

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.

Civil Action No. 3:06-CV-2136-AH
(This pleading concerns a motion referred to the U.S. Magistrate Judge)

EXAMINER'S REPORT REGARDING MOTION TO SELL POLICIES

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Introduction

1. This Report addresses the pending Receiver's Motion to Sell All Insurance Policies and Approve Purchase and Sale Agreement and Request for Evidentiary Hearing (Dkt. 146) ("Receiver's Motion"). The Receiver's Motion was referred to the Honorable Ima C. Ramirez, United States Magistrate Judge, for hearing and, if necessary, for determination (Dkt. 150). An evidentiary hearing is set for September 23-24 (Dkt. 152). This Report is made in anticipation of that hearing.

2. The Examiner's Report is made in furtherance of his duties herein. He was appointed to monitor the activities of the Receiver, communicate with approximately 3500 investors located primarily in Taiwan, the United States, Puerto Rico and other countries, and to

report to the Court whenever necessary as to the collective interest of the investors (Dkts. 11-12). Accordingly, the Examiner presents this Report in order to advise the Court of the notice that has been given to investors, to advise the Court of the nature of the response from investors with respect to the Receiver's Motion, to provide recommendations to the Court as to that Motion, and to present the remaining investor objections for the Court's consideration. Additionally, this Report provides information and analysis for investors and other interested parties to review and consider in advance of the hearing on the Receiver's Motion.

Summary of Report

3. This Report is divided into three parts. It first describes the notice given and the response of investors to the Receiver's Motion. It then presents the Examiner's analysis, commencing from the beginning of the case and continuing to the present, with respect to the best interests of investors on the central and critical issue of whether to sell or to hold the portfolio of policies. The Report finally presents and addresses the remaining objections of those who are against the Receiver's Motion.

Overview of Notice and Investor Response

NOTICE

4. Substantial notice has been provided concerning the Receiver's Motion. The Motion was filed on June 30, 2008 (Dkt. 146). On July 3, 2008, the Examiner posted a copy of the Motion on the English and Chinese versions of a website that the Examiner has established to communicate with investors. This posting was placed on a website where investors should expect by this point in the case for such a notice to be posted. This website has been in existence since December of 2006. Since that time, the Examiner has broadly notified investors of the existence of the site, and advised that this website should be monitored, and that it will contain updates concerning case developments. Updates have been regularly provided, including updates as to the stabilizing of the portfolio, the analyses underlying the decision to move forward with a sale, the making of that decision, the seeking of approval for bid

procedures, the results of that bid process, and now finally the presentation to the Court of the Receivers' Motion. Investors who have sent e-mail back to the Examiner through the site (in either English or Chinese) have routinely received responses from the Examiner (in their own language) that provide more specific updates and answers to questions. Investors who have called in to the Examiner have also been referred to this site.

5. The Receiver likewise posted a copy of the Motion on the website that he established to provide updates and reports concerning the progress of this matter (Dkt. 154, at 1). In mid-August, the Receiver also mailed copies of the Motion and the Order setting an evidentiary hearing to all investors, potential bidders of which the Receiver was aware, and other potentially interested parties (id.). Investors in Puerto Rico were sent copies translated into Spanish, and investors in Taiwan were sent copies in Chinese (id.).

RESPONSES IN FAVOR

6. Some investors have advised the Examiner that they are in favor of the Receiver's Motion. Nearly all of those investors appear to be domestic.

7. Investors who have responded indicate an interest in bringing the receivership to a close and effecting a distribution. These investors believe that a market sale will bring the highest and best price for the portfolio.

8. The Examiner expects that most investors would not respond to the notice unless they are against the sale.

RESPONSES AGAINST

9. The Examiner's notice of the Receiver's Motion brought a number of negative responses. The Examiner has responded, presenting his analysis with respect to the issues raised. Many of these parties remain unconvinced. Before addressing the merits of these issues, the following summarizes the investor concerns.

10. The primary response has been from Taiwanese parties. These parties express stunned disbelief that impartial bid procedures could produce a high bid of only \$27.1 million.

They state that a sale at such a price is simply "not acceptable." They would rather attempt to hold the portfolio to maturity, although they do not appear to believe that bears any risk that they would be left with nothing. To the contrary, they express the view that any purchaser will receive a large profit. They do not, however, indicate a basis for that belief beyond the fact that the insureds are in their eighties. They also make statements to the effect that it is simply not proper that they should not recover their full invested principal, and that the Examiner and the Receiver should be ashamed that a person has not been located who would pay more for the portfolio. They reject out of hand the notion that any weight should be given to the result of a bid process; they would recognize only a report by an "institution." They do not appear to believe the Receiver's report that his borrowing power is limited.

11. A few Puerto Rican investors have responded against the sale. Several have simply said that receiving back 11% of their money is unacceptable. Another has raised questions about whether updated medical information can be obtained.

12. There have also been some negative responses from domestic investors. For example, the question was raised as to whether investors could be organized to salvage the portfolio themselves as was done in another receivership. The referenced case involved a portfolio of a large number of policies with smaller face values and smaller premium payments, and a company that went into receivership with tens of millions in cash reserves.

13. As noted, the Examiner has responded to these parties. For some, the Examiner's response appears to have been satisfactory. For others, particularly a number of Taiwanese investors, the Examiner's comments fall on deaf ears. With that in mind, the Examiner presents the next two sections of this Report – a summary of the Examiner's own analysis, and a presentation of investor objections that remain for the Court to consider.

