

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 FIFTH INTERIM APPLICATION
TO ALLOW AND PAY (1) EXAMINER'S FEES AND EXPENSES, (2) ATTORNEY'S
FEES AND EXPENSES, AND (3) EXPERT'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 Fifth Interim Application to Allow and Pay (1) Examiner's Fees and Expenses, (2) Attorney's Fees and Expenses, and (3) Consultant's Fees and Expenses, and Brief in Support of such, and 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 (Dkt. 1). On that same date, the Court appointed Michael J. Quilling to serve as receiver and he has functioned in that capacity since that time (Dkt. 8).

2. On November 29, 2006, the Receiver filed a Motion to Appoint Examiner (Dkt. 11). On November 30, 2006, the Court granted the motion and appointed Steven A. Harr as the Court's Examiner (Dkt. 12). The Examiner 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.

3. The Court has directed that Examiner is to be compensated out of the Receivership Assets pursuant to the same procedures approved for the Receiver (Dkt. 12).

Fee Period

4. This Application seeks the court's approval of the attorney's fees and expenses incurred by the Examiner and his counsel, Munsch Hardt Kopf & Harr, P.C. ("MHKH"), for the time period of April 15, 2008 through November 15, 2008.

5. This Application also presents an invoice for work done during this period by a consulting expert, UHY Advisors FLVS, Inc. ("UHY"), who provided services during the period covered by this Application as a consulting expert on the pivotal point of the appropriate valuation of the insurance policy portfolio.

Amount Requested

6. The invoices for the period covered by this Application set forth total fees in the amount of \$168,336.00 and expenses of \$12,460.97 for the Examiner and MHKH for the time period from April 15, 2008 through November 15, 2008. Pursuant to the payment procedures established by this Court, the Receiver has advanced these fees and expenses, and held back ten percent (10%) of the fees, a total of \$16,833.60. This Application therefore seeks approval of the payments to date, and the release of the amounts held back.¹

¹ In approving the Examiner's First and Second Applications, the Court did not approve the release of the holdbacks. In approving the Examiner's Third and Fourth Applications, the Court approved payment including the holdbacks. With the results now obtained in the case, as more specifically described herein, the Examiner respectfully suggests that the holdbacks should be released.

7. Additionally, this Application seeks approval of the UHY invoice referenced above, which is in the amount of \$31,281.25. This invoice has not yet been paid. The Application therefore seeks approval to pay this invoice in full.

Summary of Work Performed

8. This Application covers the period commencing with the selection of a stalking horse bidder in early May through the ultimate resolution of the contested determination to sell the portfolio for \$33.5 million.

9. The decision to sell the portfolio was ultimately that of the Court, and was the work of the Receiver, and so, at the outset, the Examiner would make clear that the following discussion seeks primarily to describe the contribution of the Examiner to these events.

10. Particularly in light of the subsequent collapse of the financial markets, the Examiner believes the sale was the best choice in a difficult situation and that, overall, having cash in hand is a much better outcome than attempting to borrow funds in the current market, or attempting to sell the portfolio in the current market. Had the sale not occurred, that is the plight in which the receivership estate would now find itself.

11. In early May, however, the Examiner's recommendation in favor of proceeding down this path opened a period of intense controversy. No one knew how timely the sale would be, and the choice between risking the lost opportunity of a substantial maturity versus the risk of being unable to sustain the portfolio was clearly the subject of much debate.

12. When Silverpoint emerged with a high bid of \$27.1 million, most investors were still laboring under the spell of the ABC fraud. Notwithstanding the increasing revelations of the Examiner as to the results of the Receiver's investigation, many investors, particularly sales agents, consistently advocated the view that the portfolio was worth over \$100 million even without the supporting bonds, and they continued to hold out the expectation that maturities would occur in sufficient numbers to provide for the repayment of their collective investment. The announcement of the results of the first round of bidding initiated a break in the spell but

many investors continued to insist that a sale was not appropriate. The Examiner's updates began drawing an enormous response, primarily by e-mail, and primarily from investors located in Taiwan. Working with the assistance of a translator, the Examiner responded to hundreds of inquiries. The Examiner analyzed the points raised, and provided accurate responses to doubtful investors and leading sales agents, many times explaining the same information repeatedly even though the information was on the Examiner's website. He explained the impact of the loss of the premium reserve, the fraudulent nature of the bonds, the inaccurate expectations as to tax consequences of maturities, and other factors that led him to believe that the risks were mounting and that now was the time to sell.

