

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 NINTH 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 Ninth 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 September 8, 2010 through October 15, 2011.

#### **Amount Requested**

5. The invoices for the period covered by this Application set forth total fees in the amount of \$18,495.00 and expenses of \$2,217.15 for the Examiner and MHKH for the time period from September 8, 2010 through October 15, 2011. 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 \$1,849.50. This Application therefore seeks approval of the payments to date, and the release of the amount held back.

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

6. During the period covered by this Application, the claims review process was completed and the pending litigation progressed toward potential resolution. The Receiver continued to work on a solution to the logistical issues affecting an interim distribution to Taiwanese investors. The Examiner assisted the Receiver in solving these logistical issues and communicated with the investors regarding the same. After resolving concerns about the delivery of the checks and finalizing fraud safeguards, distribution checks were mailed to all Taiwanese investors during the first week of August, 2011. Also, ongoing during the period covered by this Application, were two pieces of litigation. One, the suit brought by the Receiver

in the Northern District of Texas against Erwin & Johnson, LLP, and, two, the suit against DMH Stallard and Christopher John William Stenning pending in the United Kingdom. Examiner, his counsel, and a paralegal have continued to maintain an updated website, have handled numerous investor inquiries about the litigation and distributions and the liquidation of certain real estate managed by the Receiver, and have communicated with the Receiver on a regular basis as necessary to address the various issues arising in the litigation and distribution process.

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

| <b>Invoice No.</b> | <b>Bill Date</b> | <b>Fees</b>        | <b>Expenses</b>   | <b>Totals</b>      |
|--------------------|------------------|--------------------|-------------------|--------------------|
| 10245686           | 09/21/10         | \$ 400.00          |                   | \$ 400.00          |
| 10242335           | 09/21/10         | \$2,052.50         | \$162.50          | \$2,215.00         |
| 10243610           | 10/20/10         | \$1,650.50         | \$184.11          | \$1,834.61         |
| 10245319           | 11/17/10         | \$ 624.00          | \$162.50          | \$ 786.50          |
| 10248197           | 01/21/11         | \$3,466.50         | \$167.21          | \$3,633.71         |
| 10249752           | 02/17/11         | \$1,061.00         | \$162.50          | \$1,223.50         |
| 10251266           | 03/18/11         | \$ 831.50          | \$373.35          | \$1,204.85         |
| 10252300           | 04/20/11         | \$2,072.50         | \$184.66          | \$2,257.16         |
| 10254000           | 05/20/11         | \$ 879.00          | \$ .60            | \$ 879.60          |
| 10255033           | 06/17/11         | \$ 459.00          | \$163.20          | \$ 622.20          |
| 10256161           | 07/19/11         | \$ 807.50          | \$166.58          | \$974.08           |
| 10257722           | 08/18/11         | \$1,505.50         | \$162.50          | \$1,668.00         |
| 10259696           | 09/28/11         | \$2,050.50         | \$164.22          | \$2,214.72         |
| 10260440           | 10/19/11         | \$635.00           | \$163.22          | \$798.22           |
|                    |                  |                    |                   |                    |
|                    |                  | <b>\$18,495.00</b> | <b>\$2,217.15</b> | <b>\$20,712.15</b> |

8. 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**

9. 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. Most of the work completed during the period covered by this Application was done by Ms. Martin, who is now entirely conversant with the issues commonly being raised by investors. To the extent that Ms. Martin encounters unique issues, she confers with either the Examiner or his counsel, or directs an inquiry to either of them for response. Determining when and how to effect an interim distribution requires experience in making distributions in receivership cases, and experience with effecting foreign distributions. Both the Examiner and his counsel have that expertise.

(c) The requisite skill to perform the service. The done during the period covered by this Application required experience in securities enforcement receiverships and liquidations. The Examiner, his counsel, and Ms. Martin have considerable experience in those 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. |
| Brian DeVoss    | \$290.00 per hour | Licensed in Texas in 2006 and admitted to practice in the State of 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. There have been no time limitations that would impact the analysis of this Application.

(h) The amount involved and the results obtained. The communications with investors are an inherent part of effecting a proper 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 CONFERENCE**

I hereby certify that on the 1st day of December, 2011, I communicated with counsel for the Receiver and counsel for the SEC via e-mail and neither party took issue with the assertions or statements contained in the foregoing document.

/s/ Dennis Roossien  
Dennis Roossien

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of December, 2011, 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