gables, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508

By: /s/ David L. Rosendorf
David L. Rosendorf
FL Bar No. 996823
dlr@kttlaw.com

Attorneys for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 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 August 1, 2021 [1]**

3a The amount of Overpayment Balance account [2]	1,314,085
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3b Amount of funds currently available to pay expenses	
Cash / Money Market Accounts	813,460
Fixed Income investments	500,625
Total Overpayment Funds	<u>1,314,085</u>

3c The most recent total amount of monthly operating expenses [3]	286,192
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3d Estimated average run-rate of monthly Trust operating expenses	
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	Aug 2021	Sep - Dec 2021
Operating Expenses [4]	47,400	47,400
Enhanced Oversight	29,000	29,000
Acheron Subsidy [5]	6,050	-
Subtotal	82,450	76,400
Litigation [4]	125,000	62,500
Estimated Average Monthly Run-Rate	<u>207,450</u>	<u>138,900</u>

3e Total amount of money owed to Trustee and other professionals [6]	<u>232,953</u>
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3f Estimated minimum number of policy interests needed to rationalize costs for those interests	150 - 300
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The current number of policies and policy interests the Trust is servicing:

Current # of policies the Trust is servicing [7]	982		
	MBC Victims	Acheron [7]	Total
Total Face Value	51,992,253	56,868,992	108,861,245
HIV	27,399,789	65,892,260	93,292,049
Non-HIV [8]	79,392,042	122,761,252	202,153,294
Total	39.27%	60.73%	
%			

Current number of policy interests the Trust is servicing

MBC Victims	Acheron [7][9]	Total
2,024	731	2,755

Mutual Benefits Keep Policy Trust

As of August 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) As of July 31, 2021 the Trust has a Contingency Loan Receivable balance of \$487,334 per Litai Assets, LLC ("Litai"). Consistent with the Trust's ongoing operations, the Trust anticipates collecting most, if not all, of this balance upon the sale of policy interests and policies.
- 3) July expenses include \$100,000 retainer to Trust's consultant for portfolio sale, Longevity Asset Advisors LLC.
- 4) Budgeted operating expenses and litigation expenses have been revised from prior months based on recent activity.
- 5) 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.
- 6) Adjusted for voluntary 20% holdback of fees for attorneys, accountants and Trustee.
- 7) Includes 2 policies with a combined \$275,000 face value 100%-owned by Acheron. The 2 policies represent the last of Acheron's 100% owned policies to be removed from the Trust. 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.
- 8) MBC Victims' Non-HIV face value was inadvertently reflected as \$27,339,789 rather than \$27,399,789 on the prior month report.
- 9) Some policy interests owned by former Acheron entities Avernum Portfolio Trust, Lorenzo Toni 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.