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,	§	Civil Action No. 3:06-CV-2136-P
and JESSE W. LAMONDA, JR.,	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
LAMONDA MANAGEMENT FAMILY	§	
LIMITED PARTNERSHIP,	§	
STRUCTURED LIFE SETTLEMENTS, INC.,	§	
BLUE WATER TRUST,	§	
and DESTINY TRUST	§	
	§	
Relief Defendants.	§	

RECEIVER'S UNOPPOSED MOTION TO SOLICIT BIDS FOR PURCHASE OF POLICIES AND APPROVE BID PROCEDURES AND BRIEF IN SUPPORT

TO THE HONORABLE JORGE SOLIS, U.S. DISTRICT JUDGE:

COMES NOW the Receiver, Michael J. Quilling, ("Receiver") and requests that the Court authorize him to solicit bids for purchase of one or more of the insurance policies owned by the receivership estate and to establish procedures relating to bid solicitation. In support of this Motion the Receiver would show as follows:

Introduction

1. By Orders dated November 17, 2006, and December 1, 2006, this Court appointed Michael J. Quilling as the Receiver for ABC Viaticals, Inc. and various related trusts

(collectively, "ABC") and charged the Receiver with the duties and obligations to hold, manage and dispose of various assets (the "Receivership").

2. Among the Receivership's assets are 55 insurance policies (the "Policies") with a combined death benefit face value of $236,240,033.00. A schedule of those Policies is attached as Exhibit 1.

3. By prior Order of this Court, the Receiver was allowed to use remaining escrow funds and policy maturities (death benefits) to pay future policy premiums as they accrued (Dkt. No. 17) and to have the ability to borrow funds from Sovereign Bank to pay premiums, should it be necessary (Dkt. No 18). Due to the fact that ABC's previous management and trustees failed to place sufficient premium reserves in escrow, all of the premium reserves have been exhausted without any policies maturing. The only substantial source of funds available to pay premiums is the Receiver's line of credit at Sovereign Bank. As of January 31, 2008, the Receiver has $190,826.25 on deposit and has drawn $8,060,000.00 against his $9 million line of credit. The premium obligation for February 2008 is $979,982.95. The Receiver and Sovereign Bank are discussing an increase of that line of credit to $15 million.

4. The Receiver is presently administering the Policies which means that he is paying the premiums on a timely basis and monitoring the insureds with respect to a death. Included within the polices are some that essentially cost the Receiver nothing to continue to hold at this time. These policies have cash values that will pay the premiums for a couple of more years and, thus, the cost to hold them during that period is so low and the return represented by the payment of a full death benefit so high that the Receiver intends to hold those policies and monitor their maturity ("Low Cost Policies") unless an acceptable offer to purchase

them is received. The seven policies in this group of policies have an aggregate of $52,903,786.00 in death benefit value. A schedule of these policies are set forth in Exhibit 2.

5. Some of the Policies held by the Receiver are designated as "bonded" by the Albatross/Unicredit transactions. Selling these policies at the present time could jeopardize any coverage provided by Albatross/Unicredit. The Receiver is actively engaged in trying to open communications with Unicredit Xelion Bank in Italy to confirm their agreement to pay on these obligations and will probably have a firm answer prior to any actual sale of this group of policies. Until the Receiver knows for sure how Unicredit intends to proceed, it would be unwise to sell the policies as one of the conditions of Albatross/Unicredit paying on their obligations is that the Receiver must transfer the insurance policies in exchange for the payment. However, if an acceptable offer is made, it might make sense to sell these policies now. There are 17 policies in this group of policies and they have an aggregate of $64,900.00 in death benefit value ("Unicredit Policies"). This group of policies is expected to cost the receivership estate $2,693,572.80 in premiums in 2008 alone. A schedule of these policies are set forth in Exhibit 3.

6. The remaining 31 policies were either not bonded or were bonded by International Fidelity & Surety and those bonds are known to be worthless. Those policies are projected to cost the receivership estate at least $6,710,052.10 in premiums during the calendar year 2008 alone. Given the passage of time with no deaths amongst the insureds, and the very expensive cost of maintaining the policies, the Receiver and the Examiner believe it would be in the best interest of the receivership estate and the investors to solicit bids to purchase these policies (the "Sale Policies"). This group of policies have an aggregate $118,436,247.00 in death benefit value. A schedule of these policies are set forth in Exhibit 4.

7. There are thought to be approximately 4,000 investors/creditors of the Receivership. The Court has heretofore approved a Claims Administration Procedure (Dkt. No. 26). Pursuant to the claims procedures, 3,379 "A" claims have been submitted to the Receiver as of January 15, 2008, in the aggregate amount of $126,160,998.95.

8. As set forth above, it makes sense to immediately try to sell the Sale Policies. It might also make sense to sell the Unicredit Policies and Low Cost Policies now if an acceptably high price can be achieved versus the cost to maintain those policies, borrow money and keep these proceedings pending. So that all reasonable courses of action can be fairly evaluated, the Receiver and Examiner recommend that bids be solicited for all the Policies and for just segments of the Policies. Specifically, the Receiver would like to solicit bids for (a) all the Policies; (b) only the Sale Policies; (c) only the Unicredit Policies; (d) only the Low Cost Policies; and (e) only the Unicredit and Sale Policies. The Receiver has already had numerous discussions with several potential purchasers. The Receiver and Examiner hope to obtain the highest possible price for the Policies to be ultimately sold so as to maximize the return to investors.

