

2017

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

IN RE: ALL FUNDS ON DEPOSIT IN)
ACCOUNT NUMBER 000669829075 in)
THE BANK OF MM ACMC BANQUE DE)
COMMERCE, INC., AT NATIONSBANK,)
N.A., CONSISTING OF \$18,756,420.97,)
MORE OR LESS.)

C.A. NO. 3:98mc96-McK

GEORGE AND DOLORES ROLLAR,)
Plaintiffs,)

v.)

C.A. NO. 3:01CV205-McK

UNITED STATES OF AMERICA, et al.,)
Defendants,)

(CASES CONSOLIDATED)

RICHARD VASQUEZ,)
Intervener.)

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

TO THE HONORABLE H. BRENT McKNIGHT, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files this his Unopposed First Interim 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 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 each of the Orders, 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 November 1, 2001 through March 31, 2003. During the Period covered by this Application, the Accountants have incurred fees in the amount of \$44,603.00 and expenses in the amount of \$2,386.46 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 November 1, 2001 through March 31, 2003: (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 (4th 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 199.00 hours in the performance of professional services for the Receiver from November 1, 2001 through March 31, 2003, resulting in total accounting fees of \$44,603.00.

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

Partner	\$275.00
Staff Accountant	\$190.00
Paraprofessional	\$55.00-110.00

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 involves in excess of \$20 million invested by hundreds of persons and entities. The accounting and tracing issues are extremely complex. As a result of the efforts of the Accountants, much of the work has already 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 of this date in the approximate amount of \$44,603.00 plus expenses in the amount of \$2,386.46. 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 \$46,489.46, as per itemization in Exhibit "A" attached hereto.

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:

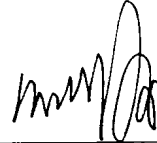


Michael J. Quilling
State Bar No. 16432300

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Prior to filing this Application, I conferred with all counsel of record. None of them oppose the Application.



Michael J. Quilling

CERTIFICATE OF SERVICE

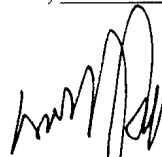
I hereby certify that on the 16th day of July, 2003 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

William A. Brafford
Assistant United States Attorney
United States Attorney's Office for
the Western District of North Carolina
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This Application will also be posted on the Receiver's website, www.secreceiver.com, immediately after filing.



Michael J. Quilling