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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

MARC SPITZER
Chairman

2003 MAY 30 A 4: 35

JIM IRVIN
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

WILLIAM A. MUNDELL
Commissioner

Arizona Corporation Commission

JEFF MATCH-MILLER
Commissioner

DOCKETED

MIKE GLEASON
Commissioner

MAY 30 2003

DOCKETED BY *CHK*

In the matter of:

DOCKET NO. S-03464A-03-0000

MUTUAL BENEFITS CORPORATION,

RESPONDENT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

Respondent.

Pursuant to the Rules of Practice before the Arizona Corporation Commission and Rule 34 of the Arizona Rules of Civil Procedure, Respondent Mutual Benefits Corporation (the "Respondent" or "MBC") requests that the documents or things designated in the attached list be produced for inspection and copying.

Except as provided otherwise in the attached list, the time and place of production are:

Time: Forty (40) calendar days from the date of service of this Request unless this time frame is modified by the Administrative Law Judge.

Place: Roshka Heyman & DeWulf, One Arizona Center, 400 East Van Buren Street, Suite 800, Phoenix, Arizona 85004.

The attached list sets forth the items to be produced, either by individual item or by category; describes each item and category with reasonable particularity; and specifies the reasonable time, place and manner of making the production and performing the related acts in connection with each item.

The party upon whom this Request is served shall satisfy or object to it in writing within

1 forty (40) days from the date of service of this Request unless this time frame is modified by the
2 Administrative Law Judge.

3 The Response shall state, with respect to each item or category, that the documents will be
4 produced and related activities will be permitted as requested, unless the Request is objected to, in
5 which event the reasons for objection shall be stated.

6 The documents or things sought by this Request include documents, information and things
7 in the possession, custody or control of the Securities Division, their attorneys and all present and
8 former agents, servants, representatives, investigators and others who may have obtained custody
9 of the documents and things on behalf of the party or their attorneys.
10

11 Unless otherwise indicated, this Request covers the time frame of January 1, 1995 to the
12 present.

13 **DEFINITIONS**

14 For the purposes of this Request for Production of Documents, the following terms and
15 references have been abbreviated and defined as follows:

- 16 1. The terms "and" and "or" shall be construed conjunctively or disjunctively,
17 whichever makes the document request more inclusive.
- 18 2. The terms "Securities Division," "you" and "your" shall mean the Securities
19 Division of the Arizona Corporation Commission.
20
- 21 3. The term "Respondent" shall mean Mutual Benefits Corporation.
- 22 4. The term "Notice" is intended to include the Notice of Opportunity for Hearing for
23 Docket No. S-03465A-02-0000.
24
- 25 5. The terms "document" or "documents" include, without limiting their generality, all
26 contracts, agreements, correspondence, letters, files, memoranda, messages, handwritten notes,
27

1 e-mail, inter- or intra-departmental or office or firm communications, telephone logs, telephone
2 messages, computer disks, hard drives, telegrams, newsletters or other publications, stock
3 certificates, stock options, promissory notes, appraisal reports, expressions of opinion as to value
4 or use of real or personal property, valuation estimates of any kind, financial data, *pro formas*,
5 estimates, financial projections, statements, credit and loan applications, accounting records and
6 worksheets, financial statements, diaries, calendars, logs, desk diaries, appointment books,
7 feasibility studies, recordings, notes of conversations, notes of meetings, notes of conferences,
8 notes of investigations, notes of opinions, notes of interviews, written statements, recorded or
9 taped interviews or statements, drafts of reports, preliminary reports, final reports, studies,
10 forecasts, prospectuses, charts, graphs, maps, drawings or other representations or depictions,
11 telephone records, motion picture film, audio or video tape recordings, facsimile copies, computer
12 printouts, data card programs or other input or output of data processing systems, photographs
13 (positive print, slides or negatives), microfilm or microfiche, or other data compilations from
14 which information can be obtained or translated through detection devices into reasonably usable
15 form, whether originals or copies, altered or unaltered, made by any means. The terms
16 "document" and "documents" also include all copies which are, in any manner, not identical in
17 content to the originals. Any comment or notation appearing on any document, and not a part of
18 the original text, is to be considered a separate "document." Any draft, or any other preliminary
19 form of any document, is also to be considered a separate "document."
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22 6. The term "all documents" means every document, as defined above, known to you
23 and every document which can be located or discovered by reasonably diligent efforts.
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25 7. The terms "writing" or "written" are intended to include, but not necessarily be
26 limited to, the following: handwriting, typewriting, printing, photographing and every other means
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1 of recording upon any tangible thing, any form of communication later reduced to a writing or
2 confirmed by a letter.

3 8. The term "communication" means any oral, written, electronic, graphic,
4 demonstrative, or other transfer of information, ideas, opinions or thoughts between two or more
5 individuals or entities, regardless of the medium by which such communication occurred, and shall
6 include, without limitation, written contact by such means as letters, memoranda, telegrams, telex,
7 or any documents, and oral contact by such means as face to face meetings and telephone
8 conversations.

9
10 9. The terms "concerns" or "concerning" include referring to, alluding to, responding
11 to, relating to, connected with, commenting on, impinging or impacting upon, in respect of, about,
12 regarding, discussing, showing, describing, affecting, mentioning, reflecting, analyzing,
13 constituting, evidencing or pertaining to.

14 10. The term "person(s)" shall mean any natural person, corporation, partnership, sole
15 proprietorship, joint venture, association, limited liability company, governmental or other public
16 entity, or any other form of organization or legal entity, and all of their officials, directors, officers,
17 employees, representatives, attorneys and agents.

18
19 11. The terms "meeting" and "meetings" mean any coincidence of presence of two or
20 more persons between or among whom some communication occurs, whether or not such
21 coincidence of presence was by chance or prearranged, formal or informal, or in connection with
22 some other activity.

23 **INSTRUCTIONS FOR USE**

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25 A. In producing documents and things, indicate the particular request to which a
26 produced document or thing is responsive.

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B. In producing documents and things, furnish all documents or things known or available to you, regardless of whether such documents or things are possessed directly by you or your directors, officers, agents, employees, representatives and investigators or by your attorneys or their agents, employees, representatives or investigators.

C. If any requested document or thing cannot be produced in full, produce each such document to the extent possible, specifying each reason for your inability to produce the remainder and stating whatever information, knowledge or belief you have concerning the unproduced portion and the expected dates on which full production can be completed.

D. If any documents or things requested were in existence but are no longer in existence, then so state, specifying for each document or thing:

- (1) The type of document or thing;
- (2) The type(s) of information contained therein;
- (3) The date upon which it ceased to exist;
- (4) The circumstances under which it ceased to exist;
- (5) The identity of each person or persons having knowledge or who had knowledge of the contents thereof; and
- (6) The identity of each person or persons having knowledge of the circumstances under which each document or thing ceased to exist.

E. This Request for Production of Documents is deemed to be continuing. If, after producing documents and things, you obtain or become aware of any further documents, things or information responsive to this Request for Production of Documents, you are required to produce to Respondent such additional documents and things, or provide Respondent with such additional information.

F. Documents attached to each other should not be separated.

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G. In lieu of producing originals or copies thereof responsive to this Request, you may, at your option, submit legible photographic or other reproductions of such documents, provided that the originals or copies from which such reproductions were made are retained by you until the final disposition of this proceeding.

H. In the event that you seek to withhold any documents, things or information on the basis that it is properly subject to some limitation on discovery, you shall supply Respondent with a list of the documents and things for which limitation of discovery is claimed, indicating:

- (1) The name of each author, writer, sender or initiator of such document or thing, if any;
- (2) The name of each recipient, addressee or party for whom such document or thing was intended, if any;
- (3) The name of the person in custody or charge or possession of each such document;
- (4) The date of each such document, if any, or an estimate thereof and so indicated as an estimate;
- (5) The general subject matter as described in each such document, or, if no such description appears, then such other description sufficient to identify said document;
- (6) The name, business address and position of each person who has seen, or has access to or knowledge of, the contents or nature of any such document; and
- (7) The claimed grounds for limitation of discovery (*e.g.*, "attorney-client privilege").

DOCUMENTS TO BE PRODUCED

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:

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- 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 (i) Respondent and (ii) employees/independent agents/representatives of Respondent, including Examinations Under Oath, and all exhibits thereto;
- b. All tapes and/or transcripts of tapes and/or memoranda and/or notes an/or transcripts of sworn testimony that in any way memorialize communications between the Securities Division and any entity or individual interviewed and/or contacted in connection with the Securities Division's investigation of Respondent and relating to the allegations set forth in the Notice. This includes all complaints, correspondence and Examinations Under Oath, and all exhibits thereto;
- c. All documents in the possession or under the control of the Securities Division relating to the Respondent;
- 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;
- e. All correspondence regarding or referring to the Respondent;
- f. All documents or other information provided by Respondent to the Securities Division;
- g. All documents regarding or referring to Dr. Clark Mitchell;
- h. All documents regarding or referring to Anthony Livoti;
- i. All documents regarding or referring to Steven Steiner;
- j. All documents regarding or referring to Joel Steinger;
- k. All documents regarding or referring to Leslie Steinger;
- l. All documents regarding or referring to Community Healthcare/Center One, Inc. and any affiliates or related entities;
- m. All documents evidencing telephone calls made by the Securities Division or anyone acting on its behalf to Respondent including, but not limited to, (i) documents sufficient to identify each telephone call made by the Securities Division, (ii) who authorized each telephone call, (iii) who placed the telephone calls, (iv) the scripts or outlines

1 used by the individuals who placed or received these calls; and (v)
2 any notes, transcripts, tapes or other memoranda memorializing the
3 telephone calls;

4 n. All documents sufficient to identify the "55 individuals and corporate
5 agents" and "349 Arizona investors" referenced in Paragraph No. 5 of
6 the Notice;

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

9 p. All documents related to the Securities Division's involvement in the
10 legislative process resulting in A.R.S. § 44-1801 (26) and (29) and
11 § 44-1850 referenced on Paragraph No. 10 of the Notice including,
12 but not limited to, (i) copies of any and all memoranda or other
13 reports prepared on the subject, (ii) documents reflecting testimony, if
14 any, given by the Securities Division concerning the above referenced
15 statutes, and (iii) any other documents that refer or relate to the
16 changes in the law referenced to in Paragraph No. 10 of the Notice in
17 the possession of the Securities Division;

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

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

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

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

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

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

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

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

ROSHKA HEYMAN & DEWULF, PLC

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TELEPHONE NO 602-256-6100
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- y. Documents sufficient to identify the “Agents” and “investors” referenced in Paragraph No. 42 of the Notice;
- z. Documents sufficient to identify the “investors” referenced in Paragraph No. 45 of the Notice;
- aa. Documents sufficient to identify the “Agents” and “investors” referenced in Paragraph No. 46 of the Notice;
- bb. Documents sufficient to identify the “two viator attending physicians” referenced in Paragraph No. 48 of the Notice;
- cc. Documents sufficient to identify the “one attending physician” referenced in Paragraph No. 50 of the Notice;
- dd. Documents sufficient to identify the “Agents” and “investors” referenced in Paragraph Nos. 53(a), (b), (c), (f), (g), (h) and (i) of the Notice;
- ee. Documents sufficient to identify the “Arizona investors” referenced in Paragraph No. 54 of the Notice; and
- ff. All subpoenas issued by the Securities Division in connection with the investigation of Respondent in Docket No. S-03464A-03-0000.

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

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

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

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

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

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

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

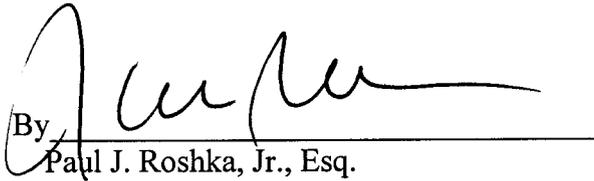
9. Copies of all documents concerning, relating to or regarding the Respondent that came into the Securities Division's possession prior to July 18, 2000.

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

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

RESPECTFULLY SUBMITTED this 30th day of May, 2003.

ROSKA HEYMAN & DeWULF, PLC

By 

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Alan S. Baskin, Esq.
James M. McGuire, Esq.
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TELEPHONE NO 602-256-6100
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1 ORIGINAL and thirteen copies of the foregoing
2 hand-delivered this 30th day of May, 2003 to:

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

7 COPY of the foregoing hand-delivered
8 this 30th day of May, 2003 to:

9 W. Mark Sendrow, Esq.
10 Matthew J. Neubert, Esq.
11 Phillip A. Hofling, Esq.
12 Securities Division
13 Arizona Corporation Commission
14 1300 West Washington Street, 3rd Floor
15 Phoenix, Arizona 85007

16 Marc E. Stern
17 Administrative Law Judge
18 Hearing Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 *Ruth A. Bushee.*
23 mutual.acc/pld/1st Req for Docs.doc

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