

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE §
COMMISSION, §
§
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-02136-BH

REFERRED TO THE
U.S. MAGISTRATE JUDGE

ANGELO DIAZ GONZALEZ AND AGENCY’S SUPPLEMENTAL
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW¹
RELATING TO THE HEARING ON THE RECEIVER’S MOTION TO SELL
ALL INSURANCE POLICIES AND APPROVE
PURCHASE AND SALE AGREEMENT²

Angelo Diaz Gonzalez and Angelo Diaz Gonzalez and Agency³ (collectively,
“Angelo Diaz”), submit the following supplemental⁴ findings of fact and conclusions of
law:

¹ The proposed findings of fact and conclusions of law should be construed as either findings or conclusions, as appropriate.

² At the conclusion of the Sale Hearing on September 24, 2008, the Court invited all parties to submit proposed findings of fact and conclusions of law. These proposed findings and conclusions are submitted in response to the Court’s invitation. Angelo Diaz Gonzalez and Agency disagrees with the Court’s ruling on September 24, 2008 and believes that it constitutes manifest errors in fact and law for the reasons set forth herein.

1. At conclusion of the hearing, the Court stated that “I also have to consider the fact that [Scott Gibson, the valuation expert for Angelo Diaz Gonzalez] agrees that the current bidders have already done essentially the same thing that he proposes to do. . . .” (Trans., Vol. 2, at p. 160, lines 12 – 17) Based upon the Court’s ultimate ruling, the Court either misunderstood or misapplied the significance of Mr. Gibson’s comments.

2. During the hearing, the Court asked Mr. Gibson “as I understand your position you are telling me that by updating these life estimates that will provide, probably, a higher estimate and hopefully new bidders or higher bidders; is that accurate?” (Trans., Vol. 2, at p. 148, lines 14 – 18). Mr. Gibson responded “Yes, ma’am.” (Trans., Vol. 2, at p. 148, line 19)

3. The Court then asked “[i]f the bidders here have already done a process as you described similar to what you expect to do, what incentive do they have to rely on your higher bid other than what they have already done?” (Trans., Vol. 2, p. 148, lines 20 – 23)

4. At this point, Mr. Gibson responded in a manner in which the Court either misunderstood or misapplied the significance of his response. Mr. Gibson stated that “I suspect that the ones in this room have probably done what I have done and it may not influence them, other than the fact they’re going to now know that there’s a parallel to what they have done and rather than show a number of 34 million or 27 million it might show 70 million and they may be held a little bit more accountability, and you may bring

³ Angelo Diaz Gonzalez and Agency includes both Angelo Diaz and his hierarchy of agents within his company.

⁴ On September 30, 2008, Angelo Diaz Gonzalez and Agency submitted its Proposed Findings of Fact and Conclusions of Law Relating to the Hearing on the Receiver’s Motion to Sell All Insurance Policies and Approve Purchase and Sale Agreement, docket no. 175 (the “Original F/F and C/L”). This pleading supplements the Original F/F and C/L.

in some other additional bidders who see that basis that I've done it on and start out with a little bit different way of thinking, that it's not so much of a fire sale." (Trans., Vol. 2, at p. 148 (line 25) – p. 149 (line 9) (emphasis added)

5. To the extent that the Court based its ruling (denying the 3 Week Proposal) based on its assumption that it would be a wasted exercise since the bidders in the room would probably not change their bid following the implementation of the 3 Week Proposal and Mr. Gibson's valuation of the Portfolio, such a conclusion would be clear error for at least three reasons.

6. First, whether the bidders in the room (i.e., the three bidders who participated at the auction) would change their bid based upon the implementation of the 3 Week Proposal is irrelevant to whether the 3 Week Proposal should have been approved. A significant purpose of the 3 Week Proposal was to disseminate Mr. Gibson's updated valuation data to those potential buyers who were never contacted by the Receiver to allow them to participate in a final auction against the bidders in the room. Even if one were to assume that the bidders in the room would not change their bid, the evidence in the record supports the proposition that additional bidders would attend the final auction and submit bids higher than the current high bid. (Trans., Vol. 2, at p. 148 (line 25) – p. 149 (line 9); at p. 126 (line 8) – p. 128 (line 2)

7. Second, there is nothing in the record to suggest that, merely because the bidders in the room may have internally updated the Portfolio that they would not increase their bid in a subsequent auction in which new bidders (with the updated valuation numbers from Mr. Gibson) are threatening to acquire the Portfolio out from under them.

8. Third, when Mr. Gibson stated that the bidders in the room may have already done an internal valuation of the Portfolio, it does not follow from such statement that their internal valuation will be identical to Mr. Gibson's valuation. To the extent that the Court assumed that the bidders in the room would not further participate in a final auction because there would be no difference between the two valuations, or that they might not be influenced to increase their bid based upon Mr. Gibson's valuation, such assumption is not supported by anything in the record, and would be clearly erroneous.

9. Again, basing a ruling on a finding that is not supported by substantial evidence is taken to be clearly erroneous in the Fifth Circuit. *Freeport Sulphur Co. v. The S/S Hermosa*, 526 F.2d 300, 307 (5th Cir. 1976)

10. For all the foregoing reasons, the Court should conditionally grant the Sale Motion, conditioned upon the implementation of the 3 Week Proposal as more specifically described in the Original F/F and C/L.

Dated: this 2nd day of October, 2008.

Respectfully submitted,

/s/ John S. Brannon _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties by fax and first class mail, postage prepaid on this 2nd day of October, 2008.

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