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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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AUG 01 2003

DOCKETED BY *[Signature]*

In the matter of:)
MUTUAL BENEFITS CORPORATION,)
Respondent.)

DOCKET NO. S-03464A-03-0000
ALJ: Marc E. Stern

**PLAINTIFF SECURITIES DIVISION'S RESPONSE AND OBJECTIONS
TO MUTUAL BENEFITS CORPORATION'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Securities Division ("Division") of the Arizona Corporation Commission hereby responds to Mutual Benefits Corporation's ("MBC") First Request for Production of Documents (the "Request") and produces or otherwise objects to the Request as follows:

Request 1: "The Securities Division's complete investigative file relating to and/or resulting in the commencement of Arizona Corporation Commission Docket No. S-03464A-03-0000. This should include, but not be limited to, the following:

Division Response: This is the first of four such unbounded requests made by Respondent in the same document. Since this request asks for everything the Securities Division has regarding Respondent, it renders Respondent's other requests superfluous. Needless to say, the Division objects to this unbounded request as over broad and on the grounds it seeks information that is not relevant to the subject matter in the pending action and which is protected by the investigative, work-product and attorney-client privileges more particularly discussed in the objection discussion section below.

- a. All tapes and/or transcripts of tapes and/or memoranda and/or notes and/or transcripts of sworn testimony that in any way memorialize communications between the Securities Division on the one hand and

1 (i) Respondent and (ii) employees/independent agents/representatives
2 of Respondent, including Examinations Under Oath, and all exhibits
3 thereto;

4 Division Response: The Division will provide the requested information for those individuals it
5 expects to call as witnesses.

6 b. All tapes and/or transcripts of tapes and/or memoranda and/or notes
7 and/or transcripts of sworn testimony that in any way memorialize
8 communications between the Securities Division and any entity or
9 individual interviewed and/or contacted in connection with the
10 Securities Division's investigation of Respondent and relating to the
11 allegations set forth in the Notice. This includes all complaints,
12 correspondence and Examinations Under Oath, and all exhibits
13 thereto;

14 Division Response: The Division has or will provide the requested information for those
15 individuals it expects to call as witnesses. Otherwise the Division objects to this request on the
16 grounds of investigative, work-product and attorney-client privileges more particularly discussed
17 in the objection discussion section below.

18 c. All documents in the possession or under the control of the Securities
19 Division relating to Respondent;

20 Division Response: This is the second of four such unbounded requests made by Respondent
21 in the same document. Once again Respondent seeks all information from the Division regarding
22 Respondent. The Division objects to this request as overbroad and on the grounds it seeks
23 information that is not relevant to the subject matter in the pending action and which is protected
24 by the investigative, work-product and attorney-client privileges more particularly discussed in
25 the objection discussion section below.

26 d. All affidavits and statements provided by individuals interviewed or
contacted by the Securities Division relating to the allegations set forth
in the Notice and/or relating to the Respondent;

Division Response: The Division has or will provide the requested information for those
individuals it expects to call as witnesses to the extent it has affidavits and/or statements under
oath. Otherwise the Division objects to this request on the grounds of investigative, work-product
and attorney-client privileges more particularly discussed in the objection discussion section

1 below.

2 **e. All correspondence regarding or referring to the Respondent;**

3 Division Response: The Division has or will furnish such documentation to the extent it is in the
4 Division's possession except for those documents covered this request which may also be covered
5 by another of Respondent's Request and to which the Division objects for the reasons set forth in
6 the objection discussion section below.

7 **f. All documents or other information provided by Respondent to the**
8 **Securities Division;**

9 Division Response: The Division objects to this request as unnecessary. Respondent is asking the
10 Division to produce documents it already has in its possession.

11 **g. All documents regarding or referring to Dr. Clark Mitchell;**

12 Division Response: The Division has or will furnish such documentation to the extent it is in the
13 Division's possession except for those documents covered this request which may also be covered
14 by another of Respondent's Request and to which the Division objects for the reasons set forth in
15 the objection discussion section below.

16 **h. All documents regarding or referring to Anthony Livoti;**

17 Division Response: The Division has or will furnish such documentation to the extent it is in the
18 Division's possession except for those documents covered this request which may also be covered
19 by another of Respondent's Request and to which the Division objects for the reasons set forth in
20 the objection discussion section below.

