

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
RETIREMENT VALUE, LLC, et al,	§	
	§	
Defendants.	§	126 <sup>th</sup> JUDICIAL DISTRICT

**TWENTY-EIGHTH APPLICATION FOR FEES  
BY THE RECEIVER AND RECEIVER’S COUNSEL**

Eduardo S. Espinosa, court-appointed receiver for Retirement Value, LLC, files his Twenty-Seventh application for fees incurred by the Receiver and his counsel, Dykema Cox Smith (Dykema) for the months of October 2015 through March 2016.

**BACKGROUND**

To assist the Receiver in the performance of his duties, the Agreed TI<sup>1</sup> authorizes the Receiver to “to hire employees, contractors, consultants, accountants, attorneys, legal assistants, or other assistants under terms to be determined by the Receiver, whose services in the sole discretion of the Receiver, are necessary for an efficient and accurate administration of the receivership estate.” Agreed TI at 14, ¶8. To that end, the Receiver has retained Dykema to represent him in connection with this case, to assist him in the performance of his duties and to prosecute or defend litigation on behalf of Retirement Value.

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<sup>1</sup> The “Agreed TI” is the Agreed Temporary Injunction Order against Defendants Retirement Value, LLC and Richard H. “Dick” Gray and the Relief Defendant and Order Appointing Receiver, entered by the Court on May 28, 2010.

By its Order Regarding the First Application for Fees by the Receiver and Receiver's Counsel entered on October 26, 2010 (Fees Order), the Court modified the basis by which the Receiver and his counsel are paid. Pursuant to the Fees Order, the Receiver shall charge an hourly rate of \$320 per hour and the Receiver's counsel shall discount its rates by 9.5% from its then current hourly rates in effect as of the time services are rendered, beginning on August 1, 2010. Fees Order at 2. Moreover, the Receiver and his counsel are to submit to the Court and to the parties of record their request for payment of fees. If no party of record files an objection to the request for payment within ten days from the filing of the request for payment, then the Receiver shall pay the amount of the request from funds he holds in the receivership estate. Any objection must state with specificity the particular items of the Receiver's request to which the objection is made. If an objection is made, the Receiver shall not pay the contested portion of the invoice until a hearing has been held on the objection, but the Receiver may pay the portions of the request to which no objection is made. *Id.*

#### **APPLICATION FOR PROFESSIONAL FEES**

By this Application, the Receiver seeks approval from the Court to pay from the assets of the Receivership the fees incurred by the Receiver and his counsel, Dykema, for services rendered from October 2015 through March 2016.

The Receiver has incurred fees of \$36,800.00 during the period covered by this Application. He has retained the legal services of Dykema which incurred fees for the periods covered by this Application of \$ \$71,135.29. Affidavit of Eduardo S.

Espinosa (Espinosa Affid.) at ¶10 (attached as Exhibit 1). While substantial, these fees were both reasonable and necessary.

The fees charged by the Receiver and his counsel represent a 18.35% discount from the usual and customary fees charged by Dykema. As a general matter, the charge for the services provided by Dykema are determined by multiplying the total number of hours worked by each timekeeper by that timekeeper’s billing rate. *Id.* at ¶6. In this case, the billing rate of each timekeeper was discounted from the usual and customary rates charged by Dykema. The Receiver is charging \$320/hour, which represents a 29% discount from his usual and customary rate of \$450/hour for 2015 and a 33% discount from his usual and customary rate of \$475/hour for 2016. In addition, Dykema has discounted its rates by 9.5%. In the aggregate the discounts and write-offs associated with this Application amount to \$24,254.74. *Id.* The chart below summarizes the fees charged and the discounts applied.

<b>Invoice Summary</b>	
Services Rendered in:	<b>Total</b>
Fees Requested	
DCS	\$106,907.17
DCS- Schroeder Bankruptcy	\$537.07
DCS- McDermott, et.al.	\$491.05
<b>Total</b>	\$107,935.29
Receiver Incurred	\$53,587.50
Receiver Billed	\$36,800.00
Receiver adj	(\$16,787.50)
All other Tkpr Incurred	\$78,602.53
All other Tkpr Billed	\$71,135.29
(9.5%) adj.	(\$7,467.24)
Write-offs	
<b>Total Adj</b>	<b>(\$24,254.74)</b>

The Receiver certifies that the estate has sufficient cash reserves from which to pay this Application after taking into account the estate's receipts and expenditures since the last actuarial analysis of the portfolio in January 2016. *Id.* at ¶ 12.

