

**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 SEPTEMBER 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 August 16, 2021 [D.E. 2965].

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 35 phone calls and 6 emails; the Trustee's personal have spoken with 26 investors, left voice mail messages for 6 investors, sent the link for the investor portal to 3 investors who had requested it, and responded by email to 5 investors, with one email awaiting reply. 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) issues logging into the investor portal; (i) requests to send the MBC Trust Wind Down Notice in Spanish; (j) general inquiries as to servicing issues such as processing of premium payments; and (k) inquiries as to the timing of wind down and sale and how investors will be notified.
- 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. As noted in the last report, 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.

- In order to enhance the data on Trust Policies that will be available in the data room, the Trustee will be shortly filing 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.
- 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 continued his review and discussion of two proposals to provide continued servicing of “100% owned” policies and expects in short order to advise the Court regarding the status and advisability of those options.
- As advised in prior reports, the Trustee anticipates that in order to sustain the Trust through anticipated termination, he will be exercising the authority under Section 3.1(b)(xi) of the Trust Agreement to direct the collection of additional fees necessary to fund the operations

of the Trust in light of the anticipated insufficiency of the available Overpayment Balance to pay all expenses.

- The Trustee has been advised that an additional approximately \$1.5 million in restitution funds have been made available by the U.S. Attorney's office to the Receiver and are in process of being funded.
- 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. Litai has not yet confirmed if it will comply with these instructions.

GENOVESE JOBLOVE & BATTISTA, P.A.

s/ John Arrastia

John Arrastia

Fla. Bar No. 0072461

Jarrastia@gjb-law.com

100 S.E. Second Street, 44th Floor

Miami, FL 33131

Tel: (305) 349-2300

Fax: (305) 428-8832

KOZYAK TROPIN & THROCKMORTON, LLP

2525 Ponce de Leon, 9th Floor

Coral Gables, FL 33134

Tel: (305) 372-1800

Fax: (305) 372-3508

By: */s/ David L. Rosendorf*

David L. Rosendorf

FL Bar No. 996823

dlr@kttlaw.com

Attorneys for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on September 17, 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 September 1, 2021 ^[1]

3a The amount of Overpayment Balance account ^[2] 1,193,205

3b Amount of funds currently available to pay expenses ^[3]
 Cash / Money Market Accounts 1,193,205
 Total Overpayment Funds 1,193,205

3c The most recent total amount of monthly operating expenses 234,958

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

	Sep 2021	Oct - Dec 2021
Operating Expenses	47,400	47,400
Enhanced Oversight	29,000	29,000
Subtotal	76,400	76,400
Litigation ^[4]	165,000	125,000
Estimated Average Monthly Run-Rate	<u>241,400</u>	<u>201,400</u>

3e Total amount of money owed to Trustee and other professionals ^[5] 412,987

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 ^[6]			974
Total Face Value	MBC Victims	Acheron	Total
HIV	51,633,015	56,280,354	107,913,369
Non-HIV	26,661,997	61,835,609	88,497,606
Total	<u>78,295,012</u>	<u>118,115,963</u>	<u>196,410,975</u>
%	39.86%	60.14%	
Current number of policy interests the Trust is servicing	MBC Victims	Acheron	Total
	1,990	724	2,714

Mutual Benefits Keep Policy Trust

As of September 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) As of August 31, 2021 the Trust has a Contingency Loan Receivable balance of \$407,783.48 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) All fixed securities were sold and redeemed during the month of August 2021.
- 4) Budgeted litigation expenses have been revised from prior months based on recent activity.
- 5) Professional fees presented in the current report include fees incurred for the reporting period as well as the cumulative 20% holdback which had not been reported in prior reports.
- 6) The number of policies, policy interests and break-down between MBC Victims and Acheron amounts are all as of September 13, 2021.