

**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 MARCH 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 in accordance with the Court’s Order Setting Video Status Conference [D.E. 2868] scheduling a status conference for March 19, 2021. Attached hereto is an updated report of the information provided to the Court since the Trustee’s last Status Report was filed on February 15, 2021 [D.E. 2869].

Background

When the Trustee first filed his Trustee’s Motion to Authorize the Initiation of Trust Wind Down and Termination (“Trustee Wind Down Motion”) [D.E. 2609]¹ over a year ago, the Trustee anticipated that the timeline for the wind-down and eventual termination of the Trust was expected to take from 18 to 36 months. *Id.* at ¶13. The steps the Trustee proposed to take were:

(a) after Court approval, to advise the Victims and other investors of the intent to wind down and terminate the Trust;

(b) continue to obtain life expected reports for selected policies;

(c) consider engagement of industry experts to assess baseline pricing expectations;

(d) commence soliciting offers for the policies from interested purchasers, to be followed by a sale of the policies and wind-down of Trust operations;

(e) consider and evaluate options for packaging of the policies for sale.

Id. at ¶23.²

The Trustee Wind Down Motion advised that the Trustee anticipated that termination would involve “the sale of all policies (rather than fractional policy interests) remaining in the Trust at the time of termination,” and that the sale of the entire policies was consistent with the express contemplation of the Trust Agreement and the goal of maximizing the value of the policies.

Id. at ¶¶16-19.

¹ The Trustee later filed an amended motion on April 10, 2020 [D.E. 2640].

² The Trustee also indicated an intention to consider the possibility of providing an option to investors to sell their interests before Trust termination. *Id.* at ¶26. However, such interim dispositions were not encompassed within the existing servicing agreement and would require fresh negotiations regarding servicing. D.E. 2723, p. 20.

The Trustee recognized that he would have to continue to evaluate the date for Trust termination, including “factors that might accelerate the need to terminate the Trust.” *Id.* at ¶21. The Trustee also advised that he would recommend and seek approval from the Court as to the form of the sale of the policies, whether there was a way for Policy Investors to retain their interests upon such a sale, and how sale proceeds should be allocated. *Id.* at ¶22.

On July 27, 2020, the Court entered a Report and Recommendation [D.E. 2723] granting the Trustee Wind Down Motion and denying a motion by Acheron Capital, Ltd. [D.E. 2580] which sought to compel the immediate dissolution of the Trust, to allow Acheron to preserve its fractional interests in the Trust Policies, transfer ownership of the Trust Policies to Acheron, and give the Keep Policy Investors the option of either “tagging along” with Acheron as the owner, or having their interests purchased by Acheron at a fixed price (5% of face value for HIV policies, 7.5% for non-HIV policies).

The Report and Recommendation noted, among other things, that the Trust Agreement expressly addressed the timing of Trust termination, and the power of the Trustee to sell the Keep Policies in connection with termination:

Here, the governing trust instrument provides that “[the] 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.” (DE 2540-1 at § 8). Furthermore, the Trust Agreement gives power to the Trustee to “authorize and direct the sale, surrender, or lapse of the Keep Policies” and thus terminate the Trust under circumstances where continued servicing of the Keep Policies becomes unfeasible. *Id.* at § 3.1(b)(xvii).

D.E. 2723 at p. 12. The Court further noted that the Trust Agreement “expressly provides the Trustee with broad powers to take actions ‘that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Trust’ including those necessary to carry out the Trust’s

termination” and that “Nothing in the Trustee’s Amended Wind Down Motion is inconsistent with the broad powers that the Trust Agreement confers on the Trustee.” *Id.* at pp. 21-22.

