

U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF TEXAS  
**FILED**  
 DEC - 4 2001  
 CLERK, U.S. DISTRICT COURT  
 By \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

VS.

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

Defendants,

and

HOWE FINANCIAL TRUST, an Indiana corporation,  
 et al,

Defendants Solely for Purposes  
 of Equitable Relief.

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

**RECEIVER'S THIRD INTERIM APPLICATION TO  
 ALLOW AND PAY (1) RECEIVER'S FEES AND EXPENSES  
 AND (2) ATTORNEYS' FEES AND EXPENSES AND BRIEF IN SUPPORT  
 (Quilling vs. Wolcott Lifetime Trust, et al, pending in Grand Rapids, Michigan)**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Third Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses with respect to litigation styled *Quilling vs. Wolcott Lifetime Trust* pending in Grand Rapids, Michigan and in support of such would show unto the Court as follows:

**BACKGROUND**

1. On November 13, 1998, the Securities and Exchange Commission ("SEC") initiated Civil Action No. 3:98-CV-2689-M styled *Securities and Exchange Commission vs. Funding Resources Group, et al* (the "SEC Proceedings") and, in connection therewith, sought the

appointment of a receiver as to each of the named 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 freezing the assets of and appointing Michael J. Quilling as the Receiver for Hammersmith Trust, LLC and a number of related entities.

3. Pursuant to the terms of each of the foregoing Orders, the Receiver was authorized to employ such attorneys as is necessary and proper for the collection, preservation, maintenance and operation of the Receivership’s Assets. Subsequent to his appointment, the Receiver employed the law firm of Quilling, Selander, Cummiskey, Clutts & Lownds, P.C., now known as Quilling, Selander, Cummiskey & Lownds, P.C. (“QSC&L”) 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.

4. In connection with performance of his duties as Receiver, the Receiver initiated Civil Action No. 1:00CV826 styled Michael J. *Quilling v. The Wolcott Lifetime Trust, et al* pending in the United States District Court for the Southern District of Michigan (“Wolcott Life Trust Litigation”). In connection with such litigation, the Receiver hired Smith, Haughey, Rice & Roegge (“Smith Haughey”) to act as local counsel as required by the Court presiding over the litigation.

5. On April 16, 2001, the Court entered its Order regarding the Receiver’s proposed budget as to the Wolcott Lifetime Trust Litigation pursuant to which the Court established procedures for fee applications to be submitted by the Receiver.

6. On June 4, 2001, the Receiver filed his 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

December 1, 2000 through May 31, 2001. On July 16, 2001, the Court issued its Order Approving the Application and thereafter QSC&L was paid \$58,158.28 and Smith Haughey was paid \$1,207.76.

7. On September 5, 2001 the Receiver filed his 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 June 1, 2001 through August 31, 2001. On October 18, 2001 the Court issued its Order Approving the Second Interim Application and thereafter QSC&L was paid \$48,630.58 and Smith Haughey was paid \$6,794.97.

8. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSC&L for the time period from September 1, 2001 through November 30, 2001. This Application also seeks approval and payment of the fees and reimbursement of expenses for the Receiver's local counsel in Grand Rapids, Michigan, Smith Haughey for the period from August 1, 2001 through October 31, 2001. The majority of the legal work has been performed by QSC&L. Smith Haughey is only acting as local counsel.

9. During the period covered by this Application, the Receiver has incurred fees and expenses in the Wolcott Lifetime Trust Litigation with respect to his activities as Receiver and with respect to QSC&L and as to Smith Haughey in the Wolcott Lifetime Trust Litigation on a monthly basis as follows:

	<u>QSC&amp;L</u>	
<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
September, 2001	\$ 4,645.00	\$ 1,516.53
October, 2001	1,900.00	3,569.19
November, 2001	960.00	18.12
<b>TOTAL:</b>	<b>\$ 7,505.00</b>	<b>\$ 5,103.84</b>

**Smith Haughey**

<b><u>Month</u></b>	<b><u>Fees</u></b>	<b><u>Expenses</u></b>
August, 2001	\$ 2,907.00	\$ 40.53
September, 2001	513.00	9.40
October, 2001	114.00	.65
<b>TOTAL:</b>	<b><u>\$ 3,534.00</u></b>	<b><u>\$ 50.58</u></b>

10. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of September 1, 2001 through November 30, 2001 as to QSC&L and from August 1, 2001 through October 31, 2001 as to Smith Haughey: (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. Expense items in excess of \$500.00, if any, have been itemized under Exhibit "B."

**JOHNSON FACTORS**

11. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver and QSC&L 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).” Those factors as applied to the services rendered in this case by the Receiver and QSC&L are addressed below.

(a) The Time and Labor Required. The Receiver and QSC&L respectfully refer the Court’s attention to Exhibit “A” which details the involvement of the Receiver and QSC&L’s attorneys in this case during the three month period covered by this Application during which a total of more than 48 hours of attorney 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 QSC&L have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. The Receiver and QSC&L 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 Northern District of Texas. During the course of these proceedings, the following lawyers at QSC&L have performed legal services on behalf of the Receiver with respect to these proceedings: Mike Quilling (\$250.00 per hour), licensed in 1982 and Board Certified in Business Bankruptcy Law and Civil Trial Law; Art Selander (\$250.00

per hour) licensed in 1977; Ken Hill (\$200.00 per hour) licensed in 1991; and Dee Raibourn (\$150.00 per hour), licensed in 1998.

(f) Whether the Fee is Fixed or Contingent. The Receiver's and QSC&L'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. This is an action by the Receiver to recover approximately \$400,000.00 of monies wrongfully diverted from Hammersmith Trust investors for a purchase of a house on Lake Michigan. During the period covered by this Application, the Receiver has continued discovery in the case and has engaged in settlement discussions.

(i) The Experience, Reputation, and Ability of the Attorneys. QSC&L 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 QSC&L's attorneys is recognized and respected in the community.

(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. QSC&L did not represent the Receiver in these proceedings prior to being retained in these proceedings.

(l) Award in Similar Cases. QSC&L 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 QSC&L 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 QSC&L may show themselves 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: 

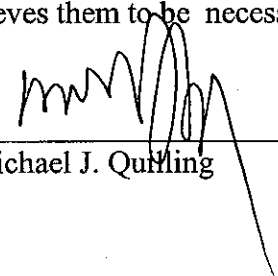
Michael J. Quilling

State Bar No. 16432300

ATTORNEYS FOR RECEIVER

### CERTIFICATE OF CONFERENCE

Prior to filing this Application, as required by the Order Appointing Temporary Receiver, I conferred with Bob Brunig of the SEC regarding the filing of this Application. The SEC consents to payment of the requested fees and expenses and believes them to be necessary and reasonable.

  
Michael J. Quilling

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of December, 2001 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, 19th Floor  
Fort Worth, Texas 76102

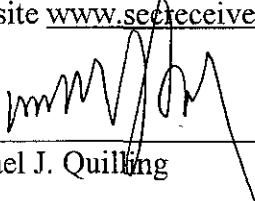
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Goodall & Sooter  
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Dan R. Waller  
Secore & Waller, LLC  
13355 Noel Road, Suite 2290  
Dallas, Texas 75240

Raymond Parr  
15455 Point Northwest Blvd., Apt. #507  
Houston, Texas 77095

The Application 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