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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

MARC SPITZER
Chairman

Arizona Corporation Commission

2003 MAY 29 P 4: 12

JIM IRVIN
Commissioner

DOCKETED

WILLIAM A. MUNDELL
Commissioner

MAY 29 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

JEFF MATCH-MILLER
Commissioner

DOCKETED BY	<i>CH</i>
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MIKE GLEASON
Commissioner

In the matter of:

MUTUAL BENEFITS CORPORATION,

Respondent.

DOCKET NO. S-03464A-03-0000

RESPONDENT MUTUAL BENEFITS
CORPORATION'S ANSWER

Respondent Mutual Benefits Corporation ("MBC") answers the Notice of Opportunity for Hearing Regarding the Proposed Order to Cease and Desist, of Denial, for Restitution, for Administrative Penalties and for Other Affirmative Action ("the Notice"), by admitting, denying and alleging as follows:

I.

JURISDICTION

MBC denies the Arizona Corporation Commission ("the Commission") has jurisdiction over any transactions alleged in the Notice to have occurred prior to July 18, 2000. MBC alleges that on April 25, 2003, it commenced a rescission regarding transactions dated on or after July 18, 2000.

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II.
RESPONDENT

MBC admits that it is a corporation organized and existing under the laws of the State of Florida and that its principal place of business is 200 East Broward Boulevard, 10th Floor, Ft. Lauderdale, Florida 33301.

III.
FACTS

1. Paragraph No. 1 of the Notice does not contain any allegations and, therefore, does not require a response.

2. Paragraph No. 2 of the Notice does not contain any allegations and, therefore, does not require a response.

3. Respondent admits the allegations contained in Paragraph No. 3 of the Notice.

4. Respondent admits that MBC sells viatical settlements through independent agents. Respondent is without sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph No. 4 of the Notice and, therefore, they are denied.

5. Respondent notes the inconsistency between the numbers in Paragraph No. 5 and Paragraph No. 7 of the Notice. Respondent admits it sold viatical and life settlements. Based upon this inconsistency, and the vagueness of the words "individual and corporate agents," Respondent denies any remaining allegations contained in Paragraph No. 5.

6. Respondent denies each and every allegation contained in Paragraph No. 6 of the Notice.

7. Respondent admits the "viatical sales" were not registered as securities. Respondent denies any of these viaticals were required to be registered as securities in Arizona.

1 Respondent denies any remaining allegations contained in Paragraph No. 7 of the Notice. (See
2 Paragraph No. 5 above.)

3 8. Respondent denies each and every allegation contained in Paragraph No. 8 of the
4 Notice.

5 9. Respondent denies it knows what "the relevant time period" referred to in
6 Paragraph No. 9 of the Notice is. Respondent denies that it was required to be registered as a
7 securities dealer in Arizona. Respondent is without sufficient information or knowledge to form a
8 belief as to the truth or falsity of the remaining allegations contained in Paragraph No. 9 of the
9 Notice and, therefore, they are denied.

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11 10. Respondent states that A.R.S. §§ 44-1801(26) and (29) and § 44-1850 speak for
12 themselves. Respondent denies that these statutes "codified the then existing investment contract
13 analysis" with regard to viatical and life settlements. Respondent denies any remaining allegations
14 in Paragraph No. 10 of the Notice.

15
16 11. Respondent states that A.R.S. § 44-1850 speaks for itself. Respondent denies any
17 remaining allegations contained in Paragraph No. 11 of the Notice.

18 12. Respondent states that its April 3, 2001 filing speaks for itself. The Respondent
19 states that the Securities Division's (the "Division") April 17, 2001 response also speaks for itself.

20 13. Respondent states that A.R.S. § 44-1850 speaks for itself. Respondent is without
21 sufficient information or knowledge to form a belief as to the truth of falsity of the remaining
22 allegations contained in Paragraph No. 13 of the Notice and, therefore, they are denied.

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24 14. Respondent states that the Division's June 19, 2001 correspondence speaks for
25 itself. Respondent further states that its September 2001 correspondence to the Division also
26 speaks for itself. Respondent is without sufficient information or knowledge to form a belief as to
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ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 the truth or falsity of the remaining allegations contained in Paragraph No. 14 of the Notice and,
2 therefore, they are denied.

