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 JANUARY 2022 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 December 15, 2021 [D.E. 3050]. In addition, as directed by the Court in its *Order of Instructions for November 19, 2021 Status Conference* [D.E. 3010], the report also includes as Exhibit "B"

historical information for categories 3a-3f of the report from June 2020 through the month of the report.

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 and respond to inquiries through the MBKPT investor portal, email, or phone from Keep Policy Investors. The communications during the past month generally fall into the following groups: (a) inquiries about the process and timing of the sale of the Trust portfolio of policies; and (b) inquiries about the Trustee's notice to investors who hold 100% of the fractional investment interests in a policy to request the transfer of that policy.
- The Trustee has finalized and executed a Securities Intermediary Agreement with Wilmington Trust and is in process of implementing that Agreement.
- The Trustee has provided notice to the Keep Policy Investors who hold 100% of the investment interests in a Keep Policy ("100% Investors") of the opportunity, subject to certain terms and conditions, to request to have the policy transferred to them. On December 21, 2022, the Notice was sent to 190 "100% Investors." Over the past month, the Trust has received 30 inquiries in response to the Notice, and as of the filing of this Status Report, has received only 6 completed Policy Transfer Agreements requesting the transfer of a policy pursuant to the procedures described in the Notice. This represents approximately 3% of the 100% Investors.
- The Trust's consultants expect to be prepared to make the "Data Room" available to prospective "stalking horse" bidders for due diligence by February 1, 2022, despite the

challenges presented by the condition of the Trust Data and Policy Files provided by the Trust's servicer, Litai Assets.

- The Trustee has prepared and expects to file by the end of this week a motion to approve sale and bidding procedures for the sale of the Trust portfolio in connection with Trust liquidation ("Sale Procedures Motion"), which will address (a) the identification of "tranches" for submission of bids; (b) the Trustee's proposed process for parties to qualify to submit a bid; (c) the manner in which bidding will proceed at auction; and (d) the contractual rights of Acheron Capital.There will be a 30-day time period for Keep Policy Investors to object to the Sale Procedures Motion, after which the Trustee requests that the Court consider and rule on the Sale Procedures Motion and any objections, or schedule a hearing to consider objections and then rule.
- The Sale Procedures Motion the Trustee has prepared contemplates that: (a) Acheron Capital will be provided an opportunity to submit an "Acheron Initial Bid" by **March 1, 2022** for some or all of the Keep Policies in which Acheron Capital has an existing investment interest; (b) those policies for which an "Acheron Initial Bid" is submitted will become a separate tranche ("Tranche A") for auction purposes, and the policies for which it has not submitted a bid will become a separate tranche ("Tranche B") for auction purposes; (c) within Tranche A and Tranche B, there will be separate "sub-tranches" for those policies for which the insured is 100+ years old and no additional premium is due, so that separate bids are submitted on such policies to recognize their unique circumstances; (d) the Trustee, following identification of the Tranches, will solicit "stalking horse" bids by **April 1, 2022** for each Tranche, and for the entire portfolio, and will supplement the Sale Procedures Motion with notice of any stalking horse bids selected

by the Trustee; (e) upon approval of the Bidding Procedures and selection of "stalking horse" bids, the Trustee will solicit Qualified Bidders to participate in an auction sale, with a 60 day deadline to complete due diligence and submit a Qualified Bid, and the auction conducted immediately thereafter; (g) at Auction, the Trustee will solicit competing bids for each Tranche, and for the entire portfolio of Keep Policies offered for sale by the Trust; (h) upon the conclusion of the Auction, the Trustee will identify the highest and best bid or bids submitted either for each Tranche, or if higher and better, for the entire portfolio, and request approval of such sale from the Court; (i) the Trustee's proposed Purchase Agreement will provide for the sale to be closed within two business days of the entry of a Sale Approval Order.

- The Trustee has given extensive consideration to the possibility of other "options" for Keep Policy Investors to "keep" their policies rather than proceeding with the sale procedures set forth in the Sale Procedures Motion. As set forth below, the Trustee, in the exercise of his business judgment, has determined that such "options" (1) are inconsistent with the Trust Agreement; (2) are not viable; and (3) are not in the best interests of the Keep Policy Investors. This is discussed further below.

