

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE COMMISSION,))	
)	
Plaintiff,))	
)	
v.))	Case No. 07-cv-10712-RGS
)	
LYDIA CAPITAL, LLC;))	
GLENN MANTERFIELD, and))	
EVAN ANDERSEN,))	
)	
Defendants.))	

**RECEIVER’S SECOND REPORT TO THE COURT
FOR THE PERIOD AUGUST 1, 2007 THROUGH SEPTEMBER 30, 2007**

Pursuant to the Court’s June 1, 2007, Order for Appointment of Receiver (“Order for Appointment”) (Doc. No. 28), H. Thomas Moran, II, Court-Appointed Receiver for Defendant Lydia Capital, LLC (“Lydia”), submits his second periodic report to the Court, “summarizing his activities, providing an accounting of the funds, assets and property in his possession, and reporting on the status of any legal claims” for the period August 1, 2007 through September 30, 2007. (Doc. No. 28, p. 8, ¶ XIII.) As further ordered, this Report also contains “an application to the Court for an order approving the payment of all reasonable fees and expenses” for both the Receiver and the Receiver’s legal counsel. (Id.) Accordingly, the Receiver submits his second report to the Court.

I. BACKGROUND.

On April 12, 2007, the United States Securities and Exchange Commission (“S.E.C.”) filed this action against Defendants Lydia, Evan Anderson (“Anderson”) and Glenn Manterfield (“Manterfield”). (Doc. No. 1.) On the same date the S.E.C. sought and, on April 13, 2007, secured a temporary restraining order freezing certain of the Defendants’ assets. (Electronic

Order, dated April 13, 2007.) The temporary restraining order was modified on April 17, 2007. (Electronic Order, dated April 17, 2007.) On May 3, 2007, the Court entered two unopposed preliminary injunction orders freezing certain assets of Defendants Lydia, Manterfield and Anderson. (Doc. Nos. 20, 21 and 22.)

On May 23, 2007, the S.E.C. filed a motion seeking the appointment of a receiver for Lydia as well as a brief in support of the motion. (Doc. Nos. 25 and 26.) The Defendants did not oppose the S.E.C.'s motion. (Doc. No. 25, p. 2.) On June 1, 2007, the Court granted the S.E.C.'s request and appointed Mr. Moran as Receiver for Lydia.¹ (Doc. No. 28.) In the June 1, 2007, Order for Appointment of Receiver ("Order"), the Court directed the Receiver to:

A. take and retain immediate possession, custody and control of the funds, assets, monies, securities, contracts, notes, bank accounts, safe deposit boxes, negotiable and non-negotiable instruments or documents of title, choses in action and properties, real, if any, and personal, tangible and intangible, of whatever kind and description, wherever situated, of Lydia, and of all other entities which Lydia either owned, controlled or benefited from (including, but not limited to, Lydia Capital Alternative Investment Fund LP) including without limitation, the accounts established by Lydia on behalf its investors (the "Lydia Client Accounts"), as well as all property of whatsoever nature, whether real or personal, tangible or intangible, which has been acquired with or through funds or proceeds of Lydia (hereinafter "Receivership Assets");

B. take all steps the Receiver deems necessary to conduct an inventory of the assets and liabilities of Lydia and Lydia Capital Alternative Investment Fund LP;

C. take all steps the Receiver deems necessary to reconstruct the histories of the Lydia Client Accounts to determine whether and how client funds have been dissipated;

D. take all steps the Receiver deems necessary to secure and protect the Receivership Assets, including all assets and property of Lydia and Lydia Capital Alternative Investment Fund LP;

E. promptly provide written notice of this Order to all current and former clients of Lydia ("Lydia Clients"). Service of a copy of this Order shall be deemed sufficient notice;

F. have access to and take control of all books, records, papers and other documents of Lydia and Lydia Capital Alternative Investment Fund LP,

¹ An Electronic Order was entered on May 23, 2007, granting the S.E.C.'s motion to appoint a receiver. (Electronic Order dated May 23, 2007.) However, it was an additional ten days (June 1, 2007) before an order was docketed which set forth the name of the Receiver and delineated the scope of the Receiver's duties. (Doc. No. 28.)

including all computers, computer files, on-site and off-site backup files, backup disks, other electronic storage material and websites;

G. have control of, and be added as an authorized signatory for, all accounts of Lydia and Lydia Capital Alternative Investment Fund LP at any bank, brokerage firm, insurance company or financial institution having possession, custody or control of any assets, accounts or funds of Lydia and Lydia Capital Alternative Investment Fund LP, wherever situated;

