

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. |) | |

**RECEIVER’S UNOPPOSED EIGHTH INTERIM APPLICATION TO
ALLOW AND PAY (1) RECEIVER’S FEES AND EXPENSES
AND (2) ATTORNEYS’ FEES AND EXPENSES AND BRIEF IN SUPPORT**

TO THE HONORABLE DAVID C. KEESLER, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Unopposed Eighth Interim Application to Allow and Pay (1) Receiver’s Fees and Expenses and (2) Attorneys’ Fees and Expenses and in support of such would show unto the Court as follows:

BACKGROUND

1. On March 5, 2003 the United States Securities and Exchange Commission filed a Motion to Appoint Receiver in these proceedings. On May 22, 2003 the Court issued an Order appointing Michael J. Quilling as receiver and he continues to function in that capacity.

2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was authorized to employ such attorneys as is necessary and proper in connection with performing his duties. Subsequent to his appointment, the Receiver employed the law firm of 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.

3. On October 8, 2003 the Receiver filed his First Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from July 1, 2003 through September 30, 2003. On November 24, 2003 the Court entered an Order Approving the First Interim Application and thereafter QSCL was paid \$69,746.32 of fees and expenses.

4. On February 13, 2004 the Receiver filed his Second Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from October 1, 2003 through January 31, 2004. On June 1, 2004 the Court entered an Order Approving the Second Interim Application and thereafter QSCL was paid \$91,634.81 of fees and expenses.

5. On June 9, 2004 the Receiver filed his Third Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from February 1, 2004 through April 30, 2004. On July 20, 2004 the Court entered an Order Approving the Third Interim Application and thereafter QSCL was paid \$25,548.25 of fees and expenses.

6. On October 13, 2004 the Receiver filed his Fourth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from May 1, 2004 through September 30, 2004. On October 27, 2004 the Court entered an Order Approving the Fourth Interim Application and thereafter QSCL was paid \$18,336.98 of fees and expenses.

7. On January 20, 2005 the Receiver filed his Fifth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period

from October 1, 2004 through December 31, 2004. On April 14, 2005 the Court entered an Order Approving the Fifth Interim Application and thereafter QSCL was paid \$6,684.27 of fees and expenses.

8. On April 27, 2005 the Receiver filed his Sixth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from January 1, 2005 through March 31, 2005. On May 25, 2005 the Court issued an Order Approving the Sixth Interim Application and thereafter QSCL was paid \$29,908.15 of fees and expenses.

9. On August 25, 2005 the Receiver filed his Seventh Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fee and Expenses for the time period from April 1, 2005 through July 31, 2005. On September 15, 2005 the Court issued an Order Approving the Seventh Interim Application and thereafter QSCL was paid \$52,581.10 of fees and expenses.

10. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSCL for the time period from August 1, 2005 through October 31, 2005.

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

| <u>Month</u> | <u>Fees</u> | <u>Expenses</u> |
|----------------|-------------------|-------------------|
| August 2005 | \$1,986.50 | \$1,198.00 |
| September 2005 | \$1,707.50 | \$13.77 |
| October 2005 | \$4,725.00 | \$23.93 |
| TOTAL: | \$8,419.00 | \$1,235.70 |

12. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of August 1, 2005 through October 31, 2005: (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

13. 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)." The Johnson factors have been expressly adopted by the Fourth Circuit. See, *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 (4th Cir. 1978). Those factors as applied to the services rendered in this case by the Receiver and QSCL are addressed below.

(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 three-month period covered by this Application during which a total of more than 32 hours of attorney, paraprofessional and Receiver time have been expended.

(b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in Exhibit "A" involved factual and legal questions which were of substantial complexity.

(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 the rates charged by other practitioners of similar experience levels in the Western District of North Carolina. During the course of these proceedings, the following lawyers at QSCL have performed legal services on behalf of the Receiver with respect to these proceedings: Michael Quilling (\$350.00 per hour) licensed in Texas in 1982 and Texas Board Certified in Business Bankruptcy Law and Civil Trial Law; Dee Raibourn (\$190.00 per hour) licensed in Texas in 1998; Michael D. Clark (\$195.00 per hour) licensed in Texas in 1997; Marcie L. Schout (\$195.00 per hour) licensed in Texas in 2000; and Hudson Jobe (\$175.00 per hour) licensed in Texas in 2003.

(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 normal.

(h) The Amount Involved and the Results Obtained. The Receiver has been charged with the task of tracing the origin of millions of dollars of funds raised from defrauded investors, developing a claims process and making recommendations to the Court regarding distributions. During the period covered by this Application the Receiver has made considerable progress in this regard. In addition, the Receiver has retained counsel in Canada and successfully seized and sold a \$1.5 million (Canadian) house in Canada owned by Fred Gilliland and has seized all of his other physical assets and records. The Receiver has also filed two lawsuits against several individuals and entities to recover fraudulent transfers. The Receiver continues to devote a substantial amount of time to continuing the tracing of funds and locating investors. Finally during the period covered by this Application, the Receiver has assisted in the successful conviction of Gilliland.

(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 their community in Texas.

(j) The Undesirability of the Case. The representation of the Receiver incident to this case has not been undesirable.

(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 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Michael J. Quilling
Michael J. Quilling
Texas State Bar No. 16432300
Email: mquilling@qsclpc.com

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Prior to filing this Application, I conferred with counsel for the SEC. He does not oppose the Application.

/s/ Michael J. Quilling
Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2005 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

W. Robinson Deaton, Jr.
Deaton & Biggers, PLLC

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3475 Lenox Road, Suite 1000
Atlanta, Georgia 30326

402 East Graham Street
Shelby, North Carolina 28150

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

/s/ Michael J. Quilling
Michael J. Quilling