**I. What have we accomplished during this period**

During the period covered by this Application, the Receiver and his counsel devoted substantial attention to collecting amounts due the estate pursuant to judgments and settlements; defending the estate against claims brought by Michael McDermott and Wendy Rogers; managing the portfolio and responding to investor comments and inquiries. The significant tasks during this time period include, without limitation:

- Responding to numerous inquiries and resolving various issues regarding the investors' claims, their IRA's and their distributions;
- Maintaining investor communications, including responding to inquiries from investors, defendants and their respective counsel regarding this matter, the Plan of Distribution, value of the claims and alternative recovery efforts;
- Maintaining and periodically updating the estate's website with new information and current events;
- Attending to the preservation of the estates' assets, including coordination of various accounting matters, funds management, fielding acquisition inquiries, payment of premiums, & collecting death benefits;
- Responding to appeals of judgments in favor of the Receiver;
- Enforcing the Estate's settlement agreements and judgments in order to maximize the Estate's recoveries;
- Preparing quarterly and annual reports;
- Analyzing the effect of recent increases in the cost of insurance on certain of the Estate's policies and determining the appropriate response; and
- Requesting permission from the Court to make a \$2.5 million distribution to the Investors raising the total amount distributed to \$11 million or 13.7%.

The Receiver initially undertook to investigate the business of Retirement Value, to collect the assets readily available to it and to put in place interim measures to protect the value of those assets. That work is complete. The Receiver is currently working to execute the court-approved plan for the portfolio of insurance policies in order to maximize the policies' value and return to investor victims. Except for one appeal, the Receiver has completed the litigation against the licensees and other defendants. He is now engaged in collecting on the judgments against the licensees, including asserting the estate's claims in their bankruptcy proceedings. He also continues to respond to inquiries and suggestions from investors.

The primary work in this period related to (i) preparing the quarterly and annual reports to the Court and the investors; (ii) evaluating the effect of and responding to increases in the cost of insurance of certain of the Estate's policies and (iii) determining and seeking permission to distribute an additional \$2.5 million to the investors. In addition, the Receiver and his counsel assisted in defending the appeals of the judgments against them by James Poe and Sal Magaraci. The court of appeals recently denied the appeals and Poe has entered into an agreement to pay \$660,000 to the Receiver to satisfy the judgment against him. The Receiver has also objected to the attempts by certain licensees to discharge the judgments against them in bankruptcy.

## **II. What Work Remains to Be Done**

While a substantial portion of the Receiver's work has been completed, work remains to be done. At this point, our work can be divided into three categories: (i)

collection of judgments; (ii) resolution of new claims and/or litigation against the estate; and (iii) fulfillment of the plan of distribution.

The litigation of claims by the estate has been largely completed by the estate's contingency fee counsel. Negotiated settlements entered into pursuant to the estate's collection efforts afforded the estate the opportunity to make an interim distribution. The first interim distribution was funded entirely from amounts collected. The remaining claims against licensees have been resolved by judgments in the Receiver's favor totaling \$6.1 million. Many of the judgment debtors have already entered into settlement agreements with the Receiver pursuant to which they have agreed to pay the estate over \$1.63 million. To the extent any of the licensees against whom a judgment has been secured file an appeal or otherwise seek to adversely affect the estate's judgments, the Receiver will seek to preserve and enforce the estate's legal rights.

The Receiver is currently engaged in two legal proceedings. One is the last remaining appeal of a judgment entered in his favor against licensees. This appeal is being handled by the Receiver's contingency fee counsel. The Receiver is also engaged in litigation in bankruptcy court in California with Eric Chick on the question of whether the Receiver's judgment against him may be discharged (i.e., eliminated) in his bankruptcy. Dykema is handling that matter.<sup>2</sup>

The Plan of Distribution largely resolved the claims against the estate. Receiver received 44 proofs of claim (38 from investors and 6 from other claimants)

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<sup>2</sup> The bankruptcy court in Ohio held that Scott Schroeder could not discharge his debt to the Receiver. That litigation has been concluded.

disputing scheduled claim amounts or characterization. All disputes pertaining to the Class 2 –Investor claims have been resolved. Disputes regarding Class 3 General Creditor claims have largely been resolved. The Tracy Moss litigation ended with an agreed judgment against Retirement Value for \$150,000 and Wells Fargo dropped its \$50,000 claim against the estate. As it is unlikely that there will be funds to pay the Class 3 claims, the Receiver does not contemplate further efforts to resolve the remaining disputes over Class 3 claims at this time.

