

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

ABC VIATICALS, INC.,  
C. KEITH LAMONDA,  
and JESSE W. LAMONDA, JR.,

## Defendants

and

LAMONDA MANAGEMENT FAMILY  
 LIMITED PARTNERSHIP,  
 STRUCTURED LIFE SETTLEMENTS, INC.,  
 BLUE WATER TRUST,  
 and DESTINY TRUST

Relief Defendants.

[illegible]

Civil Action No.: 3:06-CV-2136-P (BH)

ECF

**AMENDED MOTION TO SET DATE FOR PRODUCTION OF DOCUMENTS  
AND REASONABLE SUBPOENA PROCESSING FEE AND BRIEF IN SUPPORT**

TO THE HONORABLE IRMA C. RAMIREZ, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling as Receiver in this action and files his Amended Motion to Set Date for Production of Documents and Reasonable Subpoena Processing Fee as directed by the Court's Order of March 20, 2007 [Dkt. No. 36]. In support of this motion, the Receiver would respectfully show the Court as follows:

## I. BACKGROUND FACTS

1. By Order of November 17, 2006, this Court appointed Michael J. Quilling as Receiver for the Defendants and Relief Defendants in this case. *Order Appointing Receiver*

[Dkt. No. 8]. That Order expressly enjoins all parties, including financial institutions, from interfering with the operation of this Receivership in any way. *Id* at ¶ 6.

2. On November 30, 2006, the Receiver sent a letter to SunTrust Bank (“SunTrust”) directing it to provide all records relating to an account held by Relief Defendant LaMonda Management FLP. On January 11, 2007, SunTrust provided those documents along with an invoice charging \$11.00 an hour for research time and copies at \$0.25 a page.

3. The Receiver delivered a subpoena to SunTrust on December 14, 2006, requesting records for seven accounts held by American Title Company of Orlando.<sup>1</sup> In response, SunTrust sent an invoice of estimated charges for \$32,250.00 and stated that production would take at least 42 weeks. That estimate priced research time at \$25.00 an hour and copies at \$1.00 a page.

4. Upon receiving SunTrust’s estimate, the Receiver’s counsel attempted to resolve this dispute without Court intervention. However, SunTrust’s Custodian of Records refused to adjust their rate below \$25.00 an hour or the copy charges below \$0.50 a page. He also insisted that SunTrust could not produce those records for at least 42 weeks.

5. On February 1, 2007, the Receiver filed his original Motion to Set Reasonable Subpoena Processing Fee [Dkt. No. 29], claiming that SunTrust’s estimations were unreasonable and interfered with the Receiver’s ability to carry out his duties.

6. On February 14, 2007, SunTrust’s counsel sent a revised estimate adjusting their rate to \$11.00 an hour and their copy charges to \$.25 a page. A true and correct copy of that estimate is attached as Exhibit “A” and incorporated for all purposes. That estimate, however, still anticipates that SunTrust needs 42 weeks and \$10,200.00 before it will provide 10,500 items

---

<sup>1</sup> That subpoena also requested the LaMonda Management FLP records, which had not yet produced at that time.

to the Receiver. Those charges project 450 hours of research time and 21,000 copies. The Receiver submits that those terms are still unreasonable and asks that this Court set a date for SunTrust to produce those records and set the amount that the Receivership Estate shall pay for them.

## II. ARGUMENTS AND ANALYSIS

It is well settled that a District Court is “entitled to broad discretion in managing pretrial discovery matters” and in “the allocation of costs in discovery.” *Klay v. All Defendants*, 425 F.3d 977, 982 (11th Cir. 2005); *see also Kelly v. Syria Shell Petroleum Development B.V.*, 213 F.3d 841, 855 (5th Cir. 2000) (stating that the District Court has “broad discretion in all discovery matters” that will not be disturbed absent a clear abuse of discretion). In exercising this discretion, the District Court should look to Rule 45 of the Federal Rules of Civil Procedure when allocating the cost of subpoena production between a party and a non-party respondent. Rule 45 explains that Court Orders directing production of requested materials “shall protect any person who is not a party ... from significant expense resulting from the inspection and copying commanded.” Fed. R. Civ. P. 45(c)(2)(B) (emphasis added).<sup>2</sup>

In *Linder v. Portocarrero*, 251 F.3d 178 (D.C. Cir. 2001), the Court examined this language in detail. In that case, the appellants served subpoenas duces tecum to three United States agencies that were not parties to the underlying lawsuit. *Id.* at 179-80. The District Court ordered that appellants and the United States agencies should equally split the “reasonable copying and labor costs.” *Id.* The Appellate Court affirmed that decision and explained that,

