

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 EMERGENCY MOTION FOR ORDER  
COMPELLING INSURANCE COMPANIES TO IMMEDIATELY PROVIDE  
INFORMATION ON POLICIES AND TO WITHHOLD ALL DISBURSEMENTS  
PENDING FURTHER ORDER OF THE COURT, AND BRIEF IN SUPPORT**

COMES NOW H. Thomas Moran II, Court-appointed Receiver for Lydia Capital, LLC (the “Receiver”) in the above-styled cause, and hereby submits for the Court’s consideration his Emergency Motion for Order Compelling Insurance Companies to Immediately Provide Information on Policies and to Withhold All Disbursements Pending Further Order of the Court (the “Motion”). In order to efficiently perform his duties, the Receiver respectfully requests expedited consideration of this matter by the Court. To the extent the Court may determine a hearing is needed on this Motion, the Receiver respectfully requests the hearing be set as soon as possible. In support of his Motion, the Receiver represents and states to the Court as follows:

**I. PROCEDURAL BACKGROUND.**

On April 12, 2007, the United States Securities and Exchange Commission (“S.E.C.”) filed this action against Defendants Lydia Capital, LLC (“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. (Doc. No. 28.)

## **II. REQUEST TO THE COURT.**

1. In the Order for Appointment, the Receiver was directed to take complete control, possession, and custody of all assets of Lydia defined in the Order of Appointment collectively as “Receivership Assets.” (Doc. No. 28, pp 1-2, ¶ II.A.) Since his appointment, the Receiver has been performing his duties in a manner believed to be consistent with the Order for Appointment.

2. The Order for Appointment provides, in pertinent part, that the Receiver shall “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.” (Doc. No. 28, p. 2, ¶ II.D.)

3. The Order for Appointment further provides that: “[a]ll persons, including . . . insurance companies and other business entities having possession, custody or control of any Receivership Assets . . . shall cooperate expeditiously in the granting of control and authorization

as a necessary signatory as to said assets, funds or accounts to the Receiver.” (Doc. No. 28, p. 5, ¶ V.)

4. The Order for Appointment further provides, in pertinent part, that: “Defendants, . . . and all other persons who are in possession, custody or control of any assets, books, records or other property of Lydia and Lydia Capital Alternative Investment Fund LP shall forthwith give access to and control of such assets, books, records or property to the Receiver.” (Doc. No. 28, pp. 5-6, ¶ VI.)

5. The primary component of the Receivership Assets is a life insurance portfolio comprised of approximately thirty-five (35) policies with an aggregate face value of approximately \$152,550,000.00 (the “Portfolio”). (A list of the policies comprising the Portfolio, identified by the name of the issuing insurance company, the policy number and the face amount of the policy is attached hereto as Exhibit 1.)<sup>1</sup>

6. In furtherance of the duties set forth in the Order for Appointment, the Receiver, on July 16 and 17, 2007, sent certain correspondence to each of the fourteen insurance companies who issued a policy contained within the Portfolio. (A sample of that is attached hereto as Exhibit 2.) The Receiver also sent each of the insurance companies a copy of the Order for Appointment and a Verification of Coverage form.

7. In the correspondence, the Receiver requested each insurance company direct “all future communications, including, but not limited to, correspondence, billing or other documentation . . . regarding the policy” to him and his counsel. (Exhibit 2.) The Receiver also requested that copies of “all communications, including but not limited to correspondence, billing or other documentation, regarding the policy that have been within the last the sixty (60)

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<sup>1</sup> Due to privacy concerns relating to the identity of insureds who are not parties to this case, the Receiver has not included the names of the insureds and other personal identifiers on the attached exhibit.

days sent to or received by you from any owner, Trustee, beneficiary or other interested person” be sent to him. (Id.) Finally, the Receiver stated that all monetary disbursements from or relating to the policies should be made only to him. (Id.)

