



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 ) Case No. AP-04-59  
WILLARD T. JURGENSMEYER, )  
a/k/a W. T. Jurgensmeyer, )  
 )  
Respondent. )

Serve Willard T. Jurgensmeyer at:  
1512 S.W. 6<sup>th</sup> Street  
Lee's Summit, MO 64063

**ORDER TO CEASE AND DESIST**

On the 22<sup>nd</sup> day of June 2004, Mary S. Hosmer, Assistant Commissioner for Enforcement, submitted a petition for a cease and desist order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. Willard T. Jurgensmeyer a/k/a W. T. Jurgensmeyer ("Jurgensmeyer"), is a Missouri resident with a last-known address at 1512 S.W. 6<sup>th</sup> Street, Lee's Summit, Missouri 64063.
2. Mutual Benefits Corporation is a Florida corporation and has a last-known address of 200 East Broward Blvd., 10<sup>th</sup> Floor, Fort Lauderdale, Florida 33301.
3. As used in this Cease and Desist Order, the term "Respondent" refers to Jurgensmeyer.
4. On May 10, 2004, the Missouri Securities Division received a complaint from a Missouri resident ("MR1") concerning MR1's purchase of fractional interests in Mutual Benefits viatical settlement contracts offered and sold by Jurgensmeyer in November of 1997.



5. Jurgensmeyer told MR1, among other things, that:
  - a. There were “very little or no risks” involved with the investment;
  - b. MR1 would earn 28% interest on viatical settlement contracts where the viator’s life expectancy was 24 months;
6. In promotional materials, Jurgensmeyer and Mutual Benefits presented the investment as a compassionate and humanitarian way to help AIDS patients that produced financial rewards for the investor.
7. Jurgensmeyer and Mutual Benefits provided MR1 with a document entitled *Outline of Events* that stated among other things, that the viator must be terminal and have a life expectancy of thirty-six months or less and that this life expectancy would be confirmed by an Independent Reviewing Physician.
8. The Mutual Benefits Purchase Agreement form provided to MR1 by Jurgensmeyer stated, in part, that Mutual Benefits, among other things, would:
  - a. Identify life insurance policies of terminally ill individuals, which complied with established criteria:
  - b. Enter into any agreements or contracts necessary for the purchase of life policies and/or death benefits on behalf of the Purchaser which fall within the agreed underwriting criteria set forth in this Agreement and related documents provided by Mutual Benefits.
  - c. Provide to the purchaser, prior to closing, a summary of any policy to be purchased for review.
  - d. After closing, purchaser would be provided with a copy of the original insurance policy, a copy of the transfer of ownership, a copy of the change of beneficiary documents, and a copy of the independent reviewing physician’s letter regarding life expectancy.
9. Under the Purchase Agreement MR1 could choose the type of policy to be purchased from a list that contained the fixed returns to be earned by the investor. These included a 12-month policy that provided a 12% fixed return, (ostensibly a 12-month policy indicated that the life expectancy of the insured under the insurance policy was 12 months) an 18-month policy that provided a 21% fixed return, a 24-month policy that provided a 28% fixed return and a 36-month policy that provided a 42% return. MR1 chose to invest in 24-month policies that were to pay a 28% return.



10. Based on Jurgensmeyer's recommendation, MR1 invested a total of \$28,000 through a Mutual Benefits Purchase Agreement on November 2, 1997. MR1 opted to invest in at least three different 24-month viatical settlement contracts that would return 28% upon the death of the viators.

11. Mutual Benefits placed MR1's funds into two (2) different viatical settlement contracts as follows:

	Investment Date	Investment Amount	Viator	Policy Carrier	Policy Number	Policy Value	Assigned to Livoti/Mutual
A	11/2/1997	11,621.00	DB	UNUM	LAL126528	63,000.00	Not known
B	11/21/97	16,379.00	JC	Federal Kemper Life	FK5053833	Not known	2/10/98

12. Neither of the two policies listed above matured within the 2-year life expectancy. Correspondence from Mutual Benefits dated October 9, 2003, indicated that both of these so-called 24-month policies were still active and had, at that time, been in place for over 72 months.