The Court's adoption of the Initial Plan substantially reduces, if not eliminates, the need for further expense or delay associated with evaluating alternative asset management strategies. The proof of claim process has been concluded, each claimant's proportionate interests in the estate's assets have been established and the initial distribution remitted. The Receiver has since turned his attention to managing the liquid assets on hand without exposing them to undue risk, executing interim distributions, addressing investor inquiries and ministerial issues to ensure that the estate's records are updated and the estate is ready to execute the next distribution.

In March 2016, the Receiver filed his annual report for 2015. He had previously published a report for the third quarter of 2015. He anticipates preparing and publishing a report for the first quarter of 2016 shortly.

#### **ARGUMENT**

The Receiver's administrative costs, including his fee and that of his counsel, are to be paid out of the funds and other assets of the estate. These costs are considered costs of court and have priority over all other claims against the estate.

*Jordan v. Burbach*, 330 S.W.2d 249 (Tex. Civ. App. – El Paso 1959, writ ref'd n.r.e.); also TEX. CIV. PRAC. & REM. CODE §64.051. The Court should consider the reasonableness of the fees requested by both the Receiver and counsel.

In evaluating the reasonableness of the fees, the Court should consider the following factors: (1) the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly; (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997). These factors support the award of the requested fees.

**Time, labor, skill & complexity.** By its nature, a receivership proceeding is unique and complicated. As discussed above, this receivership is particularly complicated due to its size, the assets involved, the poor record keeping of Retirement Value and the sheer number of people involved (1,084 investors, 1,000 licensees, 18 insurance companies and several banks). To properly administer the estate requires a high degree of skill and diligence. Moreover, the Receiver and his counsel have had to devote significant time to this matter. The exact time expended

and work performed by the Receiver and his counsel are shown on the invoices attached to the Espinosa Affidavit. In addition, the Receiver's reports of July 28, 2010, April 30, 2011, December 31, 2011, May 31, 2013, May 31, 2014, May 31, 2015 and December 31, 2015; and the fee applications previously filed with the Court summarize the work of the Receiver and his counsel.

**Preclusion of other employment.** Dykema has not had to decline any representation solely because of its services in this case.

**Customary fees.** An attorney's usual and customary fees are presumed to be reasonable. TEX. CIV. PRAC. & REM. CODE § 38.003. The fees charged by Dykema in this case are the usual and customary fees that they charge to and collect from their clients for the services of the attorneys and other professionals working on this matter, except that: (i) the Receiver is charging 29% to 33% less than his usual and customary rate; and (ii) Dykema is charging 9.5% less than its usual and customary rates on all other timekeepers. Espinosa Affid. at ¶6. Further, the court may take judicial notice of customary fees and of the contents of the case file without further evidence. TEX. CIV. PRAC. & REM. CODE § 38.004.

Dykema undertakes annual analyses of the markets in which it operates in order to determine the appropriate fees to charge for their respective professionals based on the fees charged by their competitors and peer firms. The goal of this analysis is to set rates for each professional at the median rate for professionals at peer firms in similar practices areas and similar experience. Accordingly, the rates

charged by Dykema in this matter are well within the norm for firms of its type in Texas. Espinosa Affid. at ¶8.

**Amount involved and results obtained.** The amount involved in this matter, measured either by the \$77 million invested by the investors or the over \$35 million of estate assets administered by the Receiver, is very large. During the Receiver's 71 months on the job, the Receiver has actively managed the estate's affairs and discharged his court-imposed duties. All told, the Receiver has brought nearly \$29.9<sup>3</sup> million into the estate over the course of the Receivership Action. He has filed a plan of distribution and made distributions of approximately \$11.0 million.

**Time limitations.** Time is of the essence in a receivership. This is particularly true in the initial stages. The efforts undertaken in this case to recover assets, investigate the facts and preserve the portfolio of policies were conducted on an expedited basis.

