

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

vs. §

Civil Action No.: 3:06-CV-2136-P

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. §

**RECEIVER'S FOURTH INTERIM APPLICATION TO
ALLOW AND PAY (1) RECEIVER'S FEES AND EXPENSES
AND (2) ATTORNEYS' FEES AND EXPENSES AND BRIEF IN SUPPORT**

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

Michael J. Quilling, Receiver, files this his Fourth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses and in support of such would respectfully show unto the Court as follows:

BACKGROUND

1. On November 17, 2006, the Securities and Exchange Commission filed its Complaint and request for appointment of a receiver. On November 17, 2006, the Court issued

its Order Appointing Receiver pursuant to which Michael J. Quilling was appointed to serve as Receiver in this case.

2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was authorized to employ such attorneys as is necessary and proper in connection with the claims process. Subsequent to his appointment, the Receiver employed the law firm of Quilling Selander Cummiskey & Lownds, P.C. ("QSCL") as his general counsel. The Receiver is an attorney and a shareholder of the law firm and has rendered many of the legal services which are the subject of this Application as well as performing his duties as the Receiver.

3. On May 10, 2007, the Receiver filed his First Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses covering the time period from November 2006 through April 2007. On March 31, 2008 the Court issued an Order approving the fee application.

4. On August 8, 2007, the Receiver filed his Second Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from May 2007 through July 2007. On August 24, 2007, the Court issued an Order approving the fee application.

5. On March 14, 2008, the Receiver filed his Third Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from August 2007 through February 2008. On January 7, 2009 the Court issued an Order approving the fee application.

6. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSCL for the time period from March 1, 2008 through December 31, 2008.

7. Pursuant to paragraph 16 of the Order Appointing Receiver, the Receiver has paid himself and QSCL 90% of their fees (\$710,856.00) and 100% of their expenses (\$27,663.76). The purpose of this Application is to request Court approval of all of the fees and expenses and to allow payment of the 10% fee holdback (\$78,984.00).

8. During the period covered by this Application, the Receiver has incurred fees and expenses with respect to his activities as Receiver and with respect to QSCL as to these proceedings on a monthly basis as follows:

| Month | Fees | Expenses |
|-----------------|---------------------|--------------------|
| March, 2008 | \$53,106.00 | \$1,729.27 |
| April, 2008 | \$79,623.00 | \$930.28 |
| May, 2008 | \$88,483.50 | \$533.21 |
| June, 2008 | \$95,812.00 | \$1,004.42 |
| July, 2008 | \$95,565.50 | \$414.00 |
| August, 2008 | \$105,068.50 | \$15,806.91 |
| September, 2008 | \$118,068.00 | \$5,226.91 |
| October, 2008 | \$78,156.50 | \$1,175.25 |
| November, 2008 | \$50,621.50 | \$708.04 |
| December, 2008 | \$25,335.50 | \$135.47 |
| TOTAL: | \$789,840.00 | \$27,663.76 |

9. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of March 1, 2008 through December 31, 2008, number of hours worked by each attorney and staff member on a particular day; (b) the manner and type of work performed by each attorney and staff member; (c) the customary billing rate for each person rendering service in this matter; and (d) the monetary value assigned to each task performed by a given attorney and/or staff member. Each of the

invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a given month.

JOHNSON FACTORS

10. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver and QSCL 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 Fifth Circuit Court of Appeals in *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998) "The calculation of attorneys fees involves a well-established process. First, the court calculates a 'lodestar' fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers. (cite omitted.) The court then considers whether the lodestar figure should be adjusted upward or downward depending on the circumstances of the case. In making a lodestar adjustment the court should look at twelve factors, known as the Johnson factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." Those factors as applied to the services rendered in this case by the Receiver and QSCL are addressed below.

(a) The Time and Labor Required. The Receiver and QSCL respectfully refer the Court's attention to Exhibit "A" which details the involvement of the Receiver and QSCL's attorneys in this case during the nine month period covered by this Application during which a total of more than 3,429 hours of attorney, Receiver and paraprofessional time have been expended.

(b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in Exhibit "A" involved factual and legal questions which were of substantial complexity.

