

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 SECOND INTERIM APPLICATION TO ALLOW AND PAY  
ATTORNEYS' FEES AND EXPENSES OF SPECIAL COUNSEL  
AND BRIEF IN SUPPORT**

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

Michael J. Quilling, Receiver, files this, his Second Interim Application to Allow and Pay Attorneys' Fees and Expenses of Special Counsel 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 performing his duties. Subsequent to his appointment, the Receiver employed the law firm of Borod & Kramer, PLC (“Borod & Kramer”)<sup>1</sup> as his special counsel to handle complex litigation matters.

3. This Application seeks approval and payment of the fees and reimbursement of expenses for Borod & Kramer for the time period from May 1, 2008 through August 11, 2010.

4. **Pursuant to paragraph 16 of the Order Appointing Receiver, the Receiver has paid Borod & Kramer 90% of their fees (\$51,952.05) and 100% of their expenses (\$7,166.13). 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 (\$5,772.45).**

5. During the period covered by this Application, the Receiver has incurred fees and expenses with respect to his special counsel on a monthly basis as follows:

Month	Fees	Expenses
05/01/08 – 05/13/08	\$1,880.00	\$0.82
11/20/08 – 02/26/09	\$2,865.00	\$1,813.70
03/13/09 – 03/23/09	\$280.00	\$548.12
04/06/09 – 04/17/09	\$460.00	\$0.50
05/06/09 – 06/12/09	\$13,257.50	\$3,258.11
06/15/09 – 07/31/09	\$710.00	\$0.00
08/03/09 – 08/31/09	\$2,540.00	\$0.00
09/08/09 – 09/29/09	\$8,235.00	\$0.44
10/06/09 – 10/29/09	\$8,145.00	\$1,543.12

<sup>1</sup> Now known as Kramer Crone

12/10/09 – 12/31/09	\$7,990.00	\$0.00
01/04/10 – 01/25/10	\$7,977.00	\$0.00
02/10/10 – 02/15/10	\$140.00	\$0.00
04/09/10 – 04/09/10	\$80.00	\$0.00
05/10/10 – 05/10/10	\$60.00	\$0.00
07/21/10 – 08/11/10	\$500.00	\$0.88
<b>TOTAL:</b>	<b>\$57,724.50</b>	<b>\$7,166.13</b>

6. Exhibit “A,” which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of May 1, 2008 through August 11, 2010: (a) the 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**

7. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver and Borod & Kramer 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 Borod & Kramer are addressed below.

(a) The Time and Labor Required. Borod & Kramer respectfully refers the Court’s attention to Exhibit “A” which details the involvement of Borod & Kramer’s attorneys in this case during the 23 month period covered by this Application during which a total of more than 169 hours of attorney, and paraprofessional time has 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 by Borod & Kramer have required individuals possessing considerable trial experience. Borod & Kramer has considerable experience in that area.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. Borod & Kramer has not declined any representation solely because of their services as special 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 Borod & Kramer have performed legal services on behalf of the Receiver with respect to these proceedings: Bruce J. Kramer (\$400.00 per hour), licensed in Tennessee in 1969; Elaine Sheng

(\$300.00 per hour) licensed in Tennessee in 1997; Scott Kramer (\$245.00 per hour) licensed in Tennessee in 1998; David Brackstone (\$190.00 per hour) licensed in Tennessee in 2009.

(f) Whether the Fee is Fixed or Contingent. Borod & Kramer'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 normal.

(h) The Amount Involved and the Results Obtained. Bruce Kramer was chosen as special counsel by the Receiver because he has been and currently is a receiver over a large viatical company and he has a thorough understanding of the legal issues in this case. Mr. Kramer is a very experienced and well known litigator in high profile cases. In these proceedings, Mr. Kramer handled the IFS litigation which resulted in a recovery of more than \$3 million and is currently handling the Kaplan litigation and the Erwin & Johnson litigation. He also represented the Receiver in the two day Motion to Sell hearing.

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

(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. Borod & Kramer did not represent the Receiver in these proceedings prior to being retained in these proceedings.

(l) Awards in Similar Cases. The Receiver 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 Borod & Kramer and authorize the Receiver to pay the 10% fee holdback of \$5,772.45, as per 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 Borod & Kramer may show themselves justly entitled.

Dated: January 6, 2011.

Respectfully submitted,

**QUILLING, SELANDER, CUMMISKEY  
& LOWNDS, P.C.**

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(214) 871-2100 (Telephone)

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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 13th day of January, 2011, 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