

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

FUNDING RESOURCE GROUP, a/k/a FRG Trust, et al.,
Defendants,

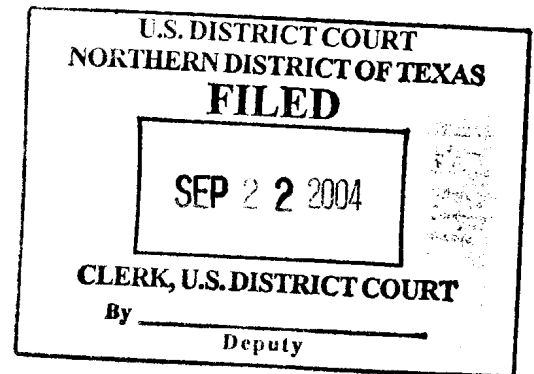
and

HOWE FINANCIAL TRUST, an Indiana corporation,
et al.,

Defendants Solely for Purposes
of Equitable Relief.

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CIVIL ACTION NO.
3:98-CV-2689-M



**RECEIVER'S FINAL APPLICATION TO ALLOW AND PAY (1) RECEIVER'S FEES
AND EXPENSES AND (2) ATTORNEYS' FEES AND EXPENSES AND BRIEF IN
SUPPORT (HAMMERSMITH TRUST RECEIVERSHIP ESTATE)**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Final Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses (Hammersmith Trust Receivership Estate) and in support of such would show unto the Court as follows:

BACKGROUND

1. On November 13, 1998, the Securities and Exchange Commission ("SEC") initiated these proceedings and, in connection therewith, sought the appointment of a receiver as to each of the named Defendants. On November 13, 1998, the Court issued its Order Appointing Temporary Receiver pursuant to which Michael J. Quilling was named Receiver ("Receiver").

2. On July 23, 1999, the Court issued an Order freezing the assets of and appointing Michael J. Quilling as the Receiver for Hammersmith Trust, LLC and a number of related entities [Docket No. 283].

3. Pursuant to the terms of each of the foregoing Orders, the Receiver was authorized to employ such attorneys as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership's Assets. Subsequent to his appointment, the Receiver employed the law firm of Quilling, Selander, Cummiskey, Clutts & Lownds, P.C., now known as Quilling Selander Cummiskey & Lownds, P.C. ("QSCL") as his general counsel. The Receiver is an attorney and a shareholder of the law firm and has rendered many of the legal services which are the subject of this Application as well as performing his duties as the Receiver.

4. On March 9, 2001 the Receiver filed his Unopposed Motion to Designate Receivership Estates [Docket No. 585]. By Order entered March 13, 2001 [Docket No. 588] the Court established four different receivership estates with respect to these proceedings. One of those established is the Hammersmith Trust Receivership Estate. It is comprised of the assets and claims with respect to Hammersmith Trust, L.L.C. (both Tennessee and Nevis, West Indies), Hammersmith Trust, Ltd., Bridgeport Alliance, L.L.C., Landfair Custodial Services, Inc., Microfund, L.L.C., American Pacific Bank & Trust, Inc., Eurofund Investments, Inc., B. David Gilliland and Melody Rose.¹

5. In contemplation of the Court entering an order establishing four different receivership estates, the Receiver began creating separate billing invoices for each estate beginning

¹ During the course of these receivership proceedings, a number of individuals associated with its operation were tried and convicted by the United States in Pensacola, Florida. As part of the sentencing and restitution orders, the Court ordered that Michael J. Quilling be appointed restitution receiver and that such funds be paid to him and distributed to victims as part of these proceedings. Accordingly, those payments are also included within the receivership estate.

February 1, 2001. Prior to that time, all time was billed to a common file. On March 9, 2001 the Receiver also filed a Motion to Allocate Fees Between Receivership Estates [Docket No. 584] pursuant to which he provided a detailed analysis of how all fees and expenses through November 30, 2000 should be allocated between the estates. The Court approved the Motion by Order entered April 13, 2001 [Docket No. 642].

