



*Resources Group, et al.* (the “SEC Proceedings”) and, in connection therewith, sought the appointment of a receiver as to each of the named defendants and relief defendants. On November 13, 1998 the Court issued its Order appointing temporary receiver in the SEC Proceedings pursuant to which Michael J. Quilling was named receiver (“Receiver”).

2. On July 23, 1999 the Court issued an Order in the SEC Proceedings expanding the receivership to include a number of related entities including Hammersmith Trust, L.L.C., a Tennessee limited liability company, Hammersmith Trust, L.L.C., a Nevis limited liability company, and Hammersmith Trust, Ltd., an Ireland corporation (collectively referred to as “Hammersmith Trust”).

3. Prior to the appointment of the Receiver, Hammersmith Trust was operating a huge international Ponzi scheme involving investors and investor groups from around the world. From the period of time it commenced operations in 1997 through the time the Receiver terminated its operations, Hammersmith Trust raised approximately \$51 million dollars. Most of the principals associated with operation of the financial scam were indicted by the United States Attorney’s Office in Pensacola, Florida (the “Florida Proceedings”) and most of those indicted were subsequently convicted and are now incarcerated. One of the individuals prosecuted and convicted in the Florida Proceedings was Jeffrey Matz (“Matz”). Matz was a principal of and conducted business through United States Holdings, L.L.C. (“USH”), an entity operating in Phoenix, Arizona. On July 25, 2001, as part of the restitution order against Matz in the Florida Proceedings, the Florida Court ordered Matz to turnover to the Receiver any and all interest which USH had in two Fidelity Bonds.

4. After Matz established USH in the summer of 1998, funds were solicited from investors for placement in two alleged high-yield investment programs - the Hammersmith Trust

Program and the “Isle of Mann Program.” With very few exceptions, the investors in each program were different.

5. On or about February 15, 2000 the United States authorities in Phoenix seized approximately \$12,000,000.00 in funds associated with the Isle of Mann Program. At that same time the United States Attorney’s Office in Phoenix, Arizona instituted a Civil Forfeiture Action (the “Arizona Proceedings”) designed to forfeit any interest of the conspirators and to return the monies to the innocent victims. Matz and USH, among others, were named as co-conspirators in the Isle of Mann Program. As a result of distributions out of the Arizona Proceedings, the investors in the Isle of Mann Program (the “Isle of Mann Investors”) have received in excess of \$11,000,000.00.

6. On April 12, 2001 National Union Fire Insurance Company of Pittsburgh, Pennsylvania (“National Union”) initiated litigation against Matz and USH, among others, same being Cause No. 01-0657-PHX styled *National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. United States Holdings, L.L.C., Jeffrey A. Matz, and G.J. Skibbee* (“National Union Litigation”) pending before the United States District Court for the District of Arizona. The lawsuit centered around the issuance of two Fidelity Bonds (the “Bonds”) with an aggregate coverage of \$10,000,000.00 issued by National Union to USH. The bonds were obtained by USH to protect investor funds for placement in the Hammersmith Trust and Isle of Mann programs. As more particularly set out in the Complaint, a copy of which is attached hereto as Exhibit “A”, National Union sued for fraud and rescission of the Bonds. The Receiver, as Successor in Interest for USH, has defended the lawsuit and pursued USH’s claims, including judgment for losses covered under the Bonds, against National Union.

7. During the course of the National Union Litigation it became apparent that two distinct groups of investors were covered by the Bonds, the Isle of Mann Investors and the Hammersmith Trust Investors. While the Hammersmith Trust Investors interests are represented by the Receiver, the Isle of Mann Investors were without a voice in the proceedings. In addition, the Receiver and National Union had numerous discussions about a potential settlement, however, National Union was concerned that any settlement with the Receiver would still leave numerous potential claims held by the Isle of Mann Investors. In order to facilitate a fair and global settlement, the parties requested that an agent be appointed to represent the interests of the Isle of Mann Investors. Accordingly, on April 8, 2000 the Phoenix Court appointed Patrick Murphy ("Murphy") as Agent of the Court to identify, protect, and recover any interests of the Isle of Mann investors in connection with the litigation.

#### THE PROPOSED SETTLEMENT

8. After completion of substantial discovery the parties agreed to mediation which was held on July 9, 2003 in Phoenix, Arizona. As a result of a lengthy mediation, a settlement was reached between National Union, the Receiver, and Murphy, subject to approval by this Court as to the Receiver and approval of the Phoenix Court as to Murphy. Specifically, National Union agreed to pay \$975,000.00 in exchange for a release of all claims owned by the Receiver and Murphy.

9. After a detailed review of the records and documents of both the Hammersmith Trust and Isle of Mann programs, including Matz's bank records, the Receiver and Murphy have determined that the Hammersmith Trust Investors and Isle of Mann Investors lost a net amount<sup>1</sup> of approximately \$11,167,634.14 due to USH's activities. Approximately \$2,412,208.97, or 21.6%,

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<sup>1</sup>The net amount was calculated by determining the investor's initial investment amount, less any returns from either the Hammersmith Trust or Isle of Mann programs, and less monies received from the Arizona Proceedings.

has been attributed to the Isle of Mann Investors. Accordingly, National Union has agreed to pay \$210,600.00 (or 21.6%) of the settlement proceeds to Murphy in his capacity as Agent for the Isle of Mann Investors. All fees and expenses of Murphy will be paid from the monies distributed to him pursuant to further proceedings in the Arizona Proceedings. The remaining amount, \$764,400.00, will be paid to the Receiver and added to the Hammersmith Trust Receivership Estate until further order by this Court.

10. It is the informed business judgment of the Receiver that the settlement reached is in the best interest of the Hammersmith Trust Receivership Estate and should be approved by the Court. Although the Receiver is confident of the claims asserted, he is equally mindful of the inherent risks and uncertainties of all litigation. The Receiver is also mindful of the cost of protracted litigation against a well-funded insurance company which is not particularly motivated by cost of litigation concerns. The National Union Litigation is extremely complex and presents virtually every issue imaginable in fidelity bond litigation. Besides the fraud and concealment issues, there are significant coverage issues, agency issues, unclean hands issues, intervening causes issues and the like. The primary witness for the Receiver is a convicted and incarcerated felon. Other witnesses are spread across the country and around the globe. Trial of the case has not yet been scheduled. In short, this is a very difficult case which needs to be settled.

#### FEES PREVIOUSLY PAID TO THE RECEIVER AND COUNSEL

11. On September 18, 2001 the Court issued its Order requiring that the Receiver and his local counsel in Phoenix, Holden Brodman, file a litigation budget with respect to the National Union litigation. On October 1, 2001 the Receiver filed a budget which estimated that the fees and expenses of the Receiver and his law firm would be \$82,850.00 and the fees and expenses of Holden Brodman would be \$79,625.00 for a combined total of \$162,475.00. After a hearing held on

November 16, 2001, the Court issued an Order approving the budget based, in part, upon the Receiver's good faith estimate that he would recover in excess of \$500,000.00 with respect to the litigation.

12. Thereafter, pursuant to the provisions of the Order approving the litigation budget, five interim fee applications were filed. With some minor reductions, each of the first four applications were approved after notice and hearing, pursuant to which QSCL was paid a total of \$26,213.02 of fees and expenses and Holden Brodman was paid \$40,004.05 of fees and expenses for a combined total of \$66,217.07. As to the Fifth Interim Fee Application, by Order dated January 10, 2003 it was denied in its entirety without prejudice to including the fees and expenses in a subsequent application. The denied fees and expenses covered the time period of September 1, 2002 through November 30, 2002 as to QSCL and August 1, 2002 through October 31, 2002 as to Holden Brodman. The denied fees are included in the requested fees below.

REQUEST FOR PAYMENT OF FEES AND EXPENSES

13. In addition to the attorneys' fees and expenses which have already been paid set forth above, there are additional attorneys' fees and expenses which have not yet been considered and/or approved by the Court. Those fees and expenses are as follows:

QSCL

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
September 2002	\$966.00	\$0.55
October 2002	\$2,891.50	\$0.37
November 2002	\$1,663.50	\$27.08
December 2002	\$1,852.00	\$46.72
January 2003	\$255.00	\$31.29
February 2003	\$1,375.00	\$3.77
March 2003	\$361.00	\$2.00

April 2003	\$0.00	\$0.00
May 2003	\$0.00	\$0.00
June 2003	\$0.00	\$0.00
July 2003	\$8,338.50	\$3,443.91 <sup>2</sup>
September 2003 (estimated)	\$550.00	\$0.00
<b>TOTAL:</b>	<b>\$18,252.50</b>	<b>\$3,555.69</b>

Copies of the invoices reflecting these fees and expenses are attached hereto as Exhibit "B" and are incorporated herein by reference. As part of approval of the settlement, the Receiver requests that the Court approve and allow payment of these fees and expenses.

HOLDEN BRODMAN

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
August 2002	\$2,548.00	\$37.80
September 2002	\$1,999.00	\$1,193.75
October 2002	\$1,802.50	\$512.29
November 2002	\$47.00	\$0.00
December 2002	\$1,918.50	\$71.45
January 2003	\$866.00	\$9.60
February 2003	\$1,379.50	\$5.40
March 2003	\$1,529.50	\$315.95
April 2003	\$1,094.00	\$94.35
May 2003	\$1,320.00	\$167.43
June 2003	\$3,357.50	\$10.65
July 2003 <sup>3</sup>	\$4,431.25	\$9.75
<b>TOTAL:</b>	<b>\$22,292.75</b>	<b>\$2,428.42</b>

<sup>2</sup> Includes \$2,379.10 for work by expert witness on damage calculations.

<sup>3</sup> Includes some estimated time to obtain settlement approval in Phoenix.

Copies of the invoices reflecting these fees and expenses are attached hereto as Exhibit “C” and are incorporated herein by reference. As part of approval of the settlement, the Receiver requests that the Court approve and allow payment of these fees and expenses.

#### THE LEGAL STANDARD FOR AWARDING ATTORNEY’S FEES AND EXPENSES

14. The calculation of a reasonable attorney’s fee in federal courts within the Fifth Circuit involves a well established process. “First, the court is to calculate a ‘lodestar’ fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers.” *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998). The court is then to consider whether the lodestar figure should be adjusted upward or downward depending on the circumstances of the case. *Id.*

15. In making a lodestar adjustment, the court should look to twelve factors, known as the “Johnson factors” after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grounds*; *Blanchard v. Bergeron*, 489 U.S. 87 (1989); *Migis*, 135 F.3d at 1047. The factors are: (1) the time and labor required for the litigation; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee [for similar work in the community]; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* The court should pay “special heed” to factors 1, 5, 8 and 9. *Id.*

16. The lodestar amount is presumed to be a reasonable fee and should be modified only in exceptional circumstances. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *Watkins v.*



*Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). The Johnson factors are discussed separately below. The factors do not warrant any downward adjustment.

#### TIME AND LABOR REQUIRED

The fees and expenses of the Receiver span eleven months, during which more than 84 hours of receiver and attorney time were expended. The fees and expenses of Holden Brodman span twelve months, during which more than 156 hours of attorney time was expended. The Receiver respectfully submits that all of the costs incurred and services performed in these cases are compensable and represent actual and necessary services performed in properly representing the interests of the receivership estate. Each of the expenses was reasonably required to accomplish the task performed.

#### THE NOVELTY AND DIFFICULTY OF THE QUESTIONS

The questions involved in the lawsuit were very difficult and complex, and the discovery was unusually complicated and burdensome. National Union contended that it had been defrauded into issuing the fidelity bonds based on outright misrepresentations and concealment of material facts by Matz. It further contended that the broker who sold the bonds was not its agent and the broker's knowledge and complicit conduct could not be imputed to it. National Union also contended that even if the bonds were validly issued, the losses were not covered. The amount of the losses has always been somewhat uncertain, and even today the stated amount of the losses is an educated guess. The representative of the broker who sold the bonds has disappeared and Matz is incarcerated and not particularly helpful or believable. The investors who would need to be deposed regarding the losses are spaced around the globe. The other people formerly associated with USH are not willing to talk because of fear of criminal liability.

### THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY

It was necessary to engage skilled and experienced trial attorneys to successfully defend and pursue the lawsuit against National Union. The insurance company hired competent senior counsel. This case could not have been handled by a junior associate. The Receiver respectfully submits that he and his counsel had the level of skill and experience necessary to effectively pursue and ultimately settle the lawsuit.

### THE PRECLUSION OF OTHER EMPLOYMENT BY THE ATTORNEY DUE TO ACCEPTANCE OF THE CASE

Neither the Receiver nor his counsel have declined any representation solely because of their service in this case.

### THE CUSTOMARY FEE FOR SIMILAR WORK IN THE COMMUNITY

The hourly rates charged by the Receiver and his counsel in these cases are commensurate with, if not below, the rates charged and collected in other federal lawsuits in the Northern District of Texas and in the District of Arizona. During the period covered by the requested fees, the following attorneys performed legal services for the Receiver:

- a. Michael J. Quilling, at an hourly rate of \$275.00. Mr. Quilling was admitted to the Texas Bar in 1982, and has been engaged in the full time practice of law at all times since his admission. He is board certified in civil trial law and business bankruptcy law by the Texas Board of Legal Specialization. He is one of the most experienced SEC receivers in the United States and his practice is national in scope. He is a regular panelist at seminars conducted by the SEC for its personnel. He authored the chapter "Receiverships" in Texas Foreclosure Law & Practice, W. Mike Baggett, 1984. The SEC regularly submits his name as receiver in large complex cases. Although not requested in this case, Mr. Quilling's normal hourly rate is \$350.00.

b. D. Dee Raibourn, at an hourly rate of \$170.00. Mr. Raibourn was admitted to the Texas Bar in 1998, and has been engaged in the full time practice of law at all times since his admission.

c. Mike Holden, at an hourly rate of \$200.00. Mr. Holden was admitted to the Arizona Bar in 1981, and he has been engaged in the full time practice of law since his admission.

d. Barry Willits, at an hourly rate of \$175.00. Mr. Willits was admitted to the Arizona Bar in 1994 and he has been engaged in the full time practice of law since his admission.

d. Kevin Kasarjian, at an hourly rate of \$135.00. Mr. Kasarjian was admitted to the Arizona Bar in 2000 and has been engaged in the full time practice of law since his admission.

Other than the rate of Mr. Quilling, these rates are the standard hourly rates charged by the Receiver and his counsel in other cases.

#### WHETHER THE FEE IS FIXED OR CONTINGENT

Although a contingent fee arrangement is a factor to be considered in whether to adjust the lodestar figure, it does not replace the lodestar amount. In other words, a reasonable fee is not limited to the amount provided in the contingent fee agreement. *Blanchard v. Bergeron*, 489 U.S. 87, 92 (1989). In this case the fee is a fixed hourly rate subject to approval by the Court.

#### TIME LIMITATIONS IMPOSED BY THE CLIENT OR THE CIRCUMSTANCES

The National Union Litigation required substantial amounts of time and effort, but the deadlines and scheduling have not been unusual for cases of this type.

## THE AMOUNT INVOLVED AND THE RESULT OBTAINED

The Receiver respectfully submits that the results obtained in this case were very favorable, especially in light of the numerous fraud/concealment issues, coverage questions and the prospect of expensive, protracted litigation if no settlement were reached. Including the fees approved and paid by virtue of the first four interim fee applications and assuming all the fees requested in this application are approved, the total lodestar figure for all costs and attorney's fees in this case is \$112,746.43, which is about \$50,000.00 less than the approved amount of the budget and less than 15% of the amount recovered. That ratio is certainly within the range of reasonableness for this type of case and well within this Court's discretion. *Cf. Migis*, 135 F.3d at 1048 (fees 6½ times the amount of damages were excessive). The Supreme Court has rejected a strict proportionality test based on a mechanical comparison of the amount of damages to the amount of attorney's fees. *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986).

## THE EXPERIENCE, REPUTATION AND ABILITY OF THE ATTORNEYS

The matters relevant to this factor are discussed above in connection with the third and fifth factors.

## THE UNDESIRABILITY OF THE CASE

The National Union Litigation was not initially undesirable. However, to a degree it became so when quarterly fee applications were ceased and counsel had to work for a year with no compensation or expense reimbursement.

## THE NATURE AND LENGTH OF THE PROFESSIONAL REPRESENTATION WITH THE CLIENT

The Receiver's counsel did not represent the Receiver prior to being retained in the National Union Litigation.

AWARDS IN SIMILAR CASES

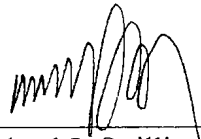
The attorney's fees and expenses sought in these cases are consistent with, or less than, awards in this District and the District of Arizona for cases of similar size and complexity.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that upon final hearing and consideration of this Motion, that the Court approve the settlement, and allow payment of the requested fees and expenses, and for such other relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By:



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Michael J. Quilling  
State Bar No. 16432300

ATTORNEYS FOR RECEIVER

**CERTIFICATE OF SERVICE**

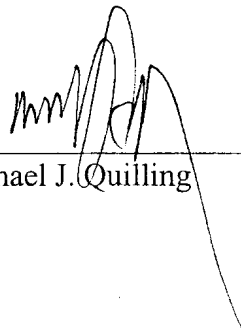
I hereby certify that on the 7<sup>th</sup> day of August, 2003 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

Robert B. Brunig  
Securities & Exchange Commission  
801 Cherry Street, Suite 1900  
Fort Worth, Texas 76102

Mike Holden  
Holden Brodman  
2425 East Camelback Road, Suite 1050  
Phoenix, Arizona 85016

Patrick M. Murphy  
Gutilla & Murphy  
4150 West Northern Avenue  
Phoenix, Arizona 85051

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



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Michael J. Quilling