

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.

~~~~~

Civil Action No. 3:06-CV-2136-P

**EXAMINER'S FINAL 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 Final 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).

4. On May 15, 2007, the Examiner filed his First Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 51). On March 31, 2008, the Court issued an Order approving the application, but did not allow payment at that time of the requested 10% holdback of \$21,309.65. (Dkt. 126).

5. On September 5, 2007, the Examiner filed his Second Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 90). On March 31, 2008, the Court issued an Order approving the application, but did not allow payment at that time of the requested 10% holdback of \$9,655.65. (Dkt. 127).

6. On September 9, 2008, the Examiner filed his Third Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 158). On October 14, 2008, the Court issued an Order approving the application, including payment of the 10% holdback. (Dkt. 181).

7. On September 9, 2008, the Examiner filed his Fourth Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 159). On October 14, 2008, the Court issued an Order approving the application, including payment of the 10% holdback. (Dkt. 182).

8. On November 26, 2008, the Examiner filed his Fifth Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 207). On January 7, 2009, the Court issued an Order approving the application, including payment of the 10% holdback. (Dkt. 213).

9. On September 21, 2009, the Examiner filed his Sixth Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 237). On October 9, 2009, the Court issued an Order approving the application, including payment of the 10% holdback. (Dkt. 239).

10. On March 8, 2010, the Examiner filed his Seventh Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 257). On May 10, 2010, the Court issued an Order approving the application, but did not allow payment at that time of the requested 10% holdback of \$11,508.40. (Dkt. 268).

11. On September 16, 2010, the Examiner filed his Eighth Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 280). On September 17, 2010, the Court issued an Order approving the application, but did not allow payment at that time of the requested 10% holdback of \$781.50. (Dkt. 281).

12. On December 2, 2011, the Examiner filed his Ninth Interim Application to Allow Examiner's and MHKH's Fees and Expenses. (Dkt. 330). On December 5, 2011, the Court issued an Order approving the application, but did not allow payment at that time of the requested 10% holdback of \$1,849.50. (Dkt. 331).

#### **Pending Fees**

13. 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 October 16, 2011 through August 15, 2014, and also to allow payment of the 10% fee holdback covered by this Application.

#### **Amount Requested**

14. The invoices for the period covered by this Application set forth total fees in the amount of \$22,980.50 and expenses of \$6,155.45 for the Examiner and MHKH for the time period from October 16, 2011 through August 15, 2014. Pursuant to the payment procedures established by this Court, this Application seeks approval of all fees and expenses set forth in paragraph 15 below and to allow payment of the 10% fee holdback covered by this Application in the amount of \$2,298.05. This Application also seeks approval on a final basis of all interim fees previously allowed by virtue of the prior nine interim fee applications and to allow payment

of the 10% holdback under those applications, as referenced in paragraphs 4, 5, 10, 11 and 12 above, in the aggregate amount of \$45,104.70.

15. During the period covered by this Application, the Examiner and MHIKH have incurred fees and expenses with respect to their activities as follows:

| <b>Invoice No.</b> | <b>Bill Date</b> | <b>Fees</b>         | <b>Expenses</b>    | <b>Totals</b>       |
|--------------------|------------------|---------------------|--------------------|---------------------|
| 10262901           | 12/04/11         | \$ 2,018.00         | \$ 162.50          | \$ 2,180.50         |
| 10263103           | 12/19/11         | \$ 595.00           | \$ 175.31          | \$ 770.31           |
| 10264812           | 02/03/12         | \$ 324.50           | \$ 212.50          | \$ 537.00           |
| 10265550           | 02/23/12         | \$ 338.50           | \$ 245.72          | \$ 584.22           |
| 10268097           | 04/18/12         | \$ 761.00           | \$ 325.00          | \$ 1,086.00         |
| 10269442           | 05/17/12         | \$ 798.00           | \$ 162.74          | \$ 960.74           |
| 10270919           | 06/25/12         | \$ 332.50           | \$ 162.50          | \$ 495.00           |
| 10271982           | 07/18/12         | \$ 85.00            | \$ 162.50          | \$ 247.50           |
| 10273265           | 08/20/12         | \$ 354.00           | \$ 168.50          | \$ 522.50           |
| 10274886           | 09/24/12         | \$ 405.00           | \$ 162.50          | \$ 567.50           |
| 10276720           | 10/25/12         | \$ 505.00           | \$ 174.42          | \$ 679.42           |
| 10277501           | 11/19/12         | \$ 182.00           | \$ 169.20          | \$ 351.20           |
| 10279078           | 12/19/12         | \$ 529.00           | \$ 162.50          | \$ 691.50           |
| 10281011           | 01/29/13         | \$ 250.00           | \$ 170.46          | \$ 420.46           |
| 10281913           | 02/21/13         | \$ 3,048.00         | \$ 168.00          | \$ 3,216.00         |
| 10283294           | 03/22/13         | \$ 9,257.00         | \$ 162.50          | \$ 9,419.50         |
| 10285246           | 04/26/13         | \$ 310.50           | \$ 605.80          | \$ 916.30           |
| 10286147           | 05/20/13         | \$ 68.00            | \$ 162.50          | \$ 230.50           |
| 10287735           | 06/19/13         | \$ 462.00           | \$ 162.50          | \$ 624.50           |
| 10289803           | 07/26/13         | \$ 153.00           | \$ 163.10          | \$ 316.10           |
| 10290686           | 08/20/13         | \$ 176.00           | \$ 162.50          | \$ 338.50           |
| 10292197           | 09/18/13         | \$ 68.00            | \$ 162.50          | \$ 230.50           |
| 10293614           | 10/18/13         | \$ 575.00           | \$ 162.50          | \$ 737.50           |