On November 16, 2020, the Court entered an Order adopting the Report and Recommendation. [D.E. 2825]. In doing so, the Court specifically noted, and rejected, Acheron’s argument that the Court should not authorize the sale of the whole Keep Policies (rather than fractional interests) upon Trust termination:

Lastly, Acheron objects to the Report and Recommendation to the extent it addresses the possibility of future sales of whole Keep Policies. As noted by the Magistrate Judge, the March 2015 Agreement (D.E. 2500-2 at § 4) allows the Trustee to sell whole policies if he is liquidating the Trust or selling the entire portfolio of policies. Section 4 provides that “[i]n the event of such a sale, Acheron will have the right to bid upon any sale of a policy in which it has an interest and the right to top any bid submitted by another party.” The Court does not find the Magistrate Judge erred in this statement contained in the March 2015 Agreement.

Id. at p. 5.

Trustee’s Current Assessment of Wind Down Timeline

Since the Wind Down Order was entered, the Trustee has provided monthly updates regarding the status of the Trust and the steps taken in connection with preparation for the wind down. In the last report filed on February 15, 2021, and at the status conference which preceded it, the Trustee advised that he has been engaged in an ongoing and continuous process of evaluating the Trust’s sources and uses of funds and the projected timeline for Trust wind down and termination and would be providing an updated timeline and more detailed proposals for Trust termination with this report.

Over a year has now passed since the Trustee Wind Down Motion was first filed. During that time period, and continuing to date, a number of factors have combined to reduce the funds available to fund the Trust’s operations and consequently to accelerate the projected timeline for Trust wind down. First and foremost, ongoing litigation expenses as a result of litigation

commenced by the Acheron Entities, and objections by the Acheron Entities and Litai to Trustee efforts to secure the Trust's data and to secure appropriate servicing arrangements for the Trust, have continued and indeed increased, and appear to show no signs of abating. In addition, the Acheron Entities repeatedly have refused to pay the prices they have historically paid for dispositions of "forfeited" policy interests, which has reduced the funds that have historically replenished the "Overpayment Balance" from which Trust expenses including the Administrative Fee Credit are paid. And finally, the rate of defaults and the amount of policy interests that have been available for sale as a result of "forfeitures" by Keep Policy Investors has substantially decreased over the past several dispositions, which again has the effect of reducing the funds available to replenish the Overpayment Balance.

As a result, the Trustee now anticipates that the Trustee's sale of the Keep Policies in connection with the Trust wind-down should occur by the *fourth quarter of 2021* in order to avoid the prospect of having to substantially increase the Administrative Fee that would be payable by the Keep Policy Investors in order to continue to have the Trust maintain the Keep Policies for their benefit.³

Steps to be Taken

In light of the updated timeline, the Trustee has been in process of, and plans to take, the following steps to effectuate and implement the liquidation of the Trust's Keep Policies:

³ In light of the updated timeline for Trust wind down, the Trustee has decided to discontinue the Administrative Fee Credit paid from the Overpayment Balance, since the remaining Restitution Funds which have been earmarked to be used for the benefit of the Keep Policy Investors (and which have been being used to subsidize the portion of the Administrative Fee not paid from the Administrative Fee Credit) are anticipated to be sufficient to pay the full amount of the Administrative Fee over the projected remaining time period until the Keep Policies are liquidated. This has the effect of (1) preserving Trust funds; (2) ensuring that the Restitution Funds are used for the benefit of the original victims of the fraud; and (3) continuing to have Litai receive the same servicing fee.

- Notify all Keep Policy Investors (“KPIs”) of the Trust’s intent to sell the portfolio and subsequently wind-down the Trust and distribute net proceeds (after expenses) to the beneficial owners of the policy interests. Notifications will be provided by mail, email and notification posted on the Trust’s website.
- Engage third-party professionals to field inquiries from existing Keep Policy Investors.
- In conjunction with notification to KPIs, provide a dedicated line of communication (phone, email and existing website) for KPI’s to make any inquiries as well as information KPIs might need in the event they wish to object to the plan.
- Consider the necessity and extent of obtaining information on insureds in consultation with industry experts for medical and health status of insureds in Trust’s determination of maximizing sale value.⁴
- Continue efforts to obtain Life Expectancy Reports for selected policies as advised by industry experts retained on behalf of the Trust.
- Obtain from Servicer data and documentation for each policy to be provided to prospective purchasers which generally includes: a current in-force policy illustration, historical annual statements issued by the carrier, complete premium payment history, future payment streams, current verification of coverage (including current premium, last premium paid, date last premium paid, and current cash surrender value), medical records, and any prior life expectancy reports.
- Prepare all available underlying policy documentation for review by prospective purchasers.
- Migrate the policies and underlying required policy documentation to a securities transfer intermediary to facilitate ultimate transfer of the policies to the auction buyer once sold.⁵
- Engage third-party professionals to evaluate the most cost-effective and expeditious approach of providing administrative support to the auction process as well as to manage the sale process from inception to completion including, but not limited to: prospective buyer outreach and marketing, population and

