

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION *et al.*,

Plaintiff,

vs.

MUTUAL BENEFITS CORP. *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND GRANTING TRUSTEE'S MOTION TO APPROVE PROCEDURES FOR SALE
OF POLICIES IN CONNECTION WITH TRUST TERMINATION**

THE MATTER was referred to the Honorable Jared M. Strauss, United States Magistrate Judge, for a Report and Recommendation on Trustee's Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination (D.E. 3065) filed on January 21, 2021. The Magistrate Judge filed a Report and Recommendation (D.E. 3130) on April 9, 2022. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Jared M. Strauss's Report and Recommendation is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that Trustee's Motion to Approve Procedures for Sale of Policies in Connection with Trust Termination is **GRANTED** as follows:

- 1) The Trustee is authorized to implement the procedures for the sale of the remaining Keep Policies held by the Trust as set forth in the Motion, subject to the modifications reflected in D.E. 3107-1. Notwithstanding the foregoing, the Trustee may not condition Acheron's access to the data room and Acheron's participation in the auction on Acheron waiving any claims against the Trustee or the right to appeal.
- 2) The Notice to Keep Policy Investors attached to the motion provides an adequate summary of the relief sought in the motion.
- 3) The Trustee is authorized to enter into an Asset Purchase Agreement(s) with prospective "stalking horse" buyers of the Keep Policies consistent with the terms set forth in and subject to the procedures set forth in the motion. However, the Asset Purchase Agreement(s) shall provide that the closing of any sale shall occur seven (7) days after the entry of a Sale Approval Order (as defined in the motion). The Asset Purchase Agreement(s) shall further provide that if the Sale Approval Order is stayed prior to closing, closing shall occur seven (7) days after any such stay is lifted.
- 4) Upon the selection of a "stalking horse" buyer or buyers, the Trustee shall file a Notice of Filing indicating: (a) the amounts and material terms and conditions of the "stalking horse" offers, (b) the time and date of the auction and other relevant deadlines, and (c) any other information relevant to the conduct of the auction sale. Notice thereof shall be provided as set forth in the Motion.
- 5) Upon the submission of the Notice of Filing, Magistrate Judge Strauss will schedule a hearing for the first available date after the scheduled date of the auction, for consideration of the Motion for Entry of Sale Approval Order to be filed pursuant to Paragraph 9 below. If no hearing is scheduled within one week of the submission of

the Notice of Filing, the Trustee's counsel shall promptly contact chambers.

- 6) The Bidding Procedures set forth in the Motion, including the procedures for qualifications of bidders, for submission of qualified bids, for submission of higher and better offers, and for the conduct of the auction, including the means of providing notice of the bidding procedures, are approved, except as set forth in Paragraph 1 above.
- 7) The Trustee is authorized to proceed with an auction sale consistent with the Bidding Procedures among bidders who timely satisfy the qualifications set forth in the Bidding Procedures, as determined by the Trustee, except as set forth in Paragraph 1 above.
- 8) At auction, the Trustee will solicit the highest and best bid for "Tranche A," "Tranche A-1," "Tranche B," and "Tranche B-1" (if applicable), as defined in the motion, pursuant to the bidding procedures, and shall select the highest and best bid (and back-up bid) for each tranche.
- 9) Upon the conclusion of the auction, the Trustee shall file a Motion for Entry of Sale Approval Order which shall: (1) set forth the Trustee's determination, in the exercise of his business judgment and discretion of the highest and best bids (and back-up bids) submitted at auction; and (b) request entry of the Sale Approval Order authorizing and approving the sale of the Keep Policies to the highest and best bidder(s). Magistrate Judge Strauss will schedule and conduct a hearing on the Motion for Entry of Sale Approval Order in accordance with Paragraph 5 above.

10) The procedures, as approved by this Order, represent an appropriate and reasonable exercise of the Trustee's discretion and business judgment and further satisfy the contractual rights of Acheron under Section 4 of the 2015 Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th of June 2022.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

United States Magistrate Judge Jared M. Strauss

Counsel of Record