

**I.
FACTS AND PROCEDURAL HISTORY**

1. This Motion is supported by the Declaration of Michael J. Quilling, Receiver (the “Receiver’s Declaration”), which is attached and fully incorporated herein as Exhibit “A”.

2. On November 17, 2006, this Court appointed the Receiver to act on behalf of ABC Viaticals, Inc. and numerous related individuals and entities in *SEC v. ABC Viaticals, Inc., et al.*, Cause No. 3:06-CV-2136 (N.D. Tex.). *Order Appointing Receiver* [Dkt. No. 8] (3:06-CV-2136). The Receiver has since continued to function in that capacity. *Receiver’s Declaration*, Exhibit “A” at ¶ 3.

3. Through that Order, this Court expressly authorized the Receiver to recover Receivership Assets and proceeds by filing suit against third-parties:

The Receiver is hereby authorized to institute, defend, compromise, or adjust such actions or proceeding in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection of Receivership Assets or proceeds therefrom, and to issue subpoenas, institute, prosecute, compromise, or adjust such actions or proceedings in state or federal court as may in his judgment be necessary or proper for the collection, preservation, or maintenance of the Receivership Assets.

Order Appointing Receiver [Dkt. No. 8] at ¶ 13 (3:06-CV-2136).

4. Accordingly, the Receiver commenced this lawsuit by filing his Complaint against Defendant International Fidelity & Surety Limited (“Defendant”) on March 6, 2007. *Complaint* [Dkt. No. 1].

5. On March 9, 2007, Defendant received service of process as indicated on the summons [Dkt. No. 7] filed on March 20, 2007. Defendant, therefore, had until March 29, 2007, to answer or otherwise respond in this matter. Fed. R. Civ. P. 12(a).

6. To date, Defendant has failed to answer or make an appearance in this case. *Receiver's Declaration*, Exhibit "A" at ¶ 6.

7. The Clerk of this Court entered Defendant's default into the record on April 13, 2007, in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure. *Clerk's Entry of Default* [Dkt. No. 29].

8. Defendant is not an incompetent, infant, person currently in military service, or any officer or agency of the United States. *Receiver's Declaration*, Exhibit "A" at ¶ 7.

II. ARGUMENT AND AUTHORITIES

9. A District Court may enter a final judgment by default. Fed. R. Civ. P. 55(b)(2). The Court has discretion to determine the most appropriate method for calculating damages for a default judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine damages following a party's default. *See, e.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5th Cir. 1998). Instead, damages are often proven simply through affidavit. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). A Court's default judgment ruling on damages without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo Cabinetry*, 157 F.3d at 414.

10. In this case, the amount of damages is measured by Defendant's due and unpaid bond obligations. Those obligations currently total \$48,811,500.00. *See Complaint* [Dkt. No. 1] at ¶ 32; *Receiver's Declaration*, Exhibit "A" at ¶ 8.

11. Furthermore, because the Receiver has fully set forth all legal and factual bases for liability, there is no need for an evidentiary hearing to determine damages in this case. *Leedo Cabinetry*, 157 F.3d at 414.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that this Court enter final default judgment against Defendant International Fidelity & Surety Limited for \$48,811,500.00, plus pre- and post-judgment interest at the rate provided by law and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On the 22nd day of May, 2007 a true and correct copy of this motion was sent to all interested parties through the Court's electronic filing system and by first class U.S. mail, postage prepaid, to:

International Fidelity & Surety Limited
c/o ICM Group LLC
100 Pearl Street, 14th Floor
Hartford, Connecticut 06103

/s/ Michael J. Quilling