

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

**ECF**

**RECEIVER'S MOTION TO SELL ALL INSURANCE  
POLICIES AND APPROVE PURCHASE AND SALE  
AGREEMENT AND REQUEST FOR EVIDENTIARY HEARING**

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

COMES NOW Michael J. Quilling, the Receiver (“Receiver”) and files this Motion to Approve Purchase and Sale Agreement and in support of such would show unto the Court as follows:

## Background

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 and affiliated

entities, including various 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 of the Policies maturing. The only substantial source of funds available to pay premiums is the Receiver’s line of credit at Sovereign Bank. As of May 31, 2008, the Receiver has \$425,260.31 on deposit and has drawn \$12,110,000.00 against his \$15 million line of credit. The premium obligation on the Policies for June 2008 is \$896,082.95. The premium obligation on the Policies for July through December 2008 is \$4,763,797.70.

4. On February 1, 2008, the Receiver filed an Unopposed Motion to Solicit Bids for Purchase of Policies and Approve Bid Procedures (“Bid Motion”) [Dkt. No. 114] which the Court approved by Order dated February 4, 2008 (“Bid Order”) [Dkt. No. 115].

5. Pursuant to the Bid Order, the Receiver provided due diligence materials via a secure website to potential purchasers and solicited sealed bids to delivered on or before April 30, 2008. Three parties made written bids for the entire portfolio of Policies, the highest of

which was \$27,100,000.00 by Silver Point Capital Fund, L.P. ("Silver Point"). Despite the Receiver's invitation for bidders to only bid on portions of the Policies, none did so.

6. Although the Silver Point bid was less than what the Receiver hoped to achieve, he has nonetheless had extensive discussions about the Silver Point bid with the Examiner and the SEC, each of whom agrees that the only viable option, in light of current financial circumstances, is to accept the Silver Point bid.

7. Accordingly, the Receiver notified Silver Point that he accepted the bid and the parties have negotiated a Purchase and Sale Agreement ("Purchase Agreement"), a true and correct copy of which is attached as Exhibit 2 and incorporated herein by reference for all purposes.<sup>1</sup> The Purchase Agreement was the result of good faith arm's length negotiations between sophisticated parties advised by competent counsel and the price contained therein represents reasonable value for the Purchased Assets.

8. As will be further explained below, the Receiver believes that the Court's approval of, and the Receiver's consummation of, the Purchase Agreement is in the best interest of the Receivership and the investors. The Examiner and the SEC agree.

**The Purchase Agreement is in the Best Interest of the Receivership and the Investors**

9. In order to assess whether the Purchase Agreement is in the best interest of the Receivership and the investors, one must examine the benefits and detriments of consummation of the Purchase Agreement as well as the existing alternatives.

10. Under current circumstances, a sale now has a number of benefits. It will allow the Receivership to cease incurring debt under the line of credit at the rate of almost \$1 million

per month as well as the attendant interest expense. It will also allow the Receivership to avoid the modest fees of National Viatical, Inc. to handle the Policies and more substantial legal fees associated with issues relating to the Policies. Once the funds from the sale are received, it will allow the Receiver to pay off the balance of the line of credit and put the Receivership in a positive cash position. Finally, a sale now will allow the Receiver to position the case for a distribution to investors which will eventually bring finality to the situation for investors and the Court.

11. On the other hand, the detriment is shockingly clear – the investors are going to suffer a large loss. Although the claims process is not complete, the amount invested by investors is approximately \$120,000,000.00. If the sales price is not increased by virtue of the auction contemplated by the Bid Order and described therein and herein, after payment of the line of credit, approximately \$14,000,000.00 will remain in the Receivership. Even if all of it were to be distributed, investors would only recover approximately 11% of the amount they invested. As bad as that may seem, the alternatives below do not present a better picture and the loss could be, and frankly would be, even greater.

