

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: ALL FUNDS ON DEPOSIT IN)	
ACCOUNT NUMBER 000669829075 in)	
THE BANK OF MM APMC BANQUE DE)	
COMMERCE, INC., AT NATIONSBANK,)	
N.A., CONSISTING OF \$18,756,420.97,)	
<u>MORE OR LESS.</u>)	C.A. NO. 3:98-MC-96-McK
GEORGE AND DOLORES ROLLAR,)	
Plaintiffs,)	
v.)	C.A. NO. 3:01-CV-205-McK
)	
UNITED STATES OF AMERICA, et al.,)	
Defendants,)	
)	(CASES CONSOLIDATED)
RICHARD VASQUEZ,)	
<u>Intervener.</u>)	

**RECEIVER’S FINAL 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 Final 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 October 11, 2001 the Court issued its Consent Order regarding the appointment of a receiver in these proceedings (“Consent Order”). Thereafter, on October 29, 2001 the Court issued its Order Appointing Receiver pursuant to which Michael J. Quilling was specifically appointed to serve as Receiver in this case.

2. Pursuant to the terms of the Consent Order, the Receiver was authorized to employ such attorneys as is necessary and proper in connection with the claims process. 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 February 15, 2002 the Receiver filed his Unopposed First Interim Application to Allow and Pay (1) Receiver’s Fees and Expenses and (2) Attorney’s Fees and Expenses for the time period from October 1, 2001 through January 31, 2002. On February 20, 2002 the Court entered an Order Approving the First Interim Application and thereafter QSCL was paid \$71,916.77 of fees and expenses.

4. On May 8, 2002 the Receiver filed his Unopposed Second Interim Application to Allow and Pay (1) Receiver’s Fees and Expenses and (2) Attorney’s Fees and Expenses for the time period from February 1, 2002 through April 30, 2002. On May 10, 2002 the Court entered an Order Approving the Second Interim Application and thereafter QSCL was paid \$72,877.21 of fees and expenses.

5. On August 12, 2002 the Receiver filed his Unopposed Third 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, 2002 through July 31, 2002. On August 16, 2002, the Court entered an Order Approving the Third Interim Application and thereafter QSCL was paid \$50,288.94 of fees and expenses.

6. On November 12, 2002 the Receiver filed his Unopposed Fourth Interim Application to Allow and Pay (1) Receiver’s Fees and Expenses and (2) Attorneys’ Fees and Expenses for the time period from August 1, 2002 through October 31, 2002. On November 14, 2002, the Court

entered an Order Approving the Fourth Interim Application and thereafter QSCL was paid \$117,104.73 of fees and expenses.

7. On February 27, 2003 the Receiver filed his Unopposed Fifth Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorney's Fees and Expenses for the time period from November 1, 2003 through January 31, 2003. On February 28, 2003 the Court entered an Order Approving the Fifth Interim Application and thereafter QSCL was paid \$76,857.88 of fees and expenses.

8. On May 19, 2003 the Receiver filed his Unopposed Sixth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from February 1, 2003 through April 30, 2003. On June 16, 2003 the Court entered an Order Approving the Sixth Interim Application and thereafter QSCL was paid \$53,861.34 of fees and expenses.

9. On August 13, 2003 the Receiver filed his Unopposed Seventh Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from May 1, 2003 through July 31, 2003. On November 21, 2003 the Court entered an Order Approving the Seventh Interim Application and thereafter QSCL was paid \$33,961.58 of fees and expenses and Mary Vance was paid \$27,780.00 of fees.

10. On November 14, 2003 the Receiver filed his Unopposed Eighth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from August 1, 2003 through October 31, 2003. On December 8, 2003 the Court entered an Order Approving the Eighth Interim Application and thereafter QSCL was paid \$50,824.66 of fees and expenses.

11. On February 17, 2004 the Receiver filed his Unopposed Ninth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from November 1, 2003 through January 31, 2004. On June 1, 2004 the Court entered an Order Approving the Ninth Interim Application and thereafter QSCL was paid \$6,705.48 of fees and expenses.

12. On June 9, 2004 the Receiver filed his Unopposed Tenth Interim Fee 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 Tenth Interim Application and thereafter QSCL was paid \$43,563.74 of fees and expenses.

