

**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 MAY 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 the Court’s April 20, 2021 Order Setting Status Conference [D.E. 2916]

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 April 15, 2021 [D.E. 2882].

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 April 21, 2021 the Court entered its *Order Granting Trustee's Motion to Approve Proposed Final Revised Notice Regarding Trust Wind Down (DE 2900)* [D.E. 2917] approving the form of notice the Trustee proposed to send to investors in the Trust.
- On April 27, 2021, the Trustee filed his *Notice of Filing Form of Notice to Investors Regarding Trust Wind Down* [D.E. 2919] reflecting the notice, as revised pursuant to the Court's Order, that would be sent to investors.
- On May 10, 2021, the notice was mailed to 2,057 investors in the Trust, including 236 international parties, by Stretto, an experienced legal noticing vendor.
- The investor portal for inquiries from investors is live and fully functional. Information on the portal, as well as additional methods of contact for inquiries including email, phone and mail, are provided in the notice. The Trustee's personnel have just started to receive inquiries from investors in response to the notice, and will be able to provide more detail on the inquiries and responses by the next report.
- The Trustee has updated the Trust website – www.mbckeepttrust.com – with a prominent notice on the landing page of the website directing visitors to the information on the Trust Wind-Down.
- The website has a list of “Frequently Asked Questions” and responses intended to address anticipated inquiries from investors. This list will be updated as the Trust field inquiries from investors.

- The website also includes links to the Trustee's Motion to Authorize the Initiation of Trust Wind Down and Termination and the Court's Report and Recommendation and Order on the Motion, as well as the monthly Wind Down Status Reports filed by the Trustee.
- On May 6, 2021, Trustee's counsel held a lengthy telephone conference with counsel representing certain Keep Policy Investors to address several questions regarding the proposed wind down and termination of the Trust, including as to the reasons for the Trust liquidation, the Trustee's evaluation of alternatives, and anticipated steps going forward.
- The Trustee has provided Litai with a detailed list of the documentation requirements of the Trust for preparing the Keep Policies for sale and has requested a proposal from Litai to the extent Litai claims any portion of the services fall outside of its responsibilities under the Servicing Agreement. Because Litai has not confirmed its willingness to comply with the Trustee's requests, the Trustee anticipates that these requirements will need to be fulfilled by the party engaged to administer the sale process.
- The Trustee on May 4, 2021 filed a Motion for Injunctive Relief in a Miami-Dade County Circuit Court proceeding commenced by Litai, in order to compel Litai to turnover the Trust's data and Policy Files, so that the Trust is in a position to proceed with steps necessary for the sale of the policies and wind down of the Trust. On May 14, 2021, the Trustee filed a motion for a special-set hearing on the Motion for Injunctive Relief.
- The Trustee expects to execute and implement a proposal from a third-party provider to obtain updated HIPAA authorizations from insureds for selected policies, in light of the unsatisfactory response from Litai when requested to provide a proposal. The Trust will require an acknowledgment from Litai to the insureds that the insureds may speak with the third-party provider.

- The Trustee has further discussed and negotiated and expects to execute and implement in short order a proposal from an experienced third-party firm to administer a sale process. Such sale process will remain subject to such orders as the Court may enter with regard to the manner of sale approved by the Court.
- To conserve the cash of the Trust for operations, the Trust has already directed the suspension of the Administration Fee Credit and has instead been using the Restitution Funds to subsidize the Administrative Fee payable by Keep Policy Investors. In order to further conserve Trust cash, the Trustee and the Trust's legal and accounting professionals (other than the third-party accountants) have voluntarily agreed to a 20% "holdback" of fees, with the expectation that such fees will be paid upon the sale of the Trust portfolio.
- The Trustee, pursuant to his authority under Section 3.1(b)(xi) of the Trust Agreement,¹ is evaluating the assessment of additional fees for calendar year 2021 in order to ensure sufficient funds to continue the operations of the Trust, with the intention that the collection of such fees would be deferred until either: (a) Trust liquidation, at which point the fees would be assessed as a cost of liquidation and deducted from the liquidation proceeds, to the extent necessary to satisfy any deficiency; or (b) if the Trust is not liquidated at the end of 2021, the Trustee would direct the Servicer to assess the fee, and any further assessment 2022 that the Trustee deemed necessary and appropriate to support the operations of the Trust. The Trustee currently anticipates that such additional fee would be in the range of

¹ Section 3.1(b)(xi) of the Trust Agreement authorizes the Trustee "to direct the Servicer to collect such additional fees as are necessary, in the Trustee's business judgment, to fund the operations of the Trust, in the event that the amount of the Overpayment Balance otherwise available to pay the expenses of the Trust is deemed insufficient by the Trustee."

\$300 per fractional interest, which amount would be subject to adjustment based upon Trust revenues and expenses.

GENOVESE JOBLOVE & BATTISTA, P.A.

s/ John Arrastia

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By: */s/ David L. Rosendorf*

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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 May 14, 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 May 1, 2021 ^[1]

3a The amount of Overpayment Balance account ^{[2][3]} 2,185,654

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

Cash / Money Market Accounts	1,282,847
Fixed Income investments	902,807
Total Overpayment Funds	<u>2,185,654</u>

3c The most recent total amount of monthly operating expenses ^[4] 225,706

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

	<u>May - Jun 2021</u>	<u>Jul - Dec 2021</u>
Operating Expenses	67,400	67,400
Enhanced Oversight	29,000	29,000
Acheron Subsidy ^[5]	18,000	-
Subtotal	<u>114,400</u>	<u>96,400</u>
Litigation ^[6]	48,750	48,750
Estimated Average Monthly Run-Rate	<u>163,150</u>	<u>145,150</u>

3e Total amount of money owed to Trustee and other professionals ^{[7][8]} 168,355

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 ^[9]			1,254
Total Face Value	MBC Victims	Acheron ^[9]	Total
HIV	52,726,399	77,516,143	130,242,542
Non-HIV	28,788,985	75,507,657	104,296,642
Total	<u>81,515,384</u>	<u>153,023,800</u>	<u>234,539,184</u>
%	34.76%	65.24%	
Current number of policy interests the Trust is servicing			
	MBC Victims	Acheron ^{[10][11]}	Total
	2,083	1,006	3,089

Mutual Benefits Keep Policy Trust

As of May 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) Includes the estimated May 1, 2021 reconciled balance for the Contingency Account. The May 1, 2021 reconciled balance for the Contingency Account had not been received from the servicer at the time this report was prepared. To the extent there are any differences between the estimated May 1, 2021 reconciled balance for the Contingency Account and the actual reconciled balance, such will be reflected on the Trust's monthly report for June 1, 2021.
- 3) The May 1, 2021 Overpayment Balance is higher than the April 1, 2021 Overpayment Balance as Contingency Loans exceeding \$380,000 were reimbursed to the Contingency Account in April.
- 4) April expenses were greater than average due to significant litigation expenditures incurred.
- 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 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) Adjusted for voluntary 20% holdback of fees for attorneys, accountants and Trustee.
- 8) Does not include approximately \$75,000 premiums for Trustee E&O and Cybercoverage policies.
- 9) Includes 258 policies with a combined \$28 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 continue to be processed by the servicer.
- 10) Includes the 258 policies 100%-owned by Acheron. Without those policies, the Acheron column would reflect approximately 53% face value.
- 11) 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.