Summary of Examiner's Analysis

14. Since the beginning of the case, the Examiner has investigated whether the insurance policy portfolio was worth \$236 million as claimed by the ABC principals and the

brokers who sold fractional interests in these policies. The Examiner's analysis has revealed a number of key facts about the portfolio that actually make it worth much, much less. There are also a number of practical realities that make it impossible for the Receiver to hold the portfolio until all policies have matured. The following reviews the investigation that resulted in the revelation of these key facts and practical realities, the updates provided to investors as this investigation proceeded, and the resulting decision to sell.

ORIGINAL MARKETING OF PORTFOLIO

15. As a prelude to this discussion, it is first necessary to review what ABC and the involved brokers originally told investors. This is more specifically set forth in the Complaint herein (Dkt. 1) and the supporting evidence filed at the commencement of the case (Dkt. 6).

16. Generally speaking, the investors were told that ABC would roughly double their money over a three to six year period by purchasing a universal life insurance policy and a supporting bond that would pay off at the end of the holding period. Approximately 3500 individuals invested a total of approximately \$135 million. The total promised payout was the face value of the policies, that is, \$236 million.

17. The promise was based upon the representation that one of two things would occur: either the policy would mature (that is, the insured would die) prior to the end of the holding period, or, at that point, a bond purchased by ABC would pay the full death benefit instead.

18. The key components upon which this promise depended were: (a) enough of the \$135 million would be set aside to pay the premiums on the policies until either the policies or the bond matured; (b) the bonding company was real and solvent; and (c) the entire death benefit value would be returned to the investors without any deduction for taxes.

FACTS ADVERSELY IMPACTING THE ACTUAL VALUE OF THE PORTFOLIO

Need for Additional Capital to Fund Premiums

19. The first fact that had to be confronted when this case was filed in November, 2006 was that the necessary premiums had not been escrowed. Rather, by the time that the Receiver was appointed, only \$4.5 million of the \$135 million remained. It was clear from the start of the case that this is a fatally insufficient amount to pay the premiums needed to carry the policies through the holding period.

20. On December 6, 2006, the Examiner advised investors that ABC had been placed in receivership, that the assets had been pooled in an effort to obtain a loan to cover the shortfall, and that analysis was then ongoing to determine the appropriate course of action under various alternatives open to the Receiver. Investors were advised that only \$4.5 million in cash remained on hand, and that the balance of premium payments going forward would have to be borrowed. Investors were advised that the present trustee, Erwin & Johnson, did not have even have a full calculation of the amount that should have been escrowed; there was only a calculation as to about half of the policies, which showed at least \$9 million would be needed.

21. Ultimately, it was determined that rather than maintain the promised escrow of \$35 million, the trustee who was supposed to be holding those funds allowed ABC to use over \$15 million for other things.

22. This has a number of effects on the value of the portfolio. First, there is a loss of \$15 million. Second, since replacement funds would have to be borrowed, that amount would have to be magnified by bank charges of interest. Third, the ability to hold the policy to term was now reduced by over a year.¹

¹ The Receiver's ability to hold the portfolio to term is now limited to how long he can borrow money, whereas an additional \$15 million would have allowed him to go at least an additional 15 months before beginning to borrow funds.

Fake Bonds

23. The next shoe to drop was the determination that the bonds were not real. This meant that even if the Receiver borrowed an additional \$15 million and paid that money out over the remainder of the holding period, the investors could not count on a payout from the bonding companies at that point.

24. On February 8, 2007, the Examiner presented a more comprehensive report to investors. In that investor update, the Examiner advised that there were questions as to the legitimacy of the bonding companies.

25. The bonds in question were issued by two supposed reinsurers: International Fidelity & Surety Company ("IFS") and Albatross Invest, S.A. ("Albatross").

26. IFS was investigated first because, as the Examiner reported in his February 8, 2007 update to investors, IFS had failed to honor a bond that came due in July, 2006. An investigation into IFS that followed led to a determination that the company was fraudulent and the filing of a suit by the Receiver, as was reported to investors in April, 2007.

27. Given the similarity of the supposed Albatross bonds, the Examiner also began to look at that company. In his April, 2007 report, the Examiner further advised investors that the decision had been made to make active efforts to attempt to open a line of communication with Albatross, even though its bonds were not yet coming due.

28. On July 18, 2007, investors were advised that the suit against IFS had resulted in a judgment against IFS and a freeze of the assets of the mastermind of that fraudulent scheme, David Goldenberg. In that same report, investors were advised that efforts to investigate Albatross had been accelerated.

29. On September 4, 2007, investors were advised that the principals of IFS had been indicted on federal criminal charges. Investors were further informed that the preliminary results of the Albatross investigation suggested that it too was a fraud.

30. On October 1, 2007, a comprehensive report was provided to investors as to Albatross. In summary, the Examiner reported that the large Italian bank ("Unicredit") that was supposed to back the Albatross bonds was claiming that documents indicating its support were forgeries.