13. On October 18, 2004 the Receiver filed his Unopposed Eleventh Interim Fee 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 November 3, 2004 the Court entered an Order Approving the Eleventh Interim Application and thereafter QSCL was paid \$77,470.86 of fees and expenses (as to the main case) and \$595.00 of fees and expenses (as to the IIG file).

14. On January 21, 2005 the Receiver filed his Unopposed Twelfth Interim Fee 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 February 24, 2005 the Court entered an Order Approving the Twelfth Interim Application and thereafter QSCL was paid \$13,518.17 of fees and expenses (as to the main case) and \$8,170.00 of fees and expenses (as to the IIG file).

15. On April 27, 2005 the Receiver filed his Unopposed Thirteenth Interim Fee 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 entered an Order Approving the Thirteenth Interim Application and thereafter QSCL was paid \$27,681.18 of fees and expenses (as to the main case) and \$1,185.00 of fees and expenses (as to the IIG file).

16. On August 25, 2005 the Receiver filed his Unopposed Fourteenth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from April 1, 2005 through July 31, 2005. On September 15, 2005 the Court entered an Order Approving the Fourteenth Interim Application and thereafter QSCL was paid \$5,851.74 of fees and expenses (as to the main case) and \$3,692.50 of fees and expenses (as to the IIG file).

17. On November 16, 2005 the Receiver filed his Unopposed Fifteenth Interim Fee Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from August 1, 2005 through October 31, 2005. On December 28, 2005 the Court entered an Order Approving the Fifteenth Interim Application and thereafter QSCL was paid \$4,331.77 of fees and expenses (as to the main case) and \$360.00 of fees and expenses (as to the IIG file).

18. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSCL for the time period from November 1, 2005 through October 31, 2006.

19. 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:

MAIN CASE

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
November 2005	\$837.50	\$24.04
December 2005	\$2,734.50	\$0.00
January 2006	\$315.00	\$25.58
February 2006	\$3,198.00	\$83.96
March 2006	\$10,645.00	\$364.26
April 2006	\$984.00	\$2,214.92
May 2006	\$320.00	\$3.80
June 2006	\$3,810.00	\$2.00
July 2006	\$553.50	\$98.26
August 2006	\$245.00	\$0.00
September 2006	\$149.00	\$2.60
October 2006	\$12,440.00	\$109.00
TOTAL:	\$36,231.50	\$2,928.42

IIG Investor Funds¹

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
November 2005	\$105.00	\$0.00
December 2005	\$609.00	\$0.00
January 2006	\$160.00	\$2.26
February 2006	\$175.00	\$0.00
March 2006	\$1,166.00	\$0.63
April 2006	\$1,792.00	\$79.07
May 2006	\$624.00	\$10.06
June 2006	\$245.00	\$0.00
July 2006	\$70.00	\$0.00
August 2006	\$6,589.00	\$0.00
September 2006	\$110.00	\$0.00
October 2006	\$363.00	\$0.00
TOTAL:	\$12,008.00	\$92.02
AGGREGATE TOTAL:	\$48,239.50	\$3,020.44

20. Exhibit "A" (for the main case) and Exhibit "B" (for the IIG Investors) which are attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of November 1, 2005 through October 31, 2006: (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

¹ Starting September 1, 2004 the Receiver created a separate billing file for International Investment Group (IIG) so that fees and expenses which relate to those funds and claims (pursuant to Court Order of April 20, 2004) can be tracked separately and paid out of those funds.

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 Exhibits “A” and “B” 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).” 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 Exhibits “A” and “B” which details the involvement of the Receiver and QSCL’s attorneys in this case during the twelve-month period covered by this Application during which a total of more than 273 hours of attorney, paraprofessional and Receiver time have been

expended. (b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in Exhibits "A" and "B" 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: Mike 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; and Brent Rodine (\$150.00 per hour) licensed in Texas in 2005.

(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 in excess of \$18.8 million of seized funds, developing a claims

process and making recommendations to the Court regarding distributions. During the period covered by this Application the Receiver has addressed the following matters:

- (1) Handled matters relating to a supplemental distribution;
- (2) Handled general administrative matters;
- (3) Handled matters relating to funds seized in Norway;
- (4) Communicated with numerous investors; and
- (5) Continued website updates.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2006 a true and correct copy of the foregoing document was served via first class mail, with full and proper postage prepaid thereon, to:

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

 /s/ Michael J. Quilling

Michael J. Quilling