**The nature and length of the professional relationship.** This factor cuts no particular way. However, neither the Receiver nor his counsel has any particular relationship with any of the parties involved in this matter. Nor is there any possibility of a future relationship with the estate. By their nature, receiverships

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<sup>3</sup> These recoveries include (i) \$1.25 million secreted by Retirement Value's principals into Special Acquisitions, Inc.; (ii) \$560,000 and 8 policies of insurance worth about \$1.1 million recovered from James Settlement Services; (iii) \$127,000 in cash and \$195,000 in debt-reduction from a settlement with Bruce Collins; (iv) \$710,000 in a settlement with Kiesling Porter; (v) \$623,000 in assets from a settlement with Dick and Catherine Gray; (vi) \$176,000 in assets and \$7,000 in debt reduction from a settlement with Wendy Rogers; (vii) \$10,117,534 collected from Pacific Life on the PLI140 policy, which was initially disputed by Pacific Life; (viii) \$\$34,564 in recovered state franchise taxes; (ix) \$2,183,000 in approved settlements with licensees; (x) \$6,086,240 in judgments against licensees; (xi) \$5.5 million in approved settlements with the James Defendants; and (xii) \$1,257,000 in setoffs.

are a one-time event. As a result, no discount would normally be appropriate. Nevertheless, this application reflects a discount of 18.35% off of the fees that Dykema would normally charge for the work performed during this time period.

**Experience, reputation, and ability of the professionals.** Dykema is one of Texas' premier law firms. Founded as Cox Smith Matthews Incorporated in San Antonio over 80 years ago and recently merged with Dykema Gossett, it employs over 400 attorneys with diverse experience, across 15 offices, in a myriad of practice areas. Dykema's experience spans all of the key Texas markets, with growing offices in Austin, Dallas, El Paso and McAllen, as well as offices across the nation in Michigan, Illinois, Minnesota, California and Washington, D.C. Dykema represents leading global corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals.

**Whether the fee is fixed or contingent.** The fees of the Receiver and his counsel are based on upon their hourly rates with a substantial discount. However, the payment of fees depends upon the approval of the court and the availability of assets in the estate – something which could not be known at the time the engagement was accepted and which remain uncertain.

Based on the size and complexity of the estate, the difficulties of administering it, the efforts expended and the results obtained, the fees requested by the Receiver and his counsel are reasonable and necessary.

ACCORDINGLY, the Receiver requests that this Application be granted in its entirety and that he be authorized to pay the fees requested by him and his counsel from the funds available to the estate.

Respectfully submitted,

By:  /s/ Michael D. Napoli  
Michael D. Napoli  
State Bar No. 14803400

DYKEMA COX SMITH  
1717 Main Street, Suite 4200  
Dallas, Texas 75201  
(214) 698-7837  
(214) 462-6401 (fax)  
MNapoli@dykema.com

**Counsel for Eduardo S. Espinosa,  
Receiver**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record listed below, through the electronic filing manager if that counsel's e-mail address is on file or via e-mail, if not, on this 19th day of April, 2016.

Jack Hohengarten  
TEXAS ATTORNEY GENERAL  
Financial and Tax Litigation Division  
300 W. 15<sup>th</sup> Street, Sixth Floor  
Austin, Texas 78711-2548  
(512) 475-3503  
(512) 477-2348 fax  
[jack.hohengarten@texasattorneygeneral.gov](mailto:jack.hohengarten@texasattorneygeneral.gov)  
**COUNSEL FOR THE STATE OF TEXAS**

John W. Thomas  
John R. McConnell  
GEORGE BROTHERS KINCAID & HORTON, LLP  
114 W Seventh, Suite 1100  
Austin, Texas 78701-3015  
(512) 495-1400  
(512) 499-0094 fax  
[jthomas@gbkh.com](mailto:jthomas@gbkh.com)  
[jmccconnell@gbkh.com](mailto:jmccconnell@gbkh.com)  
**COUNSEL FOR RV RECEIVERS**

Geoffrey D. Weisbart  
Mia A. Storm  
WEISBART SPRINGER HAYES LLP  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
(512) 652-5780  
(512) 682-2074 fax  
[gweisbart@wshllp.com](mailto:gweisbart@wshllp.com)  
[mstorm@wshllp.com](mailto:mstorm@wshllp.com)  
**COUNSEL FOR THE CAIN INTERVENORS**