The Trustee's Consideration of "Keep" Options

In considering how to proceed with Trust termination, the Trustee's guidepost has been his fiduciary responsibilities to the Keep Policy Investors, including his responsibility to "administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries." *Fla. Stat.* § 736.0801. The Trust Agreement expressly contemplates and addresses the ultimate termination of the Trust, and expressly directs the manner by which the Trust's primary assets, the "Keep Policies," are to be liquidated:

> This Trust Agreement shall terminate upon the final disposition of all Keep Policies, whether by maturity, sale, surrender, or lapse, and the distribution of all other Trust Assets in accordance with the terms of the Servicing Agreement.

Trust Agreement, D.E. 2540-1 at Section 8.

> [T]he Trustee shall have the following powers and duties: … In the event that the Servicing Agreement is terminated or expires and the continued servicing of the Keep Policies becomes unfeasible, to authorize and direct the sale, surrender, or lapse of the Keep Policies, and to distribute the proceeds, if any, of the Keep Policies upon such sale, surrender or lapse, to the Keep Policy Investors in such manner as the Trustee determines to be appropriate.

Id. at Section 3.1(b)(xvii) (emphasis added).

Here, the Trust Agreement specifies the manner for the Trust's liquidation: through the sale, surrender or lapse of the remaining Keep Policies. Accordingly, while the Trustee's determination of when such liquidation is within his discretion, and the particulars of that process are left to the Trustee's business judgment, the manner of liquidation is expressly set forth in the Trust Agreement.

Parties other than the Keep Policy Investors – Acheron Capital, Ltd., and related entities (the "Acheron Parties") which have purchased fractional interests from the Trust when Keep Policy Investors have forfeited their interests by failing to pay premium and administrative fee obligations, and Litai Assets, LLC ("Litai"), the Trust's servicer – have argued that the Trustee should be required to provide the Keep Policy Investors with "options" to "keep" the policy in which they have invested. The Trustee is also aware that a small number of Keep Policy Investors have requested the opportunity to "keep" policies in which they hold investment interests. The Trustee has addressed these requests on multiple occasions in previous filings, including in the briefing on the original Trust Wind Down Motions, in the Trustee's June 15, 2021 *Wind Down Status Report* [D.E. 2947], in the *Trustee's Response to Investors' Motion for Order Directing Trustee to Offer investors an Option to Keep Their Interest Upon Wind Down* [D.E. 3033], and the

Trustee's Response to Acheron Capital, Ltd.'s Expedited Motion for Order Directing Trustee to (1) Include in Proposed Amendments to Trust Agreement All Policies Where 100% of the Fractional Investors Elect to "Keep" (Including Policy B2146125) and (2) Survey Investors Regarding Their Interest in a "Keep" Option [D.E. 3051].

In a recent Order, the Court has suggested that "[i]f there is a feasible, lawful way for investors to retain their interests post-Trust termination where all of the investors with interests in a given policy agree to do so, the Trustee should further consider and explore such an option." [D.E. 3060, p. 6]. To be clear, the Trustee has given serious and extensive consideration to these requests, but has determined that (1) they are inconsistent with the Trust Agreement's express provisions regarding the manner of liquidation upon Trust termination; (2) they are not viable; and (3) they would likely operate to the detriment of the vast number of Keep Policy Investors who hold fractional investment interests in the Keep Policies who have not made any such request to "keep" the policies in which they hold fractional investment interests.

First: the Trust Agreement is clear as to the manner by which the Trust should be liquidated – through the sale, surrender or lapse of the remaining Keep Policies. Section 8 of the Trust Agreement only identifies four methods of disposition of Keep Policies before the Trust is to be terminated: maturity, sale, surrender or lapse. And if the Trust must be terminated before all the Keep Policies have matured or otherwise been disposed of by any of those means, then Section 3 3.1(b)(xvii) gives the Trustee the discretionary power to authorize and direct the sale, surrender, or lapse of the Keep Policies. Quite simply, there is nothing in the Trust Agreement which requires, authorizes, or even contemplates that the Trustee would create some sort of platform by which investors in fractionalized interests in Keep Policies would retain their interests in the Keep Policies, rather than the Trustee selling, surrendering or lapsing those interests as expressly

provided Section 3.3(1)(b)(xvii). Nor is there anything in the Trust Agreement that contemplates that the Trustee would be required to solicit participation by Keep Policy Investors in some sort of "keep option" on behalf of the Acheron Parties or anyone else.

