

FILED
MAR 11 2003
U.S. DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES & EXCHANGE COMMISSION,)
Plaintiff,)
vs.)
FREDERICK J. GILLILAND,)
Defendant,)
and)
MM ACMC BANQUE DE COMMERCE, INC.,)
Relief Defendant.)

CIVIL ACTION FILE
NO. 3:02CV128-McK

**RECEIVER’S UNOPPOSED FOURTH INTERIM APPLICATION TO
ALLOW AND PAY (1) RECEIVER’S FEES AND EXPENSES
AND (2) ATTORNEYS’ FEES AND EXPENSES AND BRIEF IN SUPPORT**

TO THE HONORABLE H. BRENT MCKNIGHT, UNITED STATES DISTRICT JUDGE:

Michael J. Quilling, Receiver, files this his Unopposed Fourth Interim 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 March 5, 2003 the United States Securities and Exchange Commission filed a Motion to Appoint Receiver in these proceedings. On May 22, 2003 the Court issued an Order appointing Michael J. Quilling as receiver and he continues to function in that capacity.

2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was authorized to employ such attorneys as is necessary and proper in connection with performing his duties. Subsequent to his appointment, the Receiver employed the law firm of Quilling, Selander, Cumiskey & 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 October 8, 2003 the Receiver filed his First Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from July 1, 2003 through September 30, 2003. On November 24, 2003, the Court entered an Order Approving the First Interim Application and thereafter QSCL was paid \$69,746.32 of fees and expenses.

4. On February 13, 2004 the Receiver filed his Second Interim Application to Allow and Pay (1) Receiver's Fees and Expenses and (2) Attorneys' Fees and Expenses for the time period from October 1, 2003 through January 31, 2004. On June 1, 2004 the Court entered an Order Approving the Second Interim Application and thereafter QSCL was paid \$91,634.81 of fees and expenses.

5. On June 9, 2004 the Receiver filed his Third Interim 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 Third Interim Application and thereafter QSCL was paid \$25,548.25 of fees and expenses.

6. This Application seeks approval and payment of the fees and reimbursement of expenses for the Receiver and QSCL for the time period from May 1, 2004 through September 30, 2004.

7. 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:

<u>Month</u>	<u>Fees</u>	<u>Expenses</u>
May 2004	\$3,074.00	\$853.76
June 2004	\$2,912.00	\$1,071.28
July 2004	\$3,732.00	\$337.87
August 2004	\$5,488.50	\$97.52
September 2004	\$385.00	\$385.05
TOTAL:	\$15,591.50	\$2,745.48

8. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of May 1, 2004 through September 30, 2004: (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.

JOHNSON FACTORS

9. 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 Exhibit “A” which details the involvement of the Receiver and QSCL’s attorneys in this case during the four-month period covered by this Application during which a total of more than 70 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 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: Michael 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 Marcie L. Schout (\$175.00 per hour) licensed in Texas in 2000.

(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 millions of dollars of funds raised from defrauded investors, developing a claims process and making recommendations to the Court regarding distributions. During the period covered by this Application the Receiver has made considerable progress in this regard. In addition, the Receiver has retained counsel in Canada and successfully seized and sold a \$1.5 million (Canadian) house in Canada owned by Fred Gilliland and has seized all of his other physical assets and records. The Receiver has also filed two lawsuits against several individuals and entities to recover fraudulent transfers. Finally, the Receiver continues to devote a substantial amount of time to continuing the tracing of funds and locating investors.

(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.

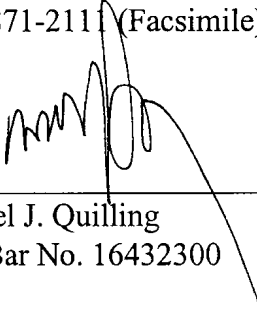
(l) Award in Similar Cases. QSCL believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases in this District.

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.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By:

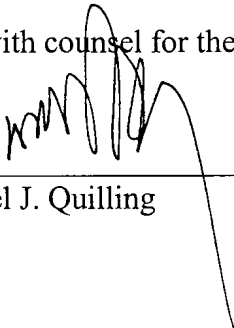


Michael J. Quilling
State Bar No. 16432300

ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Prior to filing this Application, I conferred with counsel for the SEC. He does not oppose the Application.



