

**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.

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**TRUSTEE'S OCTOBER 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 September 17, 2021 [D.E. 2976].

### **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 the last report and through the date of this Report, the Trustee's personnel have received 34 phone calls and 11 emails; the Trustee's personal have spoken with 22 investors, left voice mail messages for 10 investors, one phone number was inaccessible, one is pending a further response as of this Report, and responded by email to 11 investors. The communications continue to generally fall into the following groups: (a) inquiries as to whether investors must continue to make premium payments; (b) inquiries as to the percentage that will be distributed to investors; (c) inquiries if the investor's policy has matured or requesting an accounting of premiums paid; (d) inquiries as to whether 100% owned policies may be retained rather than sold; (e) an inquiry as to an "opt in" option; (f) disappointment about the determination that the policies must be sold; (g) requests for W-9 / W8BEN tax forms; (h) forfeiture of policy due to high premium due; (i) general inquiries as to servicing issues such as processing of premium payments; and (j) inquiries as to the timing of wind down and sale and how investors will be notified.
- The Trustee has reviewed and considered proposed servicing agreements for the servicing of policies that are 100% owned by one investor and is continuing to negotiate final terms of such proposals. The Trustee is also evaluating the amendments to the Trust Agreement that would be required to permit such continued maintenance and servicing of policies outside of the Trust and the mechanics for implementing such proposals if such Trust

amendments are approved. The Trustee expects to seek appropriate relief from the Court before the next status report.

- The Trustee has received an additional approximately \$1.5 million in restitution funds that have been made available by the U.S. Attorney's office to the Receiver. Restitution funds have been and will continue to be used to subsidize the Administrative Fees payable by the MBC fraud victims who hold investments in Keep Policies.
- The Trustee has directed the collection of an additional \$400 per policy interest Administrative Fee in accordance with his authority under Section 3(b)(xi) of the Trust Agreement, which gives the Trustee the power and duty 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 Overpayment Balance otherwise available to pay the expenses of the Trust is deemed insufficient by the Trustee. For the MBC fraud victims who hold investments in Keep Policies, the additional Administrative Fee will be subsidized by the restitution funds and will not result in additional out-of-pocket cost.
- The Trustee is sending notices to all Keep Policy Investors advising them of the additional Administrative Fee, and further advising them that the Trustee anticipates that the sale of the remaining policies held by the Trust is now expected to occur on or before March 31, 2022.
- The Trustee has conferred with Wilmington Trust regarding a Securities Intermediary Agreement to facilitate the transfer of title to the policies upon a bulk sale and anticipates finalizing such an agreement within the next 14 days.
- The Trustee, with the assistance of his advisors, has continued to review and process the data and document 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 and Policy Documents relating to the Keep Policies in a state court action originally filed by Litai. The Trustee and his advisors are continuing the process of assembling, reviewing, sorting and organizing the available data and documents on the Keep Policies to be placed into a “data room” to be made available to prospective purchasers for due diligence, and then supplementing and enhancing the available information as it changes over time. The process of assembling the “data room” has taken longer than anticipated due to the condition of the Trust Data and Policy Documents received from Litai.

- To enhance the data on Trust Policies that will be available in the data room, the Trustee filed a motion to confirm the Trustee’s authority to require certain information to be provided by insureds, medical providers and insurers with respect to the Trust Policies. (DE#2980). Objections to that motion were filed by Investors Jonathan Majers, Craig Feltheim, and Janet Feltheim (DE#2984), Acheron Capital, Ltd. (DE#2985), Litai (DE#2986), to which the Trustee replied (DE#2899). The Court has requested a supplemental reply from the Trustee (DE#2993) which will be filed shortly. The Orders requested by the Trustee will facilitate the population of the “data room” with the information prospective bidders expect to review (such as updated illustrations, annual statements, forms and other information) in order to calculate indicative offers.
- The Trustee and his advisors have continued to seek prospective “stalking horse” purchaser candidates for the Trust portfolio, and will, subject to appropriate confidentiality and non-disclosure agreements, share the data room when available, engage in substantive

discussion and negotiations with prospective purchasers, and select and move forward with approval of a stalking horse proposal.

- The Trustee has requested of Litai, its servicer, that Litai remit only the portion of any annual premium due required in order to keep the policy in force through the end of the first quarter of 2022, so that premium balances collected from investors but not remitted to the carriers can be refunded to investors upon completion of the portfolio sale process. After extensive discussions, Litai has refused to undertake the processes requested by the Trustee, even though the Trustee agreed to pay the additional requested fee proposed by Litai for performing such services.
- The Trustee, with the assistance of his advisors, and in light of Litai's refusal to do so, has initiated the process of making premium mode changes for 178 policies in order to conserve premium funds for potential refund upon the completion of a sale.

**GENOVESE JOBLOVE & BATTISTA, P.A.**

*s/ John Arrastia*

John Arrastia

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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 October 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

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**TRUSTEE'S NOTICE OF FILING**

Barry Mukamal, as Trustee of the Mutual Benefits Keep Policy Trust, gives notice of the filing of the attached Exhibit A which was inadvertently omitted from his October 2021 Status Report Regarding Wind Down (DE#2994).

**GENOVESE JOBLOVE & BATTISTA, P.A.**

s/ John Arrastia  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on October 18, 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 October 1, 2021 <sup>[1]</sup>**

3a	The amount of Overpayment Balance account <sup>[2] [3]</sup>	852,529
3b	Amount of funds currently available to pay expenses	
	Cash / Money Market Accounts	852,529
	Total Overpayment Funds	<u>852,529</u>
3c	The most recent total amount of monthly operating expenses paid	216,634
3d	Estimated average run-rate of monthly Trust operating expenses	
		<b>Oct - Dec 2021</b>
	Operating Expenses	<u>47,400</u>
	Enhanced Oversight	<u>29,000</u>
	Subtotal	<u>76,400</u>
	Litigation	<u>125,000</u>
	Estimated Average Monthly Run-Rate	<u>201,400</u>
3e	Total amount of money owed to Trustee and other professionals <sup>[4]</sup>	<u>496,642</u>
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:			
<b>Current # of policies the Trust is servicing <sup>[5]</sup></b>			969
Total Face Value	<b>MBC Victims</b>	<b>Acheron</b>	<b>Total</b>
HIV	51,336,208	56,519,441	107,855,649
Non-HIV	25,151,939	60,095,667	85,247,606
Total	<u>76,488,147</u>	<u>116,615,108</u>	<u>193,103,255</u>
%	39.61%	60.39%	
<b>Current number of policy interests the Trust is servicing</b>			
	<b>MBC Victims</b>	<b>Acheron</b>	<b>Total</b>
	1,967	721	2,688

**Mutual Benefits Keep Policy Trust**

**As of October 1, 2021** <sup>[1]</sup>

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 September, the Trust advanced approximately \$394,000 in contingency loans and recovered approximately \$200,000 contingency loans receivable. As of September 30, 2021 the Trust had a Contingency Loan Receivable balance of \$601,174 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) Professional fees presented in the current report include fees incurred for the reporting period as well as the cumulative 20% holdback, which as of September 30, 2021 approximates \$294,0000.
- 4) The number of policies, policy interests and break-down between MBC Victims and Acheron amounts are all as of October 10, 2021.