6. From the time of his appointment through November 30, 2000 the Court approved, in full, eleven (11) interim fee applications. On March 5, 2001 the Receiver filed a Twelfth Interim Fee Application [Docket No. 577] covering the period from December 1, 2000 through February 28, 2001 which was denied without prejudice by Order entered March 8, 2001 [Docket No. 580]. Accordingly, the Receiver and his law firm have not been paid any fees with respect to the Hammersmith Trust Receivership Estate from December 1, 2000 to present. The Court did, however, allow payment of expenses from December 1, 2000 through July 31, 2001 and so no expenses are outstanding for that period.²

7. Therefore, this Application seeks approval and payment of the fees for the time period from December 1, 2000 through September 15, 2004 and approval and payment of expenses for the time period from August 1, 2001 through September 15, 2004.

19. During the period covered by this Application, the Receiver has incurred fees and expenses as to QSCL with respect to his activities as Receiver on a monthly basis as follows:

² These expenses were approved by virtue of Motions filed on March 15, 2001, June 4, 2001 and September 5, 2001 [Docket Nos. 594, 709 & 768] and Orders entered on April 16, 2001, July 16, 2001 and October 18, 2001 [Docket Nos. 646, 741 & 784].

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
December 2000 ³	\$4,878.00	Paid
January 2001 ³	\$10,311.00	Paid
February 2001	\$7,024.00	Paid
March 2001	\$11,868.50	Paid
April 2001	\$9,525.50	Paid
May 2001	\$9,524.00	Paid
June 2001	\$2,681.50	Paid
July 2001	\$10,540.00	Paid
August 2001	\$5,791.00	\$0.00
September 2001	\$3,432.00	\$61.00
October 2001	\$6,326.00	\$30.42
November 2001	\$1,158.50	\$315.13
December 2001	\$1,019.00	\$144.99
January 2002	\$2,128.00	\$83.65
February 2002	\$2,610.00	\$387.32
March 2002	\$650.50	\$436.06
April 2002	\$1,285.00	\$0.00
May 2002	\$2,655.50	\$18.04
June 2002	\$641.00	\$142.30
July 2002	\$1,428.50	\$9.49
August 2002	\$3,213.50	\$21.80
September 2002	\$184.50	\$3.20

³ Because these invoices pre-date the time when the Receiver began creating separate invoices by estate (February 1, 2001), they include time and expenses for all four estates. However, attached at the end of these two invoices is a breakdown of how the fees should be allocated. Only the amount of fees attributable to the Hammersmith Trust Receivership Estate is requested.

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
October 2002	\$4,272.50	\$6.50
November 2002	\$809.00	\$0.64
December 2002	\$302.50	\$1.05
January 2003	\$3,327.50	\$24.35
February 2003	\$192.50	\$0.00
March 2003	\$165.00	\$500.00
April 2003	\$555.00	\$0.00
May 2003	\$55.00	\$0.00
June 2003	\$280.00	\$0.00
July 2003	\$82.50	\$100.00
August 2003	\$82.50	\$0.00
September 2003	\$27.50	\$0.00
October 2003	\$133.50	\$25.29
November 2003	\$192.50	\$100.00
December 2003	\$1,268.50	\$7.80
January 2004	\$749.50	\$9.00
February 2004	\$2,016.00	\$0.40
March 2004	\$1,655.00	\$94.86
April 2004	\$2,826.00	\$105.38
May 2004	\$2,757.50	\$115.42
June 2004	\$2,751.00	\$39.71
July 2004	\$55.00	\$154.74
August 2004	\$220.00	\$73.84
September 2004	\$1,022.50	\$0.00
Totals:	\$124,674.00	\$3,012.48

20. Exhibit “A” which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of December 1, 2000 through September 15, 2004: (a) the number of hours worked by each attorney and staff member on a particular day, (b) the manner and type of work performed by each attorney and staff member, (c) the customary billing rate for each person rendering service in this matter, and (d) the monetary value assigned to each task performed by a given attorney and/or staff member. Each of the invoices attached hereto as Exhibit “A” reflect aggregate expenses by category during a given month.