"A trustee is generally obligated to follow the settlor's true intent and purposes in discharging his/her duties in managing the trust." *Reid v. Temple Judea*, 994 So.2d 1146, 1148 (Fla. 3d DCA 2008). The settlor's intent here is clear: upon Trust liquidation, the remaining Keep Policies are to be sold, surrendered or lapsed. The Trustee's fiduciary duty is to fulfill the directives of the Trust Agreement – not to try to craft some new mechanism not contained in or contemplated by the Trust Agreement that is inconsistent with the directive to sell, surrender or lapse the Keep Policies upon Trust liquidation.

Second: the "keep options" that have been presented to the Trustee are not feasible and the Trustee cannot, consistent with his fiduciary duties, solicit the Keep Policy Investors' participation in them. The Trustee has repeatedly communicated the deficiencies he has identified in those proposals, and those have never been meaningfully addressed. With respect to the Acheron Parties' proposal, the Court made clear that the transfer of control of Keep Policies to a self-interested non-fiduciary was inconsistent with the clear intent of the Trust Agreement:

> "Under Florida law, the polestar of trust interpretation is the settlors' intent." *Littell v. Law Firm of Trinkle, Moody, Swanson, Byrd & Colton*, 345 F. App'x 415, 419 (11th Cir. 2009) (internal quotations and citation omitted). The Trust's structure was intended by the Receiver to continue a standard of fiduciary care that the receivership had been providing to the victims of the fraud. Court-appointed receivers have fiduciary duties. *Alonso v. Weiss*, 932 F.3d 995, 1002-1004 (7th Cir. 2019) (referencing 28 U.S.C. § 959(b) for the proposition that state law supplies the controlling standard of fiduciary care for court-appointed receivers). Likewise, "[a] trustee is held to something stricter than the morals of the market place." *Van Dusen v. Se. First Nat. Bank of Miami*, 478 So. 2d 82, 92 (Fla. 3d DCA 1985) (quoting Justice Cardozo in *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928)). As the Receiver stated to the Court at the time the Court approved the Trust, "we came up with . . . a quasi-receiver giving the investor certain remedies and abilities to come to court if necessary to enforce their rights . . . [a]nd the

> [T]rustee will serve as an ombudsman in essence." (DE 2310 at 11:15-19). The Receiver's description of the Trustee as an ombudsman, however, is not at all equivalent to the ombudsman proposed by Acheron, who Acheron would pay only up to stated cap amounts and who would "be [the] contact person for investor questions and complaints" while Acheron took over servicing responsibility for the policies. (DE 2593-1 at ¶ 6). Under Acheron's plan, the proposed ombudsman, and Acheron itself, would have no fiduciary duty to the Keep Policy Investors. Nor is Court oversight of the ombudsman under Acheron's proposal a sufficient substitute for a structure such as the Trust that facilitates administration of the Keep Policies by a fiduciary. By law, Acheron would be able to conduct itself consistent with "[the] morals of the market place" and put its own interests ahead of the Keep Policy Investors. Thus, the relief requested by Acheron must be denied because the lack of any continued fiduciary duty in the continued administration of Keep Policies directly conflicts with the purpose and terms of the Trust.

[D.E. 2723 at 14-15].

The proposals that have been presented, whether from the Acheron Parties or Litai, continue to suffer from the same fundamental defect of putting the fox in charge of guarding the henhouse, without any fiduciary responsibility to the Keep Policy Investors in connection with the continued management of the Keep Policies. The Trustee's concern with doing so is only heightened by the unresolved concerns as to the relationship between the Acheron Parties and Litai. As the Trustee noted more than half a year ago with regard to the Litai proposal, (a) Litai does not provide for any review of the servicer's performance of its procedures; (b) even if such a review was to be done, the party conducting or supervising the review (an SPV controlled by Litai) would be effectively the same party performing the servicing (Litai); (c) no detail or explanation is provided as to the relationship, rights and remedies as between the SPV, the servicer, and the investors, and (d) no safeguards were provided against conflicts of interest arising from Litai's relationship with the Acheron Parties. [D.E. 2947 at 9-10]. The Trustee is already engaged in litigation with Litai over breaches of its Servicing Agreement that have operated for the benefit of the Acheron Parties, which were only discovered as a result of the Trustee's enhanced oversight over the servicer's performance of its duties, which in turn was triggered by Litai's refusal to

provide complete disclosures of its affiliations with the Acheron Parties as requested by the Trustee and his third-party accountants. *See* D.E. 3033 at 7-8, Ex. "A".

