

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
FEES AND EXPENSES OF TRANSLATORS 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 Fees and Expenses of Translators 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 performing his duties. The Receiver employed Tom Tong ("Tong") of the law firm of Tong & Sung, P.C. in Houston, Texas to act as his English/Chinese translators. The Receiver chose Tong because Tong is a very reputable lawyer the Receiver has known for years and both he and several members of his firm are fluent in English and Mandarin Chinese. During the course of these proceedings, Mr. Tong has joined the law firm of Locke Lord, LLP.

3. On January 9, 2009, the Receiver filed his First Interim Application to Allow and Pay Fees and Expenses of Translators for the time period from December 2006 through December 31, 2008. On February 17, 2009, the Court issued an Order approving the fee application.

4. On April 21, 2011, the Receiver filed his Second Interim Application to Allow and Pay Fees and Expenses of Translators for the time period from January 1, 2009 through December 31, 2009. On May 13, 2011, the Court issued an Order approving the fee application.

5. This Application seeks approval and payment of the fees and reimbursement of expenses for Tong for the time period from January 10, 2011 through July 21, 2014.

6. **Pursuant to paragraph 16 of the Order Appointing Receiver, the Receiver has paid Tong 90% of the fees (\$59,085.00) and 100% of the expenses (\$6.55) sought below. The purpose of this Application is to request Court approval of all of the fees and expenses set forth in paragraph 7 below and to allow payment of the 10% fee holdback covered by this Application (\$6,565.00). This Application also seeks authority to allow the Receiver to pay Tong \$40,000.00 to cover the anticipated translation costs associated with the**

Receiver's proposed final distribution which is discussed in more detail in paragraph 10 below.

7. During the period covered by this Application, Tong has incurred fees and expenses with respect to his activities on behalf of the Receiver on a monthly basis as follows:

Time Period	Fees	Expenses
January, 2011	\$4,192.50	\$0.00
February, 2011	\$325.00	\$0.00
March, 2011	\$4,810.00	\$0.00
May, 2011	\$1,462.50	\$0.00
June, 2011	\$7,150.00	\$0.00
July, 2011	\$2,762.50	\$6.55
August, 2011	\$7,995.00	\$0.00
September, 2011	\$9,685.00	\$0.00
October, 2011	\$4,127.50	\$0.00
November, 2011	\$6,695.00	\$0.00
December, 2011-January, 2012	\$4,322.50	\$0.00
February, 2012	\$2,177.50	\$0.00
March, 2012	\$975.00	\$0.00
April, 2012	\$1,267.50	\$0.00
May, 2012	\$1,430.00	\$0.00
June, 2012	\$1,105.00	\$0.00
July, 2012	\$650.00	\$0.00
August, 2012	\$845.00	\$0.00
September, 2012	\$65.00	\$0.00
October, 2012	\$780.00	\$0.00
December, 2012	\$325.00	\$0.00
January, 2013	\$812.50	\$0.00
February, 2013	\$162.50	\$0.00

March, 2013	\$357.50	\$0.00
April – May, 2013	\$357.50	\$0.00
June, 2013	\$130.00	\$0.00
November, 2013	\$97.50	\$0.00
December, 2013	\$195.00	\$0.00
March, 2014	\$65.00	\$0.00
May, 2014	\$97.50	\$0.00
June, 2014	\$97.50	\$0.00
July, 2014	\$130.00	\$0.00
TOTAL:	\$65,650.00	\$6.55

8. Exhibit “A,” which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of January 10, 2011 through July 21, 2014: (a) the number of hours worked on a particular day; (b) the manner and type of work performed by each attorney and staff member; (c) the customary billing rate for the person performing each task; and (d) the cumulative monetary value assigned to the tasks performed.

JOHNSON FACTORS

9. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver respectfully directs 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 Tong 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 Tong in this case during the three and one-half year period covered by this Application during which a total of more than 519.75 hours of attorney and paraprofessional time have been expended.

(b) The Novelty and Difficulty of the Questions. The translations involved were specialized in that they often included pleadings and legal terminology.

(c) The Skill Requisite to Perform the Service. The Receiver believes that the services performed in this case required individuals with legal experience who could understand the documents and accurately translate in English and Mandarin Chinese. Tong has all of those skills.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. Tong did not decline any representation because of their services in this case.

(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. As reflected in Exhibit “A” paralegals involved in the translations charged \$80.00 per hour and lawyers charged \$130.00 per hour for translation services and \$295.00 for legal services. Tong’s published hourly rate for legal services is currently \$625.00 per hour.

(f) Whether the Fee is Fixed or Contingent. Tong'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 sometimes have been demanding because they required immediate translation of lengthy and complex legal documents and direct communication with Taiwan based investors.

(h) The Amount Involved and the Results Obtained. The services rendered by Tong have been extremely valuable and critical to the efforts of the Receiver. At least 2,500 of the investors are Taiwanese who speak and write only in Mandarin Chinese. The services rendered by Tong allow the Receiver and Examiner to communicate with those investors by email and to maintain mirror images of their respective websites in Mandarin Chinese. But for these services, communication with that group of investors would be virtually impossible.

(i) The Experience, Reputation and Ability of the Attorneys. The reputation of Tong'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. Tong did not represent the Receiver in these proceedings prior to being retained in these proceedings.

(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.

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 believes it will be necessary to use Tong to translate instructions to be included with final distribution checks to Taiwanese investors, translate and respond to emails from Taiwanese investors, make phone calls to resolve name changes, address changes and other logistical issues, and provide an update to the Receiver's Chinese website describing the final distribution process. Based upon the fees associated with the interim distribution process, the Receiver estimates that it will cost approximately \$40,000.00 in fees to accomplish the final distribution process. Accordingly, the Receiver requests he be allowed to pay Tong \$40,000.00 to cover his fees and expenses associated with translations necessary for the final distribution.

WHEREFORE, the Receiver respectfully requests that the Court:

- (a) approve on a final basis the fees of \$65,650.00 and expenses of \$6.55 set forth in paragraph 7 above and allow payment of the 10% holdback of \$6,565.00;
- (b) authorize the Receiver to pay Tong the amount of \$40,000.00 to cover translations relating to the final distribution to investors; and
- (c) such other and further relief, agreed or special, at law or in equity, to which the Receiver and Tong 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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