JOHNSON FACTORS

21. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver and QSCL respectfully direct this Court’s attention to those factors generally considered by courts in awarding compensation to professionals for services performed in connection with the administration of a receivership estate. As stated by the Fifth Circuit Court of Appeals in *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998) “The calculation of attorneys fees involves a well-established process. First, the court calculates a ‘lodestar’ fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers. (cite omitted.) The court then considers whether the lodestar figure should be adjusted upward or downward depending on the circumstances of the case. In making a lodestar adjustment the court should look at twelve factors, known as the Johnson factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *overruled on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989). *Migis*, 135 F.3d at 1047. The court should pay “special heed” to factors 1,5, 8 and 9. *Id.*

The lodestar amount is presumed to be a reasonable fee and should be modified only in exceptional circumstances. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *Watkins v.*

Fordice, 7 F.3d 453, 457 (5th Cir. 1993). The fees and expenses of the Receiver and his counsel are calculated strictly by the lodestar method. The *Johnson* factors are discussed separately below. The factors do not warrant any downward adjustment.

(a) The Time and Labor Required. The Receiver and QSCL respectfully refer the Court's attention to Exhibit "A" which details the involvement of the Receiver and QSCL's attorneys in this case during the over three and one-half year period covered by this Application during which a total of more than 1,119 hours of attorney, Receiver and paralegal time have been expended. The Receiver respectfully submits that all of the costs incurred and services performed set forth in Exhibit "A" are compensable and represent actual and necessary services performed in properly representing the interests of the receivership estate.

(b) The Novelty and Difficulty of the Questions. Most of the tasks reflected in Exhibit "A" involved factual and legal questions which were of substantial complexity. In many instances the resolution of such questions required prompt and definitive action by the Receiver and QSCL within abbreviated time periods and costly travel. Throughout the period of time the Receiver has served, he has faced many difficult challenges not usually encountered in a normal case, each of which contributed substantially to higher costs and legal fees. Those challenges are explained in more detail in paragraph (h) but can be summarized as: (1) this case was a huge international fraud with bank accounts and investors spread around the world; (2) hostile and uncooperative former operators of the scam; (3) no books and records and no bank records; and (4) the required hotly contested litigation around the country.

(c) The Skill Requisite to Perform the Service. The Receiver believes that the services performed in this case have required individuals possessing considerable experience in asset seizure, tracing and liquidation. Both the Receiver and QSCL have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver and QSCL have not declined any representation solely because of their services as Receiver and counsel for the Receiver.

(e) The Customary Fee. The hourly rates sought herein are commensurate with, if not below, the rates charged by other practitioners of similar experience levels in the Northern District of Texas. During the course of these proceedings, the following lawyers at QSCL have performed legal services on behalf of the Receiver:

i. Michael J. Quilling, at an hourly rate of \$275.00. Mr. Quilling was admitted to the Texas Bar in 1982, and has been engaged in the full time practice of law at all times since his admission. He is board certified in civil trial law and business bankruptcy law by the Texas Board of Legal Specialization. He was selected by his peers as a *Texas Lawyer*, Super Lawyer for years 2003 and 2004. He is one of the most experienced SEC receivers in the United States and his practice is national in scope. He is a regular panelist at seminars conducted by the SEC for its personnel. He authored the chapter "Receiverships" in *Texas Foreclosure Law & Practice*, W. Mike Baggett, 1984. The SEC and the Department of Justice regularly submit his name as receiver in large complex cases. Although not requested in this case, Mr. Quilling's hourly rate is now \$350.00.

ii. D. Dee Raibourn, at an hourly rate of \$170.00. Mr. Raibourn was admitted to the Texas Bar in 1998 and has been engaged in the full time practice of law at all times since his admission. Since he began practicing, his practice has been primarily devoted to the representation of receivers.

(f) Whether the Fee is Fixed or Contingent. The Receiver's and QSCL's fees are fixed insofar as monies exist by way of Receivership Assets from which to pay such fees. Payment of such fees, however, is subject to Court approval.