8. To date, only one of the insurance companies has fully complied with the Receiver’s requests for information. Two of the insurance companies have responded to the Receiver’s correspondence with requests for information or documents<sup>2</sup> while two other companies have denied the existence of any connection between the policies and Lydia. Finally, nine companies have failed to communicate with the Receiver in any way.

9. Based on the investigation conducted to date by the Receiver, it appears that the series of transactions by which the policies became a part of the Portfolio was, at times, complicated or confusing. It also appears that the insureds, the beneficiaries under the policies and others may have taken certain actions with respect to the ownership of the policies without notifying the insurance companies. Hence, with respect to many of the policies purchased with funds from the Lydia investors, the insurance companies may have never received documentation transferring ownership or beneficial interest of the policies to the Fund. Accordingly, it appears to the Receiver that the insurance companies may be unaware of any relationship between the policies, Lydia Capital Alternative Investment Fund LP and Lydia.

10. While efforts to resolve the issues raised by the insurance companies will be ongoing on a case-by-case basis, the Receiver believes it is in the best interest of the Receivership estate and the investors that the insurance companies immediately give him certain information regarding the policies and that the insurance companies be ordered to cooperate with him in his investigation.

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<sup>2</sup> The Receiver is in the process of communicating with those insurance companies which requested additional information.

11. Specifically, the Receiver believes that the issuance by this Court of an order compelling each of the fourteen companies to cooperate with him with respect to the policies comprising the Portfolio will greatly assist him in the duties he has been assigned, including the duties to evaluate, preserve and manage the Receivership Assets of which the Portfolio is a major component.

Accordingly, the Receiver requests the Court order each of the insurance companies identified on Exhibit 1 to comply with the requests set forth by the Receiver in his July 16 and 17, 2007, correspondence within ten (10) days from the insurance companies' receipt of such an order.<sup>3</sup> Further, the Receiver requests that the order notify the insurance companies that failure to comply with the Court's order will result, upon application by the Receiver, in the issuance of an order to show cause why any such insurance company should not be held in contempt for failing to cooperate with the Receiver. A proposed order granting this Motion is attached hereto as Exhibit "3" and made a part hereof by reference.

### **BRIEF IN SUPPORT**

A court imposing a receivership assumes custody and control of all assets and property of the subject receivership, and may issue all orders necessary for the proper administration of the receivership estate. S.E.C. v. Wencke, 622 F.2d 1363, 1370 (9th Cir. 1980). See also Eller Indus., Inc. v. Indian Motorcycles Mfg., 929 F.Supp. 369, 372 (D. Colo. 1995). The receiver serves as the court's agent in collecting, maintaining, administering and disposing of the property of the receivership estate. Id.; see also F.T.C. v. Five Star Auto Club, Inc., No. Civ. A. CIV-99-1693, 2000 WL 1609798 (S.D.N.Y., June 12, 2000). The Court is vested with broad discretionary authority to enter such orders as may be appropriate and necessary for the Receiver

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<sup>3</sup> After the Receiver is provided the information and documents requested by him and his analysis of the Portfolio is complete, the Receiver anticipates it may be necessary to seek a further order of the Court directing a change in the ownership and/or beneficiary of the policies.

to perform his duties and responsibilities to preserve and maintain the property and funds within the receivership estate. S.E.C. v. Basic Energy & Affiliated Resources, Inc., 273 F.3d 657, 668 (6th Cir. 1996). The Receiver believes the relief sought in this Motion is in the best interests of the receivership estate and is within the scope of this Court's discretionary authority.

The Receiver believes that all insurance companies have had adequate time and opportunity to review their respective files and to comply with the initial requests for information and documents made by the Receiver and his authorized representatives. The Receiver is concerned that any additional delay in obtaining the requested information may harm the receivership estate by possibly allowing a policy to lapse, causing overpayment of a premium or failure to receive the proceeds of a maturity. For the same reasons, the Receiver believes it is appropriate that the Court expedite consideration of this Motion and, if the Court believes a hearing is necessary, set this Motion for hearing at the earliest practicable date.