| 10296739           | 12/17/13         | \$ 170.00           | \$ 325.00          | \$ 495.00           |
| 10298210           | 01/21/14         | \$ 200.00           | \$ 00.60           | \$ 200.60           |
| 10299356           | 02/19/14         | \$ 34.00            | \$ 325.00          | \$ 359.00           |
| 10300781           | 03/19/14         | \$ 00.00            | \$ 162.50          | \$ 162.50           |
| 10303225           | 05/05/14         | \$ 461.50           | \$ 162.50          | \$ 624.00           |
| 10303807           | 05/19/14         | \$ 140.50           | \$ 162.50          | \$ 303.00           |
| 10305215           | 06/17/14         | \$ 322.50           | \$ 163.90          | \$ 486.40           |
| 10306711           | 07/17/14         | \$ 17.00            | \$ 162.70          | \$ 179.70           |
| 10308222           | 08/19/14         | \$ 40.00            | \$ 162.50          | \$ 202.50           |
|                    |                  |                     |                    |                     |
|                    |                  | <b>\$ 22,980.50</b> | <b>\$ 6,155.45</b> | <b>\$ 29,135.95</b> |

Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes, conveys the following information for the time period of October 16, 2011 through

August 15, 2014: (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.

**ESTIMATED FEES AND EXPENSES TO CLOSE CASE**

16. From the ending date of fees addressed above (August 15, 2014) through the date an Order is entered approving a final distribution and closure of the case, the Examiner anticipates that additional fees and expenses will be incurred with respect to at least the following activities:

- a. Preparing this Application and attending any hearings or closing meetings relevant to closing the case.
- b. Attending to issues of final closing of the file, responding to inquiries from claimants with regard to the final distribution, addressing questions usually raised in connection with final valuations of investments held in custodial accounts and attending to the closing of the physical file.

17. As to some of these costs, the amount of fees and expenses may be clearer by the time of the hearing to approve the Receiver's Final Report. The amount of fees and expenses associated with responding to investors and assisting with the issues that arise with the final distribution of approximately 3,900 checks to investors cannot be stated exactly. Instead, based on the amount of investor inquiry and traffic associated with the first nine interim applications in this case, MHKH estimates that it will cost \$13,000 in fees to address the inquiries and issues associated with the final distribution and an additional \$2,000 for the cost of attending final meetings and a final closing hearing in this very long but successful matter.

MHKH proposes that the Court approve fees and expenses in this amount with MHKH bearing the risk should it prove to be more costly than estimated.

**Application of Johnson Factors**

18. 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. Determining when and how to effect a final 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 work done during the period covered by this Application required experience in securities enforcement receiverships and liquidations. The Examiner and his counsel 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    | \$310.00 per hour | Licensed in Texas in 2006 and admitted to practice in the State of Texas. |
| Peter Chen      | \$260.00 per hour | Licensed in Texas in 2008 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. Communication with investors is an inherent part of effecting a proper distribution of tens of millions of dollars to investors. 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.

The Examiner worked closely with the Receiver on the primary tasks presented by this appointment. In summary, 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 were prepared, mailed, reviewed and approved.

The Receiver negotiated comprehensive settlements with various parties which resulted in the receivership recovering through litigation 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 \$8,535,343.80 which will result in investors recovering an additional approximate 7.33% of the allowed claims.



During the period covered by this Application, the pending litigation progressed toward final resolution. During the period covered by this Application there 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. The Examiner also attended to regular contact from investors. The Examiner assisted the Receiver in solving logistical issues regarding the interim distribution and communicated with the investors regarding the same. The 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 as necessary to address the various issues arising in the litigation and distribution process.

(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:

(1) approve on a final basis all of the fees and expenses previously awarded to the Examiner and MHKH on an interim basis;

(2) approve on a final basis the fees of \$22,980.50 and expenses of \$6,155.45 set forth in paragraph 15 above;

(3) allow payment of the 10% holdback for the fees set forth in paragraph 15 above in the amount of \$2,298.05, and allow payment of all of the prior 10% holdbacks, as referenced in paragraphs 4, 5, 10, 11 and 12 above, in the aggregate amount of \$45,104.70;

(4) approve payment of \$15,000.00 to the Examiner and MHKH to address the needs of the investors arising as a result of the final distribution and to attend final meetings and the final closing hearing; and

(5) for such other and further relief, general or 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.**

500 North Akard Street, Suite 3800

Dallas, TX 75201-6659

(214) 855-7500

(214) 855-7584 (facsimile)

By: /s/ Steven A. Harr

Steven A. Harr

State Bar No. 09035600

Dennis L. Roossien

State Bar No. 00784873

**ATTORNEYS FOR STEVEN A. HARR  
COURT APPOINTED EXAMINER**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 16th day of September, 2014, 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/ Steven A. Harr  
Steven A. Harr

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of September, 2014, 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/ Steven A. Harr  
Steven A. Harr