The Trustee's concerns are not assuaged by the possibility of limiting such a "keep" option to only those instances where all of the holders of the fractional investment interests in a policy so request. Among other things, the proposed means of assessing that unanimity are impractical and unfeasible. The Acheron Parties want the Trustee to do a "survey" of nearly 2,000 Keep Policy Investors, in which the Trustee will inquire as to their interest in participating in some undefined, unexplained "option" to "keep" their investment interest, without any detail as to the nature, terms or conditions of that "option." After receiving the responses to that "survey," Acheron Capital will ***then*** disclose the terms and conditions of the option, and will attempt to negotiate the Keep Policy Investors' acceptance of Acheron Capital's proposal to "keep" their interests, presumably by giving them some interest in some investment vehicle controlled by Acheron Capital. The "survey" is meaningless and misleading because Keep Policy Investors are being asked to respond without any information or understanding of the nature of the proposal being suggested.

The proposed "survey" process will also prevent the Trustee from moving forward with a sale process, as it will take months until the "survey" can be conducted, the results obtained, and only then will Acheron Capital commence discussions regarding the terms and conditions of their proposal for Keep Policy Investors to "keep" their interests. Those discussions will take more time, and then some Keep Policy Investors may agree to Acheron Capital's proposal, and others may not. Then it will be necessary to go back once again to re-identify which policies, if any, for which 100% of the holders have agreed to the terms and conditions proposed by Acheron Capital – while also addressing whether the terms and conditions for transfer of the policy are acceptable to the Trustee as well.

In the meantime, the sale process for the portfolio of Keep Policies owned by the Trust would have to remain on hold, because it will not be known which policies will be removed from the sale portfolio as a result of this process until the process is completed. Prospective buyers cannot reasonably be asked to dedicate the time and resources necessary to conduct due diligence without knowing what is going to be available for sale. Undertaking such a process will be detrimental to the interests of all Keep Policy Investors in maximizing the value of the Keep Policies upon Trust termination, because it will hinder and delay the sale process. Further delay of the sale process until this "survey" and negotiation process can be completed will reduce the net proceeds to be realized because the Trust continues to accrue expenses as the process is prolonged, while investors will be required to fund additional premium obligations until a sale can be completed.

Moreover, none of the proposals for preserving the fractional interests of investors in Keep Policies address the inherent securities law problems with such a structure. The Eleventh Circuit Court of Appeals has already clearly held – ***in this case*** – that fractionalized interests in viaticated insurance policies are securities, and that MBC was engaged in the sale of unregistered securities without a registration statement and appropriate disclosures. *S.E.C. v. Mutual Benefits Corp.*, 408 F.3d 737, 744-745 (11th Cir. 2005). As explained in the *Mutual Benefits* case, a "security" includes the catch-all, undefined term "investment contract" *Id.* at 742, citing 15 U.S.C. § 77(b)(a)(1) and 15 U.S.C. § 78(c)(a)(10). The test for determining whether a transaction qualifies as an "investment contract" requires consideration of whether the transaction is a "contract, transaction or scheme" whereby a person invests his money in a "common enterprise" and is "led to expect profits solely from the efforts of the promoter or third party." *Id.* at 742, citing *Sec. & Exch. Comm'n v. W.J. Howey Co.*, 328 U.S. 293, 66 S.Ct. 1100 (1946). In the *Mutual Benefits* decision,

the Eleventh Circuit confirmed that the sale of an investment in a viatical contract amounts to a "classic investment contract" which constitutes a "security" under applicable law, because investors were being offered and sold an investment in a common enterprise in which they were promised profits that were dependent on the pre- and post-purchase managerial efforts of the promoters. *Id.* at 744-45.