13. Paramount to the success or failure of an investment in a viatical settlement contract is Mutual Benefit's "expertise" in determining the projected life expectancy of the insureds. The projected life expectancy affects the discount rate paid to the insured for the policy and the price an investor pays to participate in the viatical settlement contract. Mutual Benefits did not disclose information on the accuracy of the independent physician in determining the life expectancy of other viators.

14. On January 3, 2001, the Commonwealth of Virginia, Division of Securities and Retail Franchising entered a Settlement Order with Mutual Benefits finding that the viatical settlement contracts as offered and sold by Mutual Benefits between February 1995 and July 1998, were investment contracts and therefore securities under Virginia law and required Mutual Benefits, among other things, to offer rescission to Virginia residents with 6% interest.

15. On April 25, 2003, the State of Arizona issued a Notice of Opportunity For Hearing Regarding Proposed Order to Cease and Desist against Mutual Benefits, based on the offer and sale of viatical settlement contracts from March 1995 through January 2002. The viatical settlement contracts sold by Mutual Benefits were found to constitute investment contracts and Mutual Benefits was ordered to cease and desist the offer and sale of its viatical settlement contracts in Arizona and to make restitution to Arizona investors. Mutual Benefits was given 10 days to file a written request for hearing. No request was docketed.

16. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities offered and sold by Respondent in the State of Missouri.



17. The viatical settlement contracts sold by Respondent are not federal covered securities.
18. An investigation by the Securities Division revealed that the investments offered by Respondent were investment contracts for the following reasons:
  - a. MR1 invested money to purchase viatical settlement contracts;
  - b. These investments occurred when MR1 parted with MR1's money;
  - c. MR1's money was used to purchase fractional interests in viatical settlement contracts. This money was pooled with other investors' money to fund the purchase of insurance policies from viators or other viatical settlement companies. The sharing in the profit or loss of the enterprise with the other investors who purchased fractional interests establishes the existence of a common enterprise;
  - d. The investor expected to make a profit from the investments in these fractional interests in viatical settlement contracts. MR1 was told MR1 would get a return of 28%;
  - e. MR1's profits were to have been derived from the significant managerial efforts of Mutual Benefits. These efforts were part of what MR1 bargained for in purchasing the investments. These efforts included but were not limited to, the following activities that occurred after MR1 invested:
    - (1) locating and qualifying individuals with life insurance policies;
    - (2) reviewing the status, terms and viability of each life insurance policy;
    - (3) reviewing and assessing the insured individuals' medical records;
    - (4) determining the individuals' maximum life expectancies;
    - (5) determining an appropriate amount to escrow for payment of premiums;
    - (6) negotiating the price to be paid to each insured individual for their policy; and
    - (7) making decisions concerning policy ownership and method of distribution to beneficiaries upon maturation of the life insurance policies.Mutual Benefits' performance of these activities subsequent to the purchase by MR1 had a material impact upon the profits MR1 would receive.
  - f. MR1's only effort was to put forth the money required for the investment. All other significant efforts, both managerial and entrepreneurial, came from the performance of parties other than MR1.



19. Respondent offered and sold unregistered, non-exempt securities in the form of investment contracts to Missouri residents.
20. A check of the records maintained by the Commissioner confirmed no registration for Respondents to sell securities in the State of Missouri.
21. In connection with the offer, sale or purchase of a security to a Missouri resident, Respondent omitted to state material facts necessary in order to make the statements made not misleading, as follows:
  - a. That Respondent was not registered to sell securities in the State of Missouri; and
  - b. That the viatical settlement contracts were not registered securities;
  - c. Respondents stated that the life expectancy of people with AIDS could be reasonably predicted based upon the medical condition of the patient but omitted to provide information on the accuracy rate of any independent physician in setting life expectancies for the viators.
22. In connection with the offer, sale or purchase of a security to a Missouri resident, Respondent made untrue statements of material fact that the investor's return would be realized within 24 months after investing.
23. This Order is in the public interest.