3 15. Paragraph No. 15 of the Notice contains incomplete, misleading and/or inaccurate
4 statements and, therefore, the allegations are denied. Respondent notes that the Division's own
5 allegations refers to the legislation as "the new law" three times in this Paragraph and the
6 legislation is defined as "the new law" in Paragraph No. 10 of the Notice which was filed in 2003.

7 16. Respondent admits it facilitated the sale of viaticals in Arizona. However,
8 Respondent is without sufficient information or knowledge to form a belief as to the truth or falsity
9 of the remaining allegations contained in Paragraph No. 16 of the Notice and, therefore, they are
10 denied. Respondent further states that it advised the Division as long ago as July 16, 2002 that it
11 intended to do a rescission offering with regard to the sales which occurred on or after July 18,
12 2000. In addition, Respondent states that it had provided the Division with drafts of proposed
13 rescission letters before the Notice was filed. On April 25, 2003, Respondent's counsel had a letter
14 hand-delivered to the Division advising that the rescission process regarding transactions on or
15 after July 18, 2000 had begun.

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18 17. Respondent denies each and every allegation contained in Paragraph No. 17 of the
19 Notice.

20 18. Respondent admits that it actively participated in the legislative process
21 surrounding statutory changes which became effective July 18, 2000. Respondent states that it did
22 so because of its intention to comply with the Arizona statutes and in a good faith attempt to work
23 with the Division. Respondent denies each and every remaining allegation contained in Paragraph
24 No. 18 of the Notice.
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1 19. Respondent is without sufficient information or knowledge to form a belief as to the
2 truth or falsity of the allegations contained in Paragraph No. 19 of the Notice and, therefore, they
3 are denied.

4 20. Respondent denies each and every allegation contained in Paragraph No. 20 of the
5 Notice.

6 21. Respondent admits that it has provided marketing literature to its independent
7 agents. Respondent is without sufficient information or knowledge to form a belief as to the truth
8 or falsity to the remaining allegations contained in Paragraph No. 21 of the Notice and, therefore,
9 they are denied.
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11 22. Respondent states that its summer 2001 newsletter speaks for itself. Respondent
12 admits that not all its viatical settlements have matured within their projected life expectancy
13 because there is no way to know for certain when an individual will die. In addition, medical
14 advancements in the treatment of AIDS have enabled many individuals diagnosed with AIDS or
15 HIV-Positive to live beyond life expectancies projected before such advancements. Respondent
16 denies that its marketing literature is misleading. Respondent is without sufficient information or
17 knowledge to form a belief as to the truth or falsity of the remaining allegations contains in
18 Paragraph No. 22 of the Notice and, therefore, they are denied.
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20 23. Paragraph No. 23 of the Notice contains incomplete, misleading and/or inaccurate
21 statements and, therefore, the allegations are denied. Respondent states that its marketing
22 literature speaks for itself.
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1 24. Paragraph No. 24 of the Notice contains incomplete, misleading and/or inaccurate
2 statements and, therefore, the allegations are denied.¹

3 25. Respondent denies it misleads purchasers regarding risk and rates. Paragraph No.
4 25 of the Notice contains incomplete, misleading and/or inaccurate statements and, therefore, the
5 allegations are denied.

6 26. Paragraph No. 26 of the Notice does not contain any allegations and, therefore, does
7 not require a response. To the extent there may be allegations in this Paragraph, Respondent is
8 without sufficient information or knowledge to form a belief as to the truth or falsity of the
9 allegations contained in Paragraph No. 26 of the Notice and, therefore, they are denied.
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11 27. The allegations of Paragraph No. 27 of the Notice are so vague as to prevent a
12 meaningful response. Accordingly, Respondent is without sufficient information or knowledge to
13 form a belief as to the truth or falsity of the allegations contained in Paragraph No. 27 of the
14 Notice and, therefore, they are denied.

15 28. The Notice's use of terms such as "relatively simple," "usually" and "at some later
16 date" make it impossible to respond intelligently and, therefore, Respondent denies the allegations
17 contained in Paragraph No. 28 of the Notice. Respondent admits that, in connection with a
18 purchase, a purchase agreement and related forms are completed and executed by purchasers and
19 those documents speak for themselves.
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21 29. As with the previous paragraph, Respondent does not understand phrases such as
22 "in most circumstances," "implicitly" or the use of the word "appears" and, therefore denies the
23 allegations contained in Paragraph No. 29 of the Notice. Respondent also alleges that this
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¹ Paragraph Nos. 23 and 24 of the Notice are prime examples of the difficulty in answering the Notice. Where are
27 these quotes found? To whom were the documents given? When? See the Motion to Dismiss previously filed in this
matter.

1 paragraph contains incomplete, misleading and/or inaccurate statements.

2 30. Respondent denies each and every allegation contained in Paragraph No. 30 of the
3 Notice. Respondent states the laws on privacy rights in the various States speak for themselves.

4 31. Respondent admits that it performs ministerial functions. Respondent denies the
5 remaining allegations contained in Paragraph No. 31 of the Notice.

6 32. Again, use of words and phrases such as "or others," "in most instances," "at
7 MBC's direction" and "usually given" make response to the allegations contained in Paragraph
8 No. 32 of the Notice impossible. Having said that, Respondent is without sufficient information or
9 knowledge to form a belief as to the truth or falsity of the allegations contained in that Paragraph
10 and, therefore, they are denied. Respondent denies that the purchasers were without ability to
11 undertake any investigation into the investment and that the unidentified purchasers must rely
12 exclusively on the representations of MBC and its agents. In addition, Respondent states
13 purchasers knew every material fact associated with the decision to purchase.
14

15 33. The Notice's use of the phrase "no rights of involvement" makes it impossible to
16 respond intelligibly. Accordingly, Respondent is without sufficient information or knowledge to
17 form a belief as to the truth or falsity of the allegation contained in Paragraph No. 33 of the Notice.
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19 34. Respondent states its forms speak for themselves. Respondent denies any
20 remaining allegations contained in Paragraph No. 34 of the Notice.

21 35. Respondent is without sufficient information or knowledge to form a belief as to the
22 truth or falsity of the allegations contained in Paragraph No. 35 of the Notice and, therefore, they
23 are denied. Respondent states that its documents speak for themselves.
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25 36. Respondent admits that everyone knows that life expectancy cannot be determined
26 exactly. Respondent states that the trust agreement speaks for itself. Respondent admits that a
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1 reserve is established to pay premiums. Respondent states that Paragraph No. 36 of the Notice
2 contains incomplete, misleading and/or inaccurate statements and, therefore, the remaining
3 allegations in Paragraph 36 are denied.

4 37. Respondent states that its documents speak for themselves. The Notice's use of
5 words such as "generally understood," "many" and "may" make it impossible to respond
6 intelligently. The Notice does not explain what is meant by the words "post-purchase efforts" and
7 Respondent is left without sufficient information to respond intelligently. Accordingly,
8 Respondent denies any remaining allegations contained in Paragraph No. 37 of the Notice.
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10 38. Respondent denies each and every allegation contained in Paragraph No. 38 of the
11 Notice.

12 39. Respondent states that its agreements and documentation speak for themselves.
13 Given the vagueness of the allegations, Respondent is without sufficient information or knowledge
14 to form a belief as to the truth or falsity of the allegations contained in Paragraph No. 39 of the
15 Notice and, therefore, they are denied.
16

17 40. Respondent is without sufficient information or knowledge to form a belief as to the
18 truth or falsity of the allegations contained in Paragraph No. 40 of the Notice and, therefore, they
19 are denied.

20 41. Respondent states that its purchase agreements speak for themselves. Respondent
21 admits that all viators die at some point in time, the return is as stated and the return is fixed. The
22 use of words such as "might be" and "if" create a situation where Respondent is without sufficient
23 information or knowledge to form a belief as to the truth or falsity of the remaining allegations
24 contained in Paragraph No. 41 of the Notice and, therefore, they are denied.
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1 42. Respondent denies each and every allegation contained in Paragraph No. 42 of the
2 Notice.

3 43. Respondent denies each and every allegation contained in Paragraph No. 43 of the
4 Notice.

5 43a. In responding to Paragraph No. 43a of the Notice, Respondent states that its
6 documentation speaks for itself. Respondent denies that it had an obligation to disclose any of its
7 regulatory issues. Certainly, the Division has never taken the position that Merrill Lynch, UBS
8 PaineWebber, UBS Warburg or Prudential Securities must inform each of their customers when
9 they enter into a transaction that the firm has had a number of sanctions imposed upon it by the
10 SEC and various state administrators including Arizona. Respondent admits that Joel Steinger and
11 Leslie Steinger consented to a permanent injunction without admitting or denying any liability, but
12 Respondent alleges that proceeding did not name MBC as a defendant. Respondent denies any
13 remaining allegations contained in Paragraph No. 43a.

14 43b. Respondent admits it believes in giving back to the community and that it donates
15 to various charitable organizations. Respondent is without sufficient information or knowledge to
16 form a belief as to the truth or falsity of the remaining allegations contained in Paragraph No. 43b
17 of the Notice and, therefore, they are denied.

18 43c. Respondent admits that it did not, and affirmatively alleges that it could not,
19 disclose the Virginia proceeding to any purchasers prior to the existence of the Virginia order.
20 Respondent states it was not required to disclose the order even after it came into existence.
21 Respondent states that the order was a public record. Respondent notes the Virginia order was a
22 Consent without admission of wrongdoing or that viaticals were securities. Respondent is without
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1 sufficient information or knowledge to form a belief as to the truth or falsity of the remaining
2 allegations contained in Paragraph No. 43c of the Notice and, therefore, they are denied.

3 43d. Respondent admits that it did not disclose the Vermont proceeding to any
4 purchasers prior to the existence of the Vermont order. Respondent states it was not required to
5 disclose the order even after it came into existence. Respondent states that the order was a public
6 record. Respondent denies that a final, non-appealable order has been entered and denies selling
7 unregistered securities in Vermont. Respondent is without sufficient information or knowledge to
8 form a belief as to the truth or falsity of the remaining allegations contained in Paragraph No. 43d
9 of the Notice and, therefore, they are denied.
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11 44. Respondent admits that there is a humanitarian effort associated with its viatical
12 program. Respondent admits that the purchase price paid by purchasers is fixed and unrelated to
13 Respondent's negotiations in setting the terms on which the policy is purchased. Respondent is
14 without sufficient information or knowledge to form a belief as to the truth or falsity of the
15 allegations contained in Paragraph No. 44 of the Notice and, therefore, they are denied.
16

17 45. Respondent admits that the projected life expectancy of an insured is significant.
18 Respondent denies it assigns projected life expectancies. Respondent is without sufficient
19 information or knowledge to form a belief as to the truth or falsity of the allegations contained in
20 Paragraph No. 45 of the Notice and, therefore, they are denied.

21 46. Respondent admits the physician review of a viator's medical records were
22 trustworthy and credible and that the physician was independent. Respondent is without sufficient
23 information or knowledge to form a belief as to the truth or falsity of the allegations contained in
24 Paragraph No. 46 of the Notice and, therefore, they are denied.
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1 47. Respondent admits that one of the independent physicians was Clark C. Mitchell,
2 M.D. Respondent states that Dr. Mitchell's letters speak for themselves. Respondent denies any
3 remaining allegations in Paragraph No. 47 of the Notice.

4 48. Respondent is without sufficient information or knowledge to form a belief as to the
5 truth or falsity of the allegations contained in Paragraph No. 48 of the Notice and, therefore, they
6 are denied.

7 49. Respondent denies each and every allegation contained in Paragraph No. 49 of the
8 Notice.
9

10 50. Respondent denies it made any misrepresentations. Because the allegations are so
11 vague and nonspecific, Respondent cannot form a belief as to the truth or falsity of the remaining
12 allegations contained in Paragraph No 50 of the Notice and, therefore, they are denied.

13 51. Use of words such as "certain sales literature" and "one MBC brochure" require
14 Respondent to state that it is without sufficient information or knowledge to form a belief as to the
15 truth or falsity of the allegations contained in Paragraph No. 51 of the Notice and, therefore, they
16 are denied. Respondent states that its "literature" speaks for itself.

17 52. Respondent states that the fifth (5th) edition of *Black's Law Dictionary* published in
18 1979 speaks for itself.² Respondent admits that its viatical settlements offer fixed returns payable
19 only when the viator dies. Based upon the use of words such as "significantly" and "some of,"
20 Respondent is without sufficient information or knowledge to form a belief as to the truth or falsity
21 of the allegations contained in Paragraph No. 52 of the Notice and, therefore, they are denied.
22

23 53. Respondent denies each and every allegation contained in Paragraph 53 of the
24 Notice.
25

26 _____
27 ² To the extent it matters, Respondent notes the current edition of *Black's Law Dictionary* is the seventh (7th) and it was published in 1999.

1 53a. Because the allegations are so vague and nonspecific, Respondent is without
2 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
3 contained in Paragraph No. 53a of the Notice and, therefore, they are denied.

4 53b. Because the allegations are so vague and nonspecific, Respondent is without
5 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
6 contained in Paragraph No. 53b of the Notice and, therefore, they are denied.

7 53c. Because the allegations are so vague and nonspecific, Respondent is without
8 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
9 contained in Paragraph No. 53c of the Notice and, therefore, they are denied.

10 53f.³ Respondent denies it maintains continuing operations after the purchase. Because
11 the allegations are so vague and nonspecific, Respondent is without sufficient information or
12 knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph No.
13 53f of the Notice and, therefore, they are denied.

14 53g. Because the allegations are so vague and nonspecific, Respondent is without
15 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
16 contained in Paragraph No. 53g of the Notice and, therefore, they are denied.

17 53h. Because the allegations are so vague and nonspecific, Respondent is without
18 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
19 contained in Paragraph No. 53h of the Notice and, therefore, they are denied.

20 53i. Respondent denies a duty to disclose the possibility of a misdiagnosis or
21 miscalculation. Because the allegations are so vague and nonspecific, Respondent is without
22 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
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27 ³ There are no Paragraph Nos. 53d or 53e in the Notice.

1 contained in Paragraph No. 53i of the Notice and, therefore, they are denied.

2 54. Respondent denies each and every allegation contained in Paragraph No. 54 of the
3 Notice.

4 **IV.**

5 **VIOLATION OF A.R.S. § 44-1841**

6 **(Offer or Sale of Unregistered Securities)**

7 55. Respondent denies each and every allegation contained in Paragraph No. 55 of the
8 Notice relating to any time frame prior to July 18, 2000. Respondent noted above that it has begun
9 a rescission with regard to the inadvertent sales which occurred after July 18, 2000. Respondent
10 denies any remaining allegations contained in Paragraph No. 55.

11 56. Respondent denies that the sale of its viatical interest prior to July 18, 2000 were
12 securities. Respondent states that A.R.S. §§ 44-1801 and 44-1850 speak for themselves.

13 57. Respondent denies each and every allegation contained in Paragraph No. 57 of the
14 Notice as it relates to any transactions which occurred prior to July 18, 2000. Respondent states
15 A.R.S. § 44-1850 speaks for itself.
16

17 **V.**

18 **VIOLATION OF A.R.S. 44-1842**

19 **(Transactions by Unregistered Dealers or Salesmen)**

20 58. Respondent denies each and every allegation contained in Paragraph No. 58 of the
21 Notice relating to any transactions which occurred prior to July 18, 2000. Respondent denies it has
22 ever been required to register as a salesman. Respondent states A.R.S. §§ 44-1801 and 44-1850
23 speak for themselves. Respondent denies any remaining allegations contained in Paragraph
24 No. 58.
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VIII.

REQUESTED RELIEF

With regard to the Division's Requested Relief, Respondent asks the Commission to deny the Request for a Cease and Desist Order and dismiss this proceeding, deny the Request for an Accounting, and deny the Request for Restitution not only because there have been no violations of law with regard to the transactions prior to July 18, 2000, but also because Respondent has already commenced a rescission regarding viatical interests purchased on or after July 18, 2000. The Request for Restitution is inappropriate as the purchasers continue to hold their interests. Respondent asks the Commission to deny the Division's request for Administrative Action and grant MBC's pending registration exemption. Respondent requests that the Commission deny the Requested Relief as identified in Paragraph Nos. 1, 2a, 2b, 2 (sic), and 3 (sic) of Section VIII of the Notice.

IX.

HEARING OPPORTUNITY

Respondent has requested a hearing pursuant to A.R.S. § 44-1972.

AFFIRMATIVE DEFENSES

1. For its first affirmative defense, Respondent alleges that with respect to transactions prior to July 18, 2000, no violation of A.R.S. §§ 44-1841, 44-1842 or 44-1991 occurred because the sale of interests in life insurance policies/viaticals did not constitute the sale of securities.

2. For its second affirmative defense, Respondent alleges that the Arizona Legislature's 2000 decision to add "viatical or life settlement investment contracts" to its roster of regulated securities in A.R.S. § 44-1801 establishes that prior to this enactment such interests were not securities under Arizona law.

1 3. For its third affirmative defense, Respondent states that it did not sell investment
2 contracts under Arizona law.

3 4. For its fourth affirmative defense, Respondent alleges that the National Association
4 of Securities Dealers, Inc. follows the federal law established in *SEC v. Life Partners*, 87 F.3rd 536
5 (1996) and does not regard viaticals as securities in its disciplinary proceedings.

6 5. For its fifth affirmative defense, Respondent alleges that the Division's attempt to
7 penalize it for sales which occurred prior to July 18, 2000 is unlawful and violates Respondent's
8 right to due process of law.

9 6. For its sixth affirmative defense, Respondent alleges that on April 25, 2003, it
10 advised the Division that it had begun its rescission with regard to the inadvertent transactions
11 which occurred after July 18, 2000.

12 7. For its seventh affirmative defense, Respondent alleges the claims in the Notice are
13 barred by estoppel.

14 8. For its eighth affirmative defense, Respondent alleges the claims in the Notice are
15 barred by laches.

16 9. For its ninth affirmative defense, Respondent alleges the claims in the Notice are
17 barred by accord and satisfaction.

18 10. For its tenth affirmative defense, Respondent alleges that the claims in the Notice
19 violates the statute of limitations.

20 11. For its eleventh affirmative defense, Respondent alleges that the claims in the
21 Notice are barred by waiver.

22 12. For its twelfth affirmative defense, Respondent alleges that the claims in the Notice
23 are barred by assumption of risk.

1 13. For its thirteenth affirmative defense, Respondent alleges that the claims in the
2 Notice are barred by payment.

3 14. For its fourteenth affirmative defense, Respondent alleges that the claims in the
4 Notice are barred by release.

5 15. For its fifteenth affirmative defense, Respondent alleges that it is not offering or
6 selling its viatical interests in Arizona and has not done so for quite some time.

7 16. For its sixteenth affirmative defense, Respondent alleges that it has attempted to
8 comply with the Arizona statutory scheme by filing for an exemption under A.R.S. § 44-1850 and
9 responding to the Division's sixty-two (62) comments to that filing in January 2003.

10 17. For its seventeenth affirmative defense, Respondent alleges that there are no
11 hearing procedures under the Securities Act or the rules and regulations promulgated thereunder to
12 deny Respondent's request for an exemption pursuant to A.R.S. § 44-1850 and, accordingly, the
13 exemption must be granted.

14 18. For its eighteenth affirmative defense, Respondent alleges that the Notice fails to
15 state a claim upon which relief can be granted.

16 19. For its nineteenth affirmative defense, Respondent alleges that the Division has
17 failed to allege securities fraud with reasonable particularity as required by Rule 9(b) of the
18 Arizona Rules of Civil Procedure.

19 20. For its twentieth affirmative defense, Respondent states that purchasers of viaticals
20 did not rely, reasonably or otherwise, on any alleged misrepresentations by Respondent.