In a subsequent decision, the *Mutual Benefits* case was again applied to determine that investments in unregistered fractional interests in life insurance settlement contracts were "investment contracts" subject to federal securities laws because the investors shared the promise of profits and the risk of loss, and their profits were tied to the offeror's efforts. *Sec. & Exch. Comm'n v. Torchia*, 183 F.Supp.3d 1291 (N.D. Ga. 2016). In rejecting the defendants' argument that the investments were not securities because the policies had already been identified and acquired before the investor ever placed their investment, and thus profits were tied to market forces and not the efforts of the offeror, the court specifically looked to the offeror's "ongoing efforts of monitoring, making premium payments, and facilitating collection of the benefits upon maturity." *Id.* at 1308. Those are precisely the activities that either Acheron Capital or Litai (or whatever entity they propose to use to make this offering to the Keep Policy Investors) will be responsible for as well.[1]

Here, as when this case commenced, the continued maintenance of fractional interests means that the realization of profit is dependent on the efforts of the owner and servicer to manage

[1] As noted in *Torchia*, 183 F. Supp. 3d at 1309, fn. 15, while other courts have described such functions as "ministerial efforts" which do not convert life settlements into investment contracts, *see Sec. & Exch. Comm'n v. Life Partners, Inc.*, 87 F.3d 536 (D.C. Cir. 1996), the Eleventh Circuit in *Mutual Benefits* expressly "decline[d] to adopt the test established by the *Life Partners* court." *Mutual Benefits,* 408 F.3d at 743.

and maintain the policy. Offering interests in some SPV,[2] whether created by Litai or the Acheron Parties, by which Keep Policy Investors will hold investments in fractional interests in viaticated insurance policies to be managed by the SPV, would bring us full circle back to exactly where this case started: the unlawful sale of unregistered securities. The Trustee is in no position to ensure that such a process would not violate securities laws, and the Trustee should not be put in the position of having to "offer" such an "option." Nor, for that matter, should the Trustee be put in the position of having to obtain his own securities opinion to assuage these concerns, when he is not the one seeking to propose such an "option" or arguing that it should be offered to the Keep Policy Investors.

The Trustee in prior filings indicated that he was considering the possibility of providing Keep Policy Investors who hold a fractional interest in a policy with the opportunity to submit a bid for the particular policy in which they already have an interest, and then putting those policies up for auction individually. After further consideration, the Trustee has determined that this is not a viable or useful option. First, it has not received support among the small but vocal investors

[2] The use of some sort of "SPV" as the vehicle for the investment does not resolve the issue either. The Eleventh Circuit has made clear that "investment contract" is to be interpreted broadly, and "economic reality is to govern over form." *Sec. & Exch. Comm'n v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir. 2007), citing *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981). "An interest does not fall outside the definition of investment contract merely because the purchaser has some nominal involvement with the operation of the business. Rather, 'the focus is on the dependency of the investor on the entrepreneurial or managerial skills of a promoter or other party.'" *Id.* at 755. The considerations include the extent of the power or control that can be exercised by the investor over the profitability of the investment, the extent of the experience, knowledge and ability of the investor to intelligently exercise such powers, and the dependence of the investor on the managerial ability of the promoter or manager. *Id.*, citing *Williamson*, 645 F.2d at 423. Any of those factors renders an investment in an entity an investment contract. *Merchant Capital*, 483 F.3d at 755, citing *Williamson*, 645 F.2d at 424. Here, the control that the offeror would exercise over the Keep Policies, the relative lack of knowledge, sophistication and experience of the Keep Policy Investors, and the reliance of the Keep Policy Investors on the offeror to perform the ongoing management of the Keep Policies all support a conclusion that such an offering would be an "investment contract" subject to federal securities laws.