13. Many investors remained unconvinced, and so the Examiner could see that there would be a need for a solid report for the Court. Gathering the results of the analyses to date, the Examiner prepared and presented in mid-September a detailed report (Dkt. 161) for the Court's use in connection with the sale hearing scheduled for September 23 and 24. The Report identified the principal issues raised by the investors, explained the fraudulent representations of ABC and presented the true facts, addressed the corresponding impact on value, and made recommendations to the Court as to the appropriate resolution of investor concerns. Even though he himself recommended in favor of a sale, the Examiner objectively presented the views to the contrary, and provided direct quotes from representative correspondence sent to him by investors.

14. During this same period, the Examiner also prepared evidence for the Court to meet the objections being advanced, including, for example, the desire expressed by many for an institutional valuation analysis. Although this objection was ultimately not as strongly advanced as the proposal for a three-week delay to attempt further underwriting by a third-party expert proposed by Mr. Diaz, the Examiner responded to the request for an institutional

valuation by completing work previously commenced with a medical underwriter² (see footnote) and by retaining an experienced and well-regarded valuation expert. Their collective work showed that the proposed sale was within the range that could reasonably be expected taking into consideration the health conditions of the insureds, actuarial tables, and reasonable cash flow projections.³

15. In late September, the Examiner participated in the hearings held by Magistrate Ramirez with respect to the sale, further addressing the points raised by the lead sales agents from Taiwan and Puerto Rico who appeared to contest the sale.

16. The Examiner then continued to address issues that were raised for over a month afterward, including, as noted, immediately addressing and evaluating the relative merits of Highland Capital's suggested eleventh hour alternative.

17. These efforts should be seen as having built upon work commenced over a year ago. As presented in more detail in the Examiner's Report (Dkt. 161), the investigation to determine the true value of the portfolio revealed deeper and deeper concerns over the ability to salvage any value from the investment except by a sale. As the facts mounted, the Examiner resolved to do what he had been appointed to do: he made a difficult recommendation to the

² In his Third Interim Fee Application, the Examiner previously reported that he had worked with an expert to determine the relative accuracy of the life expectancy projections. When a large number of investors demanded an "institutional" valuation, the Examiner directed the completion of the work, since any cash flow model would be fundamentally premised on a combination of medical underwriting and actuarial projections. Although Dr. Bishop remained a consulting expert throughout the process, his work aided the Examiner's counsel substantially in preparing for the hearing, working with the involved parties, evaluating whether the final bids were within an acceptable range, and conducting due diligence when it appeared possible that Highland Capital might present an alternative offer.

³ At the hearing, the completed work of UHY was available for rebuttal. Additionally, UHY's work allowed the Examiner's counsel to address without hesitation the relative merits of the proposed actuarial exercise that an expert proffered by Mr. Diaz recommended. Knowing its likely result, the Examiner was able to advocate, albeit unsuccessfully, in favor of the three-week extension on the ground that would apparently resolve the last of the objections to the sale, with only a slight risk of material harm. Later, after the Court had approved the sale and denied reconsideration, this work further allowed the Examiner's counsel to conduct prompt due diligence on the restructuring concept advocated at the eleventh hour, then premised on the apparently completed work of the same expert, and to prepare an accurate and timely report for the Receiver that presented the strengths and weaknesses of proceeding in the manner suggested by Highland Capital and advocated by Mr. Diaz.

Court when it was otherwise impossible for 3500 investors to appreciate the essential facts and reach a consensus, and he presented the facts to the Court in such a way as to allow the Court to determine what was the best course of action to be taken.

18. In addition to these more public efforts, the Examiner took over the laboring oar on the negotiation of a contract for sale so as to ensure that the sale process proceeded as quickly as possible. The Examiner's counsel, specifically Dan Aaron, had particular expertise that made him uniquely qualified to negotiate a contract with Silverpoint on reasonable terms, and to keep the sale process on track.

19. The result of the collective efforts of the Receiver, the Examiner and ultimately the Court was a sale that took place just prior to the collapse of financial markets, and so just in time. While no one present at the hearings in September anticipated that the market would so quickly fall apart, the Examiner should be credited with having correctly sensed that the risks were high and that the time to sell had come, and with having so advocated. Had a different decision been reached, the estate would now be attempting to borrow money in the present market. No doubt, such efforts would have faltered. Without premium funds, the portfolio could well have collapsed leaving investors with nothing. Likewise, if the sale to Settlement Group, Inc. had been thrown away in favor of continuing to search fruitlessly for a better price in a market, as was strongly advocated at the hearings and afterward, there is no doubt now that a sale even at the price obtained in September would not be possible. To the contrary, up against the wall, the Receiver might not have been able to sell the portfolio for anything remotely close to the price fetched in September.

20. In summary, then, the contribution of the Examiner was first to utilize his position of objectivity and his expertise in this area in order to perform an investigation that led him to complete a sufficient analysis to determine correctly whether a sale was in the best interests of the investors notwithstanding the prevailing views, to respond to an avalanche of correspondence that the Receiver would otherwise have had to handle, and finally to contribute

meaningfully to the evidentiary record, principally in the form of an objective Report, so that the Court would be in a position to act.