Michael J. Quilling

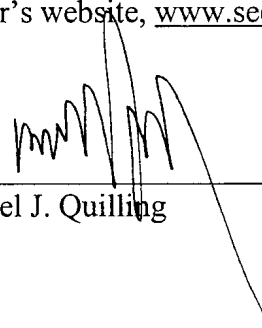
CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2004 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

Graham Loomis
Securities and Exchange Commission
3475 Lenox Road, Suite 1000
Atlanta, Georgia 30326

W. Robinson Deaton, Jr.
Deaton & Biggers, PLLC
402 East Graham Street
Shelby, North Carolina 28150

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



Michael J. Quilling

Exhibit “A”



QUILLING · SELANDER · CUMMISKEY · LOWNDS

Federal ID #75-2459334

Michael J. Quilling, Trustee

Page: 1
05/31/2004
Client No: 911-0600M
Invoice No: 22607

Re: Fred Gilliland

	Hours	
05/03/04 DDR Attention given to obtaining bank records.	0.50	95.00
05/11/04 MJQ Work on Complaint against Paquette entities.	0.60	210.00
05/13/04 MJQ Work on Third Interim Fee Application (.8); Reconcile bank accounts (.2).	1.00	350.00
DDR Prepare subpoena to US Bank and Bank of America regarding Mammoth, Cox and Gregory accounts (1.0); Review of general case correspondence (.2); Draft letter to Margaret Hampton regarding deposition (.5); Office conference with Receiver regarding various case issues (.3).	2.00	380.00
05/17/04 DDR Telephone conference with AUSA Heldmyer regarding various case issues (.4); Attention given to obtaining bank records (.8).	1.20	228.00
05/18/04 MJQ Work on Paquette complaint, cover sheet and related papers (1.5); Office conference with Dee Raibourn regarding lawsuit against Cristell (.2).	1.70	595.00
DDR Telephone conference with Michelle Heldmyer regarding various case issues (.3); Several telephone conferences with Bank of America regarding production of bank records (.5); Telephone conference with Tracy Preisser regarding various case issues (.3); Draft complaint against Marilyn Cristell and the Estate of Raymond Cristell (1.0).	2.10	399.00
05/19/04 DDR Telephone conference with Bank of America regarding production of bank records (.3); Telephone conference with Tracy Preisser regarding bank account information for Cox and Gregory (.3).	0.60	114.00
05/20/04 DDR Telephone conference with Tracey Preiser regarding various case issues (.3); Attention given to obtaining bank records for several accounts (.5); Telephone conference with Receiver regarding various case issues (.3).	1.10	209.00
05/21/04 DDR Several telephone conferences with Bianca Nieve regarding Michael Quilling affidavit for Gilliland Request for Funds (.8); Telephone conference with Receiver regarding same (.3). Review of general case correspondence (.3).	1.40	266.00

Michael J. Quilling, Trustee

Page: 2
05/31/2004
Client No: 911-0600M
Invoice No: 22607

Re: Fred Gilliland

	Hours	
05/25/04 DDR Telephone conference with Receiver regarding various case issues (.3); Telephone conference with Bianca Nieve regarding Michael Quilling affidavit for Gilliland hearing (.3).	0.60	114.00
05/28/04 DDR Attention given to preparing affidavit of Michael Quilling regarding Gilliland request for funds (.3); Telephone conference with Rachel Fischer regarding same (.3).	0.60	114.00
For Current Services Rendered	13.40	3,074.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Michael J. Quilling	3.30	\$350.00	\$1,155.00
D. Dee Raibourn	10.10	190.00	1,919.00

Telecopies	7.00
Long-Distance Telephone	8.31
Express Mail Service	68.93
Paid to LDS, SW - Service of Subpoenas Invoice #9167/9165	422.00
Filing Fee for Original Complaint (MJQ v. Grand Street Trust, et al.)	150.00
Filing Fee for Original Complaint MJQ v. Marilyn Cristell, et al.	150.00
Photocopies	46.00
Postage	1.52
Total Expenses Thru 05/31/04	853.76
Total Current Work	3,927.76
Balance Due	<u><u>\$3,927.76</u></u>

