

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
MAR - 9 2001  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Dopps

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

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

and

Defendants Solely for Purposes  
of Equitable Relief.

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) the receiver appointed in these proceedings  
this files this his Unopposed Motion to Allocate Fees Between Receivership Estates and Pay Same  
and in support of such would show unto the Court as follows:

1. On November 13, 1998 the United States Securities and Exchange Commission (“SEC”) initiated these proceedings and, in connection therewith, requested the appointment of a receiver. By Order dated November 13, 1998, (the “November 13, 1998 Receivership Order”) Michael J. Quilling was appointed receiver and he continues to function in that capacity since that time.

2. On November 30, 1998 the Court held a hearing to determine whether the receivership should remain in place. After hearing evidence and argument, the Court made the

receivership and the appointment of the Receiver permanent for the duration of the proceedings, all as set forth in the Court's Order of January 12, 1999.

3. On July 23, 1999 the Court issued an Order expanding the receivership as to additional individuals and entities and appointed Michael J. Quilling to act as Receiver (the "July 23, 1999 Receivership Order"). Since that time he has continued to function in such capacity.

4. Both the November 13, 1998 Receivership Order and the July 23, 1999 Receivership Order provide in pertinent part as follows:

\* \* \*

J. The Temporary Receiver be and hereby is authorized to employ such employees, accountants and attorneys as may be necessary and proper for the collection, preservation, maintenance and operation of the Receivership Assets. . .

\* \* \*

N. The Temporary Receiver shall seek and obtain the approval of this Court prior to disbursement of professional fees and expenses to the Temporary Receiver or his counsel and/or accountants, by presentation of a written application and after consultation with the Commission. All costs incurred by the Temporary Receiver shall be paid from the Receivership Assets. . .

\* \* \*

5. Since his appointment, the Receiver has employed his law firm, Quilling, Selander, Cummiskey & Lownds, P.C. ("QSCL") to act as his general counsel in this case and Litzer, Segner, Shaw, Mckenney & Dohmeyer ("LSSMD") to act as his accountants in this case. Through February

28, 2001, the Receiver and QSCL have filed the following fee applications each of which has been approved without reduction:

<u>Date Filed</u>	<u>Title</u>	<u>Amount</u>	<u>Date of Order Approving</u>
01/15/99	First Interim	\$ 71,947.46	02/10/99
03/16/99	Second Interim	\$ 87,616.69	03/25/99
05/16/99	Third Interim	\$ 131,814.08	05/25/99
07/15/99	Fourth Interim	\$ 89,383.54	07/20/99
09/22/99	Fifth Interim	\$ 132,727.26	10/01/99
11/15/99	Sixth Interim	\$ 166,805.43	11/29/99
02/07/00	Seventh Interim	\$ 85,300.36	03/17/00
03/28/00	Eighth Interim	\$ 83,332.54	04/04/00
05/16/00	Ninth Interim	\$ 100,980.08	06/06/00
09/05/00	Amended Tenth Interim	\$ 230,562.17	10/06/00
12/04/00	Eleventh Interim <sup>1</sup>	\$ 214,138.02	01/08/01

6. Through February 28, 2001, LSSMD has filed the following fee applications each of which has been approved without reduction:

<u>Date Filed</u>	<u>Title</u>	<u>Amount</u>	<u>Date of Order Approving</u>
01/15/99	First Interim	\$ 83,900.33	07/02/99
03/16/99	Second Interim	\$ 80,762.22	11/29/99
05/13/99	Third Interim	\$ 11,008.40	03/20/99
07/15/99	Fourth Interim	\$ 197,536.81	10/06/00
09/22/99	Fifth Interim	\$ 107,041.46	01/08/01

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<sup>1</sup>This Application, for the first time, separated fees/expenses between the "Main Case" and the fees/expenses requested by QSCL as to out-of-state litigation (the Wolcott, Johnson and Talley cases pending in other states).

7. Since his appointment, the Receiver and QSCL have, pursuant to Orders issued by the Court, filed separate fee applications with respect to each pending lawsuit initiated by the Receiver pending before this Court. The fees/expenses awarded by virtue of these applications have no impact upon the allocation analysis discussed below because in each instance, after the particular application was approved, it was paid by the Receiver out of the receivership estate to which it was applicable.

8. Since his appointment, the Receiver has also employed various law firms to assist and represent the Receiver in proceedings pending in other jurisdictions. The fees/expenses awarded by virtue of these applications have no impact upon the allocation analysis discussed below because in each instance, after the particular application was approved, it was paid by the Receiver out of the receivership estate to which it was applicable.

9. During the course of this case, the Receiver initially acted as Receiver for 19 individuals and entities (November 13, 1998 Receivership Order), and subsequently for 9 additional individuals and entities (July 23, 1999 Receivership Order). Although there are a large number of individuals and entities and although the Orders of the Court have always treated the case as one big receivership estate<sup>2</sup>, from the Receiver's perspective, the case really consists of four distinct groups, each of which comprise a separate receivership estate<sup>3</sup>. They are as follows:

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<sup>2</sup>For instance, the November 13, 1998 Receivership Order defines Receivership Assets as any and all assets, monies and properties, real and personal, tangible and intangible, of whatever kind and description, and wherever situated, belonging to FGR, Hix, Coulter, Roberts, MVP, FMCI, Funders Marketing, Parr, Smith, McKinney, Fortune, Cord, Winterhawk, IGW, Hicks, Weaver, Howe and Treds.

<sup>3</sup>Contemporaneous with the filing of this Motion, the Receiver has also filed an Unopposed Motion to Designate Receivership Estates.

**I. Cord/Winterhawk**

This estate is compromised of the assets and recoveries traceable to Robert Cord a/k/a/ Robert F. Schoonover, Jr. and Winterhawk West Indies, Ltd. Through February 28, 2001 the Receiver has collected a total of \$2,150,228.77 for this estate and, net of expenses, is holding \$1,474,664.46 .

**II. Funding Resource Group**

This estate is compromised of the assets and recoveries traceable to Funding Resource Group, FRG Trust, FMCI Trust, Funders Marketing Company, Inc., MVP Network, Inc., MVP Network Trust, Fortune Investments, Ltd., Treds Financial Trust, Steve Roberts, Raymond Parr, Quentin Hix, Gene Coulter, Vearl Smith, Earl McKinney, Don Hicks, Carl Weaver and Mary Ann Bauce. Through February 28, 2001 the Receiver has collected a total of \$930,993.71 for this estate and, net of expenses, is holding \$409,514.46.

**III. Howe Financial Trust**

This estate is compromised of the assets and recoveries traceable to Howe Financial Trust. Through February 28, 2001 the Receiver has collected a total of \$1,426,443.97 for this estate and, net of expenses, is holding \$787,724.11.

**IV. Hammersmith Trust**

This estate is comprised of the assets and recoveries traceable 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. Through February 28, 2001 the Receiver has collected a total of \$827,721.00 for this estate and, net of expenses, is holding \$542,635.49.

10. As the Receiver has submitted fee applications as set forth above, and as those applications have been approved, he has paid the fees from whichever of the foregoing four receivership estates had funds available at the time. In some instances, the Receiver has estimated the amount of a given fee application attributable to a particular estate and has divided payment accordingly. By way of example, the Receiver's First Interim Application (\$71,947.46) was paid entirely from the Funding Resource estate because, at the time, it was the only one with funds available, even though not all of the fees and expenses were attributable to work performed on behalf of the Funding Resources estate. Similarly, the Receiver's Second Interim Fee Application (\$87,656.69) was paid \$42,616.69 from the Cord/Winterhawk estate and \$45,000.00 from the Howe estate, again even though not all of the fees were attributable to those estates and in those amounts. It has always been the stated intention of the Receiver to, at the appropriate time, audit the fees and determine the exact amount of the total fees attributable to the respective four estates.

11. In that the Receiver is now working diligently to make final and partial distributions to investors of the respective four estates, the Receiver has performed an audit of the fees approved to determine the amount which is attributable to each estate. In addition, the Receiver has performed an audit of the amount paid by each estate versus the amount actually attributable to that estate. Attached hereto as Exhibit A and Exhibit B are summary schedules which show how each approved fee application of QSCL (including the Main Case and the included but separate requests as to QSCL for out of state litigation) and LSSMD were paid out of the four respective receivership estates. Exhibits A and B also reflect the Receiver's proposal as to how fees should be allocated as to each

fee application of QSCL and LSSMD<sup>4</sup>. The difference between how fees/expenses should be allocated versus how they were actually paid is set forth in the Difference Summary of Exhibit A and Exhibit B. In summary, it reveals the following:

	Total Difference		
	QSCL	LSSMD	Totals
Cord: \$	(307,857.87)	\$ (10,000.00)	\$ (317,857.87)
Funding: \$	(33,273.24)	\$ (205,116.53)	\$ (238,389.77)
Howe: \$	(210,230.86)	\$ (39,818.32)	\$ (250,049.18)
Hammersmith: \$	551,361.97	\$ 254,934.85	\$ 806,296.82

Accordingly, if the Court approves the allocations proposed by the Receiver, the Hammersmith Trust estate owes each of the other estates as set forth above.

12. So that the Receiver can move toward making distributions and closure of the receivership estates, the Receiver requests that the Court hold an evidentiary hearing to consider and approve the audit and allocations and authorize the Receiver, as funds are available, to make the appropriate transfers between the respective estates. In particular, the Receiver requests approval to cause the Hammersmith estate to pay \$317,857.87 at this time to the Cord/Winterhawk estate.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests that upon final hearing and consideration of this Motion that the Court approve the audit/allocations and authorize the Receiver to make the required transfers and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

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<sup>4</sup>The summary analysis attached as Exhibit A is also available on a month by month basis along with detail of each allocation. Due to its voluminous nature it is not attached to this Motion.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY  
& LOWNDS, P.C.

By: \_\_\_\_\_

Michael J. Quilling  
State Bar No. 16432300

2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Fax)

ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF CONFERENCE**

I certify that prior to filing this Motion I conferred with Bob Brunig of the SEC and he does not oppose the Motion. None of the Defendants represented by counsel are affected by the Motion and it is presumed they do not oppose it. Accordingly, the Motion is presented as unopposed.

\_\_\_\_\_  
Michael J. Quilling



**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of March, 2001 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, to the following parties:

Robert B. Brunig  
Securities & Exchange Commission  
801 Cherry Street, 19th Floor  
Fort Worth, Texas 76102

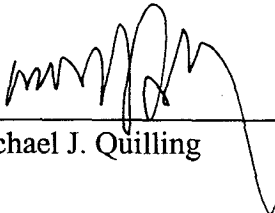
Wendell A. Odom, Jr.  
440 Louisiana, Suite 800  
Houston, Texas 77002

S. Cass Weiland  
Sheinfeld, Maley & Kay, P.C.  
1700 Pacific Avenue, Suite 4400  
Dallas, Texas 75201-4618

Deborah Goodall  
Goodall & Sooter  
12830 Hillcrest Rd., Suite 111  
Dallas, Texas 75230

Dan R. Waller  
Secore & Waller, LLC  
13355 Noel Road, Suite 2290  
Dallas, Texas 75240

This Motion will also be posted on the Receiver's website [www.receiver.com](http://www.receiver.com) immediately after filing.

  
\_\_\_\_\_  
Michael J. Quilling

# QSCL - Fees and Expenses

Allocation Per Receivership Estate

## AMOUNT BILLED ALLOCATED PER ESTATE

	Fee App 1 11/98-12/98	Fee App 2 1/99-2/99	Fee App 3 3/99-4/99	Fee App 4 5/99-6/99	Fee App 5 7/99-8/99	Fee App 6 9/99-10/99
Cord:	\$ 12,428.40	\$ 21,092.78	\$ 44,899.35	\$ 42,911.70	\$ 27,949.11	\$ 36,839.43
Funding:	\$ 32,675.81	\$ 28,681.62	\$ 20,184.69	\$ 28,831.84	\$ 29,660.38	\$ 13,885.64
Howe:	\$ 26,843.25	\$ 37,842.29	\$ 66,730.04	\$ 17,640.00	\$ 28,623.77	\$ 372.50
Hammersmith:	\$ -	\$ -	\$ -	\$ -	\$ 46,494.00	\$ 115,757.86
	\$ 71,947.46	\$ 87,616.69	\$ 131,814.08	\$ 89,383.54	\$ 132,727.26	\$ 166,855.43

	Fee App 7 11/99-12/99	Fee App 8 1/00-2/00	Fee App 9 3/00-4/00	Fee App 10 5/00-8/00	Fee App 11 9/00-11/00	Total
Cord:	\$ 15,470.98	\$ 36,830.44	\$ 20,009.64	\$ 15,680.74	\$ 3,022.50	\$ 277,135.07
Funding:	\$ 19,034.30	\$ 8,740.08	\$ 11,149.80	\$ 39,824.37	\$ 44,022.13	\$ 276,690.66
Howe:	\$ 4,697.50	\$ 9,978.00	\$ 14,649.73	\$ 7,280.11	\$ 24,862.66	\$ 239,519.85
Hammersmith:	\$ 46,097.58	\$ 27,784.02	\$ 55,170.91	\$ 167,776.94	\$ 87,975.54	\$ 547,056.85
	\$ 85,300.36	\$ 83,332.54	\$ 100,980.08	\$ 230,562.16	\$ 159,882.83	\$ 1,340,402.43

Fee App 11		
QSCL Lawsuits	Oct-00	Nov-00
Wolcott	\$ 19,039.22	\$ 30,116.00
David Johnson	\$ 3,109.90	\$ 1,550.00
Mark Talley	\$ 250.00	\$ 240.00
Hammersmith:	\$ 22,399.12	\$ 31,906.00
		<b>Lawsuit Total</b>
		\$ 54,305.12

Billed Total	
Cord:	\$ 277,135.07
Funding:	\$ 276,690.66
Howe:	\$ 239,519.85
Hammersmith:	\$ 601,361.97
<b>Total</b>	<b>\$ 1,394,707.55</b>

## ESTATE FROM WHICH APPROVED FEE APP ACTUALLY PAID

Fee App	Cord	Funding	Howe	Hammersmith	Totals
1	\$ -	\$ 71,947.46	\$ -	\$ -	\$ 71,947.46
2	\$ 42,616.69	\$ -	\$ 45,000.00	\$ -	\$ 87,616.69
3	\$ 61,814.08	\$ -	\$ 70,000.00	\$ -	\$ 131,814.08
4	\$ 35,000.00	\$ 19,383.54	\$ 35,000.00	\$ -	\$ 89,383.54
5	\$ 25,000.00	\$ 5,000.00	\$ 102,727.26	\$ -	\$ 132,727.26
6	\$ 50,000.00	\$ 10,000.00	\$ 106,855.43	\$ -	\$ 166,855.43
7	\$ -	\$ 85,300.36	\$ -	\$ -	\$ 85,300.36
8	\$ 40,000.00	\$ 18,332.54	\$ -	\$ 25,000.00	\$ 83,332.54
9	\$ 25,000.00	\$ 25,000.00	\$ 25,980.00	\$ 25,000.00	\$ 100,980.00
10	\$ 230,562.17	\$ -	\$ -	\$ -	\$ 230,562.17
11	\$ 75,000.00	\$ 75,000.00	\$ 64,188.02	\$ -	\$ 214,188.02
	<b>\$ 584,992.94</b>	<b>\$ 309,963.90</b>	<b>\$ 449,750.71</b>	<b>\$ 50,000.00</b>	<b>\$ 1,394,707.55</b>

DIFFERENCE SUMMARY	Total Billed		Paid	Difference
	11/98 - 11/00			
Cord:	\$ 277,135.07	\$ 584,992.94	\$ (307,857.87)	
Funding:	\$ 276,690.66	\$ 309,963.90	\$ (33,273.24)	
Howe:	\$ 239,519.85	\$ 449,750.71	\$ (210,230.86)	
Hammersmith:	\$ 601,361.97	\$ 50,000.00	\$ 551,361.97	
	\$ 1,394,707.55	\$ 1,394,707.55	\$ -	



# LSSMD - Fees and Expenses

Allocation Per Receivership Estate

## AMOUNT BILLED ALLOCATED PER ESTATE

	Fee App 1 11/98 - 4/99	Fee App 2 5/99 - 10/99	Fee App 3 11/99 - 12/99	Fee App 4 1/00 - 8/00	Fee App 5 9/00 - 11/00	Totals
Cord: \$	-	-	-	-	-	-
Funding: \$	968.00	13,769.18	330.00	2,110.00	1,251.50	18,428.68
Howe: \$	82,932.33	11,261.90	-	3,495.50	2,154.50	99,844.23
Hammersmith: \$	-	55,731.14	10,678.40	191,931.31	103,635.46	361,976.31
\$	83,900.33	80,762.22	11,008.40	197,536.81	107,041.46	480,249.22

## ESTATE FROM WHICH APPROVED FEE APP ACTUALLY PAID

	11/98 - 4/99	5/99 - 10/99	11/99 - 12/99	1/00 - 8/00	9/00 - 11/00	Totals
Cord: \$	-	10,000.00	-	-	-	10,000.00
Funding: \$	-	15,000.00	11,008.40	197,536.81	-	223,545.21
Howe: \$	83,900.33	55,762.22	-	-	-	139,662.55
Hammersmith: \$	-	-	-	-	107,041.46	107,041.46
\$	83,900.33	80,762.22	11,008.40	197,536.81	107,041.46	480,249.22

### Difference Summary

	Billed	Paid	Difference
Cord: \$	-	10,000.00	(10,000.00)
Funding: \$	18,428.68	223,545.21	(205,116.53)
Howe: \$	99,844.23	139,662.55	(39,818.32)
Hammersmith: \$	361,976.31	107,041.46	254,934.85

EXHIBIT

B