21. The fees and expenses incurred by the Examiner for the period covered by this Application are set forth below in summary:

Invoice No.	Bill Date	Fees	Expenses	Totals
10198090	5/20/2008	\$9,658.50	(\$2,466.24)	\$7,192.26
10200945	7/9/2008	\$5,761.00	\$746.46	\$6,507.46
10200946	7/9/2008	\$24,026.00	\$672.36	\$24,698.36
10201058	7/17/2008	\$11,314.00	\$16.71	\$11,330.71
10202910	8/22/2008	\$15,102.00	\$2,943.00	\$18,045.00
10204231	9/17/2008	\$30,463.00	\$618.28	\$31,081.28
10206123	10/21/2008	\$50,888.50	\$756.79	\$51,645.29
10208002	11/18/2008	\$21,123.00	\$9,173.61	\$30,296.61
		\$168,336.00	\$12,460.97	\$180,796.97

22. Additionally, the specific time entries for the Examiner and the professionals working under his direction are included on the invoices themselves, which are attached as Exhibit "A" to this Application. These invoices show: (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; and (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.

23. With respect to the consulting experts retained by the Examiner, who are discussed above, the expenses portion of the last MHKH invoice noted above includes a \$8775 charge by Dr. Bishop, and a separate invoice in the amount of \$31,281.25 for UHY is included at the end of Exhibit "A".

Application of Johnson Factors

24. 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.3rd 453, 471 (6th 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 (5th Cir. 1974) and adopted by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 432 (1983), a court must first determine the loadstar 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.
- (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 in the State of Texas.
Dennis Roossien	\$355.00 per hour	Licensed in Texas in 1992 and admitted to practice in the State of Texas.
Labry Welty	\$410.00 per hour	Licensed in Texas in 1991 and admitted to practice in the State of Texas. Mr. Welty is a tax lawyer.
Chris Speer	\$350.00 per hour	Licensed in Texas in 1993 and admitted to practice in the State of Texas. Mr. Speer is a tax lawyer.
Dan Aaron	\$365.00 per hour	Licensed in Texas in 1973, and admitted to practice in Texas.
Sarah Cardwell	\$250.00 per hour	Licensed in Texas in 2003 and admitted to practice 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.
Marla Thornton	\$175.00 per hour	Nominal work on file.
Amanda Storts	\$220.00 per hour	Nominal work on file.

(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. It has been known for some time that this case involves over 3500 investors from around the world who have invested approximately 120 million dollars in this scheme. It is now known that the value of the asset in which they invested was, as of September, \$33.5 million. The potential to salvage the subject asset for this amount, and the risk that the life settlement market would collapse before this could be achieved, warranted a strong, even uphill, effort to obtain the best price possible for the portfolio and to exit the life settlement market. The Examiner's efforts during the period covered by this Application should be seen as meaningfully contributing to the process necessary to sell the portfolio, particularly since these efforts were so strongly opposed until the very end. Specifically with respect to this Application, the efforts included consulting with the Receiver as to the selection of Silverpoint, taking the laboring oar on the negotiation of a contract for sale so as to ensure that the sale process proceeded as quickly as possible, continuing to keep investors apprised of developments and responding to hundreds of investor inquiries, completing the work on a valuation analysis, compiling from the work to date a report for the Court and for investors that addressed all aspects of the proposed sale, preparing for and participating actively in the hearing concerning the proposed sale and the post-hearing briefing that ensued, and finally conducting intensive due diligence on the Highland Capital concept of restructuring the portfolio and preparing a report that identified specifically the strengths and weaknesses of that eleventh hour plan. As discussed above, these efforts were the culmination of the course of action undertaken when the Examiner chose to take what he knew would be an unpopular position, and which was indeed against the tide of opinion at the time. But having done so, the Examiner should be fairly credited with having advocated a course of action that already appears to be a dramatic improvement over where the estate would now be if the Receiver had continued down the course of continued borrowing in the

hope of a maturity only to face a collapsed financial market, or aborted his efforts in favor of a fruitless search for a better price.

(i) The experience, reputation and ability of the attorneys. Munsch Hardt is a broad-based commercial firm with substantial 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.

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 CONFERENCE

I hereby certify that the Plaintiff and the Receiver do not object to this Application. The positions of investors are unknown, particularly given the recent controversy. Presently, however, the Examiner does not anticipate any opposition to this Motion.

/s/ Dennis Roossien

Dennis Roossien
Counsel for Examiner

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of November 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/ Dennis Roossien

Dennis Roossien
Counsel for Examiner