NOTE: PLEASE REFERENCE THE CLIENT MATTER NO. WITH PAYMENT



QUILLING · SELANDER · CUMMISKEY · LOWNDS

Federal ID #75-2459334

Michael J. Quilling, Trustee

Page: 1
06/30/2004
Client No: 911-0600M
Invoice No: 23089

Re: Fred Gilliland

	Hours	
06/01/04 DDR Review of documents produced by US Bank (.5); Review of general case correspondence and e-mails (.5).	1.00	190.00
06/03/04 MJQ Telephone conference with Jim Patterson and Linc Caylor regarding case status.	0.30	105.00
06/04/04 DDR Telephone conference with Tracy Preisser regarding status of Mammoth bank records (.3); Telephone conference with Reed Nordyke regarding same (.3); Telephone conference with US Bank regarding production of bank records (.5).	1.10	209.00
06/07/04 DDR Telephone conference with Michelle Heldmyer regarding production of bank records (.3); Telephone conference with USBank regarding same (.3).	0.60	114.00
06/10/04 MJQ Reconcile bank accounts (.2); Review of emails and correspondence relating to case (.3).	0.40	140.00
06/11/04 MJQ Review of voluminous correspondence relating to case (.6); Review of Colonial Bank records and preparation of letter to Michelle Heldmyer regarding same (.8).	1.40	490.00
06/14/04 DDR Telephone conference with AUSA Heldmyer regarding various case issues.	0.30	57.00
06/15/04 DDR Office conference with paralegal regarding various case issues.	0.30	57.00
06/16/04 DDR Draft subpoenas to Bank One, Bank of America, and Dollarhide regarding production of bank records(1.0); Attention given to service of lawsuits (.6); Telephone conference with AUSA Heldmyer and Tracy Preisser regarding bank records for Mammoth (.5).	2.10	399.00
06/21/04 DDR Office conference with Receiver regarding various case issues (.3); Review of claims (2.0); Telephone conference with Chris Hayes regarding Melrose Escrow, Inc. lawsuit (.3).	2.60	494.00
06/23/04 DDR Draft Motion and Order to Transfer regarding Grand Street Trust and Kreester lawsuits.	1.00	190.00
06/24/04 DDR Telephone conference with Pat Frioli regarding extension to file answer (.3); Telephone conference with AUSA Heldmyer regarding various case issues (.3); Review of general case correspondence (.2).	0.80	152.00

Bryan Tower 2001 Bryan St., Suite 1800 Dallas, TX 75201

ph. 214.871.2100

fx. 214.871.2111

www.qsclpc.com

A P R O F E S S I O N A L C O R P O R A T I O N

A T T O R N E Y S A N D C O U N S E L O R S

Michael J. Quilling, Trustee

Page: 2
06/30/2004
Client No: 911-0600M
Invoice No: 23089

Re: Fred Gilliland

	Hours	
06/28/04 MJQ Review of case correspondence.	0.20	70.00
06/29/04 MJQ Telephone conference with Chris of Melrose Escrow regarding allegations in Complaint and review of bank records regarding same.	0.70	245.00
For Current Services Rendered	12.80	2,912.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Michael J. Quilling	3.00	\$350.00	\$1,050.00
D. Dee Raibourn	9.80	190.00	1,862.00

Telecopies	57.00
Long-Distance Telephone	23.95
Courier Deliveries	4.75
Express Mail Service	278.64
Paid to Wachovia Bank NA for research and summons expenses	480.00
Photocopies	167.00
Postage	59.94
Total Expenses Thru 06/30/04	1,071.28
Total Current Work	3,983.28
Balance Due	<u><u>\$3,983.28</u></u>

NOTE: PLEASE REFERENCE THE CLIENT MATTER NO. WITH PAYMENT



QUILLING • SELANDER • CUMMISKEY • LOWNDS

Federal ID #75-2459334

Michael J. Quilling, Trustee

Page: 1
07/31/2004
Client No: 911-0600M
Invoice No: 23720

Re: Fred Gilliland

	Hours	
07/02/04 MJQ Review and respond to letter from Dressler Rein (.5); Attention to sending documents to Melrose Escrow (.1).	0.60	210.00
07/07/04 MJQ Reconcile bank account.	0.10	35.00
07/09/04 DDR Telephone conference with Michelle Heldmyer regarding various case issues.	0.30	57.00
07/13/04 MJQ Review of letter from counsel for Rein Evans and preparation of response to same (.3); Telephone conference with counsel for Marilyn Cristell (.3); Review and respond to email from Rachel Fisher (.1).	0.70	245.00
07/14/04 MJQ Review of various bank records incident to claims review.	0.70	245.00
07/16/04 MJQ Review and respond to email from Rachel Fisher.	0.20	70.00
07/18/04 MJQ Review and respond to email from Rachel Fisher.	0.10	35.00
07/25/04 MJQ Review and execute affidavit for Canadian proceedings.	0.20	70.00
07/28/04 MJQ Review of Motion to Dismiss Cristell (.5); Review of orders issued by Court and attention to issuance of check (.2).	0.70	245.00
07/29/04 MJQ Conference call with Canadian counsel regarding several pending motions (.3); Telephone conference with counsel for Rein Evans regarding time extension (.2); Office conference with Marcie Schout regarding response to Motion to Dismiss (.3).	0.80	280.00
MLS Review Motion to Dismiss; research issues raised by Motion to Dismiss; draft response to Motion to Dismiss.	6.50	1,137.50
07/30/04 MLS Review Motion to Dismiss; research issues raised by Motion to Dismiss; draft response to Motion to Dismiss.	6.30	1,102.50
For Current Services Rendered	17.20	3,732.00