21 21. For its twenty-first affirmative defense, Respondent alleges that it did not know,
22 and in the exercise of reasonable care could not have known, of any alleged untrue statements or
23 material omissions as set forth in the Notice.
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22. For its twenty-second affirmative defense, Respondent states that it has not acted with the requisite scienter.

23. For its twenty-third affirmative defense, Respondent states that it has not employed a deceptive or manipulative device in connection with the purchase or sale of any security.

24. For its twenty-fourth affirmative defense, Respondent states that purchasers of viatical interests suffered no injuries or damages as a result of Respondent's alleged acts.

25. For its twenty-fifth affirmative defense, Respondent states that it never made any misrepresentations or omissions, material or otherwise.

26. For its twenty-sixth affirmative defense, Respondent alleges that the violations, if any, of the Securities Act, were proximately caused and contributed to by the improper conduct or intervening acts of other third persons who are not named in this action as parties.

27. For its twenty-seventh affirmative defense, Respondent alleges that it acted in good faith and did not directly or indirectly induce the conduct at issue.

28. For its twenty-eighth affirmative defense, Respondent alleges that purchasers of viatical interests approved and/or authorized and/or directed all of the transactions at issue.

29. For its twenty-ninth affirmative defense, Respondent alleges that the length of time between the alleged conduct (March 1995) and the filing of the Notice (April 2003) violated fundamental principles of fairness and the Due Process Clauses of the U.S. and Arizona Constitutions.

30. For its thirtieth affirmative defense, Respondent states it has caused no damages.

31. For its thirty-first affirmative defense, Respondent alleges that the advancements in medical research, technology and treatment have fortunately prolonged the lives of terminally ill

1 individuals and been the proximate causes of individuals living beyond their projected life
2 expectancies.

3 32. For its thirty-second affirmative defense, Respondent alleges purchasers relied on
4 others and not Respondent in connection with the matters at issue in the Notice.

5 33. For its thirty-third affirmative defense, Respondent alleges that the conduct
6 attributed to the unnamed independent agents in the Notice was outside the scope of the unnamed
7 independent agents' agreements with Respondent.

8 34. For its thirty-fourth affirmative defense, Respondent alleges it is not vicariously
9 liable or otherwise liable for conduct outside the scope of its agreement with the unnamed
10 independent agents.

11 35. For its thirty-fifth affirmative defense, Respondent alleges it is not liable as a
12 controlling person for the independent unnamed agents' conduct.

13 36. For its thirty-sixth affirmative defense, Respondent alleges that at all times herein, it
14 properly and reasonably supervised its independent agents.

15 37. For its thirty-seventh affirmative defense, Respondent alleges that the conduct set
16 forth in the Notice entitles Respondent to contribution, an apportionment of all causal fault and a
17 proportionate reduction of any restitution.

18 38. Respondent alleges such other affirmative defenses set forth in Arizona Rules of
19 Civil Procedure 8(c) as may be determined to be applicable through discovery.

20 39. Respondent reserves the right to amend this Answer to assert additional defenses
21 after completion of appropriate discovery.
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ROSHKA HEYMAN & DeWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

X.

ANSWER AND AFFIRMATIVE DEFENSE REQUIREMENTS

Respondent has fully complied with the Answer and Affirmative Defense requirements.

RESPECTFULLY SUBMITTED this 29th day of May, 2003.

ROSHKA HEYMAN & DeWULF, PLC

By 

Paul J. Roshka, Jr., Esq.

Alan S. Baskin, Esq.

James M. McGuire, Esq.

One Arizona Center

400 East Van Buren Street, Suite 800

Phoenix, Arizona 85004

602-256-6100

602-256-6800 (facsimile)

Attorneys for Respondent

Mutual Benefits Corporation

ORIGINAL and thirteen copies of the foregoing
hand-delivered this 29th day of May, 2003 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 29th day of May, 2003 to:

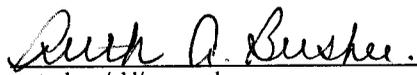
W. Mark Sendrow, Esq.
Matthew J. Neubert, Esq.
Phillip A. Hofling, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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Marc E. Stern
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007


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