

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.

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Civil Action No. 3:06-CV-2136-P

**EXAMINER'S FIRST INTERIM APPLICATION  
TO ALLOW AND PAY (1) EXAMINER'S FEES AND EXPENSES, AND (2) ATTORNEY'S  
FEES AND EXPENSES AND BRIEF IN SUPPORT**

TO THE HONORABLE JORGE A. SOLIS, UNITED STATES DISTRICT JUDGE:

Steven A. Harr, Examiner, files this his First Interim Application to Allow and Pay (1) Examiner's Fees and Expenses, and (2) Attorney's Fees and Expenses and Brief in Support of such would show the Court as follows:

## Background

1. On November 17, 2006, the United States Securities and Exchange Commission ("SEC") filed its Complaint and requested the appointment of a receiver. On that same date, the Court appointed Michael J. Quilling to serve as receiver and he has functioned in that capacity since that time.

2. On November 29, 2006 the Receiver filed a Motion to Appoint Examiner. On November 30, 2006 the Court granted the motion and appointed Steven A. Harr as the Court's Examiner. The Examiner was appointed to respond to investor inquiries, gather and communicate the collective interest of the investors with respect to on going matters in the case, and to monitor the actions of the Receiver in this matter on behalf of approximately 3500 investors world wide. Included specifically in his charge was the regular communication of events in this proceeding to the investors.

3. Mr. Harr is an attorney with the law firm of Munsch Hardt Kopf & Harr, P.C. ("MHKH") and the order further permitted Mr. Harr to retain members of his firm and any other professionals considered to be reasonable and necessary by the Examiner to fulfill his obligations to the Court.

4. This Application seeks the court's approval of the attorney's fees and expenses incurred by the Examiner and MHKH for the time period of November 16, 2006 through April 15, 2007.

5. During the period in question, the Examiner and MHKH have been paid 90% of their attorney's fees and 100% of their expense as provided in the Order Appointing Receiver at paragraph 16. This application seeks approval and payment of the fees **(\$191,786.85)** and reimbursement of the expenses **(\$26,829.30)** for the Examiner and MHKH for the time period from November 16, 2006 to April 15, 2007, and for the payment of the monthly ten percent (10%) hold back in the amount of **\$21,309.65**.

8. The action required of the Examiner and his team during this period has been steady and challenging. A very successful means of communicating with investors has been established using the internet and has allowed the Examiner to make contact with investors all over the world, including posting all information in Chinese. The portfolio has been stabilized, costs cut to minimums and the process substantially initiated to develop a strategy to deal with the 55 insurance policies that represent death benefits of over 200 million dollars. The portfolio

is safe from lapse at this point and substantial efforts are underway to understand and develop the best strategy to produce the most return to the investors. During the period covered by this application, the Examiner has incurred fees and expenses with respect to his activities as Examiner and with respect to MHKH as follows:

| <b><u>Month</u></b>                      | <b><u>Fees</u></b> | <b><u>Expenses</u></b> |
|------------------------------------------|--------------------|------------------------|
| November 16, 2006 –<br>December 15, 2006 | 59,940.50          | 2,585.11               |
| December 16, 2006 –<br>February 15, 2007 | 76,451.00          | 11,105.34              |
| February 16, 2007 –<br>March 15, 2007    | 53,598.00          | 7,266.73               |
| March 16, 2007 –<br>April 15, 2007       | 23,107.00          | 5,872.12               |
| <b>TOTAL:</b>                            | <b>213,096.50</b>  | <b>26,829.30</b>       |

9. Exhibit "A," which is attached and incorporated herein by reference for all purposes, conveys the following information for the time period of November 16, 2006 through April 15, 2007:

- a. The number of hours worked by each attorney and staff member on a particular day;
- b. The work performed by each attorney and staff member;
- c. The rates for each person rendering service in this matter (which for some are below standard rates and for all others are at standard rates), and involvement of the Examiner and MHKH attorneys and staff in this case during the period covered by this application during which a total of more than 646 hours of attorney, staff and Examiner time have been expended.

#### **JOHNSON FACTORS**

11. In support of this request for allowance of compensation and reimbursement of expenses, the Examiner and MHKH respectfully direct this Court's attention to those factors generally considered by Courts in awarding compensation to professionals for services performed in connection with the administration of a receivership estate. As stated by the Sixth Circuit Court of Appeals in *Reed v. Rhodes*, 179 F.3<sup>rd</sup> 453, 471 (6<sup>th</sup> Cir. 1999), "The primary

concern in an attorney's fee case is that the fee awarded be reasonable." See *Blum v. Stenson*, 465 U.S. 886, 893 (1984). A reasonable fee is 'one that is adequate to attract competent counsel'. . . (cite *omitted*). Under the twelve factor test enunciated by the Fifth Circuit in *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5<sup>th</sup> Cir. 1974) and adopted by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 432 (1983), a court must first determine the lodestar amount by multiplying the reasonable number of hours billed by a reasonable billing rate. That amount can then be adjusted by the "Johnson Factors". Those factors as applied to the services rendered in this case by the Examiner and MHKH are addressed below:

(a) The time and labor required. The Examiner and MHKH respectfully refer the Court's attention to Exhibit "A," which details the involvement of the Examiner and MHKH attorneys in this case during the period covered by this application during which a total of more than 646 hours of attorney, staff and Examiner time have been expended

(b) The novelty and difficulty of the questions. Many of the tasks reflected in Exhibit "A" involve factual and legal questions which were of substantial complexity. The issues are ever changing. The Examiner has had to become knowledgeable and keep current of all ongoing events so as to be in a position to respond to investor inquiries. The issues require constant attention to the inquiry and concerns of the claimants.

