

**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 FIFTH REPORT TO THE COURT  
FOR THE PERIOD FEBRUARY 1, 2008 – APRIL 30, 2008**

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 fifth 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 February 1, 2008 to April 30, 2008. (Doc. No. 28, p. 8, ¶ XIII.) Pursuant to the Order for Appointment, which requires Reports from the Receiver "every sixty (60) days . . . within the calendar year 2007 and every ninety (90) days thereafter," this fifth Report is the first to be submitted for the requisite ninety day period.<sup>1</sup> 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 fifth report to the Court.

<sup>1</sup> The Receiver's Fourth Report to the Court (Doc. No. 127) was incorrectly titled, "for the period November 1, 2007 through December 31, 2007." That Report actually covered Receiver's activities from November 1, 2007 through January 31, 2008 and provided financial information through the end of 2007. This Fifth Report includes the Receiver's activities for the months of February, March and April of 2008 and financial information for the first quarter (January, February and March) of 2008.

## 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.<sup>2</sup> (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;

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<sup>2</sup> 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.)

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;

\* \* \* \*

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.<sup>3</sup>

### A. General Background

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 worked to accurately determine the state of the receivership assets and the policies comprising the Portfolio. During this reporting period, the SEC provided the Receiver with over 15,000 documents produced during discovery from various banks, brokers, agents and agencies including: financial statements; business contracts/agreements; escrow account information; and, policy purchase documents. The Receiver is in the process of analyzing this voluminous discovery in order to create precise financial records for each policy in the Portfolio and to trace the transactions and agreements between Lydia and the brokers and agents who handled the Policies comprising the Portfolio. Finally, the Receiver and his counsel have devoted significant time and attention to the nine lawsuits pending against the Receivership and continue to communicate with the investors on various issues, including the potential sale of some of the policies.

### B. Investor Communications

On April 17, 2008, the Receiver participated in a ninety-minute teleconference with certain Lydia investors. Two and a half weeks prior to the teleconference, the Receiver corresponded with all of the investors to communicate the date and time of the conference as well as providing the necessary information for their participation; however, not all of the investors chose to participate. During the teleconference, the Receiver and his counsel updated the investors and answered investors' questions regarding: (1) the state of the assets including the status of the nine pending lawsuits; (2) the financial condition of the receivership estate; (3)

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<sup>3</sup> 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 to the motions for payment of fees and expenses of the Receiver and his counsel.

long-term options for the portfolio; (4) potential sales strategies for certain policies; and, (5) plans for a teleconference to take place during the next reporting period.

### **C. Pending Litigation**

During this period, the Receiver has diligently defended nine lawsuits filed by various insurance companies seeking to void or rescind Lydia policies. In each of these lawsuits, the Insurers are seeking rescission of the policies based upon very similar allegations that: (1) the insureds intended to sell their policies on the secondary market at the time of application for the policies, and/or (2) made material misrepresentations on their applications regarding their involvement in discussions concerning the sale of the policies to a life settlement, viatical or other secondary market provider. A summary of each lawsuit is included in the following chart:

	<b>DATE FILED</b>	<b>PLAINTIFF</b>	<b>INSURED</b>	<b>ANSWER DUE</b>	<b>COURT</b>	<b>CASE NO.</b>
1	12/21/2007	The Lincoln National Life Insurance Company	C. Vandembush	04/07/2008 Filed	U.S.D.C. for the Eastern District of Wisconsin	07-C-1140
2	12/26/2007	The Lincoln Life & Annuity Company of New York	H. Gisonni	04/04/2008 Filed	Supreme Court of the State of New York, County of Suffolk	07-39852
	02/20/2008	<i>Removed to Federal Court</i>	H. Gisonni	04/04/2008 Filed	U.S.D.C. for the Eastern District of New York	CV-08-699
3	01/09/2008	The Lincoln National Life Insurance Company	R. Black	03/31/2008 Filed	U.S.D.C. for the Southern District of California	08-CV-0023-IEG-NLS
4	03/17/2008	AXA Equitable Life Insurance Company	A. Lancet	05/23/2008 Pending	U.S.D.C. for the Southern District of California (San Diego)	08-CV-497-H-JMA
5	03/17/2008	AXA Equitable Life Insurance Company	R. Williamson	05/23/2008 Pending	U.S.D.C. for the Southern District of California (San Diego)	08-CV-498-H-LSP
6	03/17/2008	AXA Equitable Life Insurance Company	R. Williamson	05/23/2008 Pending	U.S.D.C. for the District of Utah – Central Division	08-CV-00206
7	03/26/2008	AXA Equitable Life Insurance Company	A. Fischbach	05/27/2008 Pending	U.S.D.C. for the Southern District of California (San Diego)	08-CV-0569-BTN-BLM

8	04/02/2008	Sun Life Assurance Company of Canada	C. Hoover	06/10/2008 Pending	U.S.D.C. for the District of Arizona	2:08-CV-00632-SRB
9	04/02/2008	Sun Life Assurance Company of Canada	L. Bawden	06/10/2008 Pending	U.S.D.C. for the District of Arizona	2:08-CV-00629-MHB

### III. INVESTOR RELATED MATTERS.

As previously reported, based on the records received from Dundee Leeds and others, the total amount invested in the Fund, including \$8,807,686.22 from certain April 2007, Investors was \$42,734,226.12. However, \$4,553, 858.11 was returned to these April Investors pursuant to a Settlement Agreement discussed in the Receiver's Fourth Report. (Doc. No. 127, p. 4). Therefore, as previously reported, the total amount invested stands at \$38,180,368.01.