31. On October 17, 2007, the Examiner reported that Goldenberg had committed suicide.

32. On January 2, 2008, the Examiner reported that a private investigator hired to investigate Albatross had reported further bad news. The Examiner reported that it likewise appeared that Albatross was a fraud. The Examiner indicated that this was based upon certain non-public information, as well as the simple facts that Albatross has no current place of business, the individuals formerly associated with it would not be located, and there was no indication of any assets available to back the bonds.

33. On March 14, 2008, investors were informed that Unicredit had formally repudiated the supposed support letters as forgeries, and contact with Albatross still could not be established.

34. Without the bonds, the ABC investment offering is fundamentally different. Now, instead of waiting a defined period of time for a sure payoff, the investment is dependent upon the uncertain timing of the death of the insureds. Further, it becomes questionable whether the amount of premiums paid will actually exceed the death benefit before a maturity occurs.

Taxes

35. The original promoters of the scheme entirely overlooked or completely ignored the fact that the ultimate upside was never \$236 million. The average investor was promised a roughly 2-1 return on their money. Using total figures, the promotion was that \$135 million would buy a return of \$236 million.

36. The Receiver and the Examiner have more carefully reviewed the situation, taking into consideration the foreign status of most investors and the impact of taxes in the

event of a maturity. This is because taxes play a significant role in life insurance, and these investors do not have the same tax advantages as the original insured.

37. Insurance proceeds are tax-free only to the original insured. Cf. 26 U.S.C. § 101(a)(1) (payment to insured's beneficiary exempt from taxation) with 26 U.S.C. § 61(a)(10) (gross income includes payments from insurance absent an exemption) and 26 U.S.C. § 101(a)(2) (payment to purchaser of insurance policy not except from taxation).

38. Worse yet, before sending domestically generated income to a foreign party, there must be a 30% flat withholding. See 26 U.S.C. § 871(a)(1); I.R.S. Regulation 1.1441-2(b)(1)(i).

39. It appears that this was never communicated to the foreign investors who make up the bulk of the ABC investors, nor was this even evaluated by any of the parties who operated the ABC scheme. The Receiver and the Examiner have therefore very carefully reviewed the structure of ABC, its trusts, and the cash flows to see if there is a substantial likelihood that any maturity would be subject to a 30% withholding for any foreign investor. The Receiver and the Examiner have further sought to calculate whether there would be any available deductions at the level of the trust holding the policy for the cost of the policy and the premiums paid prior to maturity. See 26 U.S.C. § 101(a)(2).

40. This analysis shows that there is a substantial likelihood that the proceeds of such a maturity would be subject to a 30% withholding, and it is not completely clear that a foreign investor would have the benefit of any deductions. For a domestic investor, there would most likely be a 35% tax on any amounts that exceed the cost of the policy and the premiums paid prior to maturity.

41. Again, there is a resulting, negative impact on the portfolio, which any purchaser of the portfolio would have to incorporate into any valuation calculation. Although this is a complex calculation, one could reasonably expect a substantial, downward impact on valuation.

42. For the receivership, the impact depends upon which policy might mature, but to give the Court a sense of the situation, if all of the policies were to mature tomorrow, then a conservative policy cost figure would be \$60 million, the premiums paid would be approximately \$30 million, and so a conservative estimate of net income would be \$146 million. While a number of arguments could be made in an effort to persuade the Internal Revenue Service to assert a claim that is most favorable to the position of the investors, at minimum, the tax issues would be sufficiently serious that the Internal Revenue Service would have to be consulted for a firm determination prior to any distribution. A claim from the I.R.S. to \$50 million of such proceeds would not be surprising.

Inaccurate and Unreliable Life Expectancy Projections

43. The absence of bonds has a further negative impact if the original life expectancy projections are not accurate. This issue has therefore been reviewed as well.

44. In his February 8, 2007 investor update, the Examiner advised that the accuracy of the life expectancy projections that ABC had obtained was under review. At least one set of policies (representing about one-third of the face value of the portfolio) was then overdue for maturity by eight months.

45. The Examiner is still not in a position to firmly state how far off the life expectancy projections may be, nor is it possible to obtain materially better projections. The Receiver's and the Examiner's efforts to determine the current life settlement market's views of the original projections indicated that the life expectancy projections were off by as much as 100%. A number of life expectancy projections have now been exceeded, some by as much as two years. Plainly, the life expectancy projections that ABC obtained are not reliable. Further, the leading life expectancy providers are the same companies who provided the existing projections. Even if those providers were now more skilled than before, the life settlement contracts that ABC purchased do not require viators to submit additional health information so

as to allow for new projections to be prepared. As a result, viators have generally refused to provide updated medical records.

46. The impact of this is that there is no basis upon which to state that an insured will die in two years, five years or ten years. The life expectancy projections are not useful tools in projecting value.

47. That leaves the matter more to chance than anything else.

48. Looking at things that way, there is reliable information, so long as the set of information is large enough. Using census data for a set of 100,000 citizens, standard life expectancy tables are regularly produced. This information is mathematically reliable. It shows that the average likelihood of death of white U.S. citizen during a year period of a person who is 80 years old is about 6%, at age 85 about 9%, and at age 90 about 13%.

INTERIM CONCLUSIONS AS TO VALUE

49. There are a number of ways of looking at the actual value of the portfolio in light of these facts. None are particularly encouraging.

50. First, the original price of the portfolio is a product of fraud and therefore not an accurate value of the portfolio. So, a cost approach is not a valid means of determining value.

51. Second, a cash flow model cannot be prepared without the certainty of bonds or accurate life expectancy projections. To the contrary, the best way of looking at each insurance policy premium paid is to compare it to making an annual bet that has a percentage chance of success of between 6% and 13%. A bet of 5% to 10% of the potential return has a slight advantage under such circumstances, although one must consider the adverse impact of taxes that even the odds considerably. Still, it is only a bet when one is dealing with 40 insureds and not an actuarially predictable group of 100,000. One should also bear in mind that the carrier against whom one is betting has the ability to predict accurately, and so is not likely, over time, to lose money. So, again, the model is that of a high risk bet, not a predictable flow of cash.

52. Third, the only reliable method of valuation is a market value. Generally speaking, the secondary market for a life settlement contract is 10-15% of its face value. That is a function of how much someone is willing to pay to make a bet that has a high level of risk. And, as for this portfolio, the current \$27.1 million bid, as hopefully increased at the hearing on the Receiver's Motion, is a very good indication of value.

PRACTICAL REALITIES

53. These analyses, presented here in rudimentary fashion, led the Examiner by the fall of 2007 to have to consider certain practical realities, even though most investors overwhelmingly wanted to continue premium funding all the way to maturity, whenever that might be. The Examiner had to face the facts.

Limited Borrowing Capacity

54. The market value being what it is means that at some point, sooner rather than later, the bank will stop lending premium dollars. A rational lender will stop lending when the amount of the loan begins to approach a conservative estimate of what the lender can sell the collateral for in the event of default. Whether in this case the lender will choke at \$20 million or something a little higher, the fact is that the point where funds could no longer be borrowed was rapidly approaching by early 2008. Indeed, it was, and is, approaching at a rate of \$12 million annually, or \$1 million each month.

55. Once that point was reached, the portfolio would have no value to the receivership. No more bets can be made.

High Risk

56. Without the bonds, the portfolio is a fundamentally different investment than the one that investors bargained for. The basis of the investor's purchase price – a guaranteed payout on a date certain – is entirely gone. The investors are now in the chancy business of betting against insurance companies.

57. After a year of taking that risk, the Examiner and the Receiver had to face the fact that there was a very high risk that the next year would not result in a maturity either. Additionally, a bid process and a sale approval process would likely consume six months or more. Accordingly, the time for taking risks was rapidly evaporating by early 2008.

58. The risk is substantial. Generally speaking, the odds of success are poor. Using standard census figures, a person at age 80 has about a 5.6% chance of dying before reaching age 81. Reversing the figures above, the probability of losing a life settlement investment bet at age 80 is 94%. Even at age 90, the mortality rate for an average person who has reached that age is still only approximately 13%, meaning, conversely, that the probability of losing a life settlement investment bet at age 90 is still 87%.

59. Moreover, each year, increases in premiums keep pace with the increases in mortality likelihood. To explain, universal life policies with no cash value function as term life insurance policies. So, each year, the premium increases, typically about 10%. At the same time, standard mortality charts show that the probability of death increases, from 5.6% at age 80 to 6.1% at age 81. Again, about 10%.

60. Incidentally, betting on mortality is not the best use of an insurance policy. The rational reason why an insured would hold a universal life insurance policy is taxes – income taxes and estate taxes. By adding additional premium dollars as permitted with a universal life insurance policy, the carrier will invest those dollars tax free and so the policy functions like a 401K plan. In the event of death, those dollars pass to the beneficiaries tax free (meaning gains are never taxed, and there is no estate tax). But, once the policy is sold to an investor, both of these tax advantages disappear, and the policy becomes nothing more than a high risk bet.

61. Still, life settlement investors make these bets because they generally believe that the medical conditions of the insureds strongly improve their odds. There are also factors that go the other way, however. Viators tend to be people of large net worth, and consequently good medical care, better than average diet, and better than average exercise habits.

62. More to the point, however, even if the odds are somewhat higher, the receivership is still doing nothing more than making a low-percentage bet with each premium paid. There is a point at which that bet cannot be made any longer.

Erosion of Sale Proceeds

63. Adding to all of this is that each month that passes without a maturity means that \$1 million less of any sale proceeds will go to the investors. As things stand, perhaps over half of the sale proceeds will not go to the investors. Given this looming reality, the Examiner had no choice but to break ranks with those investors who wish to drive the return in this case down to nothing.

64. Another way of saying the same thing is that, each month, the portfolio is being sold to the bank in increments of \$1 million. The only benefit that investors are receiving is the chance of a maturity. While it is true that such is the exact benefit for which many investors are still clamoring, other investors want some cash rather than none at all.

DECISION TO SELL

65. The first indication from the Examiner that a sale of the portfolio might be an option came as early as three months into the case. The Examiner's February 8, 2007 update included a section on alternatives strategies potentially available, including not only borrowing money and holding the portfolio, but also a possible sale of a part or all of the portfolio.

66. The Examiner's November 14, 2007 update indicated that the Receiver and the Examiner have agreed to sell at least some of the policies. The Examiner outlined a plan to divide the portfolio into three parts – those that still had cash value reserves, those that might be bonded by Albatross (at that time the investigation was ongoing), and those that should be sold for sure. The Examiner explained that, generally, the plan was to establish a due diligence website, conduct an initial sealed bid process to obtain a stalking horse bid, and then seek a hearing for a final bid process and court review of the proposed sale. The Examiner advised potentially interested bidders to continue to monitor the site.