Michael J. Quilling, Trustee

Page: 2
07/31/2004
Client No: 911-0600M
Invoice No: 23720

Re: Fred Gilliland

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Michael J. Quilling	4.10	\$350.00	\$1,435.00
D. Dee Raibourn	0.30	190.00	57.00
Marcie L. Schout	12.80	175.00	2,240.00
Telecopies			45.00
Long-Distance Telephone			23.00
Courier Deliveries			53.00
Express Mail Service			89.03
Paid to Discovery Resources for Professional Services/Invoice #JUL0401			93.35
Photocopies			23.00
Postage			5.05
Pacer Service			6.44
Total Expenses Thru 07/31/04			337.87
Total Current Work			4,069.87
Balance Due			<u><u>\$4,069.87</u></u>

NOTE: PLEASE REFERENCE THE CLIENT MATTER NO. WITH PAYMENT



QUILLING · SELANDER · CUMMISKEY · LOWNDS

Federal ID #75-2459334

Michael J. Quilling, Trustee

Page: 1

08/31/2004

Client No: 911-0600M

Invoice No: 24706

Re: Fred Gilliland

	Hours	
08/02/04 MJQ Review of Response to Cristell Motion to Dismiss.	0.50	175.00
MLS Draft Response to Motion to Dismiss.	4.50	787.50
08/03/04 MJQ Work on website updates (.8); Office conference with Marcie Schout regarding Response to Motion to Dismiss (.4).	1.20	420.00
MLS Review and revise Response to Motion to Dismiss; research historic blue book value for transferred vehicle.	1.00	175.00
DDR Review of claims.	1.00	190.00
08/04/04 MJQ Review of letters from Canadian counsel (.2); Review and revise reponse to Motion to Dismiss (1.0).	1.20	420.00
08/05/04 DDR Telephone conference with Matt Holesky regarding title information for automobile.	0.30	57.00
08/06/04 MJQ Review of Response to Motion to Dismiss Cristell lawsuit.	0.50	175.00
MLS Review and revise Response to Motion to Dismiss; draft affidavit for MJQ.	2.20	385.00
DDR Telephone conference with Matt Holesky regarding various case issues.	0.30	57.00
08/07/04 MJQ Reconcile bank accounts.	0.30	105.00
08/13/04 DDR Telephone conference with Robert Hawkes regarding service of Marie Paquette.	0.30	57.00
08/20/04 MJQ Review of Rein Evans Motion to Dismiss and office conference with Marcie Schout regarding same.	0.70	245.00
08/25/04 MLS Review motion to dismiss filed by Reins-Evans; research issues raised by motion to dismiss; draft response to motion to dismiss.	4.50	787.50
08/26/04 MLS Draft response to motion to dismiss.	2.70	472.50
08/27/04 MLS Draft response to motion to dismiss.	2.00	350.00
08/30/04 MJQ Review and revise response to Motion to Dismiss.	0.80	280.00
MLS Review recent receivership opinion in light of motion to dismiss; review and revise response to motion to dismiss.	2.00	350.00

Michael J. Quilling, Trustee

Page: 2
08/31/2004
Client No: 911-0600M
Invoice No: 24706

Re: Fred Gilliland

For Current Services Rendered 26.00 5,488.50

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Michael J. Quilling	5.20	\$350.00	\$1,820.00
D. Dee Raibourn	1.90	190.00	361.00
Marcie L. Schout	18.90	175.00	3,307.50

Long-Distance Telephone 8.49

Express Mail Service 26.72

Research value of transferred car at time of
transfer. 25.00

Photocopies 29.40

Postage 7.91

Total Expenses Thru 08/31/04 97.52

Total Current Work 5,586.02

Balance Due \$5,586.02



QUILLING · SELANDER · CUMMISKEY · LOWNDS

Federal ID #75-2459334

Michael J. Quilling, Trustee

Page: 1

09/30/2004

Client No: 911-0600M

Invoice No: 25167

Re: Fred Gilliland

	Hours	
09/07/04 MJQ Review of materials from Canadian counsel and telephone conference regarding same.	0.50	175.00
09/12/04 MJQ Reconcile bank account.	0.10	35.00
09/22/04 MJQ Telephone conference with Canadian counsel regarding case issues.	0.30	105.00
09/29/04 MJQ Telephone conference with Rachel Fisher regarding case issues.	0.20	70.00
	<u>1.10</u>	<u>385.00</u>
For Current Services Rendered	1.10	385.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Michael J. Quilling	1.10	\$350.00	\$385.00

Long-Distance Telephone	0.36
Express Mail Service	29.13
Photocopies	59.60
Online outside service expense for legal research - Invoice #807284792	133.55
Online outside service expense for legal research - Invoice #807084795	162.41
	<u>385.05</u>
Total Expenses Thru 09/30/04	385.05
Total Current Work	770.05
Balance Due	<u><u>\$770.05</u></u>

NOTE: PLEASE REFERENCE THE CLIENT MATTER NO. WITH PAYMENT

Bryan Tower 2001 Bryan St., Suite 1800 Dallas, TX 75201

ph. 214.871.2100 fx. 214.871.2111 www.qsclpc.com

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS