

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

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SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.	Case No. 07-CV-10712-RGS)
)
LYDIA CAPITAL, LLC,)
GLENN MANTERFIELD, and)
EVAN ANDERSEN,)
Defendants.)
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**RECEIVER'S MOTION AND BRIEF IN SUPPORT FOR AN ORDER
(A) AUTHORIZING THE RECEIVER TO SETTLE CLAIM PERTAINING
TO CERTAIN LIFE INSURANCE POLICY, (B) APPROVING SETTLEMENT
AGREEMENT, (C) AUTHORIZING THE RECEIVER TO TAKE THE
NECESSARY ACTIONS TO EFFECT THE PROPOSED SETTLEMENT
AND (D) GRANTING RELATED RELIEF**

COMES NOW, H. Thomas Moran, II, Court-Appointed Receiver for Defendant Lydia Capital, LLC ("Receiver"), in the above-entitled cause, and respectfully submits this Motion and Brief in Support (the "Settlement Motion") seeking an Order (A) Authorizing the Receiver to Settle Claim Pertaining to Certain Life Insurance Policy, (B) Approving Settlement Agreement, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlement, and (D) Granting Related Relief (the "Settlement Order"). A proposed Settlement Order is attached hereto as Exhibit 2. In support of this Settlement Motion, the Receiver respectfully represents to the Court as follows:

I. BACKGROUND.

A. LYDIA CAPITAL, LLC'S BUSINESS

Lydia Capital, LLC ("Lydia") was a Delaware limited liability company established in February 2006 with an office in Boston, Massachusetts. Lydia was registered as an investment

advisor with the United States Securities and Exchange Commission ("SEC"). Lydia acted as an investment advisor to, and general partner of, Lydia Capital Alternative Investment Fund LP (the "Fund"). The Fund, a Delaware limited partnership, was a pooled investment vehicle formed to purchase and sell all types of securities, but it focused on investing in life insurance policies. The Fund used money from investors to purchase policies (the "Policies") and to pay premiums on the Policies. In this way, the sellers of the Policies received money in advance of their deaths while investors expected to receive a higher percentage rate of return than with traditional investment vehicles when the Policies matured.

B. THE APPOINTMENT OF A RECEIVER FOR LYDIA

On April 12, 2007, the United States Securities and Exchange Commission ("S.E.C.") filed this action against Defendants Lydia, Evan Andersen ("Andersen") 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 Andersen. [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, 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, 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;

* * * *

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.]

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.]

The Receivership Assets include the portfolio of Policies that Lydia had purchased in the life insurance after-market and all potential causes of action related to the acquisition of these policies (the "Lydia Portfolio"). At the time of the Receiver's appointment, the Lydia Portfolio consisted of 37 life insurance policies, on the lives of 28 individuals, which ranged in face value from \$1,000,000.00 to \$10,000,000.00 (the "Portfolio").

C. RELEVANT PROCEDURAL HISTORY

On November 29, 2007, the Court granted The Lincoln National Life Insurance Company ("Lincoln") leave to file a declaratory judgment action with respect to a Policy issued by Lincoln insuring the life of H. Gisonni (the "Gisonni Policy").² [Electronic Order, dated November 29, 2007].

² In order to protect the privacy of the insureds, who are not parties to this litigation, the Receiver will use the initial for the insured's first name, rather than the insured's full name.

D. DECLARATORY JUDGMENT ACTION

Lincoln filed a declaratory judgment action regarding the Gisonni Policy in the United States District Court for the Eastern District of New York, Case No. CV-08-699, *The Lincoln Life & Annuity Company of New York v. H. Thomas Moran, II, Court-Appointed Receiver of Lydia Capital, LLC* (the "Litigation").

Lincoln alleged that H. Gisonni and the original beneficiary under the Gisonni Policy made intentional misrepresentations in the application for life insurance, including fraudulent misrepresentations concerning their alleged involvement in discussions to sell the Gisonni Policy to a life settlement company after it was issued. Additionally, Lincoln alleged that the Gisonni Policy was issued to, at the behest of, and/or under the direction of, a party possessing no insurable interest in connection with the Gisonni Policy. Lincoln alleges that the purported fraud and/or lack of insurable interest, if proven, render the Gisonni Policy void *ab initio* and/or subject to rescission. In addition to rescission, Lincoln sought to retain the premiums paid in connection with the Gisonni Policy. Alternatively, Lincoln sought to deduct, from premiums it is required to return in order to obtain rescission, its alleged costs, including commissions paid by it to its agents in connection with the sale of the Gisonni Policy. Lincoln also sought to recover its attorney's fees and costs associated with prosecuting the Litigation.