* * * *

J. receive and collect any and all sums of money due and/or owing to Lydia or Lydia Capital Alternative Investment Fund LP and make or authorize such payments and disbursements from the funds and assets taken into control or thereafter received by the Receiver, engage in or authorize such transactions, incur or authorize the incurrence of such expenses, and make or authorize the making of such agreements, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order;

K. In connection with the exercise of these powers, liquidation of any, or all, of the assets of Lydia or the Lydia Capital Investment Fund LP shall be undertaken, if at all, with due regard for the best long-term interests of investors in the Fund;

L. engage and employ persons in his discretion and in consultation with the Boston Regional Office of the Commission to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, attorneys, accountants and appraisers;

M. have access to, including rights to receive, open and review all mail of Lydia and Lydia Capital Alternative Investment Fund LP; and

N. file on a timely basis all relevant federal, state, and local tax returns and take any and all other steps required by such taxing authorities.

(Doc. No. 28, pp. 1-4, ¶¶ II.A-G and II. J-N.)

II. SUMMARY OF THE RECEIVER'S ACTIVITIES.²

The Receiver was notified of his appointment on Friday, June 1, 2007. Since that date and the date of the Receiver's last report to the Court, the Receiver and his staff have continued to work to analyze and categorize the information and documents seized from the Lydia offices, the documents received from the S.E.C. and the documents obtained from third parties and vendors. The Receiver has continued to communicate with all known vendors and service providers for Lydia and the Fund in order to secure the voluntary production of various

² The activities of the Receiver, his staff, accountants and attorneys are briefly summarized herein. For a more complete statement of the activities of the Receiver, his staff and attorneys, please refer to the itemized statements attached hereto.

documents from each of those entities, including copies of contracts; unpaid invoices; a summary or description of services provided to Lydia and/or the Fund; and a summary of data maintained by the vendor related to Lydia and/or the Fund. As such documents have been received, the Receiver has reviewed the same in order to determine whether additional assets exist and the extent of Lydia's liabilities. The Receiver has also continued working on the analysis of the Lydia bank accounts, including both deposits to and disbursements from the accounts. The Receiver and his counsel have analyzed the insurance policies comprising the Portfolio as well as all the documents that related thereto. Finally, the Receiver has continued to catalog and analyze the available information regarding the investors in the Fund.

In order to attempt to place a value on the Portfolio, the Receiver has contacted two very reputable companies with long-standing track records of reliability in the actuarial industry, Lewis & Ellis, Inc. and Milliman, Inc., both of which are highly knowledgeable in the life settlement aftermarket. Both companies were provided with the same information and have provided the Receiver with written reports containing valuations of the policies within the Portfolio.³ Both companies evaluated the policies within the Portfolio, using a probabilistic approach and a stochastic analysis and applying various discount rates. In the end, both companies valued the Portfolio very similarly by providing a range of values, the upper end being approximately \$34.6 million and the lower end being approximately \$23.3 million. It is important to note that the fact that all of the policies are still in the contestability period was not

³ Lewis & Ellis, Inc. and Milliman, Inc. were provided documents such as policy illustrations and life expectancies which had been redacted to remove personal identifiers. The life expectancies were ones that were prepared by third-parties at or near the time the policies were purchased. In addition, both companies were provided general information such as the policy codes, amount of premiums paid, face amount of the policies and birthdates of the insureds.

taken into account by either company in setting the value of the policies.⁴ It is the Receiver's opinion that since all of the policies within the Portfolio are still within the contestability period, the current value of the Portfolio is less than \$25,000,000.00. In addition, as previously noted, the Receiver is continuing to investigate the policies and the procurement of the policies. It is believed that the outcome of this investigation will also affect the value of the policies.

In addition, the Receiver has continued to communicate with possible purchasers of the Portfolio and recently received an offer to purchase the Portfolio on behalf of the Master Aggregation Trust, an affiliate of Deutsche Bank. Although in the Receiver's opinion the offer may be too low, the Receiver notes that the offer is more indicative of the current market value of the policies because the offer takes into consideration the fact that all of the policies are currently within the contestability period. In addition, the Receiver further reports that the Deutsche Bank affiliate has also expressed interest in being the stalking horse bidder for the Portfolio. The Receiver believes, at this time, that it may be too early to commit to selling the entire Portfolio. The Receiver's focus in the very near term will be to analyze the economics of the Portfolio in an attempt to determine whether the value to the investors will be maximized by selling the entire Portfolio, selling individual policies from time to time, or maintaining the entire Portfolio for the foreseeable future. These options, however, may be limited depending upon the funds available to the Receiver to continue to maintain the Portfolio.