**Alternative 1 – Keep things as they are**

12. A possible alternative is for the Receiver to maintain the status quo and continue administering the Policies as he has in the past. This alternative is not really feasible. The Receivership's line of credit will be exhausted in a matter of just a few months and there is no guarantee that the Receiver will be able to increase it. Simply put, the Receivership is out of funds to pay the million dollar a month premium obligations. Even if the Receiver could get a

---

<sup>1</sup> Although this Motion refers to a sale of the Policies, what is actually being sold are the Purchased Assets as

\$10 million increase, such increase would only pay the premium obligations for about another year and unless there are significant maturities of Policies during that time frame, the Receivership will just be in a deeper financial hole. If the Policies have to be sold in another year, the net amount available to distribute to investors after payment of the increased line of credit would be less and would result in an even greater loss.

**Alternative 2 – Sell a few Policies and keep the rest**

13. Although the Receiver solicited bids from potential buyers for only portions of the portfolio, none was received and instead each bid was for the portfolio as a whole. The Receiver has considered trying to market and sell only a few of the Policies so as to generate additional funds with which to pay premiums. Even assuming such sale could be accomplished very quickly, the problem with that scenario is that potential buyers are going to want to buy the most valuable of the Policies which will leave the Receivership with the less desirable Policies, albeit at a reduced premium obligation. If, for instance, the Receiver were able to sell several of the most valuable Policies for \$20 million, he would still have to pay premium obligations on the others for another two or so years, at which point all those funds would have been spent and the Receivership would only have the less valuable policies remaining available to sell. Again, the net number to be realized by investors under such a scenario is, in all probability, less than the net amount that could be achieved at this moment given the uncertainty of when the insureds will die.

---

defined in Section 1.1(a) of the Purchase Agreement.

**Alternative 3 – Abandon the most expensive Policies and sell the rest**

14. The Receiver has also considered abandoning some of the more expensive policies in terms of premium obligations so as to reduce the amount needed on a yearly basis to pay the premium obligations on the remaining Policies. The problem with that scenario is that some of the more expensive Policies are also some of the ones which are the most valuable on the market. In addition, even with the reduced premium carry being say, \$4 to \$5 million a year, the Receiver would have to successfully obtain a \$10 million increase in the line of credit in order to continue the remaining Policies in force for another two years. With the uncertainty as to which policies, if any, will mature during that time frame the Receivership would find itself in a deeper financial hole and have even fewer policies to try to sell at the end of that period. In all likelihood, unless there were significant maturities, the Receivership would be far worse off under such a scenario and the corresponding loss to investors would be that much greater.

**Alternative 4 – Require investors to pay their share of the premiums**

15. Theoretically, it is possible for the Court to require each investor to pay such investor's respective share of the premiums on a particular policy as if such investor still had a beneficial interest in a particular Policy. However, such an approach flies squarely in the face of the Court's Order pooling all the Policies and exchanging each investor's expected beneficial interest in a Policy for a claim against the Receivership pool of assets [Dkt. No. 17]. Even were it possible to do such a thing, the practical hurdles are daunting if not insurmountable. There are about 4000 claimants in this case, including approximately 2500 in Taiwan and 800 in Puerto Rico. Many, if not most of them, speak little or no English. Many have told the Receiver and/or the Examiner that they invested their life savings and have no financial ability to pay any portion

of premiums. Even if some of them can or want to pay, what about those who cannot or will not? What if the premium obligations last 10 plus years? What is going to be the involvement of the Court? In short, although in theory it could be done, in practice it cannot, at least not cost efficiently or with any degree of certainty that it will work.

16. As demonstrated above, no practical alternative exists other than to sell the Purchased Assets to Silver Point pursuant to the terms of the Purchase Agreement, or to another higher bidder pursuant to the bidding procedures generally described in the Bid Order and more fully described below.