WHEREFORE, for the above and foregoing reasons, H. Thomas Moran, II, as Receiver of Lydia Capital, LLC, prays this Court enter an order directing the insurance companies set forth on the attached Exhibit "1" to cooperate with the Receiver's requests for information and documents and to withhold all disbursements relating to the policies, including refunds or maturities pending further order of the Court. The Receiver prays for such other and further legal and equitable relief as may be just and proper under the circumstances of this receivership proceeding.

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

Melvin R. McVay, Jr. (admitted *pro hac vice*)

Leslie L. Lynch (admitted *pro hac vice*)

Phillips McFall McCaffrey McVay & Murrah, P.C.

Corporate Tower, Thirteenth Floor

101 North Robinson Avenue

Oklahoma City, Oklahoma 73102

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[mrmcvay@phillipsmcfall.com](mailto:mrmcvay@phillipsmcfall.com)

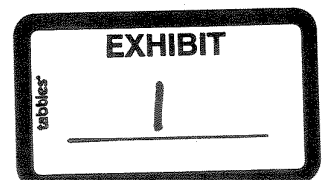
[llynch@phillipsmcfall.com](mailto:llynch@phillipsmcfall.com)

Dated: August 1, 2007

00257797.DOC

## Lydia Capital Portfolio

Viator Code	Viator Name	Ins. Co.	Policy #	Face Value	Issue Date
LYD-3341-01		Jefferson Pilot	JF 5567566	3,000,000.00	
LYD-3342-01		Transamerica	65060873	5,000,000.00	
LYD-3342-02		Transamerica	65050887	5,000,000.00	
LYD-3343-01		AIG	U10036972L	2,000,000.00	
LYD-3345-01		AXA Equitable Life Insurance Co.	157200920	10,000,000.00	
LYD-3346-01		Lincoln Benefit	01N1287542	2,500,000.00	
LYD-3346-02		PHL Variable Insurance	97516678	1,750,000.00	
LYD-3347-01		ING	4002970	5,000,000.00	
LYD-3347-02		AXA Equitable Life Insurance Co.	157203492	9,000,000.00	
LYD-3348-01		The Hartford	U 01844176	5,000,000.00	
LYD-3349-01		Indianapolis Life	IL00801430	4,000,000.00	
LYD-3350-01		AXA Equitable Life Insurance Co.	157200328	10,000,000.00	
LYD-3351-01		ING	4002604	7,500,000.00	
LYD-3352-01		AXA Equitable Life Insurance Co.	156230173	5,000,000.00	
LYD-3353-01		Pacific Life	VF51493290	2,500,000.00	
LYD-3354-01		John Hancock	93161115	3,000,000.00	
LYD-3355-01		United of Omaha	BU1150205	3,000,000.00	
LYD-3355-02		AIG	U10025296L	5,000,000.00	
LYD-3355-03		AIG	U10025297L	5,000,000.00	
LYD-3356-01		The Hartford	U 01589338	2,000,000.00	
LYD-3356-02		AXA Equitable Life Insurance Co.	156229495	4,000,000.00	
LYD-3356-03		AXA Equitable Life Insurance Co.	156218633	6,000,000.00	
LYD-3357-01		Sun Life	20127551	1,000,000.00	
LYD-3358-01		AXA Equitable Life Insurance Co.	156232048	1,900,000.00	
LYD-3359-01		Jefferson Pilot	LP5560915	5,000,000.00	
LYD-3360-01		John Hancock	UL1203852	2,000,000.00	
LYD-3360-02		Pacific Life	VF51538920	1,000,000.00	
LYD-3360-03		ING	4002226	2,000,000.00	
LYD-3361-01		ING	4001479	7,000,000.00	
LYD-3362-01		Sun Life Assurance Co. of Canada	20129479	2,750,000.00	
LYD-3363-01		Empire General	517897	8,000,000.00	
LYD-3364-01		Jefferson Pilot	JP554076	1,500,000.00	
LYD-3365-01		John Hancock	UL1204862	10,000,000.00	
LYD-3366-01		Indianapolis Life	IL00829690	2,000,000.00	
LYD-3367-01		TransAmerica Occidental	60143544	3,150,000.00	
				<b>152,550,000.00</b>	