⁴ Lewis & Ellis, Inc. simply notes: "Some policies may be in the two year contestable period. These policies may have reduced value in the market due to the possibility that an early death could be contested by the issuing [insurance] company. In our analysis, no adjustment has been made for contestable provisions." Similarly, Milliman, Inc. noted: "We did not evaluate or consider the possibility of the insurance company invoking the incontestability clause."

III. INVESTOR RELATED MATTERS.

As previously reported, in June of 2007, the Receiver sent correspondence to each of the individuals or companies which had been identified by the S.E.C.⁵ as investors in the Fund. The correspondence notified each of the recipients that the S.E.C. had filed a lawsuit against the Defendants and sought the appointment of a Receiver for Lydia and the Fund. As part of the correspondence, the Receiver provided each investor with a copy of the June 1, 2007, Order for Appointment and a proof of claim form which the investor could complete and return in order to submit a claim to the Receiver. As of the close of business on September 26, 2007, the Receiver has received seventy-two completed claim forms.⁶ The Receiver is continuing to review and confirm the claims submitted by the investors. Based on the records received from Dundee Leeds and others, it appears that the total amount invested in the Fund is \$42,734,226.12.⁷

As previously noted, the confirmation process has included, without limitation, confirmation of the investor's identity; analysis of the total amount of investment dollars claimed by each investor; and, comparison of the investor's claim to the information reflected in Lydia's books and records and to the records received from Dundee Leeds and others. Similarly, the Receiver has continued to work to confirm the number of investors, the amount of each

⁵ The S.E.C. initially identified that there were fifty-seven investors in the Fund. (Doc. No. 1, p. 3.) As of the time of the Receiver's initial report (Doc. No. 56), the number of possible investors in the fund had increased to seventy-five. (Doc. No. 56, p. 5, n.5.) The Receiver is investigating whether five of the seventy-five, instead of making investments in their own names, made investments through one of the corporate investors. In addition, the Receiver is investigating the claim of another individual. Depending upon the outcome of the Receiver's investigation, the number of investors could decrease to sixty-nine.

⁶ The Receiver confirmed his office's receipt of the claim forms to each investor who submitted a claim form.

⁷ This amount includes the \$8,507,656.22 that is the subject of the Receiver's September 25, 2007, "Motion for Instructions from the Court Regarding Certain Investors Subscription Proceeds" ("Motion for Instructions," Doc. No. 78). (In the Motion for Instructions, the Receiver sought a ruling from the Court that \$8.5 million dollars that was wired to the Fund's Operating Account in March and April of 2007 constitutes Receivership Assets.) This amount also includes \$300,010.00 that was wired into the Fund's Operating account a day or two before the S.E.C. filed its Complaint, which funds are being investigated by the Receiver. (Doc. No. 78, p. 2, n. 1.)

investor's investment and other information contained in the investor files received from Dundee Leeds and others.

During the period covered by this Report, the Receiver and his counsel have worked to determine whether certain investments made in the Fund in March and April of 2007, when nine investors submitted ten subscription agreements to Dundee Leeds and wired their investment dollars (collectively totaling \$8,507,656.2) to the Fund's Citibank (Smith Barney) account, were completed subscriptions.⁸ In this regard, counsel for the Receiver conducted an investigation into the facts preceding and surrounding the submission of these subscription agreements and the wiring of these funds and analyzed the legal issues surrounding these investment funds. As a result of that investigation, the Receiver filed his Motion for Instructions (Doc. No. 78) and sought a ruling from the Court that the funds were Receivership Assets and are available to the Receiver to maintain the policies within the Portfolio.

Finally, the Receiver notes that some of the investors have, in their communications with the Receiver, suggested that they may be intending to exercise the redemption options set forth in the Private Placement Memorandums ("PPMs").⁹ However, as revealed by the Balance Sheets attached hereto, insufficient funds exist with which to satisfy the redemption requests.

IV. THE INSURANCE POLICIES.

Based on the Receiver's preliminary analysis of the data and documents received from the S.E.C. and others, it was initially reported that the Portfolio contained thirty-five policies, on the lives of 26 individuals, which policies range in face value from \$1,000,000.00 to

⁸ The Citibank (Smith Barney) account was one of the accounts frozen by the Court's temporary restraining and preliminary injunction orders. The funds in the account are, as previously reported, currently under the control and management of the Receiver.

⁹ It appears that at the time the investors submitted their subscription agreements, each of the investors also submitted a signed and dated request to redeem their investments which they thought would be honored at some point in the future.

