

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

SECURITIES & EXCHANGE COMMISSION,	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION FILE
	)	NO. 3:02-CV-128-DCK
FREDERICK J. GILLILAND,	)	
Defendant,	)	
	)	
and	)	
	)	
MM ACMC BANQUE DE COMMERCE, INC.,	)	
Relief Defendant.	)	

**APPLICATION BY RECEIVER FOR  
COMPENSATION OF FEES AND REIMBURSEMENT OF EXPENSES FOR  
ACCOUNTANTS FOR RECEIVER AND BRIEF IN SUPPORT**

TO THE HONORABLE DAVID KEESLER, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files this his Application by Receiver for Compensation of Fees and Reimbursement of Expenses of Accountants for Receiver and Brief in Support (“Application”) and in support thereof would respectfully show unto the Court as follows:

**BACKGROUND**

1. On March 27, 2002, the Securities and Exchange Commission (“SEC”) filed a Complaint in these proceedings. On March 5, 2003, the SEC filed a Motion to Appoint a Receiver. Thereafter, on May 22, 2003, the Court issued its Order Appointing Receiver pursuant to which Michael J. Quilling was appointed to serve as Receiver in this case.

2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was authorized to employ such accountants as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets. Subsequent to his appointment, the Receiver employed

the accounting firm of Litzler, Segner, Shaw & McKenney as his accountants ("Accountants"). The Accountants have performed investigative and accounting services as requested by the Receiver.

3. This Application seeks approval and payment of the fees and reimbursement of expenses for the Accountants for the Receiver for the time period from August 2003 through November 2004. During the Period covered by this Application, the Accountants have incurred fees in the amount of \$22,142.00 and expenses in the amount of \$44.75 with respect to their activities.

4. Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period from August 2003 through November 2004: (a) the number of hours worked by each accountant and staff member on a particular day; (b) the manner and type of work performed by each accountant 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 accountant and/or staff member. The invoice attached hereto as Exhibit "A" reflects aggregate expenses by category.

#### **JOHNSON FACTORS**

5. In order to establish an objective basis for determining the amount of compensation that is reasonable for professionals' services, a court in the Fourth Circuit must consider the following twelve factors in awarding such fees:

- 1) Time and labor required;
- 2) Novelty and difficulty of the questions involved;
- 3) Skill requisite to perform the accounting services;
- 4) Exclusion of other employment by the accountants due to acceptance of the case;
- 5) The customary fee;

- 6) Whether the fee is fixed or contingent;
- 7) The amount involved and the results obtained;
- 8) The experience, reputation and the ability of the accountants;
- 9) The undesirability of the case;
- 10) The nature and length of the professional relationship with the client; and
- 11) Awards in similar cases.

*Barber v. Kimball's, Inc.* 577 F.2d 216, 226 (4<sup>th</sup> Cir. 1978).

6. Information exists that is pertinent to each of these factors and that may assist this Court in assessing the merits of this Application. The information is summarized by factor in the paragraphs below.

#### **TIME AND LABOR REQUIRED**

7. The Accountants have expended 168.50 hours in the performance of professional services for the Receiver from August 2003 through November 2004, resulting in total accounting fees of \$22,142.00.

8. The hourly billing rate of each professional and paraprofessional performing services on behalf of the Receiver are as follows:

Partner	\$395.00
Senior staff	\$210.00
Paraprofessional	\$125.00

9. The number of hours expended by each professional and paraprofessional are reflected in the summary attached hereto as Exhibit "A."

**NOVELTY AND DIFFICULTY OF QUESTIONS PRESENTED**

10. The Receiver believes that the accounting and tax questions encountered in representing the Receiver were of a complex and specialized nature, requiring a very high degree of skill in obtaining their successful resolution.

**SKILL REQUISITE TO PERFORM SERVICES PROPERLY**

11. The Accountants' firm has numerous members, including members who have performed services on behalf of the Receiver and who specialize exclusively in the practice of bankruptcy and insolvency accounting. Due to their expertise and skill in this highly specialized realm, the Receiver believes far more time would have been employed by less experienced professionals and with considerably less rewarding results. The array of financial and accounting consideration presented in this proceeding and the prompt and skillful action taken upon those problems by the Accountants required a very high degree of expertise and experience. Prompt, skillful action was utilized by the Accountants in providing professional services to the Receiver in this proceeding.

**EXCLUSION OF OTHER EMPLOYMENT**

12. The Receiver is unable to estimate the extent of other employment the Accountants were precluded from accepting by reason of the employment as accountants for the Receiver herein, but does not believe it to be significant.

**CUSTOMARY FEES**

13. The fees applied for herein are equivalent to customary fees allowed in other proceedings for similar services rendered and results obtained.

**WHETHER THE FEE IS FIXED OR CONTINGENT**

14. The fees of the Accountants are fixed insofar as funds exist with which to pay them from the Receivership Estate. Payment of such fees, however, is subject to Court approval.

**THE AMOUNT INVOLVED AND THE RESULTS OBTAINED**

15. This case involved the tracing of millions of dollars through multiple offshore accounts. The accounting and tracing issues are extremely complex. As a result of the efforts of the Accountants, the work has been accomplished.

**THE EXPERIENCE, REPUTATION AND ABILITY OF ACCOUNTANTS**

16. As stated above, the Accountants specialize in the practice of accounting and consultation. Much of the Accountants' practice has been devoted to asset management, accounting services, development of accounting data, preparation of tax returns for estates, formulation of plans of reorganization and consultation with creditors and estate representatives. The Accountants are recognized as experts in the accounting field and possess a reputation of high quality, integrity and ability.

**UNDESIRABILITY OF THE CASE**

17. The Receiver does not believe the subject case or the representation of the Receiver in this proceeding was "undesirable."

**NATURE AND LENGTH OF THE PROFESSIONAL  
RELATIONSHIP WITH THE CLIENT**

18. Prior to the institution of this proceeding, the Accountants have represented the Receiver from time to time with regard to general accounting matters and consultation in similar proceedings.

**AWARDS IN SIMILAR CASES**

19. The Receiver believes that the services rendered herein for the Receiver have substantially benefitted this estate and that such services are of a reasonable value. The Receiver further represents that the fees applied for are in conformity with fees allowed in similar proceedings for similar services rendered and results obtained.

WHEREFORE, the Receiver respectfully requests that the Court allow and authorize him to pay the requested compensation for professional services and expenses rendered by the Accountants for the Receiver in the sum of \$22,186.75, as per itemization in Exhibit "A" attached hereto.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.  
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Dallas, Texas 75201-4240  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By:  /s/ Michael J. Quilling  
Michael J. Quilling  
Texas State Bar No. 16432300  
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ATTORNEYS FOR RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of February, 2008 a true and correct copy of the foregoing document was served via first class mail, with full and proper postage prepaid thereon, to:

Graham Loomis  
Securities and Exchange Commission  
3475 Lenox Road, Suite 1000  
Atlanta, Georgia 30326

This Application will also be posted on the Receiver's website, [www.secreceiver.com](http://www.secreceiver.com) after filing.

*/s/ Michael J. Quilling*  
Michael J. Quilling