

**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 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 June 15, 2022 [D.E. 3141]. 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:

- On June 29, 2022, the Court entered an Order (“Sale Procedures Order”) [D.E. 3142] adopting the Report and Recommendation [D.E. 3130] to approve, with minor modifications, the Trustee’s *Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination* (“Sale Procedures Motion”) [D.E. 3065].
- Consistent with the Sale Procedures Order, on July 8, 2022 the Trustee filed a Notice of Filing Regarding Stalking Horse Bids and Auction [D.E. 3147] setting forth the Trustee’s selection of “stalking horse” bids for “Tranche A” and “Tranche A-1” of the Trust policies to be sold at auction. The amount of the bid for “Tranche A” is \$16,500,000, and the amount of the bid for “Tranche A-1” is \$10,500,000. The Notice also reported the Trustee’s determination to not select a “stalking horse” bid for “Tranche B” based on his determination that the “stalking horse” offers received were not appropriate in relation to the anticipated value of the “Tranche B,” policies, and that the Trustee intends to proceed with an open auction for “Tranche B,” subject to a potential minimum “floor” for bidding.¹
- The Notice further advised that the Trustee intends to conduct the auction authorized by the Sale Procedures Order on September 15, 2022 and set forth the schedule and requirements for qualification as a prospective bidder, submission of preliminary bids,

¹ A similar notice had been filed earlier on May 26, 2022 [D.E. 3140].

identification of qualifying bidders, selection of successful bids, and filing of a Motion for Sale Approval Order. Additional details are contained in the Notice.

- The Court has entered a paperless order [D.E. 3148] scheduling a hearing on approval of the sale for September 29, 2022.
- The “data room” for prospective bidders was reopened on July 8, 2022. The Trust’s sales advisors have identified over 80 potential bidders who may have interest in and capacity to participate in bidding at the auction. There are 8 other entities (aside from the “stalking horse” purchaser) who have already executed Non-Disclosure Agreements and satisfied the additional initial qualifications and have been granted access to the data room. In addition to information on the policies, the data room includes the stalking horse purchase agreements, the summary of bidding procedures included in the Trustee’s Notice of Filing, the Court’s Report and Recommendation and Order approving the Sale Procedures Motion, and other relevant documents.
- Acheron Capital, Ltd. has filed a Notice of Appeal of the Sale Procedures Order and has moved for a stay pending appeal. The Trustee has filed a motion to dismiss Acheron’s appeal consistent with the Eleventh Circuit Court of Appeals’ Opinion [D.E. 3095] dismissing Acheron Capital’s earlier appeal of this Court’s *Order Adopting Magistrate Judge’s Report and Recommendation and Granting Trustee’s Motion for Instructions* [D.E. 2967], in which the Eleventh Circuit ruled that “Only after the district court approves the sale will there be a final decision. At that point, all disputes about the sale will be ‘concluded and closed,’ ... and the Instructions Order will be capable of immediate execution.” (Opinion p. 12). The Eleventh Circuit went on to explain that “Acheron will then be entitled to appeal and ‘combine in one review all stages of the [wind-down]

proceeding,’ including the Instructions Order. ... The contrary conclusion – that the Instructions Order is a final decision – would ‘invite[] litigants to appeal every ... order] leading up to a sale, ‘even if other requests remain outstanding, resulting in a proliferation of piecemeal or repetitious appeals.’” *Id.*

- 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 have involved requested for updates on the status of the sale and queries about payment of annual premiums. The Trustee has been engaged in ongoing discussions with its servicer, Litai Assets, LLC, regarding the managing of the premium collection and payment process in light of the anticipated sale.

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CERTIFICATE OF SERVICE

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