who have participated in this case to request a "keep" option, who instead appear to be fixed in their support of the proposals by Acheron and Litai. Second, the Trustee remains concerned that the Keep Policy Investors generally do not have the sophistication, expertise or financial acumen to appropriately consider and evaluate the additional risk they would be assuming by taking ownership of the entire policy, rather than the fractional interest which they were fraudulently induced into investing in by Mutual Benefits. Third, the further division of the Keep Policy portfolio into multiple separate policies will have a detrimental effect on the sale process, as institutional bidders will be reluctant to engage in individualized underwriting of and bidding on particular policies, and based on consultations with the Trust's advisor, will almost certainly reduce the bidding participant pool, which in turn will depress the value realized from sale Fourth, such a process would have a negative effect on the other investors in fractional interests in such a policy, since the purchase price at auction would likely be detrimentally affected by adopting such a process. In essence, such a process would produce an advantage for a particular investor who wished to make a bid for a particular policy, at the expense of the other fractional investors in the policy. And finally, the Trustee believes – based on the results of the process undertaken for retention of policies held by current 100% Investors, as described below – that the substantial majority of Keep Policy Investors are ***not*** concerned with having an option to "keep" their interest, but are content with seeing the Keep Policies sold and the Trust liquidated in accordance with the provisions of the Trust Agreement, thereby liquidating their investment and terminating their obligation to continue funding the premiums and administrative fees.

As the Court is aware, for Keep Policy Investors who hold 100% of the investment interests in a policy, the Trustee has sought approval of a process whereby such investors – subject to satisfaction of certain conditions – may request that ownership of the policy be transferred to

them.[3] The notice of the opportunity to exercise that option was sent to the 190 100% Investors on December 21, 2021, with directions that all the conditions set forth by the Trustee be satisfied by January 21, 2022. Since issuing the notice, the Trustee's personnel have received only 30 inquiries regarding the notice, and have received only 6 completed requests for transfer of a 100% owned policy. The very low response rate – approximately 3% of the 100% Investors – signifies to the Trustee that the desire among Keep Policy Investors to "keep" their interests is substantially overstated by the handful of parties who have been actively advocating in this case for such an option, and that their interests are not in fact aligned with the substantial majority of the Keep Policy Investors. While undoubtedly there are a number of investors who may wish to "keep" their investment in the hope that the policy will soon mature, the response to the 100% Investor notice indicates that they are only a small fraction of the Keep Policy Investors.

It is unfair and unreasonable for the process of Trust liquidation to be hamstrung and delayed for further consideration of "options" to "keep" interests that (a) are not provided in or contemplated by the Trust Agreement; (b) are inconsistent with the express terms of the Trust Agreement regarding Trust liquidation; (c) are not viable and will substantially interfere with the

[3] It has been argued that the Trustee's agreement to provide 100% Investors with this option is somehow a breach of the Trustee's fiduciary duties to other Keep Policy Investors. Under the Florida Trust Code, where, as here, there are multiple beneficiaries of a trust, the Trustee's responsibility is to "act impartially in administering the trust property, giving due regard to the beneficiaries' respective interests." *Fla. Stat.* § 736.0803. That does not mean that every beneficiary will be treated identically. It means that the Trustee must act impartially and must consider each beneficiaries' interests. The Trustee's decision to offer the 100% Investors an option to have the policy transferred to them is based on the significantly different circumstances between 100% ownership of the interests and fractional ownership. The 100% Investor will be responsible for managing their own investment. Accordingly, the transfer does not implicate the same securities concerns that are raised by the fractional interest proposals, under which the Keep Policy Investors holding fractional interests would be reliant on the efforts of others to realize profits on their investments. The decision to permit such a transfer for a 100% Investor also does not in any way implicate the interests of other fractional investors in a policy.

implementation and completion of a sale process to the detriment of all of the Keep Policy Investors; and (d) do not appear to be of interest to a substantial majority of the Keep Policy Investors.