### **Bidding Procedures**

17. In order to ensure that the maximum value for the Purchased Assets is received, the Receiver will require each potential bidder at the auction to adhere to the following procedures:

- 1) Each bidder at auction must have signed a confidentiality agreement in accordance with the terms of the Bid Order;
- 2) Only qualified bidders will be allowed to bid at auction;
- 3) A qualified bidder is a party who has established to the Receiver's satisfaction that it has \$50 million of liquid or otherwise readily available funds and can consummate the purchase on the time frame set forth in the Purchase Agreement;
- 4) Each bidder at auction must bid in all cash in a simple lump sum;
- 5) All bids must be for all of the Policies and be on substantially the same terms as those set forth in the Purchase Agreement;
- 6) Each bid will remain irrevocable until the earlier of the closing of the sale of the Policies or 180 days from the date of the auction;
- 7) At auction, bidding must occur in increments of \$500,000.00 and Silver Point will be allowed to include as a credit in any further bid it submits the amount of the Break-Up Fee (for clarity, the first bid at auction must exceed \$27,600,000.00); and

8) All bidding at auction shall be made in an open format and shall continue until all bidders present and qualified to participate in the auction have ceased submitting bids in conformity with the bidding procedures.

18. The Receiver believes that the foregoing bidding procedures, in light of the prior marketing of the Policies pursuant to the Bid Order, are fair and reasonable and are designed to achieve maximum value for the Policies.

**Recognition Fee**

19. Silver Point has expended considerable time and expense in going through the bid process and negotiating the Purchase Agreement. Having a fully negotiated Purchase Agreement has provided the receivership estate with "floor protection" with respect to the sale of the Purchased Assets. In addition, in accordance with the terms of the Purchase Agreement, Silver Point is bearing the economic responsibility for the payment of premiums on the Policies beginning on the Execution Date (assuming a Closing occurs) (each term as defined in the Purchase Agreement). In recognition of these facts, and in order to protect the position of Silver Point in the event there is a significant maturity between the filing of this Motion and the Court's consideration of the Purchase Agreement, the Purchase Agreement obligates the Receiver to pay Silver point a Recognition Fee.

20. Specifically, if one or more Policies having an aggregate death benefit of greater than \$1,000,000 mature and the Court does not enter an order authorizing the sale of the Purchased Assets to Silver Point for a reason other than Silver Point not being the highest bidder at the conclusion of the auction, then the Receiver has agreed, and requests that he be authorized, to pay Silver Point the Recognition Fee as defined in and pursuant to the terms of the Purchase



Agreement. If there is a higher bidder for the Policies, Silver Point would be entitled to the Break-Up Fee which was previously approved by the Bid Order. Similarly, because maturities would essentially be a higher bid, Silver Point should be entitled to the Recognition Fee. The Examiner also supports the payment of the Recognition Fee on the terms set forth in the Purchase Agreement.

### **Conclusion**

21. For the reasons set forth herein, the Receiver recommends and requests that the Court schedule an evidentiary hearing to (1) conduct the auction pursuant to the bidding procedures set forth herein and the Bid Order and once the highest bidder is determined (2) approve the sale of the Policies to the highest and best bid at the conclusion of the auction. Given the significance of a sale of the Policies and so as to allow the investors an opportunity to be heard and a record developed, the Receiver requests an evidentiary hearing at which time the Receiver can present evidence to support his beliefs and position. In connection with the Court's consideration of approval of the Purchase Agreement, the Receiver will ask that the Court make the findings and recommendations set forth in Section 3.1(a) of the Purchase Agreement and issue an Order to that effect.

**WHEREFORE**, premises considered, the Receiver requests that the Court set an evidentiary hearing to conduct the auction and approve the Receiver's sale of the Policies consistent with the terms of the Purchase Agreement and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

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  
D. Dee Raibourn, III  
State Bar No. 24009495  
Brent Rodine  
State Bar No. 24048770

ATTORNEYS FOR RECEIVER

**CERTIFICATE OF SERVICE**

A true and correct copy of this motion has been served on all interested parties through the Court's electronic filing system.

/s/ Michael J. Quilling.  
Michael J. Quilling