

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 FINAL 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, the court-appointed receiver in this case, ("Receiver") files this Final Application to Allow and Pay Attorneys' Fees and Expenses of Special Counsel and in support would respectfully show the Court as follows:

SUMMARY

The Receiver retained Borod & Kramer, PLC as his special counsel to assist with litigation initiated by the receivership estate. That litigation is now complete and the Receiver asks for authority to pay the full \$25,739.88 still due to special counsel, which includes the court-ordered 10% holdback for its previous fee applications. Borod & Kramer has helped

recover more than \$5 million for the receivership estate and their total bills only amount to less than 0.3% of the estate's total receipts. This is Borod & Kramer's final fee application and it will not perform any more work for the receivership estate.

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, which appointed Michael J. Quilling as the receiver for ABC Viaticals, Inc. ("ABC").

2. That order authorized the Receiver to employ attorneys as necessary to help perform his duties. The Receiver employed the law firm Borod & Kramer, PLC ("Borod & Kramer")¹ as his special counsel to handle complex litigation matters including lawsuits against (a) International Fidelity & Surety Ltd., and its two principal officers, David Goldenberg and Mark Wolok (collectively, "IFS") for selling fraudulent bonds to ABC and (b) ABC's former trustee and escrow agent, Erwin & Johnson LLP and Christopher R. Erwin (collectively, "E&J").

3. On January 12, 2009, the Receiver filed his First Interim Application to Allow and Pay Attorneys' Fees and Expenses of Special Counsel (Doc. 219). The Court entered an Order (Doc. 222) approving the application. Consistent with that order, the Receiver paid Borod & Kramer 90% of its fees and 100% of its expenses but withheld a 10% fee holdback in the amount of \$6,877.80.

4. On January 13, 2011, the Receiver filed his Second Interim Application to Allow and Pay Attorneys' Fees and Expenses of Special Counsel (Doc. 295). The Court entered an Order (Doc. 296) approving the application. Consistent with that order, the Receiver paid Borod

¹ That firm is also formerly known as Kramer + Crone, PLC.

& Kramer 90% of its fees and 100% of its expenses but withheld a 10% fee holdback in the amount of \$5,772.45.

5. The Receiver obtained judgment against IFS and settled his claims against David Goldenberg and E&J following years of investigating and litigating those claims. Those cases resulted in a combined recovery for the receivership estate exceeding \$5 million. (Mot. to Approve E&J Settlement [Doc. 316]; Order [Doc. 317]; Mot. to Approve Goldenberg Settlement [Doc. 73], No. 3:07-CV-421; Order [Doc. 74], No. 3:07-CV-421.)

PENDING FEES

6. This application seeks approval and payment of (a) the 10% fee holdbacks the Receiver withheld from Borod & Kramer's First and Second Interim Fee Applications and (b) Borod & Kramer's fees, expenses, and 10% monthly hold back for December 20, 2010 through June 21, 2011.

7. 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
12/20/10 – 12/22/10	\$280.00	\$0.00
01/03/11 – 03/07/11	\$212.77	\$0.00
03/25/11	\$208.50	\$0.00
04/25/11 – 04/26/11	\$600.00	\$0.00
05/11/11 – 05/31/11	\$9,560.00	\$822.60
06/01/11 – 06/21/11	\$400.00	\$1,005.76
TOTAL:	\$11,261.27	\$1,828.36

8. To date, the Receiver has paid Borod & Kramer 90% of these fees (\$10,135.14) and 100% of these expenses (\$1,828.36). The 10% fee holdback totaling \$1,126.13 remains unpaid.

9. Exhibit “A”, which is attached and incorporated by reference for all purposes, conveys the following information for the time period of December 20, 2010 through June 21, 2011: (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 as Exhibit “A” reflect aggregate expenses by category during a given month.

JOHNSON FACTORS

10. In support of this application, the Receiver and Borod & Kramer respectfully direct the 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 seven-month period covered by this Application during which a total of more than 30 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, experience in litigating and negotiating claims initiated by the receivership estate, and experience in litigating and negotiating claims related to the viatical industry. Borod & Kramer has considerable experience in all of those areas.

(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 charged 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; and Elaine Sheng (\$300.00 per hour), licensed in Tennessee in 1997.

(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 is an experienced and well-known litigator in high profile cases. Mr. Kramer was chosen as special counsel because he has been and currently is a receiver over a large viatical company and has a thorough understanding of the legal issues in this type of case. In these proceedings, Mr. Kramer handled the IFS litigation that resulted in a recovery of more than \$3 million and the Erwin & Johnson litigation that resulted in a recovery of more than \$2 million. He also represented the Receiver in the two-day hearing to sell ABC's portfolio of life insurance policies.

(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 asks that the Court approve Borod & Kramer's fees as reasonable and necessary to the Receiver's duties performed in these proceedings and authorize him to pay: (1) the 10% fee holdback totaling \$1,126.13 that has been withheld for the

period covered in this application; (2) the 10% fee holdback totaling \$6,877.80 that was withheld by the Order Approving Receiver's First Interim Fee Application For Special Counsel (Doc. 222); and (3) the 10% fee holdback totaling \$5,772.45 that was withheld by the Order Approving Receiver's Second Interim Fee Application for Special Counsel (Doc. 296). The Receiver also asks for such other and further relief, general or special, at law or in equity, to which the Receiver or Borod & Kramer may show themselves justly entitled.

Respectfully submitted,

**QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER P.C.**

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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 January 27, 2012, 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, FCI-II, PO Box 1500, Butner, NC 27509.

/s/ Michael J. Quilling