⁴ The Trustee is advised that policy purchasers typically request current HIPAA release forms signed by insureds. The absence of such forms could negatively impact the portfolio sale price. The cost of obtaining these forms is anticipated to be manageable and can be offset from sale proceeds to the extent necessary.

⁵ The migration will be made solely with respect to the policy owner’s name as recognized by carriers. At no point will the Trustee relinquish any control and dominion over the Keep Policy portfolio between the migration and the portfolio sale.

administration of data room, fielding prospective bidder and investor inquiries, and advising on optimal auction processes.

- Preparation and consideration of budget elements relating to sale process.
- Preparation of narrative and detailed checklists encompassing the auction process and specific procedures.
- Invite and consider: 1) potential stalking horse bidders, 2) bid protection (break-up fee), and 3) whether to accept credit bids from existing investors and appropriate methodology for valuing such a credit bid.
- Consideration and determination of solicitation of bids for: the entire portfolio, two tranches (HIV+ and Non-HIV), or multiple tranches with a goal of optimizing sales price.
- Preparation of appropriate legal documentation for sale, transfer and closing.
- Consideration of engaging third-party actuarial firm to advise Trust on reasonableness of sale proceed allocations as needed.
- Distribute net sale proceeds after expenses of sale to investors.

The timeline for which each of these steps is anticipated to be completed is:

Action	Time to Completion
Notify all KPI's of portfolio sale and establish channels of communication with KPI's	30 days
Consideration of obtaining medical and health status of insureds	30 days
Obtain policy data and documentation from Servicer to be provided to prospective purchasers	60 days
Continue obtaining life expectancy reports for selected policies	120 days
Assemble, organize and prepare all policy documentation in data room for review by prospective purchasers	150 days
Transfer policies to securities intermediary	150 days
Determine sale process budget	150 days
Auction process narrative and checklists	150 days
Stalking horse bidder consideration and negotiation	150 days
Determine bid solicitation format	150 days
Prepare legal documents	150 days
Portfolio auction	180 days
Actuarial allocation of sale proceeds, if applicable	195 days
Distribute sale proceeds to investors	TBD

The Trustee – subject to the Court’s input – intends to seek Court approval of the following steps in this process: (a) approval of the notice to Keep Policy Investors; (b) approval of any “stalking horse” purchase offer and bidding / sale procedures; (c) approval of the sale after auction; and (d) approval of the proposed means of distributing the net sale proceeds.

The Trustee negotiated a new servicing agreement and selected a replacement servicer in October 2020, implementation of which has been delayed due to objections from Acheron Capital which are the subject of a pending arbitration. The Keep Policies are presently serviced under an extension of the Servicing Agreement with Litai which is effective until after the arbitration is completed. In light of the updated timeline for Trust wind down and the anticipated schedule for the arbitration, the Trustee has included Litai in discussions regarding its involvement regarding wind down requirements of the Trust.

Anticipated Sale Process

As previously indicated in the Trustee’s Wind Down Motion, and as the Court recognized in the Wind Down Order, the liquidation of the Trust portfolio is expected to involve the sale of the whole Keep Policies owned by the Trust, as expressly contemplated by the Trust Agreement as well as the March 2015 Agreement between the Trustee and Acheron Capital Ltd., through a process that maximizes their value (which most likely means through exposure to an open market), with the proceeds of such sale to be distributed in a fair and equitable manner to all holders of fractional interests in those policies. This of course involves the sale of both Keep Policies in which the Acheron Entities own fractional interests and Keep Policies in which they do not own fractional interests. The Trustee has already sought and been granted authority to remove any policies in which the Acheron Entities own 100% of the interests from the Trust, which is now in process, and the Trustee does not intend to sell any policies in which the Acheron Entities own 100% of

the interests unless the Acheron Entities would prefer such policies be sold rather than remove them from the Trust, which the Trustee may consider.