67. In both his November 14, 2007 and again in a January 2, 2008 update, the Examiner cautioned that it was highly unlikely that the Receiver would be able to return to investors the full amount of the principal invested. The Examiner particularly highlighted the fact that ponzi payments (payments of prior debts) had eroded the premium reserve, and the lack of reliable life expectancy projections.

68. In the January 2, 2008 update, the Examiner provided a repeated notice with respect to a potential sale of some of the policies. The Examiner also provided a detailed explanation of the anticipated sale procedures. The Examiner also advised that the Receiver would now solicit bids for the entire portfolio as well as select subgroups of policies. The Examiner indicated that the initial bid would likely be obtained by May, and that a hearing for a second bid and court consideration would thereafter be sought. The Examiner indicated that the Receiver would request at space of thirty to forty-five days between such a motion and a hearing.

69. On February 4, 2008, the Examiner notified investors of the filing of the Receiver's Motion to Solicit Bids for Purchase of Policies and to Approve Bid Procedures. Investors were generally encouraged to urge any potential purchasers to submit bids.

70. On March 14, 2008, the Examiner gave notice that the bid procedures had been approved by the Court. Again, investors were encouraged to urge any potential purchasers to submit bids. Additional, negative information was presented as to Albatross.

71. On May 15, 2008, the Examiner advised that the high bid for the entire portfolio was \$27.1 million. The Examiner further reported that after consultation, the Examiner and the Receiver believed that the bid should be submitted to the Court for its consideration in view of the fact that it was the product of an open auction, there was some potential for the amount to increase in view of the second round of bidding to be held and expressions from two parties of intentions to submit higher bids at that time, and the continuing high cost of the premiums. The Examiner and Receiver announced that their joint analysis that a better result could not likely be

obtained by employing the alternative strategy of abandoning some policies, holding some policies, and selling the rest.

72. As noted above, once the Receiver's Motion was filed, the Examiner and the Receiver have provided updates and notices of the hearing now set for September 23 and 24.

Objections

73. There remain a substantial number of stalwart opponents of any sale. The following presents some examples of correspondence received, and summarizes the essential objections.

SALE PRICE IS JUST TOO LOW

74. Many investors present the objection that the price is simply too low. These investors do not explain their views. They simply present that objection.

75. By way of example, the Examiner has received questions and objections, sometimes repeated from many different Taiwanese investors or repeated in essentially the same words, such as the following:

Why are we in a rush to sell all the policies at such an extremely low price?

Others have simply said:

We feel that sale of policy is undervalued (the information is US\$27,100,000).

Or, similarly:

Such a low bid price is not acceptable.

76. The Examiner's response to these objections is to explain a number of the issues discussed above that suggest that the proposed price is not unreasonable under the circumstances, and to explain the practical realities that force a sale at this point in time.

77. In reply, a number of these investors have sent repeat correspondence asserting simply that the price is too low or that a higher price should be obtainable. They appear to have encouraged other investors in Taiwan to send duplicates of their correspondence. Other times, they claim that they speak as an agent on behalf of several hundred investors.

78. Collectively, these objections are not helpful. These investors do not offer a means of obtaining a higher price.

79. Likewise, these objections are only valid if it were self-evident that the price is unreasonably low, which plainly is not the case.

THERE MUST BE MORE BORROWING ABILITY – PREFER RISK OF CONTINUING

80. Another objection that is raised is that the Receiver should simply continue to borrow money rather than accept a sale at a "low price." It is not clear that these investors appreciate the fact that the Receiver's borrowing capacity is actually limited, and so this objection could also be a challenge to the accuracy of the Receiver's opinion in that respect.

81. A typical investor expressed his point of view as follows:

I am an investor from Taiwan (NO. 8176P)

I used to think government involvement in this case is the best option for the investors.

Based on what we have experienced during the past period, we realized that it is not the case.

The order authorizing the Receiver to increase bank financing facility that is posted on the website on June 25, 2007 seemingly allows the Receiver, faced with insufficient fund, to pay the premiums with the money borrowed using the insurance policies as collateral according to the original plan. The Receiver can wait for some policies to mature while looking for new buyers for the policies.

Finally, we had the updated news recently. At first sight, the buyer seems to be a good buyer. A careful review seems to suggest that we were fooled.

Because:

a. If all the policies are sold, the investors may receive about 10% of the investment principal, which is no different from the situation where the investors receive nothing? To sell the policies to Silver Point Capital or future new buyer

seems to be a mere gesture to the investors by the Receiver to show it is discharging its duties.

b. As a receiver of the investors, the Receiver shall do his best to apply for maximum line of credit at the lowest interest rate for the investors. But the Receiver merely disclosed the available line of credit in the amount of USD15 million and the USD12 million line of credit that has been used. More importantly, we cannot see a reasonable evaluation report on the policies. No investors would accept the outcome for lack of transparent and fair analysis of the policies [sic].

c. Four most updated letters posted on the website seem to inform and convince the investors that this is the only buyer -- Silver Point Capital that can give the highest offer. Moreover, the future buyer has started to pay the premiums. It seems that the Receiver has acknowledged that the current bidding price is the highest market price!

