

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 ACCOUNTANTS' FEES AND EXPENSES OF  
ACCOUNTANTS 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 Accountants' Fees and Expenses of Accountants 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 accountants as is necessary and proper in connection with performing his duties. Subsequent to his appointment, the Receiver employed the accounting firm of Litzler, Segner, Shaw & McKenney LLP ("LSSM") to provide forensic accounting, financial accounting, and tax services.

3. On March 25, 2011, the Receiver filed his First Interim Application to Allow and Pay Accountants' Fees and Expenses of Accountants and Brief in Support for the time period from November 17, 2006 through December 31, 2010. On April 19, 2011, the Court issued an Order approving the fee application but did not allow payment at that time of the requested 10% holdback of \$59,036.23.

4. This Application seeks approval and payment of the fees and reimbursement of expenses for LSSM for the time period from January 1, 2011 through September 5, 2014.

5. Pursuant to paragraph 16 of the Order Appointing Receiver, the Receiver has paid LSSM 90% of their fees (\$87,072.30) and 100% of their expenses (\$3,765.80). 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 covered by this application (\$9,674.70). This Application also seeks approval on a final basis of all interim fees previously allowed on an interim basis by virtue of the prior first interim fee application and to allow payment of the 10% holdback under that application in the amount of \$59,036.23. This Application also seeks authority to allow the Receiver to pay LSSM \$7,500.00 to cover the anticipated

**accounting costs associated with the Receiver's proposed final distribution and closing the case which is discussed in more detail in paragraph 10 below.**

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

Month	Fees	Expenses
1/1/2011 – 3/31/2014	\$86,886.50	\$2,929.80
4/1/2014 – 7/31/2014	\$5,383.50	\$836.00
8/1/2014 – 9/5/2014	\$4,477.00	\$0.00
<b>TOTAL:</b>	<b>\$96,747.00</b>	<b>\$3,765.80</b>

7. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of January 3, 2011 through September 5, 2014: (a) the number of hours worked by each accountant and staff member on a particular day; (b) the manner and type of work performed by each accountant 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 accountant and/or staff member. Each of the invoices attached hereto as Exhibit "A" reflect aggregate expenses by category during a given month.

#### **JOHNSON FACTORS**

8. In order to establish an objective basis for determining the amount of compensation that is reasonable for professionals' services, a court in the Fifth Circuit must consider the following twelve factors in warding such fees:

- 1) Time and labor required;
- 2) Novelty and difficulty of the questions involved;

- 3) Skill requisite to perform the accounting services;
- 4) Exclusion of other employment by the accountants due to acceptance of the case;
- 5) The customary fee;
- 6) Whether the fee is fixed or contingent
- 7) The amount involved and the results obtained;
- 8) The experience, reputation and the ability of the accountants;
- 9) The undesirability of the case;
- 10) The nature and length of the professional relationship with the client; and
- 11) Awards in similar cases.

*Johnson v. Georgia Highway Express, Inc.* 488 F.2<sup>nd</sup> 714 (5<sup>th</sup> Cir. 1974).

9. Information exists that is pertinent to each of these factors and that may assist this Court in assessing the merits of this Application. The information is summarized by factor in the paragraphs below.

(a) The Time and Labor Required. LSSM respectfully refers the Court's attention to Exhibit "A" which details the involvement of LSSM's accountants in this case during the 44 month period covered by this Application during which a total of more than 442 hours of accountant, and paraprofessional time has been expended.

(b) The Novelty and Difficulty of the Questions. The Receiver believes that the accounting and tax questions encountered in representing the Receiver were of a complex and specialized nature, requiring a very high degree of skill in obtaining their successful resolution.

(c) The Skill Requisite to Perform the Service. The Accountants' firm has numerous members, including members who have performed services on behalf of the Receiver and who specialize exclusively in the practice of bankruptcy and insolvency accounting. Due to their

expertise and skill in this highly specialized realm, the Receiver believes far more time would have been employed by less experienced professionals and with considerably less rewarding results. The array of financial and accounting consideration presented in this proceeding and the prompt and skillful action taken upon those problems by the Accountants required a very high degree of expertise and experience. Prompt, skillful action was utilized by the Accountants in providing professional services to the Receiver in this proceeding.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. LSSM has not declined any representation solely because of their accounting services 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. The hourly billing rate of each professional and paraprofessional performing services on behalf of the Receiver are as follows:

Partner	\$350.00 - \$395.00
Staff Accountant	\$135.00 - \$235.00
Paraprofessional	\$ 55.00 - \$110.00

(f) Whether the Fee is Fixed or Contingent. LSSM'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. The accountants and staff at LSSM provided significant assistance to the Receiver by: (a) preparing summaries of ABC's, E&J's, and LaMonda's accounts that show how investor money was spent; (b) providing the analysis to prove that ABC was an insolvent Ponzi scheme; (c) calculating the amount that

ABC's premium escrow account was underfunded at all points in time; and (d) providing financial accounting and tax services to the receivership estate that tracks its income and expenses.

(i) The Experience, Reputation and Ability of the Accountants. As stated above, the Accountants specialize in the practice of accounting and consultation. Much of the Accountants' practice has been devoted to asset management, accounting services, development of accounting data, preparation of tax returns for estates, formulation of plans of reorganization and consultation with creditors and estate representatives. The Accountants are recognized as experts in the accounting field and possess a reputation of high quality, integrity and ability.

(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. Prior to the institution of this proceeding, the Accountants have represented the Receiver from time to time with regard to general accounting matters and consultation in similar proceedings.

(l) Awards in Similar Cases. The Receiver believes that the services 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**

10. If the Court approves the Receiver's Final Report and authorizes the Receiver to make the proposed final distribution, the Receiver will need LSSM to handle bank account reconciliations and any relevant tax returns or issues. The Receiver estimates that it will cost approximately \$7,500.00 in fees and expenses for the accountants to handle matters necessary to close the case. Accordingly, the Receiver requests he be allowed to pay LSSM the total amount of \$7,500.00 to cover their fees and expenses.

WHEREFORE, the Receiver respectfully requests that the Court:

- (a) approve on a final basis all fees and expenses previously awarded to LSSM on an interim basis;
- (b) approve on a final basis the fees of \$96,747.00 and expenses of \$3,765.80 set forth in paragraph 6 above;
- (c) allow payment of the 10% holdback for the fees set forth in paragraph 5 above (\$9,674.70) and allow payment of the prior 10% holdback (\$59,036.23) as referenced in paragraph 3 above;
- (d) authorize the Receiver to pay LSSM the amount of \$7,500.00 to cover the costs to handle matters necessary to close the case; and
- (e) such other and further relief, agreed or special, at law or in equity, to which the Receiver and LSSM 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 17<sup>th</sup> 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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