9. The Receiver proposes that the following bid procedures be established:

- each potential purchaser must sign a confidentiality agreement with the Receiver in the form attached as Exhibit 5;
- Upon signing and returning the confidentiality agreement, each potential purchaser will be given password access to a website upon payment of a one-time small fee to offset the Receivership's cost of maintaining the website;
- The website will contain due diligence materials determined solely by the Receiver as to each of the Policies;

- On or before a date certain to be set by the Receiver but at least 60 days after Court approval of the bid procedures, any potential purchaser wishing to make a bid for all or any segment of the Policies must submit a sealed written bid to the Receiver. All bids must be on an all cash basis in a simple lump sum and each bidder must state in writing its willingness to place 10% of the amount of its bid in the Receiver's escrow account upon written notification by the Receiver that it is the highest bidder, while Court approval is obtained. The Receiver will supply each potential purchaser who is given access to the website with a form on which to submit their written bid substantially in the format set forth in Exhibit 6;
- Upon receipt of the last bid prior to the bid deadline, the Receiver and the Examiner will rank the bids according to amount and determine if the highest bid is acceptable and worth presenting to the Court for approval;
- Assuming the highest bid is acceptable to the Receiver, a Contract to Purchase by that party ("Initial High Bidder") will be submitted to the Court for hearing and approval;
- All losing bidders and any other parties interested in making a higher bid than the one submitted to the Court for approval will be free to attend the hearing and present a higher offer at which time the Receiver, with Court supervision will conduct an auction until the highest and final bid is determined and the winning purchaser declared ("Purchaser");
- Each bid made at the time of the hearing must be made in at least $500,000 increments;

- If the Initial High Bidder is not successful in purchasing the Policies or group of policies because of a subsequent higher bid, the Initial High Bidder will be entitled to a break-up fee equal to 25% of the difference between the amount bid by the Initial High Bidder and the amount offered by the Purchaser or $1 million, whichever is less; and
- Within three business days the Purchaser will be required to execute a Contract to Purchase with the Receiver in form substantially similar to the one submitted in connection with the Initial High Bidder.

Authorities

The Order Appointing Receiver authorizes him to take exclusive custody of all Receivership Assets, including "assets, monies, securities, choses in action, and properties, real and personal, tangible and intangible, of whatever kind and description." (Order Appointing Receiver [Dkt. No. 8] ¶ 1.) The Receiver has a duty to preserve and protect those assets for the investors and other creditors of the estate. *See, e.g., Citibank, N.A. v. Nyland (CF8) Ltd.*, 839 F.2d 93, 98 (2d Cir. 1988); *Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F.Supp. 369, 372 (D. Colo. 1995); *County of Oakland v. City of Detroit*, 784 F.Supp. 1275. 1286 (E.D. Mich. 1992).

Often, the receivership estate's best interests are served by selling its assets. The power to sell assets derives from the District Court's custody and control of the property subject to receivership. *Liberte Capital Group, LLC v. Capwill*, 148 Fed. Appx. 426, 430 (6th Cir. 2005) (authorizing sale of insurance policy portfolio from viatical company in receivership). Sale of receivership assets is often warranted when they are financially burdensome or otherwise serve the estate's best interests. *Id.*; *Wuliger v. Cannella Response Television*, 2006 WL 286000, *7

(N.D. Ohio Feb. 3, 2006) (noting that a life insurance policy may become "too burdensome to maintain, thereby forcing the Receiver to sell it"). In overseeing the sale of receivership assets, the District Court may either define the procedures and conditions of sale or give the receiver discretion to do so. *See Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 548 (6th Cir. 2006) (requiring certain disclosures be made in connection with the receiver's sale of viatical insurance policies); *Quilling v. Trade Partners, Inc.*, 2006 WL 11342277, *1 (W.D. Mich. Apr. 26, 2006) (granting the receiver discretion to facilitate the sale of viatical life insurance policies).

As noted above, other District Courts have authorized receivers to sell life insurance policies from a viatical company's portfolio. In the *Liberte Capital Group* litigation, the receiver took over a portfolio of life insurance policies from the viatical company's escrow agent. *Liberte Capital Group v. Capwill*, 229 F.Supp.2d 799 (N.D. Ohio 2002). In his capacity, the receiver was authorized to "administer the sales of non-fraudulent policies" and "save other policies where justified by economic considerations." *Id.* at 801. Similarly, in the *Trade Partners* litigation, the District Court appointed a receiver to take possession of 842 insurance policies from a viatical company. *See Quilling*, 2006 WL 11342277 at *1. In order to conserve receivership assets and reduce his premium payments, the Court granted the receiver "broad discretion" in facilitating a sale of some less desirable policies. *Id.*

In this case, the Receiver and Examiner have determined that offering all or a portion of ABC's Policies for sale is the only prudent way to conserve their value for the receivership estate. Continuing to pay premiums on the Policies would drain the estate of at least $9,153,137.40 during 2008 alone. It would also likely delay the final distribution in this case given that no maturities have occurred. On the other hand, soliciting bids for all or a portion of

Policies would help the Receiver determine their fair market value and evaluate the best course of action.

No Opposition

The Receiver has confirmed with counsel of record and none of them oppose the Motion.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that the Court schedule a hearing to consider approval of the bid procedures and for such other and further relief, both general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Dated: February 1, 2008.

Respectfully submitted,

/s/Michael J. Quilling

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