If the eventual buyer is not Silver Point Capital, the eventual buyer has to pay a Break-up fee to Silver Point Capital. It seems to be an outcome that the investors are forced to accept.

As a harmed investor, I really feel like cheated for the second time. Maybe you think you have done your best. But as an investor, I do not think so.

We can only get back 10% of what we have invested – on a product that guarantees the return of the principal.

It seems that you, who should provide service for investors, are helping future buyer obtain benefits at the expense of our rights and interests.

Look at the new buyer who can acquire a high profit of USD 230 million for USD 27.1 million (12% of the total value of the policies) and monthly payment for premiums of less than USD 1 million!

If I had huge amount of money, I would have invested my money in this deal.

Since I am a small investor, I could only investment in the policies. Regardless of the investment size, nobody is willing to engage in a business that will cause loss of the principal, isn't it true? I believe Silver Point Capital has reviewed the policies, and has made the decision to buy all policies after consideration of the profitability of the investment. That means in addition to the principal, there should be considerable profits. Only such big institute can buy the policies. Regardless of the investment amount, no investor is willing to do business that causes loss to the principal.

I believe, a competent Receiver should set up the current reasonable market value of the policies, try his best to maximize the profits for the investors, and try to obtain maximum line of credit at the lowest interest rate to maintain the integrity of investors' principal, not like the current situation, where the Receiver is selling the policies at such a low price in a hurry --- to benefit the big investor with small investors' rights and interests!

Based on the reasons above, I believe that the Receiver has made the best choice for the future buyer, not a choice for the harmed investors.

From investor's standpoint, I would rather maintain the continuance of the loan with polices as collateral as before. I believe that is the best option for the investors.

82. The Examiner has responded by explaining that there are, indeed, limits on what a bank will lend when the collateral – the portfolio – brought a high bid, so far, of \$27.1 million. Additionally, it is simply a mathematical fact that each month that the line of credit goes up another \$1 million, the amount paid at the end to the investors goes down another \$1 million. Soon, there will be nothing left for investors.

83. Even so, this is a valid objection if the Court believes that a maturity is so likely that a result of no payout to investors is worth risking, or if the Court concludes that most investors would rather continue to throw the dice. The Examiner and the Receiver are very sensitive to this point of view, and so have pushed forward as far as they believe that they reasonably can before facing the stark reality that this bet has been lost. Ultimately, however, the Examiner and Receiver must counsel that the time for doing so has now come to an end.

A BUYER WILL OBTAIN A LARGE PROFIT

84. Many of these same investors are convinced that to sell the portfolio is to give a huge profit to any buyer, and they include statements to that effect along with their objections that the price is too low or that pushing forward makes better sense. Again, these investors do not specifically set forth why they believe that to be the case, except to point to the large death benefit. One can only infer that these investors must believe that a maturity of the bulk of the portfolio is imminent.

85. A typical investor statement would be:

Why are we in a rush to sell all the policies at such an extremely low price? For the original winning bidder of the US\$27.1 million, this is a high profit deal.

Why? Because the winning bidder can buy these 55 high return policies (the total value is US\$230 million) at US\$27.1 million. We are really upset about this.

This should be the investors' returns. Why is it that after the Receiver received the case, this became a winning bidder's high profits?

86. The Examiner has responded to this objection in a similar way. He has explained a number of the factors that question the value of the portfolio, and explained the practical realities that require a sale at this time.

87. Fundamentally, such an objection, as stated, is only valid if it were clear that a large number of viators were very likely to die in the immediate future. But, there is no basis for

such a view. To the contrary, whether a purchaser of the portfolio would obtain a large profit or a large loss is entirely a matter of chance.

ONLY AN INSTITUTION CAN VALUE THE PORTFOLIO

88. A number of investors reject the view that an open bid process produces a market price that is a fair reflection of the value of the portfolio. These investors appear to reject capitalism entirely. They also appear to believe that an institution exists that knows more about this portfolio than do the Examiner and the Receiver.

89. Their correspondence includes questions like the following:

Why didn't the insurance policies go through an impartial institution for a complete evaluation to set a reasonable "bidding price"?

90. Others put it somewhat differently;

. . . [W]e cannot see a reasonable evaluation report on the policies. No investors would accept the outcome for lack of a transparent and fair analysis of the policies.

91. The Examiner has not provided a mathematical report to the Court for a number of reasons. First, there is limited utility in such a report. As shown above, a cash flow model is not an appropriate means of understanding this portfolio, but rather the more relevant point is what will the market pay. Second, the fundamental analysis of annual percentage life expectancy versus the premium/death benefit ratio is fairly straightforward, and it does not change if one dresses that up in a report. Third, the Examiner and the Receiver do not believe that such an advance report would add substantially to what they anticipate the record will show once fully developed at the upcoming hearing.

92. This objection is valid only if such a report would be useful. For the reasons stated, the Examiner and the Receiver do not believe that such a report would help anything.

A SALE WILL RESULT IN THE RECOGNITION OF A LOSS

93. Some investors have expressed the complaint that a sale at this point in time will result in the recognition of a loss. This objection is necessarily premised on the view that a sale at another time will result in a higher price, or that holding the portfolio longer will result in maturities that exceed the amounts paid in premiums. But, typically, this objection merely states the point that there will be a large loss to investors if the policy is sold now.