Bogdan Rentea  
RENTEA & ASSOCIATES  
1002 Rio Grande Street  
Austin, Texas 78701  
(512) 472-6291  
(512) 472-6278  
[brentea@rentealaw.com](mailto:brentea@rentealaw.com)  
**COUNSEL FOR WENDY ROGERS**

Isabelle M. Antongiorgi  
TAYLOR DUNHAM, LLP  
301 Congress Avenue, Suite 1050  
Austin, Texas 78701  
(512) 473-2257  
(512) 478-4409 fax  
[iantongiorgi@taylordunham.com](mailto:iantongiorgi@taylordunham.com)  
**COUNSEL FOR HCF RECEIVER**

Alberto T. Garcia III  
GARCIA & MARTINEZ, LLP  
5211 W. Mile 17 ½ Road  
Edinburg, Texas 78541  
(956) 380-3700  
(956) 380-3703 fax  
[albert@garmtzlaw.com](mailto:albert@garmtzlaw.com)  
[yoli@garmtzlaw.com](mailto:yoli@garmtzlaw.com)  
**COUNSEL FOR THE HARRISON INTERVENORS**

Meagan Martin  
STANDLY AND HAMILTON, LLP  
325 N. St. Paul, Suite 3300  
Dallas, Texas 75201  
(214) 234-7900  
(214) 234-7300 fax  
[mmartin@standlyhamilton.com](mailto:mmartin@standlyhamilton.com)  
**COUNSEL FOR HCF INVESTOR INTERVENORS**

Milton G. Hammond  
LAW OFFICE OF MILTON G. HAMMOND  
6406 La Manga Drive  
Dallas, Texas 75248  
(214) 642-0881  
(972) 782-4540 fax  
[mghammondlaw@gmail.com](mailto:mghammondlaw@gmail.com)  
**COUNSEL FOR THE MARLOW INTERVENORS**

Carl Galant  
Nicholas P. Laurent  
MCGINNIS LOCHRIDGE & KILGORE, LLP  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(512) 495-6000  
(512) 495-6093 fax  
[cgalant@mcginnislaw.com](mailto:cgalant@mcginnislaw.com)  
[nlaurent@mcginnislaw.com](mailto:nlaurent@mcginnislaw.com)  
**COUNSEL FOR THIRD PARTY DEFENDANTS RON  
JAMES, DON JAMES, AND JAMES SETTLEMENT  
SERVICES**

\_\_\_\_\_/s/ Michael D. Napoli  
Michael D. Napoli

# **Exhibit A**

RETIREMENT VALUE, LLC  
EDUARDO S. ESPINOSA, RECEIVER  
COX SMITH MATTHEWS INCORPORATED  
1201 ELM STREET, SUITE 3300  
DALLAS, TX 75270

November 16, 2015  
**Invoice No.3021811**

Legal Services Through 10/31/2015 in Connection With

**COUNSEL FOR RECEIVER OF RETIREMENT VALUE, LLC**

**Matter 734617-000001**

10/01/15	E. ESPINOSA	0.20	64.00	CORRESPOND WITH D. ANDREACCHI REGARDING UPDATE TO COMMUNICATIONS LOG (0.2).
10/02/15	E. ESPINOSA	0.20	64.00	ATTEND TO BOFI STATEMENT (0.2).
10/05/15	D. ANDREACCHI	1.20	206.34	RESPOND TO INVESTOR CALLS AND UPDATE COMMUNICATIONS LOG AND MAILING LIST RE SAME (1.2).
10/06/15	D. ANDREACCHI	0.30	51.59	RESPOND TO INVESTOR CALL AND EMAIL E. ESPINOSA RE DEATH OF E. RICHARDS
10/07/15	E. ESPINOSA	0.80	256.00	ATTEND TO ACCOUNTS PAYABLE (0.6); PROVIDE BKD WITH BOFI 2Q2015 STATEMENTS (0.2).
10/08/15	E. ESPINOSA	1.50	480.00	TELEPHONE CONFERENCE WITH TAVA SMITH (INVESTOR) (0.2); ATTEND TO ACCOUNTS PAYABLE AND ACCOUNT RECONCILIATIONS (1.3).
10/09/15	M. NAPOLI	0.70	313.60	PREPARE 3Q REPORT (0.6); E-MAIL CORRESPONDENCE WITH K. HENDERSON REGARDING INSURANCE CHECK (0.1).
10/14/15	E. ESPINOSA	0.70	224.00	CORRESPOND WITH A. WILLIAMS OF BKD REGARDING RV010 (0.3); DEPOSIT RV010 (0.4).