Accordingly, the Trustee has determined in his business judgment that the appropriate method for proceeding with the Trust's liquidation is through the sale of the remaining Keep Policies pursuant to the procedures set forth in his Sale Procedures Motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on January 18, 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
David L. Rosendorf

Mutual Benefits Keep Policy Trust

As of January 1, 2021 [1]

3a	The amount of Overpayment Balance account [2]	504,663

3b	Amount of funds currently available to pay expenses [3]	
	Cash / Money Market Accounts	504,663
	Total Overpayment Funds	504,663

3c	The most recent total amount of monthly operating expenses paid [4]	6,658

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

	Jan 2022	Feb 2022
Operating Expenses	41,300	41,300
Enhanced Oversight	17,400	17,400
Subtotal	58,700	58,700
Litigation	72,000	60,000
Estimated Average Monthly Run-Rate	130,700	118,700

3e	Total amount of money owed to Trustee and other professionals [5]	514,571

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 955

Total Face Value	MBC Victims	Acheron	Total
HIV	50,929,989	56,028,725	106,958,714
Non-HIV	23,978,288	60,894,318	84,872,606
Total	74,908,277	116,923,043	191,831,320
%	39.05%	60.95%	

Current number of policy interests the Trust is servicing

MBC Victims	Acheron	Total
1,931	712	2,643

Mutual Benefits Keep Policy Trust

As of January 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) During the month of November, the Trust advanced approximately $15,000 in contingency loans and recovered approximately $61 contingency loans receivable. As of December 31, 2021 the Trust had a Contingency Loan Receivable balance of $603,971 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) All investors have been invoiced the $400 Additional Administrative Fee per policy interest. Those such fees attributable to Keep Policy Investors will be funded from the MBC Restitution Account into a separate account in the coming week. Other investor funds billed will also be deposited into the separate account upon receipt.
4) Trust December expense disbursements in the amount of $98,050 were paid in January 2022.
5) Professional fees presented in the current report include fees incurred for the reporting period as well as the cumulative fees holdback. As of January 1, 2022 such professional fee holdbacks were increased from 20% to 40%. Cumulative holdbacks total $423,000 as of this filing.

Mutual Benefits Keep Policy Trust

Historical Policies and Interests as of 01 2022

	As of 06/01/20		As of 07/01/20		As of 08/01/20		As of 09/01/20	
Number of Policies the Trust is Servicing	1,334		1,329		1,327		1,319	
Face Value								
MBC Victims								
HIV	55,342,910		55,009,470		54,880,095		54,621,535	
Non-Hiv	34,869,728		34,795,054		34,718,088		34,152,523	
Total MBC Victims Face Value	90,212,638	*33.45%*	89,804,524	*33.32%*	89,598,184	*33.30%*	88,774,058	*33.72%*
Acheron								
HIV	79,900,526		80,081,430		79,767,441		79,343,431	
Non-Hiv	99,559,113		99,633,802		99,710,764		95,153,342	
Total Acheron Face Value	179,459,639	*66.55%*	179,715,232	*66.68%*	179,478,205	*66.70%*	174,496,773	*66.28%*
Total Face Value	269,672,277	*100.00%*	269,519,755	*100.00%*	269,076,389	*100.00%*	263,270,831	*100.00%*
Number of Policy Interests the Trust is Servicing								
Current								
MBC Victims	2,310		2,265		2,259		2,238	
Acheron	1,587		1,568		1,525		1,453	
Total	3,897		3,833		3,784		3,691	

The June 2021 Report also reflected estimated policy interests after the merger of Acheron-owned policy interests. This estimated post-merger amount was not separately reported on subsequent reports to the Court as the merging of the Acheron-owned interests had commenced and was ongoing when the monthly reporting to the Court commenced with the December 2020 report.

Mutual Benefits Keep Policy Trust

Historical Policies and Interests as of 01 2022

	As of 10/01/20		As of 11/01/20		As of 12/01/20		As of 01/01/21	
Number of Policies the Trust is Servicing	1,316		1,313		1,307		1,306	
Face Value								
MBC Victims								
HIV	54,470,413		54,337,043		53,590,504		53,507,470	
Non-Hiv	33,828,866		33,569,375		32,649,946		32,179,750	
Total MBC Victims Face Value	88,299,279	*33.91%*	87,906,418	*33.83%*	86,240,450	*33.29%*	85,687,220	*33.24%*
Acheron								
HIV	79,394,557		79,417,930		79,394,129		79,412,325	
Non-Hiv	92,677,052		92,532,216		93,451,663		92,671,866	
Total Acheron Face Value	172,071,608	*66.09%*	171,950,146	*66.17%*	172,845,792	*66.71%*	172,084,191	*66.76%*
Total Face Value	260,370,888	*100.00%*	259,856,564	*100.00%*	259,086,242	*100.00%*	257,771,411	*100.00%*
Number of Policy Interests the Trust is Servicing								
Current								
MBC Victims	2,212		2,207		2,188		2,183	
Acheron	1,414		1,350		1,279		1,260	
Total	3,626		3,557		3,467		3,443	