The Receiver has been named as a Defendant in the Litigation solely due to his status as the assignee and owner of the Gisonni Policy. If a court should declare the Gisonni Policy void and/or subject to rescission, any such ruling would necessarily be predicated on the actions of the insured and others involved in the procurement and subsequent sale of the Gisonni Policy. Accordingly, the Receiver has obtained leave to file, and has filed, Third-Party Complaints in the Litigation, naming the insureds and others involved in the sale of the Gisonni Policy as Third-

Party Defendants and asserting claims for indemnity, breach of contract, fraud, unjust enrichment and rescission.

II. THE RECEIVER SEEKS APPROVAL OF THE PROPOSED SETTLEMENT AGREEMENT.

A. INTRODUCTION

The Receiver's authority to act on behalf of the Receivership is expressly provided for in the Order for Appointment of Receiver [Doc. No. 28]. The Receiver is authorized to "institute, prosecute, defend, compromise, adjust, intervene in, or become party to such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate" *Id.* Acting pursuant to this authority, the Receiver has performed his duties and responsibilities consistent with the scope of the Order for Appointment, and successfully preserved the Portfolio. In further performance of his duties and responsibilities, the Receiver and his counsel have devoted, and continue to devote, significant time and attention to the Litigation. The Receiver has also pursued settlement of the Litigation to preserve the Receivership Assets, eliminate further litigation costs and avoid the uncertainty of litigation.

As part of the Receiver's efforts to minimize expenses to the Receivership, the Receiver negotiated an agreement with Lincoln whereby the premiums for the Gisonni Policy would be suspended pending the Litigation. Pursuant to this agreement, the Receiver has been able to save the Receivership approximately \$410,000.00 to date in premiums. Under the terms of this agreement, the Receivership would be obligated to pay the accrued premiums for the Gisonni Policy in the event the court declared the Policy to be valid and enforceable. In such event, the Receivership would then be obligated to pay all accrued premiums to maintain the Policy.

B. PROPOSED SETTLEMENT

If approved by the Court, Lincoln will pay to the Receivership a total of \$97,515.00. A full copy of the settlement agreement and release is included as Exhibit 1, which has been filed under seal pursuant to the Court's Electronic Order dated April 23, 2010.

C. PROPOSED NOTICE, HEARING AND BAR OF CLAIMS

By separate motion, the Receiver intends to request that the Settlement Motion be set for hearing before the Court after a time for notice to all interested parties, and opportunity for any interested parties to object to the entry of the Settlement Order. A copy of this Settlement Motion is being provided to: (1) the SEC; (2) Defendant Evan Anderson; (3) Defendant Glenn Manterfield; (4) the investors in Lydia and/or the Fund; (5) those creditors of Lydia and/or the Fund the Receiver is aware of; and (6) those parties who received payments from Lydia and/or the Fund in connection with the Gisonni Policy of which the Receiver is aware. The Receiver asks the Court to include this Bar of Claims in the Settlement Order. The Receiver requests in the proposed Settlement Order that the Court find this Notice to be sufficient.

The Receiver proposes that the deadline for objecting to the Settlement Order be ten business days prior to the hearing on this Settlement Motion. Following the hearing on the Settlement Motion, the Receiver requests that the Settlement Order be entered.

III. THE COURT'S JURISDICTION AND THE RECEIVER'S AUTHORITY.

A Court's authority to impose and administer a receivership is derived from its inherent powers as a court of equity. *SEC v. Forex Asset Mgmt., L.L.C.*, 242 F.3d 325, 331 (5th Cir. 2001). A federal court exercises "broad powers and wide discretion" in crafting relief in an equitable receivership proceeding. *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001). This Court's jurisdiction over the Receiver and the Receiver's authority to

act on behalf of the Receivership are set forth in the Order for Appointment. [Doc. No. 28]. Pursuant to the Order for Appointment, the Receiver was directed to take complete control, possession, and custody of all Receivership Assets. Acting pursuant to this authority, the Receiver took possession and control of the Gisonni Policy. The Order of Appointment further directed the Receiver to "defend [or] compromise . . . such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP, as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order." [Doc. 28, ¶ II.H]. Now, the Receiver requests Court approval to compromise the Litigation regarding the validity of the Gisonni Policy.