REMIT TO: DYKEMA COX SMITH  
112 East Pecan Street | Suite1800  
San Antonio, Tx 78205  
210.554.5500 tel | 210.226.8395 fax

# DYKEMA COX SMITH

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10/19/15	E. ESPINOSA	1.80	576.00	CONFER WITH A. WILLIAMS OF BKD REGARDING 3Q2015 CASH FLOWS (0.8); CORRESPOND WITH E. GARNETT REGARDING APPEAL FILINGS (0.1); ATTEND TO GRANADOS CHANGE OF ADDRESS (0.2); REVIEW CORRESPONDENCE FROM T. COSTA O/B/O B. NAKANA (0.5); TELEPHONE CONFERENCE WITH E. GARNETT REGARDING DOMESTICATION OF FOREIGN JUDGMENTS (0.5).
10/20/15	E. ESPINOSA	1.90	608.00	CONFER WITH R. ARBUCKLE (EASTWEST BANK) (0.3); TELEPHONE CONFERENCE WITH D. BRADLEY AT BMS (0.3); CORRESPOND WITH A. ARNOLD (ASG) REGARDING POLICY CORRESPONDENCE (0.2); ATTEND TO POLICY PREMIUM ANALYSIS (0.4); REVIEW 3Q2015 ACCOUNTS PAYABLE (0.7).
10/22/15	E. ESPINOSA	0.40	128.00	CONFER WITH G. QUINONES REGARDING WEBSITE TRANSFER (0.2); REPLY TO J. GARDNER (INVESTOR) REGARDING INQUIRY (0.2).
10/22/15	M. NAPOLI	0.10	44.80	E-MAIL CORRESPONDENCE WITH D. ANDREACCHI REGARDING WEBSITE (0.1).
10/22/15	D. ANDREACCHI	2.30	395.49	CONTINUE WORK ON NEW WEBSITE (2.3)
10/23/15	M. NAPOLI	0.60	268.80	WORK ON 3DQ REPORT (0.3); E-MAIL CORRESPONDENCE WITH D. BRADY (0.1); ATTENTION TO WEBSITE ISSUES (0.2).
10/23/15	D. ANDREACCHI	1.20	206.34	CONTINUE WORK ON WEBSITE DOCUMENT LINKS (1.0); EMAIL G. QUINONES RE ASSISTANCE WITH FILES (0.2).

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10/26/15	E. ESPINOSA	1.30	416.00	TELEPHONE CONFERENCE WITH T. COSTA (O/B/O B. NAKANO) (0.2); CORRESPOND WITH SAME CONFIRMING CORRECTION (0.7); CORRESPOND WITH I. ANTONGIORGI (0.2); CALL J. GARDNER (INVESTOR) REGARDING HER IRA (0.2).
10/26/15	M. NAPOLI	0.10	44.80	E-MAIL CORRESPONDENCE REGARDING WEBSITE (0.1).
10/26/15	D. ANDREACCHI	1.50	257.93	CONTINUE WORK ON WEBSITE DOCUMENTS (1.5).
10/27/15	D. ANDREACCHI	6.60	1,134.87	CONTINUE WORK ON WEBSITE DOCUMENTS AND LINKS (6.5); EMAIL G. QUINONES RE MISSING FILES (0.1).
10/28/15	E. ESPINOSA	1.20	384.00	CORRESPOND WITH J. MARINO (BOFI) (0.2); CONFER WITH D. ANDREACCHI REGARDING REVISED WEBSITE (0.3); CORRESPOND WITH R. ADAME (K&L) REGARDING OUTSTANDING ACCOUNTS RECEIVABLE (0.2); DRAFT 27TH FEE APPLICATION AND AFFIDAVIT (2.8 NO CHARGE).
10/28/15	M. NAPOLI	0.20	89.60	E-MAIL CORRESPONDENCE WITH D. ANDREACCHI REGARDING WEBSITE (0.1); E-MAIL CORRESPONDENCE WITH E. ESPINOSA REGARDING 3DQ REPORT (0.1).
10/28/15	D. ANDREACCHI	3.70	636.22	FINALIZE WEBSITE (1.60); TELEPHONE CONFERENCE WITH GODADDY REGARDING SWITCHING DOMAIN TO NEW WEBSITE (1.50); TELEPHONE CONFERENCE WITH GODADDY RE ACTIVATING EMAIL AND HOW TO ACCESS SAME (.40); TELEPHONE CONFERENCE WITH G. QUINONES RE PST FILE AND TERMINATION OF ORIGINAL WEBSITE (.20).
10/29/15	E. ESPINOSA	0.80	256.00	CONFER WITH M. NAPOLI AND D. ANDREACCHI REGARDING POSTING TO WEBSITE (0.3); TELEPHONE CONFERENCE WITH M. ESPARZA (0.5).

