

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 (1) RECEIVER'S FEES AND EXPENSES
AND (2) ATTORNEYS' FEES AND EXPENSES AND BRIEF IN SUPPORT**

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

Michael J. Quilling, Receiver, files this, his Final Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses 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 the claims process. Subsequent to his appointment, the Receiver employed the law firm of Quilling Selander Cummiskey & Lownds, P.C. which is now known as Quilling, Selander, Lownds, Winslett & Moser, P.C. ("QSLWM") as his general counsel. The Receiver is an attorney and a shareholder of the law firm and has rendered many of the legal services which are the subject of this Application as well as performing his duties as the Receiver.

3. On May 10, 2007, the Receiver filed his First Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses covering the time period from November 2006 through April 2007. On March 31, 2008 the Court issued an Order approving the fee application but did not allow payment at that time of the requested 10% holdback of \$68,028.30.

4. On August 8, 2007, the Receiver filed his Second Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from May 2007 through July 2007. On August 24, 2007, the Court issued an Order approving the fee application including payment of the 10% holdback.

5. On March 14, 2008, the Receiver filed his Third Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from August 2007 through February 2008. On January 7, 2009 the Court issued an Order approving the fee application but did not allow payment at that time of the requested 10% holdback of \$45,206.05.

6. On January 8, 2009, the Receiver filed his Fourth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from March 2008 through December 2008. On February 17, 2009 the Court issued an Order approving the fee application but did not allow payment at that time of the requested 10% holdback of \$78,984.00.

7. This Application seeks approval of the fees and expenses for the Receiver and QSLWM for the time period from January 1, 2009 through September 5, 2014. Pursuant to paragraph 18 of the Order Appointing Receiver, the Receiver has paid himself and QSLWM 90% of their fees (\$1,007,866.80) and 100% of their expenses (\$19,346.44). The purpose of this Application is to request Court approval of all of the fees and expenses set forth in paragraph 8 below and to allow payment of the 10% fee holdback covered by this Application (\$111,985.20). **This Application also seeks approval on a final basis of all interim fees previously allowed on an interim basis by virtue of the prior four interim fee applications and to allow payment of the 10% holdback under those applications in the aggregate amount of \$192,218.35. Finally, as discussed in paragraph 11 below, this application also asks the Court to allow the Receiver to pay QSLWM the amount of \$82,500.00 to cover the attorneys' fees and expenses which the Receiver anticipates will be necessary to make the final distribution of funds to the investors and close the case.**

8. During the period covered by this Application, the Receiver has incurred fees and expenses with respect to his activities as Receiver and with respect to QSLWM as to these proceedings on a monthly basis as follows:

Month	Fees	Expenses
January, 2009	\$26,825.50	\$194.61
February, 2009	\$25,787.00	\$70.65

March, 2009	\$24,372.50	\$59.56
April, 2009	\$11,959.00	\$112.25
May, 2009	\$27,533.50	\$253.95
June, 2009	\$28,001.00	\$2,285.27
July, 2009	\$24,100.50	\$728.90
August, 2009	\$11,733.00	\$105.02
September, 2009	\$22,898.00	\$216.03
October, 2009	\$24,667.50	\$123.80
November, 2009	\$25,729.00	\$195.46
December, 2009	\$29,341.50	\$75.93
January, 2010	\$25,987.50	\$187.78
February, 2010	\$31,649.50	\$140.21
March, 2010	\$14,158.00	\$149.87
April, 2010	\$20,939.00	\$19.79
May, 2010	\$13,662.50	\$14.32
June, 2010	\$16,201.00	\$39.12
July, 2010	\$10,722.00	\$27.74
August, 2010	\$6,891.00	\$87.38
September, 2010	\$11,104.50	\$51.47
October, 2010	\$11,370.00	\$126.16
November, 2010	\$20,598.00	\$256.56
December, 2010	\$17,197.00	\$109.22
January, 2011	\$21,456.50	\$91.00
February, 2011	\$13,820.50	\$33.17
March, 2011	\$29,240.50	\$1,733.36
April, 2011	\$34,997.00	\$3,910.46
May, 2011	\$47,587.50	\$2,812.18
June, 2011	\$31,555.00	\$50.25
July, 2011	\$25,989.50	\$153.73

August, 2011	\$34,954.50	\$2,168.30
September, 2011	\$35,611.50	\$58.02
October, 2011	\$30,892.00	\$255.10
November, 2011	\$38,407.50	\$176.18
December, 2011	\$26,216.50	\$81.48
January, 2012	\$17,106.00	\$69.32
February, 2012	\$18,659.50	\$60.45
March, 2012	\$20,317.50	\$59.45
April, 2012	\$18,897.00	\$89.05
May, 2012	\$13,559.50	\$50.79
June, 2012	\$9,793.50	\$8.35
July, 2012	\$8,621.50	\$7.45
August, 2012	\$11,909.00	\$36.34
September, 2012	\$2,832.50	\$0.00
October, 2012	\$8,495.00	\$132.82
November, 2012	\$8,284.50	\$23.20
December, 2012	\$9,238.00	\$29.70
January, 2013	\$9,023.00	\$65.40
February, 2013	\$20,281.00	\$447.06
March, 2013	\$7,033.50	\$0.00
April, 2013	\$5,535.00	\$756.97
May, 2013	\$5,339.50	\$95.49
June, 2013	\$2,763.50	\$16.88
July, 2013	\$2,897.00	\$10.58
August, 2013	\$1,442.50	\$22.90
September, 2013	\$3,196.50	\$114.20
October, 2013	\$4,419.00	\$6.30
November, 2013	\$5,329.50	\$21.94
December, 2013	\$7,021.50	\$1.10