(g) Time Limitations Imposed by the Client or Other Circumstances. The time requirements during the period covered by this Application have been extreme at times. In many instances, the Receiver and lawyers at QSCL were required to travel upon very short notice to properly perform their duties.

(h) The Amount Involved and the Results Obtained. The Hammersmith Trust Receivership Estate is one of the most complex and far-reaching prime bank scams prosecuted by the Department of Justice. In excess of \$100 million was raised from investors around the world who were promised returns of as much as 1,600% annually. The scam has been the subject of much media attention including the December, 2003 issue of *Smart Money*, a copy of which article is attached as Exhibit "B" for the Court's convenience.

When the Receiver was appointed, Hammersmith Trust and its various related entities had less than \$15,000 in bank accounts and no physical assets. Its books and records had been taken offshore and have never been recovered by the Receiver. However, the Receiver was able to obtain copies of some documents through cooperation with the criminal authorities and the issuance of hundreds of subpoenas. The forensic accounting required in order to reconstruct the bank records and trace the funds through in excess of 230 bank accounts involved over 33,000 account entries. The resulting spreadsheets allowed the Receiver to identify and sue many people who he thought would be a source of recovery and the accounting was extremely useful to the United States in the criminal trial which resulted in convictions of virtually all those involved. The efforts were expensive in terms of accounting and legal costs, but were absolutely necessary given the charge of the Receiver and in order to have any chance of recovering funds for investors. While these efforts did not immediately translate into money to the estate, they unquestionably laid the groundwork for all that followed. In addition, the accounting allowed the Receiver to recover approximately

\$653,000.00 without the need for lawsuits. As set forth in the Receiver's Final Report, the accounting fees in this case totaled about \$370,000.00 or roughly 19% of the total administrative costs.

Although not the primary focus of the Receiver's efforts, with only a couple of exceptions, every person indicted by the United States with respect to the scheme was convicted. The U.S. Attorney's Office touts the fact that both the Receiver's work and his accountant's work were a very important factor in getting the case to trial and, ultimately, prevailing. Although no monetary result can be associated with the result, it falls within the category of "priceless." Almost every investor has told the Receiver that if they couldn't get their money back, they wanted those responsible to go to jail. As a result of the convictions, the Receiver was appointed by the criminal court to handle restitution. Those funds, which total more than \$140,000.00, have been added to the estate from time to time.

Despite (1) the lack of initial funds in the estate; (2) the absence of records; and (3) the non-stop frustration of the Receiver's efforts by the target Defendants, the Receiver was able to bring substantial value to the case even though it was costly. Had the Receiver not undertaken the aggressive action in terms of filing lawsuits and tracing funds, the investors would have received absolutely nothing in this case. Although the distribution percentage is small it, nonetheless, represents a big improvement over what might have been and is actually very much in line with the distribution percentage in most of the cases prosecuted by the SEC or the Department of Justice. As with most cases of this type, the fraudsters absconded with the money and tried to make it as difficult as possible to recover, if ever at all. This case was no exception. Bank accounts were spread all over the world as were the few existing tangible assets requiring substantial travel expenses which were, simply, unavoidable if the Receiver and his lawyers and accountants were to do their job adequately.

As detailed in the Receiver's Final Report, he was able to collect in excess of \$3.5 million after starting with nothing. Most of these funds were the result of very difficult lawsuits around the country.

In particular, in his capacity as Receiver, the Receiver initiated and prosecuted the following litigation and in connection therewith, obtained the results indicated.

- (A) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, Microfund, LLC and B. David Gilliland v. Melody Wolcott Gilliland*; Cause No. 3:01-CV-1617-BD before the United States District Court for the Northern District of Texas.
 - i. general description: lawsuit to recover fraudulent transfers to former wife of David Gilliland.
 - ii. results achieved: judgment in the amount of \$266,790.00 plus post-judgment interest and costs; released as part of settlement of lawsuit described in paragraph B.