21 **i. All documents regarding or referring to Steven Steiner;**

22 Division Response: The Division has or will furnish such documentation to the extent it is in the
23 Division's possession except for those documents covered this request which may also be covered
24 by another of Respondent's Request and to which the Division objects for the reasons set forth in
25 the objection discussion section below.

26 **j. All documents regarding or referring to Joel Steinger;**

1 Division Response: The Division has or will furnish such documentation to the extent it is in the
2 Division's possession except for those documents covered this request which may also be covered
3 by another of Respondent's Request and to which the Division objects for the reasons set forth in
4 the objection discussion section below.

5 **k. All documents regarding or referring to Leslie Steinger;**

6 Division Response: The Division has or will furnish such documentation to the extent it is in the
7 Division's possession except for those documents covered this request which may also be covered
8 by another of Respondent's Request and to which the Division objects for the reasons set forth in
9 the objection discussion section below.

10 **l. All documents regarding or referring to Community Healthcare/Center
11 One, Inc. and any affiliates or related entities;**

12 Division Response: The Division has or will furnish such documentation to the extent it is in the
13 Division's possession except for those documents covered this request which may also be covered
14 by another of Respondent's Request and to which the Division objects for the reasons set forth in
15 the objection discussion section below.

16 **m. All documents evidencing telephone calls made by the Securities
17 Division or anyone acting on its behalf to Respondent including, but not
18 limited to, (i) documents sufficient to identify each telephone call made
19 by the Securities Division, (ii) who authorized each telephone call, (iii)
20 who placed the telephone calls, (iv) the scripts or outlines used by the
individuals who placed or received these calls; and (v) any notes,
transcripts, tapes or other memoranda memorializing the telephone
calls;**

21 Division Response: The Division objects to this request on the grounds of the investigative,
22 work-product and attorney-client privileges more particularly discussed in the objection
23 discussion section below.

24 **n. All documents sufficient to identify the "55 individual and corporate
25 agents" and "349 Arizona investors" referenced in Paragraph No. 5 of
26 the Notice;**

1 Division Response: Once again Respondent is asking for information it already has in its
2 possession. Respondent furnished the Division with investor and agent lists. However, the Division
3 has or will furnish such documentation to the extent it is in the Division's possession except for
4 those documents covered this request which may also be covered by another of Respondent's
5 Request and to which the Division objects for the reasons set forth in the objection discussion
6 section below.

7 o **All documents relating to the Securities Division's attempts to regulate**
8 **the sale of viaticals prior to July 18, 2000;**

9 Division Response: The Division objects to this request on the grounds it has no relevance
10 whatsoever to the Division's allegations. The Division alleges that MBC's viatical and life
11 settlement sales prior to July 18, 2000 constitute investment contracts and are thus, securities. How
12 the Division regulated other viatical settlement transactions in the past has no bearing on any
13 factual and legal arguments Respondent may make as to why its viatical and life settlement sales
14 are not investment contracts.

15 p. **All documents related to the Securities Division's involvement in the**
16 **legislative process resulting in A.R.S. § 44-1801 (26) and (29) and § 44-**
17 **1850 referenced on Paragraph No. 10 of the Notice including, but not**
18 **limited to, (i) copies of any and all memoranda or other reports**
19 **prepared on the subject, (ii) documents reflecting testimony, if any,**
20 **given by the Securities Division concerning the above referenced**
21 **statutes, and (iii) any other documents that refer or relate to the changes**
22 **in the law referenced to in Paragraph No. 10 of the Notice in the**
23 **possession of the Securities Division;**

24 Division Response: The Division objects to this discovery request on the grounds it has no
25 relevance to the charges in the pending action and that discovery is not the proper vehicle to obtain
26 this information. A public records request is the proper avenue to pursue and the Division is aware
that Respondent has already filed such requests.

27 q. **Documents sufficient to identify the "MBC marketing employee" and**
28 **the "Arizona agent" referenced to in Paragraph No. 13 of the Notice;**

29 Division Response: The Division has furnished the documentation.

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r. Documents sufficient to identify the "Agent" referenced in Paragraph No. 15 of the Notice.

Division Response: The Division has furnished the documentation.

s. All documents supporting the allegations that "MBC engaged in deceptive and manipulative acts to effect sales to Arizona residents by encouraging the use of out-of-state addresses..." in Paragraph No. 20 of the Notice;

Division Response: The Division has furnished the documentation.

t. Documents sufficient to identify the "numerous investors" and the "still others" referenced in Paragraph No. 27 of the Notice;

Division Response: The Division has furnished Respondent with its preliminary witness list.

u. Copies of the "investor files" referenced to in Paragraph No. 35 of the Notice;

Division Response: The Division has furnished the documentation.

v. Documents sufficient to identify the "investors" referenced in Paragraph No. 37 of the Notice;

Division Response: The Division has furnished Respondent with its preliminary witness list.

w. Documents sufficient to identify the "Agents" referenced in Paragraph No. 40 of the Notice;

Division Response: The Division has furnished the documentation.

x. Documents sufficient to identify the "investors" referenced in Paragraph No. 41 of the Notice;

Division Response: The Division has furnished Respondent with its preliminary witness list.

y. Documents sufficient to identify the "Agents" and "investors" referenced in Paragraph No. 42 of the Notice;

Division Response: The Division has furnished Respondent with its preliminary witness list.

z. Documents sufficient to identify the "investors" referenced in Paragraph No. 45 of the Notice;

1 Division Response: The Division has furnished Respondent with its preliminary witness list.

2 **aa. Documents sufficient to identify the “Agents” and “investors”**
3 **referenced in Paragraph No. 46 of the Notice;**

4 Division Response: The Division has furnished Respondent with its preliminary witness list.

5 **bb. Documents sufficient to identify the “two viator attending physicians”**
6 **referenced in Paragraph No. 48 of the Notice;**

7 Division Response: The Division has furnished Respondent with its preliminary witness list.

8 **cc. Documents sufficient to identify the “one attending physician”**
9 **referenced in Paragraph No. 50 of the Notice;**

10 Division Response: The Division has furnished Respondent with its preliminary witness list.

11 **dd. Documents sufficient to identify the “Agents” and “investors”**
12 **referenced in Paragraph Nos. 53(a), (b), (c), (f), (g), (h) and (i) of the**
13 **Notice;**

14 Division Response: The Division has furnished Respondent with its preliminary witness list.

15 **ee. Documents sufficient to identify the “Arizona investors” referenced in**
16 **Paragraph No. 54 of the Notice; and**

17 Division Response: The Division has furnished Respondent with its preliminary witness list.

18 Furthermore, Respondent is already in possession of this information. Respondent’s own records
19 should show which investor viatical settlements have not matured within the projected maturity
20 dates.

21 **ff. All subpoenas issued by the Securities Division in connection with the**
22 **investigation of Respondent in Docket No. S-03464A-03-0000.**

23 Division Response: The Division has furnished the requested documents.

24 **2. Copies of all other documents obtained during the Securities Division’s**
25 **investigation that are not specifically referred to in Request Nos. 1(a - ff) above.**

26 Division Response: This is the third of four such unbounded requests made by Respondent in
the same document. As with its other similar requests, this request again asks for everything the

1 Securities Division has regarding MBC. The Division repeats its prior objections on the grounds
2 the request is overbroad and seeks information that is not relevant to the subject matter in the
3 pending action and which is protected by the investigative, work-product and attorney-client
4 privileges more particularly discussed in the objection discussion section below.

5 **3. Copies of all documents in the possession or under the control of the Securities**
6 **Division relating to the investments or accounts of the “investors” referred to**
7 **in the Notice.**

8 Division Response: The Division has furnished the requested documents.

9 **4. Copies of all documents provided by the Securities Division to other state**
10 **securities agencies and/or law enforcement organizations regarding the**
11 **Respondent, its independent agents, employees and other representatives.**

12 Division Response: The Division objects to this request on the grounds that the information
13 sought by Respondent is not relevant to the subject matter in the pending action. What information
14 the Division has, if any, passed on to other regulators or law enforcement agencies has no bearing
15 on or relevance to the pending action. The Division further objects on the grounds of investigative
16 and work-product privileges. Respondent is overreaching and improperly attempting to access
17 confidential information about investigations that may or may not be ongoing in other jurisdictions
18 by using the discovery mechanisms in this case.

19 **5. Copies of all documents provided to the Securities Division by other state**
20 **securities agencies and/or law enforcement organizations regarding**
21 **Respondent, its independent agents, employees and other representatives.**

22 Division Response: The Division objects to this request on the grounds of investigative privilege
23 in that Respondent is again attempting to learn about other jurisdictions that may be investigating
24 Respondent. To the extent the Division intends on using any such information to prove its case,
25 the Division will produce this information in the form of exhibits before the hearing.

26

1 **6. Copies of any documents that concern or reflect any contacts or**
2 **communications with other state securities agencies and/or law enforcement**
3 **organizations regarding the Respondent, its independent agents, employees and**
4 **other representatives.**

5 Division Response: For the same reasons articulated in Request Nos. 4 and 5 above, the Division
6 objects to this request. Again, to the extent the Division intends on using any such information to
7 prove its case, the Division will produce this information in the form of exhibits before the hearing.

8 **7. Copies of all documents received by the Securities Division from any entity or**
9 **individual seeking to obtain the exemption provided by A.R.S. §44-1850 and all**
10 **documents sent by the Securities Division to such entities or individuals.**

11 Division Response: The Division objects to this discovery request on the grounds it has no
12 relevance to the charges in the pending action and that discovery is not the proper vehicle to obtain
13 this information. What other viatical providers have filed with the Division in seeking the
14 exemption and the Division's responses thereto, have no bearing on the Division's allegations in
15 the pending action. A public records request is the proper avenue to pursue and the Division is
16 aware that Respondent has already filed such requests.

17 **8. Copies of all documents that concern, refer to or prove any viator's projected**
18 **life expectancy referred to in the Notice was improperly or fraudulently**
19 **established.**

20 Division Response: The Division has or will furnish such documentation to the extent it is in the
21 Division's possession.

22 **9. Copies of all documents concerning, relating to or regarding the Respondent**
23 **that came into the Securities Division's possession prior to July 18, 2000.**

24 Division Response: This is the fourth of such unbounded requests made by Respondent in the
25 same document. This request again asks for everything the Securities Division has regarding
26 Respondent prior to July 18, 2000. The Division repeats its prior objections on the grounds the

1 request is overbroad and seeks information that is not relevant to the subject matter in the
2 pending action and which is protected by the investigative, work-product and attorney-client
3 privileges more particularly discussed in the objection discussion section below. To the extent the
4 Division possesses relevant documents to which it does not object to producing, it has or will
5 furnish said documents to Respondent.

6 **10. Copies of all documents reviewed by or prepared by any expert the Securities**
7 **Division intends to call as a witness at the hearing and all drafts of those**
8 **documents.**

9 Division Response: The Division does not contemplate calling any expert witness. However,
10 should this change, the Division will produce documents reviewed or prepared by the expert prior
11 to the scheduled hearing date.

12 **11. Copies of all documents the Securities Division intends to introduce as exhibits**
13 **at the hearing.**

14 Division Response: The Division has yet to formalize a comprehensive exhibit list. The Division
15 will produce a complete set of exhibits prior to the scheduled hearing date.

16 **Objection Discussion**

17 The Division objects to Respondent's requests on several grounds. First, The Division
18 objects on the grounds that there is no right to discovery in an administrative contested case
19 proceeding. A.R.S. § 41-1062(4) states "no subpoenas, depositions or other discovery shall be
20 permitted in contested cases except as provided by agency rule or this paragraph." Emphasis added.
21 The Rules of Practice and Procedure Before the Corporation Commission (the "Commission's
22 Rules") do not provide for "other discovery", therefore, Respondent has no right to this
23 information. While Respondent may argue that the Arizona Rules of Civil Procedure ("ARCP")
24 apply to this proceeding because the Commission's Rules do not set forth a procedure for "other
25 discovery, this is not the case. Commission Rule R14-3-101 states that "[i]n all cases in which
26 procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the

1 Commission, the Rules of Civil Procedure...shall govern.” The ARCP does not apply because by
2 law “other discovery” is not permitted under A.R.S. §41-1062(4).

3 The Division next objects on the grounds of over breadth. Many of Respondents requests,
4 including, but not limited to, requests Nos. 1, 1 c., 1 o., 2, and 9, are blanket requests that lack
5 specificity and are too sweeping and undetailed to comply with requirements as to designation.
6 *Dean v. Superior Court*, 84 Ariz. 110 (1958). The over breadth of these requests seeks documents
7 that are not relevant to the subject matter in the pending action and which are properly protected by
8 other privileges such as the investigative and work product privileges.

