

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 SEVENTH INTERIM APPLICATION  
TO ALLOW AND PAY (1) EXAMINER'S FEES AND EXPENSES AND  
(2) ATTORNEY'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 Seventh Interim Application to Allow and Pay (1) Examiner's Fees and Expenses, (2) Attorney'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 16, 2009 through October 15, 2009.

#### **Amount Requested**

5. The invoices for the period covered by this Application set forth total fees in the amount of \$115,084.00 and expenses of \$2,124.49 for the Examiner and MHKH for the time period from April 16, 2009 through February 15, 2010. 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 \$11,508.40. This Application therefore seeks approval of the payments to date, and the release of the amount held back.

#### **Summary of Work Performed**

6. The central remaining issues at this point in the case are the completion of the claims review process and certain litigation.

7. The Examiner is not principally involved in the claims process. 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 participated in this process only to obtain information needed to update investors on the claims process and the issues that must be addressed by the Receiver prior to a distribution being made to the investors. Investor inquiries related to the prospects of a interim distribution,

however, have become more frequent in the last ninety (90) days and the Examiner's office has been significantly involved in communicating and following up on investor concerns with the Receiver's office which has included multiple phone conferences and meetings. Additionally, the Examiner's office has met and extensively communicated with a broker representative of the Taiwanese investors in an effort to address investor concerns related to logistic issues encountered by the Receiver in the claims process for Taiwanese investors.

8. The Examiner's counsel has been involved in supporting key litigation based upon work that the Examiner's counsel did earlier in the case that is now being applied in the course of litigation. Accordingly, with regard to the claims against the ABC Trustee Chris Irwin and the DMH Stallard firm in London, the Examiner's counsel has performed a supporting role in connection with evidence collection and analysis in these matters as described below.

9. The primary expenses sought in this application were incurred by Examiner's counsel in assisting the Receiver with gathering materials needed for the prosecution of the claims against Chris Erwin, particularly in May and June, when it appeared that the Receiver would need to commence discovery in earnest in order to complete discovery by the then pending October deadline. This work ceased when the discovery deadlines were extended so the Court could address Mr. Erwin's attempt to bring new parties into the case. As the Court can see, the expenses immediately tailed off. This work included assisting in the formulation of an overall trial strategy and discovery plan through (i) several meetings with the Receiver and his counsel to review documents obtained by the Receiver which relate to the Erwin claims, (ii) the identification and review of other documents produced to the SEC by Erwin for potential use in prosecuting the claims against Mr. Erwin, (iii) the handling of fact witness interviews, (iv) the identification and selection of liability experts and (v) the identification and interviewing of damage experts.

10. The Examiner's counsel also continued to support the Receiver and his counsel with the development of potential claims against parties related to the Albatross bonds,

including DMH Stallard which includes assisting UK counsel in the resolution of various issues as they arise. Counsel for the Examiner continued to serve 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. Otherwise, the primary work relative to the Albatross claims was done by the Receiver's office and local counsel retained by the Receiver's office.

11. The Examiner also provided minor assistance to the Receiver in his prosecution of claims against Mr. Jason Sun for disgorgement of commissions earned in connection with fund raising for ABC Viaticals, Inc.

12. The Examiner continued his assistance with the analysis of several complex tax issues which were completed during the period covered by his Application. 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. This analysis was 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. The analysis was 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 was left to decide the tax issues involved in this matter at his own peril. Ultimately, the analysis demonstrated that there is no obligation to withhold or reserve funds from distribution.

13. Additionally, the Examiner continued to coordinate with the Receiver in an effort to respond to investor inquiries and to provide regular updates to the investors regarding the financial status of the Receivership and the prospects and timing of potential distributions.

14. The fees and expenses incurred by the Examiner are summarized as follows:

| Invoice No. | Bill Date | Fees                | Expenses          | Totals              |
|-------------|-----------|---------------------|-------------------|---------------------|
| 10218187    | 05/26/09  | \$23,383.00         | \$281.31          | \$23,664.31         |
| 10222184    | 08/11/09  | \$65,486.50         | \$508.14          | \$65,994.64         |
| 10223905    | 09/17/09  | \$ 3,208.50         | \$303.37          | \$ 3,511.87         |
| 10225434    | 10/19/09  | \$ 6,796.50         | \$ 12.01          | \$ 6,808.51         |
| 10227098    | 11/17/09  | \$ 2,724.00         | \$ 1.78           | \$ 2,725.78         |
| 10228713    | 12/17/09  | \$ 3,202.00         | \$ 302.31         | \$ 3,504.31         |
| 10230177    | 1/21/10   | \$ 3,523.00         | \$ 702.70         | \$ 4,225.70         |
| 10231640    | 2/18/10   | \$ 6,760.50         | \$ 12.87          | \$ 6,773.37         |
|             |           | <b>\$115,084.00</b> | <b>\$2,124.49</b> | <b>\$117,208.49</b> |

15. 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**

16. 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<sup>rd</sup> 453, 471 (6<sup>th</sup> 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 (5<sup>th</sup> 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.                            |
| 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. |
| Brian DeVoss    | \$280.00 per hour | Licensed in Texas in 2006 and admitted to practice in Texas.                                         |

Additionally, the following paralegals assisted with the work performed:

|                |                   |                                                                                                                     |
|----------------|-------------------|---------------------------------------------------------------------------------------------------------------------|
| Mary Jo Martin | \$170.00 per hour | Rendered valuable service in connection with the communications with investors and responding to investor contacts. |
|----------------|-------------------|---------------------------------------------------------------------------------------------------------------------|

(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 effect 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, Sun 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/ Dennis L. Roossien

Dennis L. Roossien  
State Bar No. 00784873

**Counsel for Steven A. Harr, Court  
Appointed Examiner**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of March, 2010, 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