Mutual Benefits Keep Policy Trust

Historical Policies and Interests as of 01 2022

	As of 02/01/21		As of 03/01/21		As of 04/01/21		As of 05/01/21	
Number of Policies the Trust is Servicing	1,304		1,294		1,289		1,254	
Face Value								
MBC Victims								
HIV	53,504,016		53,400,402		52,986,094		52,726,399	
Non-Hiv	32,064,940		29,436,321		28,866,985		28,788,985	
Total MBC Victims Face Value	85,568,956	*34.00%*	82,836,723	*34.72%*	81,853,079	*34.54%*	81,515,384	*34.76%*
Acheron								
HIV	79,335,863		78,981,114		79,545,911		77,516,143	
Non-Hiv	86,770,820		76,799,508		75,584,654		75,507,657	
Total Acheron Face Value	166,106,683	*66.00%*	155,780,622	*65.28%*	155,130,565	*65.46%*	153,023,800	*65.24%*
Total Face Value	251,675,639	*100.00%*	238,617,345	*100.00%*	236,983,644	*100.00%*	234,539,184	*100.00%*
Number of Policy Interests the Trust is Servicing								
Current								
MBC Victims	2,175		2,138		2,089		2,083	
Acheron	1,210		1,080		1,064		1,006	
Total	3,385		3,218		3,153		3,089	

Mutual Benefits Keep Policy Trust

Historical Policies and Interests as of 01 2022

	As of 06/01/21		As of 07/01/21		As of 08/01/21		As of 09/01/21	
Number of Policies the Trust is Servicing	1,065		982		982		974	
Face Value								
MBC Victims								
HIV	52,131,891		51,992,253		51,992,253		51,633,015	
Non-Hiv	28,187,699		27,339,789		27,399,789		26,661,997	
Total MBC Victims Face Value	80,319,590	*37.83%*	79,332,042	*39.26%*	79,392,042	*39.27%*	78,295,012	*39.86%*
Acheron								
HIV	62,539,623		56,868,992		56,868,992		56,280,354	
Non-Hiv	69,447,340		65,892,260		65,892,260		61,835,609	
Total Acheron Face Value	131,986,963	*62.17%*	122,761,252	*60.74%*	122,761,252	*60.73%*	118,115,963	*60.14%*
Total Face Value	212,306,553	*100.00%*	202,093,294	*100.00%*	202,153,294	*100.00%*	196,410,975	*100.00%*
Number of Policy Interests the Trust is Servicing								
Current								
MBC Victims	2,055		2,024		2,024		1,990	
Acheron	815		731		731		724	
Total	2,870		2,755		2,755		2,714	

Mutual Benefits Keep Policy Trust

Historical Policies and Interests as of 01 2022

	As of 10/01/21		As of 11/01/21		As of 12/01/21		As of 01/01/22	
Number of Policies the Trust is Servicing	969		964		961		955	
Face Value								
MBC Victims								
HIV	51,336,208		51,187,176		51,165,770		50,929,989	
Non-Hiv	25,151,939		25,026,939		25,001,439		23,978,288	
Total MBC Victims Face Value	76,488,147	*39.61%*	76,214,115	*39.60%*	76,167,209	*39.59%*	74,908,277	*39.05%*
Acheron								
HIV	56,519,441		56,152,441		56,151,841		56,028,725	
Non-Hiv	60,095,667		60,095,667		60,075,572		60,894,318	
Total Acheron Face Value	116,615,108	*60.39%*	116,248,108	*60.40%*	116,227,413	*60.41%*	116,923,043	*60.95%*
Total Face Value	193,103,255	*100.00%*	192,462,223	*100.00%*	192,394,622	*100.00%*	191,831,320	*100.00%*
Number of Policy Interests the Trust is Servicing								
Current								
MBC Victims	1,967		1,947		1,944		1,931	
Acheron	721		718		717		712	
Total	2,688		2,665		2,661		2,643	