(c) The requisite skill to perform the service. The Examiner believes that the services performed in this case have required individuals possessing considerable experience in business transactions, investment fraud, insurance, workouts, litigation, tax, equity receiverships and liquidations. Both the Examiner and MHKH have considerable experience in many of these areas.

(d) The preclusion of other employment due to the acceptance of the case. The Examiner and MHKH have not declined any representation solely because of their services as Examiner and counsel for the Examiner.

(e) The customary fee. The hourly rates sought herein are at least commensurate with the rates charged by other practitioners of similar experience levels in the Northern District of Texas and in the case of the Examiner and his lead counsel Mr. Roossien, below their standard hourly rates. During the time period covered by this application, the following lawyers at MHKH have performed legal services on behalf of the Examiner with respect to these proceedings.

|                  |                   |                                                                                                                   |
|------------------|-------------------|-------------------------------------------------------------------------------------------------------------------|
| Steven A. Harr   | \$400.00 per hour | Licensed in Texas in 1980 and admitted to practice law before all state and federal courts in the State of Texas. |
| Dennis Roossien  | \$355.00 per hour | Licensed in Texas in 1992 and admitted to practice before all state and federal courts in the State of Texas.     |
| Mark Kopidlansky | \$395.00 per hour | Licensed in Texas in 1989 and admitted to practice before all state courts in the State of Texas.                 |
| Holly Church     | \$235.00 per hour | Licensed in Texas in 2003 and admitted to practice law before all state and federal courts in the State of Texas. |

Additionally, the following paralegals assisted with the work performed:

|                  |                   |                                                                                                                                                                                       |
|------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mary Jo Martin   | \$135.00 per hour | Rendered valuable service in connection with the communications with investors and responding to investor contact and maintenance of all the Examiner's voluminous records and files. |
| Kathleen Clement | \$70.00 per hour  | Conducted research relating to various issues.                                                                                                                                        |

(f) Whether the fee is fixed or contingent. The Examiner and MHKH fees are fixed insofar as monies exist by way of receivership assets from which to pay such fees. Payment of such fees, however, is subject to Court approval.

(g) Time limitations imposed by the Client or other circumstances. The time requirements during the period covered by this Application have been substantial. The Examiner and his staff are constantly responding to investors, addressing new issues presented and their affect on the investors, monitoring and updating the Examiner's website, attending to voicemail

communications, investor responses and information to continue to assist the Receiver and report as necessary to the Court.

(h) The amount involved and the results obtained. This case involves 55 insurance policies with a face value of 230 million dollars. It further involves over 3500 investors from around the world who have invested approximately 120 million dollars in this scheme. At the time the case was filed, the receivership had approximately 4.5 million dollars and a premium obligation of approximately 7 million a year. Since his appointment, the Examiner has been actively involved in establishing key lines of communication with the investors, including complicated English and Chinese websites, e-mail access for all investors, voicemail operations and visits to Taiwan and Puerto Rico for meetings where the majority of the investors and brokers are located. The Examiner has participated in the analysis and development of alternative strategies for how to maximize the return on the portfolio. The Examiner helped to establish the line of credit currently in place to protect the policies from lapse and investigated the market and alternative sources for funding. The Examiner has been in constant contact with investors, brokers, and members of the federal government who have an interest in this proceeding. The portfolio has been stabilized, there is time to seek a beneficial solution, the investors are informed and in the process of making claims in the proceeding.

During the period covered by this application, the Examiner and his lawyers and paralegals have handled the following matters.

(1) Establishing, monitoring and updating a website for communication to the investors of ongoing activities;

(2) Establishing, monitoring and updating an email box and a voicemail system sufficient to receive investor contact and communications and responding to their contacts in a prompt manner;

(3) Responding to contacts from investors and their various attitudes and objections to proceedings in this matter, whether that information or contact was received via e-mail, regular mail or by voicemail;

(4) When appropriate, attending and participating at hearings;

(5) Actively engaging in communication and review of documents and information provided from ABC Viatical, Inc files and elsewhere;

(6) Participating in face-to-face meetings with Special Counsel and the Receiver, and investor group leaders with regard to solutions available to preserve and maximize the value of the assets of the receivership and to effect the distribution of proceeds to the investors;

(7) Contributing to the analysis of the best means to provide timely value to the investors;

(8) Performing general and administrative tasks;

(i) The experience, reputation and ability of the attorneys. MHKH is a broad base commercial firm with vast experience in the handling of matters generally related to civil trial law, dispute resolution, bankruptcy and general workout matters. The practice of the attorneys specifically in this case regularly includes the representation of investors and other persons involved in business transactions in which the investors or other parties are victims or aggrieved in some fashion. Examiner and Counsel to the Examiner have also served as counsel in other large SEC Receiverships involving investor fraud on a worldwide basis. The reputation of the Examiner and MHKH attorneys is recognized and respected in their community in Texas.

(j) The undesirability of the case. The service as Examiner and the representation of the Examiner incident to this case has not been undesirable.

(k) The nature and length of the professional relationship with the client. MHKH did not represent the Examiner in these proceedings prior to being retained in these proceedings.

(l) Award in similar cases. MHKH believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases in this district.

WHEREFORE, PREMISES CONSIDERED, the Examiner and MHKH request that this Court approve all of the fees and expenses as set forth herein and for such other and further relief, general and special, at law or in equity, to which the Examiner and MHKH may show themselves justly entitled.

Dated: 5-15-07

Respectfully submitted,

**MUNSCH HARDT KOPF & HARR, P.C.**

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By: /s/ Steven A. Harr

Steven A. Harr  
State Bar No. 09035600

**Court Appointed Examiner**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of May 2007, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means

/s/ Steven A. Harr

Steven A. Harr