94. Typical investor correspondence contains a statement like the following:

Selling all of the policies at such a low price of USD 27.1 million and after deducting the expenses of the Receiver and the Examiner and the principal and interests for the bank loan, wouldn't we be left with very little? May be less than 1/10 of the investment amount? Aren't you afraid that we the investors would disclose all information to world press?

Selling all of the policies at such a low price of USD 27.1 million and after deducting the expenses of the Receiver and the Examiner and the principal and interests for the bank loan, wouldn't we be left with very little? May be less than 1/10 of the investment amount?

95. The Examiner has responded that the recognition of a large loss is a function of the actual value of the portfolio. In other words, this objection is valid only if the employment of some other strategy would produce a better result.

CORRUPTION OR MALFEASANCE

96. Some investors, like the investor quoted above, include statements to the effect that the Examiner and the Receiver should be concerned that a sale at the present price is scandalous. Others include statements along the lines that their voice is not being heard. Some charge the Examiner and Receiver with dereliction of duty. Some believe that anything less than a full return of their principal can only be explained by corruption or malfeasance on the part of the Examiner and the Receiver.

97. All of these types of comments call for due process to occur. The check on the Receiver and the Examiner is the Court. Accordingly, the Examiner has presented the substantive objections to the Court for its consideration. Further, the Examiner asks that any investors holding such views be given the opportunity to explain the basis of their contentions. Ultimately, the Examiner asks that the Court determine whether the final bid that may be placed is reasonably viewed as being commensurate with the actual value of the portfolio.

POSSIBLE VALUE OF THE BONDS

98. A number of investors continue to believe in the validity of the bonds that supposedly insured the payment of the death benefit upon maturity. As a result, they oppose a sale of any policies that had bonds attached to them.

99. For example, an objection along the lines of the following is not uncommon:

We originally invested in ABC because it provided “performance bond contracts.”

Ever since the beginning of the Receivership, the Examiner’s website subjectively says that “ABC and IFS are a series of frauds.” Even during the court proceedings, the website repeatedly says that the investors “may” not be able to recover all of its investment amount and other wordings. So far we still don’t know if these 2 performance bond companies are nonexistent shell companies or actual institutions in violation of US laws? Why is it that in the past year and a half of Receivership, there were no lawsuits against such institutions and related individuals for convictions? We only see on the website that brokers for the performance bond companies all exist and have independently received large amounts of bond premiums for each policy. All the liability and the blame are placed on the brokers, and there has been no further investigation. Did the ABC principals plead guilty regarding this series of actions?

Others have simply asked:

Would you continue to investigate the bond companies which include Albatross and IFS?

100. The Receiver believes that he has more than adequately investigated the IFS bonds, and that his investigation into the Albatross bonds has progressed sufficiently that it makes sense to treat those bonds as having been anticipatorily repudiated and being very likely fraudulent. The nature of this investigation is substantially described above. Additionally, the Court should be aware that the Receiver did sue IFS and its architect David Goldenberg after claims on the bonds were ignored. In the course of those efforts, the Receiver recovered sufficient bank records to trace the premium funds into various accounts and found that those accounts were entirely controlled by Mr. Goldenberg. When Goldenberg, faced with indictment on federal criminal charges, committed suicide, the Receiver viewed the matter as being beyond doubt. Perhaps even more to the point, however, the Receiver has conversely found no evidence of assets of IFS that could respond to the bond obligations.

101. As to Albatross, the Receiver has conducted an investigation into the supporting banks, who have repudiated letters of support as forgeries. Additionally, the Receiver has been unable to locate an existing office for Albatross or any indication of any assets of Albatross that could respond to the bonds. The Examiner did receive an e-mail from someone purporting to be affiliated with Albatross, and he responded, asking for the sender to provide further contact information, financials and information sufficient to confirm the existence of reserves, but there was no reply. The Receiver is currently attempting to complete an investigation comparable to that of his investigation into IFS, but he is not able to do so as quickly because the transfers go to foreign institutions. Still, given the lack of responsiveness from Albatross and the claims of legitimate banks as to the lack of authenticity of the documentation, the Receiver does not believe that he can reasonably expect to recover on the Albatross bonds. The Receiver has been cautious not to unduly expend receivership assets chasing shadows. The IFS suit did lead to possible assets, specifically the proceeds of a life insurance policy on Mr. Goldenberg

himself, but the efforts relative to Albatross appear less promising and more difficult, and so the Receiver has been more cautious. In any event, given the mounting premium costs, the Receiver does not believe that it makes sense to hold off a sale on the hope that the Albatross bonds will someday pay off.

102. The Examiner supports this view, for the reasons stated herein.

103. These objections depend in part upon whether the Court believes that the bonding companies are not in anticipatory breach of the bonds. Obviously, IFS is in breach, and so a sale is not inconsistent with pursuing a claim. As for Albatross, if there were a real bonding company that is simply ignoring all of the efforts of the Examiner and the Receiver to establish contact, then plainly such a company would be anticipatorily repudiating the bonds.

104. These objections also depend upon the Court's finding that the chance of recovery is sufficiently probable that, given what we now know about the bonding companies, it makes sense to expend \$1 million monthly plus active pursuit costs of well over \$100,000 monthly in an effort to mount an international effort to pursue this matter further. The Examiner does not believe that a cost/benefit analysis favors doing so.

NEW LIFE EXPECTANCY REPORTS FROM THE SAME COMPANIES

105. Even though in many cases the viators have outlived the original life expectancy projections, a number of investors want new life expectancy projections. One concern is that the portfolio might be more easily sold if there were new life expectancy projections.

106. In this regard, and typical investor communication would be as follows:
Despite our lengthy suggestions and communication, the Receiver would not agree to go and get a Life Expectancy report on each insured. We really cannot understand the Receiver's intention? Having spent a great amount of money, he still is not willing to engage professional evaluation companies such as 21th Service/AVS/EMSI... etc. to complete the necessary reports? Each insured

would only cost approximately \$300, and we only have approximately 40 insureds, not like we have 4,000 insureds.

107. The Receiver explored this issue over a year ago. There are a number of reasons why this course of action was rejected. First, plainly, the current life expectancy projections are inaccurate. The usefulness of going back to the same companies is therefore highly questionable. Second, there is a serious concern that by including life expectancies in the due diligence materials, the Receiver would be perpetrating, in part, a fraud, just as ABC did by presenting the original, unreliable life expectancy projections. Third, any potential purchaser can obtain updated life expectancy projections that would be based upon the health conditions of the viators as set forth in the existing due diligence materials. While these materials may not have the latest developments, a viator who has a heart condition at age 82 still has that same heart condition at age 85. The existing due diligence material contains as much as the Receiver presently knows about the health conditions of the viators. Fourth, many rating companies require updated medical information (although not all of them do) and such updated medical information will be difficult to obtain. The Receiver's consultant made a diligent effort to contact each viator and ask for medical information, or a HIPPA release. This was a request, as opposed to a demand, because, generally speaking, the life settlement contracts in this case do not require most of the viators to provide medical records or a new HIPPA release to ABC. The response of viators has been overwhelmingly negative. A motion made with proper notice is therefore likely to be opposed, and would be a time-consuming process. Fifth, new life expectancy ratings are not essential to the marketing of the portfolio. Faced with concerns as to the value of new life expectancy ratings, possible fraud, and logistical impediments, the Receiver explored whether new life expectancy projections are essential to marketing the portfolio. He learned that many potential purchasers simply double the existing life expectancy ratings, given the market's experience with such projections. He also found that marketing the portfolio "as is" was entirely feasible. Sixth, in reviewing these issues, the Receiver did not

discover reliable and tangible evidence that supported the view that a potential purchaser would, in fact, offer more for the portfolio if new life expectancy ratings were obtained. Seventh, any effort to fight the viators for new information would substantially delay the marketing of the portfolio and consequently lower the net amount realized in a sale. This seems to weigh more heavily on the scales than the intangible and questionable benefit of new life expectancy ratings.

108. Under the circumstances, then, this objection comes down to a cost/benefit analysis that takes into consideration on the factors of unreliability, possible fraud, purchaser capacity to cure, possible impossibility of improvement and time needed, questionable utility, doubtful effect, and known cost of delay.

SEEK INVESTOR FUNDING

109. Some investors have pointed to the procedures established in another receivership, which allow investors to take over the payment of premiums. These investors believe that this case is amenable to similar treatment.

110. Here is a sample investor comment:

Follow the example of the MBC liquidation, there the investors have the choice of salvaging their investment by paying shortfalls in premiums on a policy by policy basis and it is working! Policies are maturing and investors are at least being made whole. It is much fairer then what you intend to do. You do not give the investors any choice. Please check out their web site www.mbcreceiver.com , they are fairly handling the exact same situation that ABC investors are in. To be contemplating selling the entire ABC portfolio for 1/10 the face amount guarantees that all investors will lose most of their investment! At least give them a choice, it's the least you could do! Let's be fair about this!

111. The Receiver and the Examiner have considered this issue, and are fully familiar with the Mutual Benefits receivership. Indeed, this was considered early in the case. The

determination was that this case is markedly different from that one. Most significantly, there are a large number of policies, and the face values (and consequently the premiums) are much smaller. Additionally, that receiver started with tens of millions of dollars, which has allowed for more extensive administrative services to be provided to investors. Further, the determination was made that the result would not likely be any different, except that a piecemeal liquidation would occur, and there would be a costly delay. To explain, in the Mutual Benefits case, if the investors in a particular policy do not fund the entire premium of a particular policy, then that policy goes up for auction. Given the large number of investors assigned to each ABC policy, the widespread expressions from investors that their life savings are already invested, and the large premiums per policy, the Receiver and the Examiner do not believe that there is a widespread ability among investors to fund premiums on any large scale basis. Finally, to the extent that some investors might be willing to fund some part of the monthly premiums, those investors would essentially become lenders to the receivership estate. Again, that would not be materially different than the existing line of credit.

112. This objection is only valid if it could be shown that this alternative would produce a superior overall result. The Receiver and the Examiner do not believe that they have enough of a basis upon which to expect a superior result, and therefore they have chosen not to recommend this course of action in view of the administrative cost involved, and the additional premiums that would be expended while such an offering to investors was attempted.

Conclusion

113. The Examiner respectfully submits the foregoing for the Court's consideration in connection with the hearing on the Receiver's Motion. The Examiner will also contemporaneously post a copy of this Report on his website for investors and other interested parties to review.

Respectfully submitted,

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Court Appointed Examiner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September 2008, 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
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