

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 FLORIDA 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 Florida Counsel and in support would respectfully show as follows:

SUMMARY

The Receiver retained Lowndes, Drosdick, Doster, Kantor & Reed, P.A. as his counsel in Florida to help recover investor money that C. Keith LaMonda diverted into improvements to his personal home. That firm recorded the receivership estate's \$1,425,000 lien against LaMonda's property, foreclosed the lien, and successfully defended the appeals LaMonda filed up to the

Florida Supreme Court. That litigation is now complete and the Receiver asks the Court to approve \$65,241.21 already paid in fees and expenses and to authorize payment of the court-ordered 10% holdback. Those bills amount to less than 0.2% of the estate's total receipts. This is Lowndes Drosdick'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 entered an Order Appointing Receiver that appointed Michael J. Quilling as receiver for ABC Viaticals, Inc. ("ABC").

2. That order authorized the Receiver to employ attorneys as necessary to help perform his duties. He employed Lowndes, Drosdick, Doster, Kantor & Reed, P.A. ("Lowndes Drosdick") as his counsel in Florida to handle specialized real estate litigation involving C. Keith LaMonda's home in Kissimmee, Florida (the "Kissimmee Property"). Among other things, the attorneys and staff at Lowndes Drosdick assisted the Receiver by: (a) analyzing the options to proceed with litigation against the Kissimmee Property under Florida law; (b) recording the receivership estate's \$1,425,000 equitable lien against that property; (c) filing a lawsuit in Florida to foreclose that lien; (d) obtaining a foreclosure judgment; (e) successfully defending the appeals LaMonda filed up to the Florida Supreme Court; and (f) closing the sale of that property following the Receiver's foreclosure.

PENDING FEES

3. This application seeks approval and payment of Lowndes Drosdick's fees, expenses, and 10% monthly hold back for December 1, 2006, through January 25, 2012.

4. During the period covered by this application, the Receiver incurred fees and expenses with respect to his Florida counsel on a monthly basis as follows:

Month	Fees	Expenses
12/01/06	\$216.00	\$22.50
03/08/07 – 03/20/07	\$472.50	\$48.82
12/04/06 – 07/03/07	\$215.00	\$22.50
01/17/08 – 01/24/08	\$1,207.50	\$167.00
01/24/08 – 01/31/08	\$172.00	\$35.98
07/11/07 – 07/21/08	\$1,171.50	\$127.40
08/09/08 – 08/12/08	\$266.50	\$67.94
09/01/09 – 10/28/09	\$4,610.50	\$459.69
11/04/09 – 11/23/09	\$799.00	\$69.35
12/09/09 – 12/31/09	\$569.50	\$0.00
01/04/10 – 01/28/10	\$4,180.00	\$87.61
02/01/10 – 02/26/10	\$6,106.00	\$223.10
02/23/10 – 03/31/10	\$3,964.75	\$300.88
04/02/10 – 04/09/10	\$1,046.00	\$0.00
04/01/10 – 04/28/10	\$904.75	\$91.62
04/30/10	\$97.50	\$0.00
04/07/10 – 05/12/10	\$709.75	\$0.00
05/03/10 – 05/07/10	\$862.00	\$0.00
06/03/10 – 06/22/10	\$1,136.75	\$161.50
07/06/10 – 07/28/10	\$890.00	\$15.85
07/16/10 – 08/31/10	\$10,185.00	\$28.79

09/08/10	\$47.50	\$11.92
09/01/10 – 09/10/10	\$9,675.25	\$213.02
10/04/10 – 10/27/10	\$938.00	\$47.00
11/04/10	\$73.00	\$0.00
01/05/11 – 01/31/11	\$78.00	\$0.00
03/08/11 – 03/14/11	\$72.00	\$0.00
04/21/11	\$313.50	\$2.98
05/09/11 – 05/31/11	\$1,943.00	\$21.60
06/03/11 – 06/15/11	\$731.25	\$1.80
07/14/11 – 07/26/11	\$2,229.25	\$2.98
08/01/11 – 08/31/11	\$2,347.75	\$43.53
09/01/11 – 09/28/11	\$1,159.75	\$24.00
10/03/11 – 01/25/12	\$10,443.00	\$91.47
TOTAL:	\$69,833.75	\$2,390.83

5. To date, the Receiver has paid Lownds Drosdick 90% of its fees (\$62,850.38) and 100% of its expenses (\$2,390.83). The 10% fee holdback totaling \$6,983.37 remains unpaid.

6. Exhibit “A,” which is attached and incorporated for all purposes, conveys the following information for each bill listed above: (a) the number of hours worked by each attorney or staff member on a particular day; (b) the manner and type of work performed; (c) the customary billing rate for each person; and (d) the monetary value assigned to each task performed. Each of the invoices attached as Exhibit “A” reflect aggregate expenses by category during a given month.

JOHNSON FACTORS

7. In support of this application, the Receiver and Lowndes Drosdick 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: "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. 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)." *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998) (citations omitted). Those factors as applied to the services rendered by Lowndes Drosdick are addressed below.

(a) The Time and Labor Required. The Receiver respectfully refers the Court's attention to Exhibit "A" which details the involvement of Lowndes Drosdick's attorneys in this case during the 62-month period covered by this Application, during which a total of more than 293 hours of attorney and paraprofessional time has been spent. Additionally, since significant litigation expenses occurred after LaMonda filed his unsuccessful appeal on April 7, 2010, much of the time spent in this case should be attributed to LaMonda rather than to Lownds Drosdick.

(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 Lowndes Drosdick have required individuals possessing

considerable litigation experience, especially in the areas of real estate and foreclosure litigation. Lowndes Drosdick has considerable experience in those areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. Lowndes Drosdick has not declined any representation solely because of their services as 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 Florida as well as in this district. During the course of these proceedings, the following lawyers at Lowndes Drosdick have performed legal services with respect to these proceedings: Robert F. Higgins (\$400.00 to \$495.00 per hour), licensed in Florida in 1972; William R. Bird, Jr. (\$405.00 per hour), licensed in Florida in 1986; David E. Peterson (\$350.00 to \$385.00 per hour) licensed in Florida in 1983; Allison V. Perez (\$195.00 to \$210.00 per hour) licensed in Florida in 2009; Lyndon E. Carter (\$205.00 per hour), licensed in Florida in 2010. Other work was performed by paralegals at a lower rate (\$140.00 to \$180.00 per hour).

(f) Whether the Fee is Fixed or Contingent. Lowndes Drosdick's fees are fixed insofar as monies exist by way of Receivership Assets from which to pay such fees. Payment of those fees, however, are 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. The Receiver retained Lownds Drosdick to record and foreclose the estate's \$1,425,000 equitable lien against the Kissimmee Property. That lien reflected the amount of investor funds LaMonda diverted for improvements to the property. Lownds Drosdick successfully obtained the foreclosure judgment, defended

against LaMonda's appeals to the Florida Circuit Court and to the Florida Supreme Court, and handled closing of the sale following foreclosure.

(i) The Experience, Reputation and Ability of the Attorneys. Lowndes Drosdick has several attorneys who specialize exclusively in the practice of real estate or civil trial law. The practice of those attorneys includes the representation of receivers. The reputation of Lowndes Drosdick's attorneys is recognized and respected in Florida.

(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. Lowndes Drosdick did not represent the Receiver in these proceedings prior to being retained.

(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 asks the Court to approve Lowndes Drosdick's fees as reasonable and necessary to the Receiver's duties in these proceedings and to authorize payment of the 10% fee holdback. The Receiver also seeks such other and further relief, general or special, at law or in equity, to which he may show himself 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

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on the April 16, 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