(c) The Skill Requisite to Perform the Service. The Receiver believes that the services performed in this case have required individuals possessing considerable experience in asset seizure, tracing and liquidation. Both the Receiver and QSCL have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver and QSCL have not declined any representation solely because of their services as Receiver and counsel for the Receiver.

(e) The Customary Fee. The hourly rates sought herein are commensurate with or lower than the rates charged by other practitioners of similar experience levels in the Northern District of Texas. During the course of these proceedings, the following lawyers at QSCL have performed legal services on behalf of the Receiver with respect to these proceedings: Michael J. Quilling (\$400.00 per hour), licensed in Texas in 1982 and Texas Board Certified in Business Bankruptcy Law and Civil Trial Law; Chuck Baum (\$325.00 per hour) licensed in Texas in 1984; D. Dee Raibourn (\$310.00 per hour) licensed in Texas in 1998; and Brent Rodine (\$210.00 per hour) licensed in Texas in 2005 (previously licensed in Oklahoma).

(f) Whether the Fee is Fixed or Contingent. The Receiver's and QSCL's 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 extreme, requiring daily attention by the Receiver and his attorneys.

(h) The Amount Involved and the Results Obtained. This case involved in excess of 55 insurance policies having a death benefit in excess of \$230 million. In excess of 3,500

investors located around the world invested more than \$120 million to purchase fractionalized interests in the insurance policies. At the time this case was filed, there was approximately \$4.5 million of cash available to meet premium obligations in excess of \$7 million per annum.

After his appointment, the Receiver closed all known bank accounts and took possession of all known books and records. He obtained accurate, current information regarding each policy and timely paid premiums on the policies. The Receiver arranged for a \$20 million line of credit to be utilized to pay premiums and other administrative expenses. The Receiver is in the process of obtaining voluminous bank records and reconstructing them so as to determine whether fraudulent transfer and other recoveries may be possible. He has interviewed many key witnesses with respect to the case and has met with representatives of large groups of investors in both Taiwan and Puerto Rico. A website is maintained by the Receiver so as to update the thousands of investors spread around the world. Claim forms have been approved and mailed to all known investors. Three thousand, nine hundred and seventy-six (3976) claim forms have been received back from investors.

The Receiver negotiated a comprehensive settlement with the LaMonda family and has filed lawsuits against individuals and companies that he believes are responsible for the financial demise of ABC Viaticals, Inc. and intends to continue doing so as targets are discovered. To date, the Receiver has recovered in excess of \$3.2 million from these lawsuits.

Over a several month period the Receiver solicited bids and negotiated a contract to sell the insurance portfolio for \$33.5 million plus reimbursement of approximately \$2.7 million of premiums. Part of the funds were used to repay the line of credit.

Eight motions have been filed and approved regarding 3243 allowed claims totaling \$95,238,335.85.

(i) The Experience, Reputation and Ability of the Attorneys. QSCL has several attorneys who specialize exclusively in the practice of civil trial law. The practice of those attorneys regularly includes the representation of bankruptcy trustees and receivers. The reputation of QSCL's attorneys is recognized and respected in their community in Texas.

(j) The Undesirability of the Case. The representation of the Receiver incident to this case has not been undesirable.

(k) The Nature and Length of the Professional Relationship with the Client. QSCL did not represent the Receiver in these proceedings prior to being retained in these proceedings.

(l) Awards in Similar Cases. QSCL 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, the Receiver respectfully requests that the Court allow the requested compensation for professional services and expenses rendered by the Receiver and QSCL and authorize the Receiver to pay the 10% fee holdback of \$78,984.00, as per the itemization in Exhibit "A" attached hereto and for such other and further relief, general or special, at law or in equity, to which the Receiver and QSCL may show themselves justly entitled.

Dated: January 8, 2009.

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
Brent Rodine
State Bar No. 24048770

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2009, a true and correct copy of this document was served via electronic notice to all parties requesting same, and via first class mail to C. Keith LaMonda, Reg. No. 26060-018, Butner LSCI, PO Box 999, Butner, NC 27509.

/s/ Michael J. Quilling
Michael J. Quilling