- (B) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, et al. v. The Wolcott Lifetime Trust and Jeffrey D. Saxon, Jr.*; Cause No. 1:00-CV-826 before the United States District Court for the Western District of Michigan.
 - i. general description: lawsuit to clear and obtain title to real property purchased with funds from defrauded Hammersmith investors; hotly contested litigation opposed by group of banks with mortgages against the property.
 - ii. results achieved: settlement of \$150,000.00 paid to receivership estate.

- (C) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC v. Douglas M. West Trust*; Cause No. 3:00-CV-1976-M before the United States District Court for the Northern District of Texas.
 - i. general description: lawsuit to recover fraudulent transfers to father of Bill West, owner of Bridgeport Alliance.
 - ii. results achieved: settlement in the amount of \$410,000 paid to receivership estate and release of any claims.

- (D) *Granite Holdings, LLC, et al. v. David Johnson*; Cause No. 00-209-G/V before the United States District Court for the Western District of Tennessee.
- i. general description: legal malpractice lawsuit brought by a group of Hammersmith Trust investors and the Receiver against Memphis attorney David Johnson for his role as trustee and counsel for Hammersmith Trust.
 - ii. results achieved: settlement in the amount of \$600,000.00 paid to the receivership estate and release of any claims.
- (E) *National Union Fire Insurance Co. v. United States Holdings, LLC*; Cause No. 01-0657-PHX-JWS before the United States District Court, Arizona District.
- i. general description: lawsuit brought by insurance company to rescind bond coverage and counterclaim by the Receiver to recover under bonds.
 - ii. results achieved: settlement in the amount of \$764,400.00 paid to the receivership estate.
- (F) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC and Microfund, LLC v. Anthony D. Cupini and Cadet Holdings*; Cause No. 3:00-CV-2258-M before the United States District Court for the Northern District of Texas.
- i. general description: lawsuit to recover fees paid to an agent/broker for Hammersmith Trust and Microfund programs.
 - ii. results achieved: settlement in the amount of \$50,000.00 paid to the receivership estate and release of any claims.
- (G) (a) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, et al. v. Jerrold L. Gunn, et al.*; Cause No. 3:00-CV-1318-M and (b) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*; Cause No. 3:01-CV-0177-M before the United States District Court for the Northern District of Texas.
- i. general description: lawsuit to recover fraudulent transfers from counsel for Hammersmith Trust.
 - ii. results achieved: judgment in the amount of \$10,000,000.00 obtained against Gunn; Merrill Lynch account garnished and \$77,277.85 recovered from the account and \$84,977.75 as result of contempt motion.

- (H) *Michael J. Quilling, Receiver for Hammersmith Trust, LLC, et al. v. Adam Shaw, et al.*; Cause No. 3:00-CV-1405-M before the United States District Court for the Northern District of Texas.
- i. general description: lawsuit to recover broker/agent fees for the Hammersmith Trust and Microfund programs.
 - ii. results achieved: judgments against Murray Stucker (\$156,700.00), Rick Shivell (\$98,377.50); Bancorp Mortgage (\$24,000.00), Chatham International (\$1,693,500.00), Summit Marketing (\$1,170,000.00), Canton & Associates (\$24,000.00), Leon Hurst (\$450,000.00), Thomas McCrimmon (\$415,000.00) and settlements with Michael Klein (\$30,000.00), Simplified Communications (\$26,993.65), Tom/Linda Smith (\$65,000.00), Greg Skibbee (\$20,000.00), Chris Carlson (\$500.00) and Leon Hurst (\$7,687.71) paid to the receivership estate.
- (I) *Michael J. Quilling, Receiver for Microfund, LLC v. Mark D. Talley, et al.*; Cause No. 00-3041-G/BRE before the United States District Court for the Western District of Tennessee.
- i. general description: lawsuit for legal malpractice with respect to the Microfund/Luxor program; attempted to intervene in coverage denial lawsuit between carrier and Talley.
 - ii. results achieved: lawsuit dismissed because of bankruptcy filing and denial of coverage in the insurance action.
- (J) *John Papagni, Pamela L. Albion, Byron W. Bacchi Irrevocable Trust by Eddie M. Bacchi, Trustee, Eddie M. Bacchi & Virginia M. Bacchi 1991 Living Trust by Eddie Bacchi, Trustee, and William L. Bacchi and Terri L. Bacchi Revocable Trust by William L. Bacchi, Trustee v. Hammersmith Trust, LLC, David Gilliland, [Jane Doe] Gilliland, [John Doe] Tsang, [John Doe] Houran and [John Doe] Van Aggol*; Civil Action No. 3:00-CV-1065-M before the United States District Court for the Northern District of Texas, Dallas Division.
- i. general description: lawsuit by various investors in California transferred to Dallas.
 - ii. results achieved: Agreed Judgment given to each investor.