# DyKEMA COX SMITH

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10/30/15	M. NAPOLI	0.30	134.40	REVISE FEE APPLICATION 27 AND AFFIDAVIT IN SUPPORT (0.5 NO CHARGE); REVISE WEBSITE (0.3).
10/30/15	D. ANDREACCHI	0.60	103.17	UPDATE WEBSITE PER EMAIL FROM M. NAPOLI (.40); RESPOND TO EMAIL FROM INVESTOR (.20).

Total Hours 30.20

Total Fees \$ 7,343.95

### Professional Summary

Professional	Title	Hours Worked	Rate	Total Fees
E. ESPINOSA	Particip Member	10.80	320.00	3,456.00
M. NAPOLI	Particip Member	2.00	448.00	896.00
D. ANDREACCHI	Paralegal	17.40	171.95	2,991.95
Total All Professionals		30.20	\$ 243.18	\$ 7,343.95

**Total This Invoice \$ 7,343.95**

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
RETIREMENT VALUE, LLC, et al,	§	
	§	
Defendants.	§	126 <sup>th</sup> JUDICIAL DISTRICT

**AFFIDAVIT OF EDUARDO S. ESPINOSA**

BEFORE ME, the undersigned authority, on this day personally appeared Eduardo S. Espinosa, who is personally known to me, and after being duly sworn according to law, upon his/her oath duly deposed and said:

1. My name is Eduardo S. Espinosa. I am over the age of twenty-one (21) years, of sound mind, and fully competent to testify in this cause. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am a member of the law firm of Dykema Cox Smith (Dykema). I was admitted to practice law in the State of Louisiana in 1996 and in the State of Texas in 1999. Prior to entering private practice, I was an Enforcement Attorney with the United States Securities and Exchange Commission, where I investigated violations of and enforced the antifraud provisions of the federal securities laws. Since entering private practice in 1998, I have been counsel to multiple defendants in similar proceedings. I am familiar with the reasonable and customary fees charged by attorneys in this type of matter.

3. I am making this Affidavit in support of the Twenty-Eighth Application for Fees by the Receiver and Receiver's Counsel (the Application).

4. Pursuant to the Court's Order of May 5, 2010 and the Agreed Temporary Injunction Order of May 28, 2010 (the Agreed TI), I have employed professionals necessary "for an efficient and accurate administration of the receivership estate." To this goal, I have retained Dykema to represent me in connection with my duties and responsibilities as Receiver and have utilized a number of its respective lawyers and paralegals to assist me therewith. I have not acted as my own counsel.

5. Attached to this Affidavit (i) as Exhibits A through F are copies of Dykema's invoices for October 2015 through March 2016, respectively; (ii) as Exhibits G and H are copies of Dykema's invoices pertaining to the Scott Schroeder bankruptcy for October 2015 and February 2016, respectively; and (iii) as Exhibit I is a copy of Dykema's invoice pertaining to the McDermott litigation for October 2015 (collectively, the DCS Invoices). The DCS Invoices detail the services performed, during the corresponding months, by: (a) me, as Receiver; and (b) Dykema as Receiver's counsel. At the end of each Invoice is a Professional Summary that lists the professional staff that billed time to this matter during the relevant time period, the number of hours billed and their respective rates.

