

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES & EXCHANGE COMMISSION,)	
Plaintiff,)	
)	
v.)	CAUSE NO. 3:02-CV-128-DCK
)	
FREDERICK J. GILLILAND,)	
Defendant,)	
)	
and)	
)	
MM ACMC BANQUE DE COMMERCE, INC.,)	
Relief Defendant.)	

**RECEIVER’S FINAL APPLICATION TO
ALLOW AND PAY ATTORNEYS’ FEES AND EXPENSES
OF CANADIAN COUNSEL AND BRIEF IN SUPPORT**

TO THE HONORABLE DAVID C. KEESLER, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Final Application to Allow and Pay Attorneys’ Fees and Expenses of Canadian Counsel 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 firms of Bennett Jones, LLP (“Bennett Jones”) in Toronto and Edwards, Kenny & Bray, LLP (“EKB”) in Vancouver, Canada to

assist the Receiver in having the Order appointing him recognized in Canada and to seize assets of Gilliland in Canada. The Receiver chose Bennett Jones because they are recognized experts in obtaining Mareva Injunctions and Anton-Pillar Orders. Bennett Jones was also highly recommended by U.S. authorities. EKB was retained as local counsel in Vancouver to assist with the efforts in that Gilliland and his assets were located there.

3. As a result of the efforts of these law firms, the Receiver was successful in being appointed by the Supreme Court of British Columbia as receiver for Gilliland and in obtaining a Mareva Injunction and Anton-Pillar Orders whereby his assets were frozen and bank records obtained. Ultimately, the Receiver was successful in selling Gilliland's house and obtained in excess of \$500,000.00 Canadian. The Court in British Columbia allowed payment of the fees of Bennett Jones and Fisher and several sets of counsel for Gilliland out of the funds. In addition, Gilliland was allowed living expenses out of the funds. As a result, those funds have been exhausted except for \$4,348.98 which has been forwarded to the Receiver and is now in his account.

4. Previously the Receiver has made two interim applications to pay fees and expenses to his counsel in Canada. [Dkt. Nos. 53 and 62]. Pursuant to those applications, Bennett Jones was paid \$278,874.60 and EKB was paid \$28,900.38.

5. In the course of performing his duties in Canada, the Receiver learned that Gilliland posted \$750,000.00 Canadian to make bail. After Gilliland was arrested for violating the terms of his release and in the belief that the bail money was traceable to investor funds, the Receiver undertook efforts to recover it. As discovery progressed it became apparent that the bail money was not traceable to investor funds but did belong to an individual in California (Tom Ryan) who had been duped into giving the funds to Gilliland. Since substantial work had already been done by the Receiver to recover the funds, the Receiver entered into an agreement with Ryan (approved by the

Canadian Court) by which Ryan assigned his claim to the Receiver to pursue on his behalf. Ryan agreed to pay all attorney's fees associated with pursuing the matter.

6. Ultimately the bail money was recovered and Ryan was paid \$518,051.51 U.S. Bennett Jones was paid \$141,231.73 U.S. and the balance, \$87,716.76, was paid to reimburse the estate for prior fees paid. After that payment, Bennett Jones is still owed \$4,401.00 Canadian for matters not related to Ryan.

7. This Application seeks approval and payment of the fees and reimbursement of the expenses for Bennett Jones for the time periods indicated below. The outstanding fees and expenses of Bennett Jones are summarized as follows:

MONTH	FEES/CHARGES	COSTS	TAXES (GST)	TOTAL IN CANADIAN
October 2007	\$622.50	\$2.00	\$37.47	\$661.97
October 2007	\$157.50	\$0.00	\$7.88	\$165.38
November-December 2007	\$3,360.00	\$11.37	\$202.28	\$3,573.65
Total	\$4,140.00	\$13.37	\$247.63	\$4401.00

8. Exhibit "A" is attached hereto and incorporated herein by reference for all purposes and conveys the following information for the relevant time periods: (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 Exhibits "A" reflect aggregate expenses by category during a given month.

9. This Application also seeks approval and payment of the fees and reimbursement of the expenses for EKB for the time period indicated below. The outstanding fees and expenses of EKB are summarized as follows:

MONTH	FEES/CHARGES	COSTS	TAXES (GST)	TAXES (PST)	TOTAL IN CANADIAN
January 2007	\$400.00	\$230.52	\$37.84	\$28.00	\$696.36
July 2007	\$2,400.00	\$14.99	\$144.91	\$168.00	\$2,727.90
August 2007	\$1,900.00	\$74.21	\$118.45	\$133.00	\$2,225.66
September 2007	\$900.00	\$3.50	\$54.21	\$63.00	\$1,020.71
December 2007	\$800.00	\$165.50	\$53.79	\$56.00	\$1,075.29
Total	\$6,400.00	\$488.72	\$409.20	\$448.00	\$7,745.92

10. Exhibit "B" is attached hereto and incorporated herein by reference for all purposes and conveys the following information for the relevant time periods: (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 Exhibits "B" reflect aggregate expenses by category during a given month.

JOHNSON FACTORS

11. In support of this request for allowance of compensation and reimbursement of expenses, the Receiver respectfully directs 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 Bennett Jones and EKB are addressed below.

(a) The Time and Labor Required. The Receiver respectfully refers the Court’s attention to Exhibits “A” and “B” which detail the involvement of the Bennett Jones attorneys and EKB in this case during the periods covered by this Application.

(b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in Exhibits “A” and “B” 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. Bennett Jones and EKB have considerable experience in such areas.

(d) The Preclusion of Other Employment Due to Acceptance of the Case. Neither Bennett Jones or EKB have declined any representation because of their services to 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 Vancouver and Toronto, Canada.

(f) Whether the Fee is Fixed or Contingent. The fees of Bennett Jones and EKB 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 considerable.

(h) The Amount Involved and the Results Obtained. The Receiver was 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. Those tasks have been concluded and the case is ready to close. In addition, the Receiver retained counsel in Canada and successfully seized and sold a \$1.5 million (Canadian) house in Canada owned by Fred Gilliland. Those proceedings have been closed.

(i) The Experience, Reputation, and Ability of the Attorneys. Bennett Jones has several attorneys who specialize exclusively in the financial fraud arena. The practice of those attorneys regularly includes the representation of receivers. The reputation of Bennett Jones' attorneys is recognized and respected in their 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. Bennett Jones did not represent the Receiver prior to being retained in these proceedings.

(l) Award in Similar Cases. The Receiver believes that the fees requested in this case are less than or equal to those which have been awarded in similar cases in which Bennett Jones and EKB have been involved.

WHEREFORE, PREMISES CONSIDERED, the Receiver requests 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, Bennett Jones and EKB 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: /s/ Michael J. Quilling
Michael J. Quilling
State Bar No. 16432300
Email: mquilling@qsclpc.com

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2008 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

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

/s/ Michael J. Quilling