\$10,000,000.00. On September 18, 2007, however, the Receiver received for the first time information and documents demonstrating that the Portfolio contains a thirty-sixth policy. The total face value of the Portfolio (with thirty-six policies) is currently calculated to be \$157,550,000.00. As of September 12, 2007, the Receiver has made \$1,167,690.47 in premium payments on fifteen policies. It is estimated that additional premiums on the policies in the amount of \$630 thousand are due by December 31, 2007. Thereafter, the Receiver estimates the premiums on the portfolio for the year 2008 to be in excess of \$6.8 million.

It has also been suggested that the Portfolio may contain a thirty-seventh policy which the Fund may have been in the process of acquiring at the time the S.E.C. filed its Complaint. However, despite the Receiver's repeated requests for information and documents regarding that policy (which requests began in June), no information or documents were provided to the Receiver until the week of September 17, 2007, when the S.E.C. was apparently able to obtain copies of *some* of the documents relating to that policy from a third-party. A preliminary review of the documents forwarded to the Receiver by the S.E.C. reflects that the third-party's document production was incomplete. The Receiver has requested the third-party produce the missing documents immediately. Once the missing documents are produced, the Receiver anticipates filing a motion seeking instructions from the Court as to whether the Receiver should commit additional Receivership Assets to complete the purchase of the possibly thirty-seventh policy or seek a refund of previously paid funds.

As previously reported, due to the manner in which the insurance policies were transferred to the Fund, the Receiver has encountered considerable difficulty in gathering all information and documents relating to the policies in order to accurately project the anticipated or future premiums. On August 2, 2007, the Receiver filed an emergency motion with the Court

seeking the Court's assistance in obtaining information and documents from the involved insurance companies. (Doc. No. 57.) That motion remains pending. In the meantime, the Receiver is researching alternative means of obtaining the necessary documents and information. To that end, the Receiver has begun contacting the insureds and the trustees of the various Irrevocable Life Insurance Trusts ("ILITs").

V. RECEIVERSHIP ACCOUNTING MATTERS.

On June 1, 2007, the Receiver was given authority over all of Lydia's accounts pursuant to the Order for Appointment. The amount of funds deposited in those accounts totaled, \$11,932,721.16, on the day of the Receiver's appointment. The principal balance in the Receiver's account, excluding the \$8.8 million discussed in the Receiver's Motion for Instructions,¹⁰ is \$1,852,678.16. All funds are currently being held in interest bearing accounts. A Balance Sheet and summary of the activity in those accounts is set forth on Exhibit 1. As part of the Receiver's on-going duties, the Receiver is reviewing account records to track the flow of money into and out of the accounts in order to attempt to locate recoverable assets and to be able to provide an accounting of the expenditure of the investors' funds. However, to date, the Receiver has not been provided or received any documentation which fully supports the transfer of money out of the Fund's accounts. For example, the Receiver has been provided with banking records (copies of monthly statements) showing the amount of certain wire transfers, the date of the wire transfers and the bank account to which the money was wired. The Receiver has not, at this time, been provided the supporting documentation to explain the purpose of the wire transfer or the owner of the account to which the money was wired.

¹⁰ This amount includes the \$8,507,656.22 that is the subject of the Receiver's Motion for Instructions and the \$300,010.00 that is under investigation. *Supra*, n. 7.

As stated in the Receiver's Motion for Instructions, the funds currently available to the Receiver (excluding the \$8,507,656.22 which is the subject of the Motion for Instructions) will allow the Receiver to maintain the insurance policies only part way through the month of January, 2008. If, however, the relief sought in the Receiver's Motion for Instructions is granted, the Receiver believes he will have sufficient cash with which to maintain the policies in the Portfolio into 2009, if necessary.

VI. MOTIONS FOR PAYMENT OF FEES AND EXPENSES.

Contemporaneously with the filing of this Report, the Receiver and his counsel have submitted motions seeking the approval of their fees and expenses for the months of July and August, 2007. (Doc. Nos. 81 and 83.¹¹) As set forth therein, the fees and expenses itemized in the applications are reasonable. Accordingly, for the reasons set forth in the Motions, the Receiver respectfully requests the Court enter an Order approving the payment of those fees and expenses.

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

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Dated: October 1, 2007

¹¹ A copy of each of the motions is attached hereto. (Exhibits 2 and 3.)

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I hereby certify that on the 1st day of October, 2007, the attached document was transmitted to the following via electronic transmission and First-Class Mail to:

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Pro Se

/s/ Melvin R. McVay, Jr.