6. As a general matter, the charge for the services provided by Dykema are determined by multiplying the total number of hours worked by each timekeeper by that timekeeper's billing rate respective. The fees charged by the Receiver and his counsel represent a discount of approximately 18.35% from the usual and customary fees charged by Dykema. In this case, the billing rate of each

timekeeper was discounted from the usual and customary rates charged by the firm. The Receiver is charging \$320/hour, which represents a 29% discount from his usual and customary rate of \$450/hour for 2015 and a 33% discount from his usual and customary rate of \$475/hour for 2016. In addition, Dykema has discounted its rates for other timekeepers by 9.5%. In the aggregate the discounts and write-offs associated with this Application amount to \$10,426.79. The chart below summarizes the fees charged and the discounts applied.

<b>Invoice Summary</b>	
Services Rendered in:	Total
Fees Requested	
DCS	\$106,907.17
DCS- Schroeder Bankruptcy	\$537.07
DCS- McDermott, et.al.	\$491.05
<b>Total</b>	<b>\$107,935.29</b>
Receiver Incurred	\$53,587.50
Receiver Billed	\$36,800.00
Receiver adj	(\$16,787.50)
All other Tkpr Incurred	\$78,602.53
All other Tkpr Billed	\$71,135.29
(9.5%) adj.	(\$7,467.24)
Write-offs	
<b>Total Adj</b>	<b>(\$24,254.74)</b>

7. I have personal experience working with every person billing time to this matter, they are each of high quality and they have skills and expertise that are invaluable to assist me in performing my duties and responsibilities in this matter.

8. The hourly rates set forth in the Invoices are set at a level designed to compensate the firm fairly for the work of its staff and to cover fixed and routine overhead expenses. Such rates are normal and customary in this market for legal professionals with the same level of experience and expertise at comparable legal

firms in Texas. Dykema undertakes annual analyses of the markets in which it operates in order to determine the appropriate fees to charge for its professionals based on the fees charged by their competitors and peer firms. The goal of these analyses is to set rates for each professional at the median rate for professionals at peer firms in similar practices areas and similar experience. Accordingly, the rates charged by Dykema in this matter are well within the norm for firms of their type in Texas.

9. The hourly rates charged are reasonable rates for this case, given: (1) the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly; (2) the likelihood that the acceptance of the particular employment will preclude other employment by the respective professionals; (3) the fee customarily charged in the locality for similar services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or the circumstances; (6) the nature and length of the professional relationship with the client; and (7) the experience, reputation, and ability of the professionals performing the services.

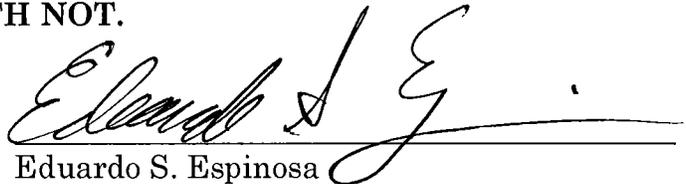
10. The amount billed for my services during the period covered by this application is \$36,800.00. The amount billed for my counsel's professional services during the period covered by this application is \$71,135.29. These amounts were calculated by taking the time billed for each task performed in connection with this case multiplied by the discounted hourly rate for the professional or staff member who performed the task. Based on my experience and knowledge of this matter, the

fees charged by myself and my team for work during the periods covered by this Fee Application are reasonable.

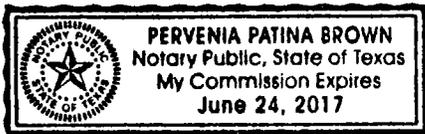
11. I have reviewed the DCS Invoices for services rendered during the periods covered by this Fee Application. Based on my experience and knowledge of this matter, the work performed by my staff during that period was reasonable and necessary to properly allow me to fulfill my duties and responsibilities in this case.

12. I engaged Lewis & Ellis to model the consolidated RV/HCF portfolio and advise the estate as to appropriate premium reserve levels and the portfolio's expected net cash at maturity. Their analysis was updated in connection with the most recent interim distributions. Lewis & Ellis determined that premium reserves of \$12,815,246 as of December 31, 2015 should suffice for 97.5% of the potential outcomes. After accounting for the interim distributions, the premiums paid since December 31, 2015, and the estate's collection of settlements and judgments; the estate maintains ample cash reserves from which to pay this Application.

**FURTHER AFFIANT SAYETH NOT.**

  
Eduardo S. Espinosa

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_ day of April 2016.



  
Notary Public  
My Commission Expires: