

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-AH

### EXAMINER'S RESPONSE TO EMERGENCY MOTION TO STAY

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Examiner Steven A. Harr ("Examiner") responds to the emergency motion for a stay and/or for expedited reconsideration (Dkt. 179), respectfully stating:

1. The Examiner submits this response because the Motion seeks relief that is directly against the best interests of the investors.

2. In these uncertain times, the Court is being asked to stop a willing buyer from paying an additional \$33 million to the Receiver, next week, and to do so based upon an unsubstantiated hope that a higher price might be obtained at some point in the future.

3. The Examiner cannot support such a proposal. The risk of losing this buyer is too great, the resulting loss is too large, and the likelihood of success is simply nonexistent.

4. The Examiner is deeply concerned that a delay of the sale would cause the purchaser to be unable or unwilling to close. In evaluating what position to take on the instant motion, the Examiner thought it appropriate to determine the extent of the risk that the buyer might not close if the sale were delayed. The Examiner's counsel therefore spoke with the buyer's representative, Joe Lucent, who stated that the buyer would very likely not close if afforded any excuse to be released from the current contract. He explained that the buyer has used the last several weeks to obtain new medical information using the HIPPA releases contained in the due diligence material on 21 of the 39 insureds, obtained updated life expectancies of its own based upon this newly obtained medical information (something that the Receiver opined at the sale hearing would likely lead to a conclusion that the portfolio was worth, at best, what it was being sold for), and determined that, sure enough, the portfolio is worth less than they had originally thought. Further, even in the last few weeks, the market for life settlements has deteriorated. The tightening of the credit markets has made it increasingly difficult for current holders of life settlements to obtain premium funding, and thus there are now many more life settlement contracts up for sale than there were four weeks ago when the auction was concluded and the subject sale was approved. Accordingly, if given the opportunity to participate in a third round of bidding, the buyer is indicating that they would use that opportunity to withdraw from the process or substantially reduce their bid.

5. The resulting loss in such an event is at least \$6 million. This is because Highland Capital, the next highest bidder, has made it clear that they would not stand behind their bid of \$33 million. That would leave the Receiver with the unhappy prospect of selling the portfolio to Silverpoint for \$27.1 million (a loss of over \$6 million) or attempting himself to obtain further credit in the current highly unfavorable credit environment using as collateral a portfolio that is now known to be saleable for, at most, that amount, or relying upon the unlikely appearance of a new buyer.

6. The chance of such a buyer appearing is nil. The Court can see for itself from the Motion and the Receiver's Response that it is very unlikely that the Movants will be able to obtain a higher offer for the portfolio, given that they have been unable to do so to this point. With ample notice and reasonable auction procedures, a high bid has been obtained. There is no reason to expect that a better result could be obtained.

7. The Examiner is therefore compelled to express his opposition to the proposal, and to recommend that the Court neither extend the time nor reconsider the approval of the sale, on an expedited basis or otherwise. In that latter regard, the Examiner would refer the Court to his comprehensive report on the subject of the relative merits of the proposed sale, the investor objections raised, and his recommendations to the Court, which was presented to Judge Ramirez (Dkt. 161).

8. For all of these reasons, the Examiner prays that the Motion be denied.

Respectfully submitted,

**MUNSCH HARDT KOPF & HARR, P.C.**  
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By: /s/ Steven A. Harr  
Steven A. Harr, SB No. 09035600

**Court Appointed Examiner**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of October 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. Additionally, I forwarded a copy of this document to Defendant Keith LaMonda.

/s/ Steven A. Harr  
Steven A. Harr