---

<sup>2</sup> Before Rule 45 was amended in 1991, it typically required the non-party respondent to absorb the costs of complying with a subpoena duces tecum. *See Cantaline v. Raymark Industries, Inc.*, 103 F.R.D. 447, 450 (S.D. Fla. 1984). Courts reasoned that the inconvenience to non-parties was outweighed by the public interest in seeking the truth in litigated cases. *See, e.g., Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993, 999 (10th Cir.), *cert. denied*, 380 U.S. 964 (1965).

under Rule 45, non-parties must only be protected from “significant” expense in responding to subpoenas. *Id.* at 182. The Court viewed Rule 45 as imposing a two-step analysis. First, the District Court should determine whether the subpoena imposes any real expenses on the non-party at all. Second, it should determine whether those expenses are significant. If so, then the non-party is entitled to recover that portion of expenses rendering the remaining amount “non-significant.” *Id.* Under the facts in that case, the Appellate Court affirmed the decision to divide the labor and copying expenses between the parties issuing the subpoena and those responding to the subpoena.

The District Court’s discretion to manage all pretrial discovery matters is underscored by the expansive equitable powers that it exercises in federal receivership proceedings. Federal courts enjoy “broad powers and wide discretion” to secure “orderly administration” in equitable receivership proceedings. *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372-73 (5th Cir. 1982). District Courts frequently exercise this discretion in the interests of timely resolution of disputes involving the Receiver, decreasing costs for the Receivership Estate, and preventing further dissipation of Receivership Estate assets. *See, e.g., SEC v. Elliott*, 953 F.2d 1560, 1566 (9th Cir. 1992); *SEC v. Wencke*, 783 F.2d 829, 837-38 (9th Cir. 1986). In this case, the Court has already stated that it will not tolerate needless expenditures of time and Receivership Estate assets when it comes to collecting bank records:

All persons . . . specifically including any bank or other depository institution holding accounts for or on behalf of Defendants or Relief Defendants, shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them and shall promptly surrender all Receivership Records. No separate subpoena shall be required. Upon presentment of this Order, all persons, including financial institutions, shall provide account balance information, transaction histories, all account records and any other Receivership Records to the Receiver or his agents, in the same manner they would be provided were the Receiver the signatory on the account.

*Order Appointing Receiver* [Dkt. No. 8] at ¶ 4.

Therefore, the Receiver hereby requests that this Court exercise its discretion to set a reasonable period of time and fee for SunTrust's production of documents. On February 14, 2007, SunTrust's counsel sent a revised estimate stating that it needed at least 42 weeks and \$10,200.00 to provide 10,500 items to the Receiver. The Receiver submits that 42 weeks is an unreasonably long time to wait for account records that are central to this receivership proceeding. Those records relate to accounts held by American Title Company of Orlando, an escrow agent that handled investor funds and premium payments for ABC Viaticals, Inc. ("ABC"). They are crucial to the Receiver's efforts to promptly identify, locate, freeze, and recover funds on behalf of ABC's investors. Waiting nearly ten months for SunTrust to produce those records would hinder the Receiver's efforts and likely allow further dissipation of Receivership Estate assets. Similarly, SunTrust's estimation of charges seems excessive in the amount of research time requested and total fees charged.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests that, following a hearing on this matter, the Court enter an Order setting (1) a reasonable period of time for SunTrust to produce the requested documents and (2) a reasonable total fee for producing the 10,500 items sought by the Receiver. The Receiver also asks that this Court grant such other and further relief, general or special, at law or in equity, to which he may show himself otherwise entitled.

Dated: March 27, 2007

Respectfully submitted,

**QUILLING, SELANDER, CUMMISKEY  
& LOWNDS, P.C.**

2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By: /s/ Michael J. Quilling  
Michael J. Quilling  
State Bar No. 16432300  
Brent Rodine  
State Bar No. 24048770

**ATTORNEYS FOR RECEIVER**

**CERTIFICATE OF CONFERENCE**

Sun Trust opposes the relief requested in this motion.

/s/ Michael J. Quilling

Michael J. Quilling

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of March, 2007, a true and correct copy of this document was served via electronic notice to all parties requesting same and to the following by U.S. mail with first-class postage pre-paid:

SunTrust Bank  
7474 Chancellor Drive  
Orlando, FL 32809  
Mail Code: FL-Orlando-6201

/s/ Michael J. Quilling

Michael J. Quilling