

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 November 16, 2008 through April 15, 2009.

Amount Requested

5. The invoices for the period covered by this Application set forth total fees in the amount of \$85,196.00 and expenses of \$1,865.28 for the Examiner and MHKH for the time period from November 16, 2008 through April 15, 2009. 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 \$8,519.60. This Application therefore seeks approval of the payments to date, and the release of the amount held back.¹

Summary of Work Performed

6. Following the contested determination to sell the portfolio, the Examiner and his staff provided updates in response to a large number of inquiries concerning the sale and the plan of the Receiver to resolve the remaining open issues in the case. The Examiner also worked with the Receiver to outline the remaining issues and to determine strategies to resolve those issues.

¹ In approving the Examiner's First and Second Applications, the Court did not approve the release of the holdbacks. Otherwise, the Court has approved payment on subsequent applications including the holdback amounts with respect to those latter applications.

7. The central remaining issues are the completion of the claims review process and certain litigation. The Receiver has been working through the thousands of claims in this case. The Receiver continued to work to complete this review during the period covered by this Application. The Examiner has not participated in this process. Two major litigation matters continue involving claims against the ABC Trustee Chris Irwin and the DMH Stallard firm in London. The Examiner has had minor roles in connection with evidence collection and analysis in these matters as described below.

8. The Examiner assisted with the development of potential claims against parties related to the Albatross bonds, including DMH Stallard. Counsel for the Examiner has been serving as the liaison to the SEC's Office of International Affairs with regard to its investigation into foreign bank records, and counsel continued to serve in that capacity during the period covered by this Application. Counsel for the Examiner also assisted, at the Receiver's request, with questions raised by local counsel as to the damages model to be employed. These questions touched on areas previously analyzed in connection with making recommendations on the proposed sale transaction. Otherwise, the primary work relative to the Albatross claims is being done by the Receiver's office.

9. In late February and early March, the Examiner's counsel assisted the Receiver with gathering materials needed for the prosecution of the claims against Chris Erwin. There were a number of issues, particularly in the area of preparing expert testimony as to damages, as to which the prior work of the Examiner's counsel made it more efficient for the Examiner's counsel to do this work. Additionally, the Examiner's counsel assisted with the preparation of responses to written discovery, and in the preparation of reciprocal discovery.

10. The Examiner assisted with the analysis of several complex tax issues. The Court may recall that the relative tax impact of a maturity was an issue that counseled in favor of effecting a sale rather than attempting to hold the portfolio to maturity, and that the Examiner's firm had done the primary work on that issue. Related issues remained, however, such as

whether any withholding would be required in making distributions to foreign investors, and whether ABC's operations created any tax liability not already addressed. The Examiner's firm continued the analysis, focusing on these key issues. This analysis is particularly complex because of the limited available authority on the applicability of the Tax Code to viatical funding structures, and particularly the involvement of foreign nationals as investors in such structures. Further, the analysis is essential because the applicable federal statutes place the burden of determining a potential claim on the part of the IRS on the Receiver, and yet there is Second Circuit precedent holding that a receiver cannot force the IRS to declare a position on tax issues prior to effecting a distribution. In short, the receiver must decide such issues at his peril. The analysis was continued during the period covered by this Application, and was completed subsequent to the period covered by this Application. Ultimately, the analysis demonstrated that there is no obligation to withhold or reserve funds from distribution.

11. While this has been ongoing, the Examiner has continued to respond to investor inquiries and to provide regular updates.

12. 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
10210514	12/23/08	\$10,180.00	\$905.39	\$11,085.39
10211254	01/23/09	\$ 4,872.00	\$ 24.02	\$ 4,896.02
10213436	02/25/09	\$ 2,160.50	\$200.00	\$ 2,360.50
10213437	02/25/09	\$23,808.00	\$ 81.54	\$23,889.54
10215322	03/30/09	\$32,981.50	\$607.30	\$33,588.80
10215656	04/17/09	\$11,194.00	\$ 47.03	\$11,241.03
		\$85,196.00	\$1,865.28	\$87,061.28

13. 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.

Application of Johnson Factors

14. 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.3^d 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.
James McGee	\$360.00 per hour	Licensed in Texas in 1992 and admitted to practice in the State of Texas.
Chris Speer	\$375.00 per hour	Licensed in Texas in 1993 and admitted to practice in the State of Texas. Mr. Speer is a tax lawyer.
Leslie Fisher	\$375.00 per hour	Licensed in Texas in 2000 and admitted to practice in Texas.
Sarah Cardwell	\$265.00 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 \$170.00 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.
Kathleen Clement	\$70.00 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. The tax work conducted is related to the desire to effect a multi-million dollar distribution in the appropriate manner and the results support a substantial additional distribution to the investors instead of a tax payment. The Albatross and Erwin claims work involves multi-million dollar claims, although those efforts are still ongoing. The communications with investors are an inherent part of a distribution of tens of millions of dollars to investors.

(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
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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

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____, 2009, 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