The Receiver believes it is in the best interest of the Receivership Estate, and the Lydia Investors, to settle the Litigation on the terms outlined in Exhibit 1. Specifically, the Receiver believes the total settlement proceeds, combined with the elimination of further litigation uncertainty and costs, and elimination of the cost of paying premiums on the Gisonni Policy, is reasonable under the circumstances. Accordingly, the Receiver respectfully requests the Court authorize him to enter into the proposed settlement on the terms reflected in Exhibit 1.

Although not contemplated, circumstances may require, prior to closing of the settlement but after Court approval, the modification, amendment or supplementation of terms of settlement agreement. The Receiver therefore requests that the Court allow him to consent to modifications, amendments or supplementations that have no material adverse effect on the Receivership Estate without the need for further approval from the Court.

WHEREFORE, premises considered, the Receiver respectfully requests the Court approve the settlement agreement reflected in Exhibit 1.

Dated: April 30, 2010

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

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

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*Attorneys for H. Thomas Moran, II, Court-
Appointed Receiver for Lydia Capital, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of February, 2010, 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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/s/ Melvin R. McVay, Jr.

Exhibit 1

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;)	Filed Under Seal --
GLENN MANTERFIELD, and)	Leave to file granted on
EVAN ANDERSEN,)	April 23, 2010
)	
)	Judge Richard G. Stearns
Defendants.)	

**EXHIBIT 1 TO
RECEIVER'S MOTION AND BRIEF IN SUPPORT FOR AN ORDER
(A) AUTHORIZING THE RECEIVER TO SETTLE CLAIM PERTAINING
TO CERTAIN LIFE INSURANCE POLICY, (B) APPROVING SETTLEMENT
AGREEMENT, (C) AUTHORIZING THE RECEIVER TO TAKE THE
NECESSARY ACTIONS TO EFFECT THE PROPOSED SETTLEMENT
AND (D) GRANTING RELATED RELIEF**

FILED UNDER SEAL

Exhibit 2

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.)

**ORDER (A) AUTHORIZING THE RECEIVER TO SETTLE CLAIM
PERTAINING TO A CERTAIN LIFE INSURANCE POLICY,
(B) APPROVING SETTLEMENT AGREEMENT, (C) AUTHORIZING
THE RECEIVER TO TAKE THE NECESSARY ACTIONS TO EFFECT THE
PROPOSED SETTLEMENT AND (D) GRANTING RELATED RELIEF**

Upon the Motion [Doc No. ____] (the "Settlement Motion") by H. Thomas Moran, II, Court Appointed Receiver ("Receiver") for Defendant Lydia Capital, LLC ("Lydia"), by his counsel, Phillips Murrah P.C. for, *inter alia*, entry of an Order (A) Authorizing the Receiver to Settle Claim Pertaining to a Certain Life Insurance Policy, (B) Approving Settlement Agreement, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlement and (D) Granting Related Relief, after notice to all interested parties; a hearing on the Settlement Motion having been held on the ____ day of _____, 2010 (the "Settlement Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Settlement Motion; and the Court having reviewed and considered the Settlement Motion and exhibits thereto; and it appearing that the relief requested in the Settlement Motion is in the best interests of the Receivership estate; and upon the record of the Settlement Hearing in this case and after due diligence thereon; and good cause appearing therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

1. This Court has jurisdiction over the subject matter of the Settlement Motion.

2. Pursuant to the Court's Order of June 1, 2007, H. Thomas Moran, II was appointed the Receiver for the assets of Lydia (the "Order of Appointment"). [Doc. No. 28]. Pursuant to the Order of Appointment, Mr. Moran, as Receiver for Lydia, was charged with the duty to "institute, prosecute, defend, compromise, adjust, intervene in, or become party to such legal or equitable actions, claims or proceedings or anticipated legal or equitable actions, claims or proceedings on behalf of Lydia and Lydia Capital Alternative Investment Fund LP (the 'Fund'), as the Receiver deems necessary and appropriate to carry out the Receiver's mandate pursuant to this Order." [*Id.*]

3. On November 29, 2007, the Court granted The Lincoln National Life Insurance Company ("Lincoln") leave to file a declaratory judgment action with respect to a Policy issued by Lincoln insuring the life of H. Gisonni (the "Gisonni Policy").¹ [Electronic Order, dated November 29, 2007]. Lincoln filed a declaratory judgment action regarding the Gisonni Policy in the United States District Court for the Eastern District of New York, Case No. CV-08-699, *The Lincoln Life & Annuity Company of New York v. H. Thomas Moran, II, Court-Appointed Receiver of Lydia Capital, LLC* (the "Litigation").

4. The proposed settlement will pay to the Receivership a total of \$97,515.00, as more particularly detailed in Exhibit 1 to the Settlement Motion, filed under seal pursuant to the Court's Electronic Order dated April 23, 2010.

5. Notice of Hearing on the Settlement Motion was provided to: (1) the SEC; (2) Defendant Evan Anderson; (3) Defendant Glenn Manterfield; (4) the investors in Lydia

¹ In order to protect the privacy of the insureds, who are not parties to this litigation, the Receiver will use the initial for the insured's first name, rather than the insured's full name.

and/or the Fund; (5) those creditors of Lydia and/or the Fund the Receiver is aware of; and (6) those parties who received any payment from or through the Receiver, Lydia and/or the Fund in connection with the sale of the Gisonni Policy in the life insurance secondary market of which the Receiver is aware. This Notice, as carried out by the receiver and reflected in his Notice of Service [Doc. No. ____] is sufficient and reasonable in light of the circumstances and the nature of the relief requested in the Settlement Motion.

6. The Court finds that the settlement agreement and release described and attached as Exhibit 1 to the Settlement Motion is reasonable with respect to the claims made on the Gisonni Policy by Lincoln. Further, the Court finds that the settlement agreement and release described and attached as Exhibit 1 to the Settlement Motion is in the best interests of the Receivership estate and the investors in Lydia and/or the Fund.

7. A Hearing on the Settlement Motion was conducted on the ____ day of _____, 2010. All interested parties were provided an opportunity to file written objections to the Settlement Motion prior to the Hearing, and were provided an opportunity to appear at the Hearing on the Settlement Motion, and be heard in connection therewith.

The Court finds that good cause exists for granting the Receiver's Settlement Motion, and accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

(a) The settlement agreement and release in Exhibit 1 to the Settlement Motion is hereby approved as reasonable and in the best interests of the Receivership estate and the investors in Lydia and/or the Fund.

(b) The Receiver is authorized to enter into the settlement agreement and release in Exhibit 1 to the Settlement Motion.

(c) The Receiver is authorized to take such steps as may be reasonably necessary to effectuate the settlement agreement and release attached as Exhibit 1 to the Settlement Motion. Further, the Receiver is authorized to consent to modifications, amendments or supplementations that do not have a material adverse effect on the Receivership estate, without the need for further approval from the Court.

(d) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

(e) The requirement that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Settlement Motion or otherwise waived.

(f) To the extent this Order is inconsistent with any prior order or pleading with respect to the Settlement Motion in this case, the terms of this Order shall govern. In the event that this Order is inconsistent with the settlement agreement, however, the settlement agreement shall govern.

(g) This Court shall retain jurisdiction to resolve any disputes relating to the interpretation of the terms or conditions of this Order. Further, the Court shall retain jurisdiction to interpret, construe and enforce the settlement agreement in Exhibit 1 to the Settlement Motion.

WHEREFORE, Receiver's Motion (A) Authorizing the Receiver to Settle Claim Pertaining to a Certain Life Insurance Policy, (B) Approving Settlement Agreement, (C) Authorizing the Receiver to Take the Necessary Actions to Effect the Proposed Settlement and (D) Granting Related Relief is hereby GRANTED.

Dated this ___ day of _____, 2010.

Richard G. Stearns
UNITED STATES DISTRICT JUDGE

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