THE HERITAGE  GROUP

521 W. Wilshire Blvd., Suite 200 Oklahoma City, OK 73116  
405-753-9100 \* 800-460-1991 \* fax: 405-753-9397 \* [tmoran@heritagegroup.us](mailto:tmoran@heritagegroup.us)

July 19, 2007

Via Regular Mail and Certified Mail

Via Certified Mail

RE:

Insured:  
Policy No.:

To Whom It May Concern:

I am writing to you today in my capacity as the Court-appointed Receiver for Lydia Capital, LLC ("Lydia"). The appointment was made on June 1, 2007 by The Honorable Richard G. Stearns, United States District Judge for the District of Massachusetts, and the "Order for Appointment of Receiver" ("Order") is enclosed for your review. In the Order, Judge Stearns, among other things, directed me to take and retain immediate possession, custody and control of certain assets of Lydia. Upon review of paragraph IIA of the Order, you will see that one of the items comprising the Receivership Assets is the Lydia Capital Alternative Investment Fund, LP (the "Fund").

Based upon the investigation that has been conducted into the assets and activities of Lydia and the Fund by my office and, prior to that, by the Securities and Exchange Commission, it has been determined that the above referenced policy is one of several policies that comprise the Fund. Accordingly, based on the express terms of Judge Stearns' Order, I am writing you to inform you of the Receivership and, as further set forth herein, to fulfill my duties under the Order by taking control of the Receivership Assets, including the policy.

Accordingly, based on the authority and powers given to me by Judge Stearns' Order, I am writing to direct that all future communications, including, but not limited to correspondence, billing or other documentation, regarding the policy be immediately directed to me at:

**H. Thomas Moran, II**

The Heritage Group

521 W. Wilshire Blvd., Suite 200, Oklahoma City, OK 73116

Telephone: (405) 753-9100 Facsimile: (405) 753-9397

E-mail: [Recevier@lydiacapital.com](mailto:Recevier@lydiacapital.com)

EXHIBIT

tabbles  
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Additionally, a copy of all communications should be sent to my attorney:

**Melvin R. McVay, Jr.**  
Phillips McFall McCaffrey McVay & Murrah, P.C.  
Corporate Tower, Thirteenth Floor  
101 N. Robinson Ave. Oklahoma City, OK 73102  
Telephone: (405) 235-4100 Facsimile: (405) 235-4133  
E-mail: [mrmcvay@phillipsmcfall.com](mailto:mrmcvay@phillipsmcfall.com)


I am also requesting that you immediately send me copies of all communications regarding the policy, including but not limited to any correspondence, billing and/or other documentation, that has been sent within the last the sixty (60) days, to or received by you from any owner, Trustee, beneficiary or other interested person(s). Please complete the enclosed Verification of Coverage (VOC) form and, in addition, send me a current illustration for this policy.

Further, any and all funds relating to the policy should only be released to me.

To be clear, I am not asking you, at this time, to cease communication with the insured, the Trustee of any trust to which the policy may have been transferred, the beneficiary of the policy or any other interested person, but only directing that all communication with those persons or entities also be made to me.

If you have any questions regarding the matters referenced herein or any other matter relating to the Policy or the Lydia Receivership, please do not hesitate to contact me or Mr. McVay.

Sincerely



**H. Thomas Moran, II**  
Court Appointed Receiver of  
Lydia Capital, LLC

cc: Melvin R. McVay, Jr., Esq.



Receiver, in the issuance of an order to show cause why any such insurance company should not be held in contempt for failing to cooperate with the Receiver.

IT IS SO ORDERED this \_\_\_\_\_ day of August, 2007.

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Richard G. Stearns  
UNITED STATES DISTRICT JUDGE