January, 2014	\$2,577.50	\$14.40
February, 2014	\$1,582.50	\$0.00
March, 2014	\$1,470.50	\$1.60
April, 2014	\$7,233.00	\$0.00
May, 2014	\$5,326.00	\$0.00
June, 2014	\$2,495.00	\$25.70
July, 2014	\$2,901.00	\$17.20
August – September 5, 2014	\$20,115.00	\$7.52
TOTAL:	\$1,119,852.00	\$19,346.44

9. Exhibit “A,” which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of January 1, 2009 through September 5, 2014, 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

10. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver and QSLWM 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 the Receiver and QSLWM are addressed below.

(a) The Time and Labor Required. The Receiver and QSLWM respectfully refer the Court’s attention to Exhibit “A” which details the involvement of the Receiver and QSLWM’s attorneys in this case during the five and a half year period covered by this Application during which a total of more than 6670 hours of attorney, Receiver and paraprofessional time have 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 have required individuals possessing considerable experience in asset seizure, tracing and liquidation. Both the Receiver and QSLWM have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver and QSLWM have not declined any representation solely because of their services as Receiver and 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 QSLWM have performed legal services on behalf of the Receiver with respect to these proceedings: Michael J. Quilling (\$400.00 per hour), licensed in Texas in 1982 and Texas Board Certified in Business Bankruptcy Law and Civil Trial Law; Brent Rodine (\$210.00 per hour) licensed in Texas in 2005 (previously licensed in Oklahoma); and Derek Bragg (\$185.00 per hour) licensed in Texas in 2011.

(f) Whether the Fee is Fixed or Contingent. The Receiver's and QSLWM'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 extreme, sometimes requiring daily attention by the Receiver and his attorneys.

(h) The Amount Involved and the Results Obtained. This case involved in excess of 55 insurance policies having a death benefit in excess of \$230 million. In excess of 3,500 investors located around the world invested more than \$120 million to purchase fractionalized interests in the insurance policies. At the time this case was filed, there was approximately \$4.5 million of cash available to meet premium obligations in excess of \$10 million per annum.

After his appointment, the Receiver closed all known bank accounts and took possession of all known books and records. He obtained accurate, current information regarding each policy and timely paid premiums on the policies. The Receiver arranged for a \$20 million line of credit to be utilized to pay premiums and other administrative expenses. The Receiver obtained voluminous bank records and reconstructed them to determine and pursue assets and courses of action against third parties. He interviewed many key witnesses with respect to the case and met

with representatives of large groups of investors in both Taiwan and Puerto Rico. A website is maintained by the Receiver so as to update the thousands of investors spread around the world. Claim forms have been mailed, reviewed and approved.

The Receiver negotiated comprehensive settlements with various parties which resulted in the receivership recovering in excess of \$6.6 million for the receivership estate.

Over a several month period the Receiver solicited bids and negotiated a contract to sell the insurance portfolio for \$33.5 million plus reimbursement of approximately \$2.7 million of premiums. Part of the funds were used to repay the line of credit.

The Receiver has made an interim distribution of \$15 million to investors and in his Final Report requests authority to make a final distribution to investors of approximately \$8.5 million which will result in investors recovering an additional approximate 7.33% of the allowed claims. Overall, investors will receive approximately 20.27% of their allowed claim.

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

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

(l) Awards in Similar Cases. QSLWM 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.

FEES AND EXPENSES TO CLOSE THE ESTATE

11. If the Court approves the Receiver's Final Report and authorizes the Receiver to make the proposed final distribution, the Receiver and his staff will be required to incur significant mailing costs and attorneys' fees. The majority of the fees will be by paralegals who will handle the daily activity associated with the issuance and processing of the distribution checks. Based upon the fees and expenses associated with the interim distribution process, the Receiver estimates that it will cost approximately \$75,000.00 in fees and \$7,500.00 in costs to accomplish the final distribution process. Accordingly, the Receiver requests he be allowed to pay QSLWM the total amount of \$82,500.00 to cover their fees and expenses for that process.

WHEREFORE, the Receiver respectfully requests that the Court:

- (a) approve on a final basis all fees and expenses previously awarded to QSLWM on an interim basis;
- (b) approve on a final basis the fees of \$1,119,852.00 and expenses of \$19,346.44 set forth in paragraph 8 above;
- (c) allow payment of the 10% holdback for the fees set forth in paragraph 7 above (\$111,985.20) and allow payment of all of the prior 10% holdbacks as referenced in paragraphs 3, 5 and 6 above (\$192,218.35);
- (d) authorize the Receiver to pay QSLWM the amount of \$82,500.00 to cover the costs and fees of mailing the final distribution to investors; and
- (e) such other and further relief, agreed or special, at law or in equity, to which the Receiver and QSLWM may show themselves justly entitled.

Dated: September 17, 2014.

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 the 17th day of September, 2014, 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, FC II, P.O. Box 1500, Butner, NC 27509.

/s/ Michael J. Quilling
Michael J. Quilling

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