In summary, in the aggregate, the foregoing litigation cost roughly \$756,000.00 in legal fees and expenses and resulted in cash recoveries to the estate of in excess of \$2,625,000.00 or about 28% of the amount recovered.

The Receiver also maintained a website, www.secreceiver.com on which he kept voluminous materials to allow interested parties to monitor the case. The Court regularly required the Receiver to use the website as an information and communication tool. Although the cost of doing so was not tremendous, it was a cost which did not translate into money recovered by the estate. However, its use did allow the estate to avoid fees and expenses which would have been necessary had the Receiver and his counsel been required to communicate directly with interested parties.

As part of the routine administration of the case, a claim form was approved and distributed. In excess of \$70 million in claims were submitted which the Receiver and his staff analyzed and ultimately, through much cost and effort, were reduced to a little over \$28 million. Had this effort not been undertaken, investors with legitimate claims would have received less and those with excessive or no claims would have received a windfall.

Finally, as a result of the Receiver's efforts and at his instruction, \$1.5 million was paid by Microfund, LLC directly back to the investors. Had the Receiver not undertaken his actions, Microfund investors would not have received a distribution whatsoever.

(i) The Experience, Reputation, and Ability of the Attorneys. QSCL has several attorneys who specialize exclusively in the practice of civil trial law. The practice of those attorneys regularly includes the representation of bankruptcy trustee and receivers. The reputation of QSCL's attorneys is recognized and respected in the community.

(j) The Undesirability of the Case. The representation of the Receiver incident to this case was not initially undesirable. However, to a degree it has become so by virtue of not being able to be paid for services rendered and expenses paid during a three and one-half year period.

(k) The Nature and Length of the Professional Relationship with the Client. QSCL did not represent the Receiver in these proceedings prior to being retained in these proceedings.

(l) Award in Similar Cases. QSCL believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases in this District.

WHEREFORE, PREMISES CONSIDERED, the Receiver and QSCL request that this Court approve all of the fees and expenses as set forth herein and for such other and further relief, general or special, at law or in equity, to which the Receiver and QSCL may show themselves justly entitled.

Respectfully submitted,

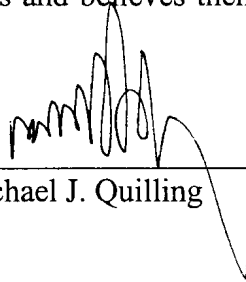
QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: _____
Michael J. Quilling
State Bar No. 16432300

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Prior to filing this Application, as required by the Order Appointing Temporary Receiver, I conferred with Marshall Gandy of the SEC regarding the filing of this Application. The SEC consents to payment of the requested fees and expenses and believes them to be necessary and reasonable.



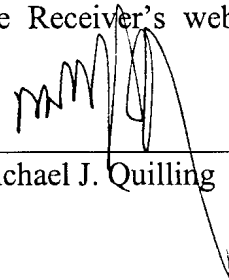
Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2004 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

Marshall Gandy
Securities & Exchange Commission
801 Cherry Street, 19th Floor
Fort Worth, Texas 76102

This Application will also be posted on the Receiver's website www.receiver.com immediately after filing.



Michael J. Quilling