

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 JULY 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 June 15, 2021 [D.E. 2947].

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 June 15, 2021 and through the date of this Report, the Trustee's personnel have received 20 emails (directly or through the portal), of which 18 have been responded to and 2 are pending response, and have received 45 calls, for which the Trustee's personnel have spoken to 33 of the investors, left messages on voice mails for 9, attempted to return the call but the phone number does not connect using the number provided for 1, and 2 are pending response as of this Report. The communications continue to generally fall into the following groups: (a) inquiries as to what next steps, if any, investors are required to presently take; (b) inquiries as to whether investors must continue to make premium payments; (c) inquiries as to the percentage that will be distributed to investors; (d) inquiries if the investor's policy has matured or requesting an accounting of premiums paid; (e) inquiries as to whether investors may retain their policies; (f) disappointment about the determination that the policies must be sold; (g) requests for W-9 / W8BEN tax forms; (h) issues logging into the investor portal; and (i) requests to send the MBC Trust Wind Down Notice in Spanish.¹
- The Trustee has executed an engagement agreement with Longevity Asset Advisors, LLC, a life settlement industry expert with extensive experience, to manage and conduct a sale process for the Trust portfolio.

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

- The Trustee and his advisor have begun discussions with prospective “stalking horse” purchasers for the Trust portfolio and have had several expressions of interest.
- The Trustee has continued to review and analyze data 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 relating to the Keep Policies in a state court action originally filed by Litai. The Trustee is in process of reviewing the data delivery to evaluate its functionality, utility and completeness, to compare it to the current lists of active policies and investors which Litai provides the Trustee on a monthly basis, and to reconcile discrepancies in the data. More recently Litai provided a subsequent “JSON” data delivery on July 7, 2021, and also delivered Policy Documents which, instead of merely providing any updated files since the last data delivery, provided the entire data set of over 500,000 files again. The Trustee requested that Litai provide only updated Policy Documents on a monthly basis. Litai provided what it advised were the updated Policy Documents for June 2021 on July 12, 2021, which the Trustee is in process of reviewing.
- The Trustee, with the assistance of Longevity, is in process of assembling the available information on the Keep Policies into a “data room” to be made available to prospective purchasers for due diligence, and supplementing and enhancing the available data.
- The Trustee has received a revised proposal from Litai for the 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, and earlier this week provided further comments and feedback to Litai on the proposed terms and

conditions of such a servicing arrangement. The Trustee awaits Litai's response to those comments and anticipates a further discussion.

- 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.

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Attorneys for Trustee

CERTIFICATE OF SERVICE

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

3a The amount of Overpayment Balance account ^[2] 1,562,939

3b Amount of funds currently available to pay expenses

Cash / Money Market Accounts	1,061,654
Fixed Income investments	501,285
Total Overpayment Funds	<u>1,562,939</u>

3c The most recent total amount of monthly operating expenses ^[3] 315,742

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

	Jul 2021	Aug 2021	Sep - Dec 2021
Operating Expenses ^[4]	167,400	67,400	67,400
Enhanced Oversight	29,000	29,000	29,000
Acheron Subsidy ^[5]	12,100	12,100	-
Subtotal	<u>208,500</u>	<u>108,500</u>	<u>96,400</u>
Litigation ^[6]	95,000	95,000	48,750
Estimated Average Monthly Run-Rate	<u>303,500</u>	<u>203,500</u>	<u>145,150</u>

3e Total amount of money owed to Trustee and other professionals ^{[4] [7]} 267,127

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 ^[8]			982
Total Face Value	MBC Victims	Acheron ^[8]	Total
HIV	51,992,253	56,868,992	108,861,245
Non-HIV	27,339,789	65,892,260	93,232,049
Total	<u>79,332,042</u>	<u>122,761,252</u>	<u>202,093,294</u>
%	39.26%	60.74%	
Current number of policy interests the Trust is servicing	MBC Victims	Acheron ^{[8] [9]}	Total
	2,024	731	2,755

Mutual Benefits Keep Policy Trust

As of July 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 Overpayment Balance was also reduced by contingency funds provided by the Trust to keep policies active in the ordinary course. While such advances are routine practice for the Trust, one policy required a larger than anticipated advance. Specifically, Policy 99-7928 had approximately \$154,000 shortfall funds from investors for the current billing cycle resulting from Litai's underestimation of premiums billed to investors. This shortfall was funded from the contingency account to keep the policy active. Such advances are normally recovered from investors in the upcoming billing cycle.
- 3) June expenses were greater than average due to significant legal expenditures incurred on various litigation matters involving Acheron and Litai.
- 4) Includes retainer to Trust's consultant for portfolio sale, Longevity Asset Advisors LLC.
- 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) Estimated litigation expenditures for July and August 2021 revised from prior reports in consideration of recent litigation expenditures incurred by the Trust, as well as continuing and new litigation matters being pursued against the Trustee by Acheron (amounts adjusted for voluntary 20% holdback of fees by attorneys). Estimated litigation expenditures for September - December 2021 are lower than the immediately preceding months in anticipation that some of the current matters may be resolved.
- 7) Adjusted for voluntary 20% holdback of fees for attorneys, accountants and Trustee.
- 8) 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.
- 9) 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.