As the foregoing proposed process reflects, obtaining the highest value for the Keep Policies will depend in substantial part on the quantum and quality of information that can be made available with respect to the policies. This is yet one more reason why the Trustee's ability to obtain and secure the Trust's data maintained by Litai is imperative.

The Trustee intends to solicit the submission of "stalking horse" purchase offers which will effectively set a "minimum bid" for the Mutual Benefits Keep Policy portfolio, or sub-sets of the entire portfolio if the Trustee determines that is the best way to maximize value. That stalking horse bid will then be subject to higher and better offers in accordance with a clearly announced bidding process, with all prospective bidders who satisfy appropriate bidding requirements (including execution of an appropriate confidentiality and non-disclosure agreement and demonstration of financial qualifications). The Trustee is willing to consider reasonable and appropriate "bid protections" (such as a termination fee to compensate for their time and expense if the policies are ultimately sold to a higher bidder) for a stalking horse bidder in exchange for the value provided by a stalking horse for establishing a "floor" for bidding.

The Trustee's determination of the selection of a stalking horse bidder, and whether the Keep Policies should be sold as one portfolio or in multiple tranches, will be driven to a degree by the negotiations with potential bidders. The Trustee welcomes the Acheron Entities to propose a stalking horse bid and anticipates that they could seek to participate in the sale process as either a stalking horse bidder or a competing bidder in the same manner as any other qualified potential bidder. Since the Acheron Entities already have acquired fractional interests in many of the Keep Policies, consideration will have to be given to the ability of the Acheron Entities to "credit bid"

their interests, and how such a credit bid should be valued. The Trustee remains willing to entertain any alternative sale structure that provides appropriate assurance that the value of the Keep Policies through such sale is being maximized for the benefit of the Keep Policy Investors.⁶

Upon the completion of the sale of the Keep Policies, the Trustee intends to distribute the net proceeds of the sales to all investors who hold interests in those policies in a manner which is fair and equitable to all such investors. This may require some sort of actuarial valuation of the portfolio in order to arrive at an appropriate allocation. Any interests owned by the Acheron Entities will be treated in the same manner, and shall receive the same distribution of net proceeds, as those of the Keep Policy Investors.

Matters the Court Requested be Addressed

In the most recent Order Setting Status Conference the Court identified several matters it requested the Trustee address in this report.⁷ They are discussed below:

- a. The expected average monthly run-rate of expenses in 2021 and beyond, if appropriate.**

The updated monthly run-rate through 2021 is reflected in the attached report.

- b. Any significant potential impacts to the funds available to support the Trust that are not accounted for in the expected average monthly run-rate of expenses.**

The potential impacts to available funds not accounted for in the average monthly run-rate are primarily litigation related: while the Trustee has budgeted for litigation expenses, those

⁶ In the original Trustee Wind Down Motion, the Trustee indicated a willingness to at least consider proposals for possible “tag-along” rights for existing Keep Policy Investors to maintain their interests. Further consideration suggests that such proposals are not likely to enhance the value of the Keep Policies upon Trust liquidation, and moreover present extreme challenges in ensuring that the interests of the Keep Policy Investors will be appropriately protected.

⁷ The Court advised that “Information regarding the Trustee’s efforts to secure servicing beyond December 31, 2020 is no longer required because the Trustee has executed an extension of the servicing agreement with Litai.” D.E. 2868, p. 3.

expenses could change, and an adverse result in such litigation could negatively impact Trust funds.⁸ It is possible, but not necessarily anticipated, that policy interest forfeitures which may occur prior to the portfolio sale date may require the Trust to cover the respective premium shortfall.

c. Expected income, and the timing of income, from asset dispositions in 2021 and beyond, if appropriate.

The amount of policy interests that have been available for sale as a result of “forfeitures” by Keep Policy Investors has substantially decreased over the past several dispositions. Further, it is anticipated that once investors are notified of the pending portfolio sale that forfeitures may be further diminished. As a result, the Trustee does not anticipate material cash inflows to the Trust from the sale of forfeited policy interests.

d. Any other sources of income that the Trustee expects to offset monthly expenses and the timing and amounts expected from those sources.

The Trustee anticipates comparatively minor amounts of interest income to be realized on the Trust’s remaining funds. The Trustee does not otherwise anticipate other sources of income.⁹

e. The anticipated date at which the Trustee forecasts that the Overpayment Balance and/or any other sources of funding for the Trust will become insufficient to absorb monthly expenses without a change to the administrative fees that are charged to investors.

The Trustee has moved forward the timeline for liquidation of the Trust’s Keep Policy portfolio in order to avoid a scenario in which the administrative fee would need to be increased

⁸ Aside from pending litigation filed by the Acheron Entities, Litai (a) has filed an action in state court asserting claims against the Trustee relating to alleged “trade secrets” of Litai; and (b) has asserted a claim of entitlement to additional compensation under the Servicing Agreement based on interest accrued on certain accounts, going back to the inception of the Trust.

⁹ The Trustee anticipates the recovery of most of the funds supplied by the Trust to cover shortfall premiums. The total receivable balance, according to the records provided to the Trustee by Litai, was approximately \$636,000 as of February 28, 2021.

in order to fund the expenses of the Trust. Accordingly, the Trustee's anticipation is that the Overpayment Balance will not be depleted before the liquidation of the Trust's Keep Policy portfolio is completed.

f. To the extent the Trustee is able to estimate, an updated date or time-range for the likely initiation of the wind down.

The Trustee now projects that wind-down will occur by fourth quarter 2021 as reflected above.

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CERTIFICATE OF SERVICE

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

3a The amount of Overpayment Balance account ^[2] 2,880,629

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

Cash / Money Market Accounts	1,224,620
Fixed Income investments	1,656,009
Total Overpayment Funds	2,880,629

3c The most recent total amount of monthly operating expenses ^[3] 343,928

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

	Mar-21	Apr 2021 - Dec 2021
Operating Expenses	67,400	67,400
Enhanced Oversight	29,000	29,000
Investor Subsidy ^[4]	49,200	-
Subtotal ^[5]	145,600	96,400
Litigation ^[6]	97,500	48,750
Estimated Average Monthly Run-Rate	243,100	145,150

3e Total amount of money owed to Trustee and other professionals 265,403

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 ^[7]			1,294
Total Face Value	MBC Victims	Acheron ^[7]	Total
HIV	53,400,402	78,981,114	132,381,516
Non-HIV	29,436,321	76,799,508	106,235,829
Total	82,836,723	155,780,622	238,617,345
%	34.72%	65.28%	
Current number of policy interests the Trust is servicing			
	MBC Victims	Acheron ^{[8] [9]}	Total
	2,138	1,080	3,218

Mutual Benefits Keep Policy Trust

As of March 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 February 1, 2021 amount of the Overpayment Balance Account and the amount of funds currently available to pay expenses was \$3,105,708.
- 3) February expenses were greater than average due to significant litigation expenditures incurred.
- 4) Effective with this filing, the Trust will discontinue paying the investor subsidy from the Overpayment Account. An equivalent amount will be paid from the MBC Receiver Restitution Fund.
- 5) Prior reports to the Court included estimated amounts for backup servicing to be incurred in 2021. As the arbitration relating to the servicing agreement is not scheduled to complete until as late as December 2021, it is currently not anticipated that backup servicing fees will be incurred in 2021.
- 6) 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.
- 7) Includes 288 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 are currently being processed by the servicer.
- 8) Includes the 288 policies 100%-owned by Acheron.
- 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.