### CONCLUSIONS OF LAW

1. §409.401, RSMo 1994, included "investment contracts" within the definition of a security. "Investment contract" is an investment of money in a common enterprise with the expectation of profit from the significant managerial efforts of others. *State v. Kramer*, 804 S.W.2d 845 (Mo.App.E.D. 1991). Under Missouri securities law, viatical settlement contracts, which satisfy the elements of an investment contract, are subject to securities law. *In the Matter of William R. Tweedy, et al.*, 2002 WL 1344587 (Mo. Div. Sec.). Under federal law, viatical settlement contracts issued by Mutual Benefits are investment contracts. *S.E.C. v. Mutual Benefits Corp., et al.*, case no. 04-60573, U. S. D. Ct. (Fla.), (*May 4, 2004 Temporary Restraining Order*). The viatical settlement contracts as described in the above findings of fact, constitute investment contracts and are securities.
2. §409.101, RSMo 1994, provided, "It is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they



are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.

3. §409.301, RSMo 1994, provided, "It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act or (2) the security or transaction is exempted under section 409.402. The conduct described in the above findings of fact constitutes violations of this section.
4. §409.201, RSMo 1994, provided that it is unlawful for any person to transact business in this state as a agent unless the person is registered. The conduct described in the above findings of fact constitutes a violation of this section.
5. §409.408(b), RSMo 1994, provided, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

6. Offering or selling unregistered securities as described in the above findings of fact constitutes an illegal practice under §409.408(b), RSMo 1994.
7. Omitting to state material facts in connection with the offer and sale of securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 1994.
8. Making an untrue statement of material fact, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 1994.
9. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.408(b), RSMo 1994.

### **ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from the following:



1. Violating or materially aiding in the violation of §409.5-501, RSMo Cumulative Supp. 2003, by omitting to state, in connection with the offer, sale or purchase of any security, any material facts, including the following:
  - a. Jurgensmeyer was not registered to sell securities in the State of Missouri;
  - b. The viatical settlement contracts were not registered securities.
  - c. The life expectancy of people with AIDS could be reasonably predicted based upon the medical condition of the patient, unless also disclosing information on the accuracy rate of any independent physician in setting life expectancies for the viators.
2. Violating or materially aiding in the violation of §409.5-501, RSMo Cumulative Supp. 2003, by making in connection with the sale of any security, untrue statements of material fact, including the statement that the investor's return would be realized within 24 months after investing.
3. Violating or materially aiding in the violation of §409.3-301, RSMo Cumulative Supp. 2003, by offering or selling any unregistered investment contract in the form of a viatical settlement contract, or any other security in this state, unless the security is exempt from registration, or is a federal covered security under the Missouri Securities Act of 2003.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 29<sup>th</sup> DAY OF June, 2004.



MATT BLUNT  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen".

DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES



**Before the  
Commissioner of Securities  
State of Missouri**

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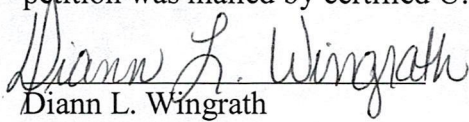
**NOTICE**

**TO: Respondent and any unnamed representatives aggrieved by this Order:**

You may request a hearing in this matter. Any request for a hearing should be sent, in writing to Douglas M. Ommen, Commissioner of Securities, Office of the Secretary of State, Missouri State Information Center, Room 229, 600 West Main Street, Jefferson City, Missouri, 65102, within thirty (30) days of the receipt of this Order. §409.412(a), RSMo 2000, §409.6-604(b) RSMo Cumulative Supp. 2003 and MO 15 CSR 30-55.020.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of June 2004, a copy of the foregoing notice, order and petition was mailed by certified U.S. Mail, postage prepaid, to the Respondent in this matter.

  
Diann L. Wingrath  
Administrative Aide