During this reporting period, the Receiver requested revised Proof of Claim forms from the April Investors reflecting the payment of funds received by them from the Settlement Agreement. The Receiver has received four revised Proof of Claim forms. Six Proof of Claim forms remain outstanding. The Receiver has sent correspondence to the remaining six investors from whom revised proof of claims are still required and will report on their status in the sixth report to the court.

### IV. THE INSURANCE POLICIES.

Based upon the Receiver's analysis of the data and documents received from the S.E.C. and others, the Portfolio consists of thirty-seven policies ranging in face value from \$1,000,000.00 to \$10,000,000.00 on the lives of 28 individuals.

#### A. Premiums

The Receiver has made \$3,255,194.63 in premium payments on 22 policies between June 1, 2007 and March 31, 2008. The Receiver previously reported estimated premiums on the portfolio for the year 2008 to be in excess of \$6.1 million. However, during this reporting

period, the Receiver entered into agreements with the insurance companies involved in the nine lawsuits discussed above, whereupon it was established that:

(1) In exchange for Receiver's agreement not to oppose the insurance companies' motions for permission to file declaratory judgment actions regarding the validity of the nine life insurance policies, the insurance companies would not require Receiver nor any other entity to make further premium payments on the policies during the pendency of the litigation, including the pendency of any appeals taken from any judicial determination with respect to the policies;

(2) In the event that there is a judicial determination that any of the Policies are valid, Lydia will become obligated to tender any premiums that have become due, along with 3% simple interest calculated annually;

(3) In the event there is a final judicial determination that any of the Policies are invalid and a judicial determination that the insurance company is obligated to tender premiums that have been paid on the policies, in whole or in part, the insurance company will tender premiums due together with accrued interest at the statutory rate, or if there is no statutorily-prescribed rate of interest, at the annual rate of 3% simple interest; and,

(4) Insurance companies will not make any assertions or claims in the Potential Litigation that Lydia has breached the terms of any of the Policies by not making premium payments during the agreed period.

The total estimated 2008 premium for the nine policies at issue is \$1,554,030.60.

Therefore, Receiver now estimates the total amount for premiums in 2008 to be \$4.6 million, rather than the \$6.1 million previously reported.<sup>4</sup>

#### **B. Transfer of Title**

The Receiver is working with the successor trustees of the various life insurance trusts and the applicable insurance companies to facilitate the transfer of ownership and the designated beneficiaries of the various policies into the name of the Fund. The Receiver has requested transfers for 32 of the 37 policies to date, and 21 have been completed. The Receiver will continue to actively pursue transfers for the remaining 16 policies.

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<sup>4</sup> This amount includes those premiums already paid and those projected to be paid in 2008.

**C. Updated Medical Information on Insureds**

The Receiver is currently working on obtaining updated medical information on many of the insureds. The Receiver's attempts to use the HIPPA release forms collected by Lydia along with the Order of Appointment failed in many cases, as medical providers may not accept HIPPA release forms that are more than one year old. Therefore, the Receiver has mailed requests for updated HIPPA release forms to all of the insureds. As of this writing, four updated release forms have been returned.

**D. Future of Portfolio**

In addition to diligently working to preserve and protect the Portfolio, the Receiver is evaluating the best course of action for the potential future sale of certain Policies. If the Receiver concludes that the sale of some or all of the Policies, either individually or in groups, is in the best interest of the receivership estate, he will request permission from this Court to begin this process.

**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 as of March 31, 2008 is \$ 3,921,365.98. A Balance Sheet and summary of the activity in those accounts is set forth on Exhibit 1. During this reporting period the Receiver has spent considerable time gathering, reviewing and analyzing S.E.C. document production materials and policy purchase transaction documents for financial information required for tax and accounting purposes. The Receiver is also working on cost basis financial statements

including balance sheets and income statements for both Lydia and the Fund as of: December 31, 2006; the date of appointment on June 1, 2007; and, December 31, 2007.

**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 January, February and March, 2008. (Doc. Nos. 144 and 145.<sup>5</sup>) 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.

Dated: April 29, 2008

Respectfully submitted,

/s/ Melvin R. McVay, Jr.

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

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<sup>5</sup> A copy of each of the motions is attached hereto. (Exhibits 2 and 3.)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of April, 2008, 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.* \_\_\_\_\_

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