9 With respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1g., 1h., 1i., 1j., 1k., 1l., 1m., 1n., 2, 4, 5,
10 6, 7, and 9, the Division objects on the grounds that Respondent seeks information that is protected
11 from disclosure by the investigative privilege. *See, e.g., State ex rel. Corbin v. Superior Court*, 99
12 Ariz. 383 (1966); *City of Tucson v. Superior Court*, 167 Ariz. 513 (1991). The investigative
13 privilege belongs to the government and serves public law enforcement interests. *See, State v.*
14 *Tisnado*, 105 Ariz. 23 (1969). Documents requested by Respondent contain information involving
15 investigative techniques and assessments and the identities of witnesses and law enforcement
16 personnel and are thus, subject to the privilege. Especially with respect to Respondent’s Requests
17 Nos. 4, 5 and 6, the privilege exists, among other things, to prevent interference with
18 investigations, witness intimidation or to allow the target to construct defenses. By seeking
19 information conveyed to or received from other jurisdictions, Respondent is attempting to learn
20 about other possible investigations using this case to circumvent confidentiality provisions in other
21 jurisdictions and to achieve ends it cannot otherwise achieve.

22 Furthermore, where government investigative files are made confidential by statute, they
23 have been held to be non-discoverable. *See, Lipschultz v. Superior Court*, 128 Ariz. 16 (1981).
24 Division investigative documents are confidential by statute. Under A.R.S. § 44-2042 all
25 information and documents obtained by the Division during the course of “any examination or
26 investigation are confidential unless the names, information or documents are made a matter of

1 public record.” The information Respondent seeks was obtained during the course of the
2 Division’s investigation of Respondent and is not a matter of public record.

3 With respect to Request Nos. 1., 1b., 1c., 1d., 1g., 1e., 1h., 1i., 1j., 1k., 1l., 1m., 1n., 2, 4, 5,
4 6, 7, and 9, the Division objects on the grounds that Respondent seeks information that is protected
5 from disclosure by the work product privilege. “The privilege ... prevents an adversary from
6 obtaining documents which contain the mental impressions, conclusions, opinions or legal theories
7 of an attorney or other representative of a party concerning the litigation.” *State ex rel. Corbin v.*
8 *Superior Court*, 140 Ariz. 123, 129, 680 P.2d 833, 830 Ariz. App. 1984. *See, also, Brown v.*
9 *Superior Court In and For Maricopa County*, 137 Ariz. 327 (1983). The documents or other things
10 requested by Respondent were prepared by the Division and contain staff interpretations and/or
11 mental impressions of investors’ investment experiences with Respondent. These interviews,
12 discussions and document were conducted and prepared in anticipation of litigation and/or
13 preparation for hearing.

14 Finally, with respect to Request Nos. 1., 1b., 1c., 1d., 1e., 1g., 1h., 1i., 1j., 1k., 1l., 1m., 1n.,
15 1o., 2, 4, 5, 6, 7, and 9, the Division objects on the grounds Respondent seeks information that is
16 protected from disclosure by the attorney-client privilege.

17 RESPECTFULLY SUBMITTED this 1st day of August, 2003.

18
19 By: 

20 Phillip A. Hofling
21 Attorney for the Securities Division of
22 the Arizona Corporation Commission
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1 ORIGINAL AND THIRTEEN (13) COPIES
2 of the foregoing filed this 1st day of August, 2003 with:

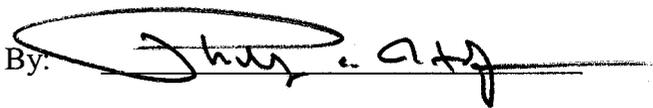
3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered this 1st day
8 of August, 2003, to:

9 Mr. Marc Stern
10 Administrative Law Judge
11 Arizona Corporation Commission
12 Hearing Division
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Copy of the foregoing mailed this 1st day
16 of August, 2003, to:

17 Paul J. Roshka, Jr. Esq.
18 Alan S. Baskin, Esq.
19 James M. McQuire, Esq.
20 One Arizona Center
21 400 East Van Buren Street, Suite 800
22 Phoenix, Arizona 85004

23 By: 

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25
26