

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

SECURITIES AND EXCHANGE COMMISSION, §

Plaintiff, §

v. §

Civil Action No. 3:05-CV-1328-L

MEGAFUND CORPORATION, STANLEY A. §
LEITNER, SARDAUKAR HOLDINGS, IBC., §
and BRADLEY C. STARK, CIG, LTD., and §
JAMES A. RUMPF, Individually and d/b/a §
CILAK INTERNATIONAL, §

Defendants, §

and §

PAMELA C. STARK, §

Relief Defendant. §

**RECEIVER'S AMENDED SECOND INTERIM APPLICATION TO ALLOW AND PAY
(1) RECEIVER'S FEES AND EXPENSES; (2) ATTORNEYS FEES AND EXPENSES;
AND (3) ACCOUNTANTS FEES AND EXPENSES WITH BRIEF IN SUPPORT
(MEGAFUND CORPORATION/CIG, LTD. RECEIVERSHIP ESTATE)**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

Michael J. Quilling, Receiver, files this his Amended Second Interim Application to Allow and Pay (1) Receiver's Fees and Expenses; (2) Attorneys Fees and Expenses; and (3) Accountants Fees and Expenses (Megafund Corporation/CIG, Ltd. Receivership Estate) and in support of such would respectfully show unto the Court as follows:

BACKGROUND

1. On July 1, 2005 the Securities and Exchange Commission ("SEC") filed its Complaint and request for appointment of a receiver. On July 5, 2005 the Court appointed Michael

J. Quilling as Receiver in this case. On July 18, 2005 the SEC filed an Amended Complaint and sought to add other individuals and entities to the receivership. On July 19, 2005 the Court issued an Amended Order Appointing Temporary Receiver ("Order Appointing Receiver").

2. The Order Appointing Receiver authorizes the Receiver to employ such attorneys and accountants as is necessary and proper in connection with the claims process. Since his appointment, the Receiver employed the law firm of Quilling Selander Cummiskey & 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 addressed in this Amended Application as well as performing his duties as the Receiver. The Receiver also employed the accounting firm of Litzler Segner Shaw & McKenney, LLP ("LSSM").

3. On August 12, 2005 the Receiver filed an Unopposed Motion to Designate Receivership Estates [Docket No. 48]. On August 15, 2005 the Court entered an Order [Docket No. 50] that established two receivership estates within these proceedings, the Megafund Corporation/CIG, Ltd. Receivership Estate and the Sardaukar Holdings Receivership Estate.

4. On January 17, 2006 the Receiver filed an Agreed Motion to Expand Receivership [Docket No. 83] to add Lancorp Financial Group, LLC to the receivership. On January 20, 2006 the Court entered an Agreed Order Expanding Receivership and Appointing Receiver [Docket No. 84], which effectively created a third receivership estate, the Lancorp Financial Group Receivership Estate.

5. On April 11, 2006 the Receiver filed a Second Interim Application to Allow and Pay (1) Receiver's Fees and Expenses; (2) Attorneys' Fees and Expenses; and (3) Accountants Fees and Expenses [Docket No. 121]. On May 8, 2006 the Court issued an Order [Docket No. 139] requiring the Receiver to file an amended application. This Amended Application is responsive to that Order.

SPECIFIC RESPONSES TO ORDER [DOCKET NO. 139]

a. Experience and Billing Rates.

Information regarding all QSCL timekeepers has been added below. QSCL Attorney Profiles for all attorneys have been attached as Exhibit "C". Information regarding the accountants has been added to paragraph 16(h) below.

b. Receipts for Expenses Which Exceed \$500.00.

Copies of receipts for each QSCL expense item which exceeds \$500.00 are attached as Exhibit "B". Copies of receipts for each LSSM expense item which exceeds \$500.00 are attached as Exhibit "E". **There are no LSSM expense items which exceed \$500.00 for the period covered by this Amended Application.** If the Court desires, and to make things easier in the future, the Receiver will gladly use the Government per diem rate for a given city for meal expenses, etc.

c. Travel Time.

The Receiver hereby certifies that when traveling, it is his practice to work while traveling. In fact, sometimes, the airplane flight to a destination is virtually the Receiver's only opportunity to prepare for the upcoming meeting. On the return flight the Receiver usually prepares pleadings to begin pursuit of whatever asset or event it was that he learned about as a result of the trip. The Receiver further uses airplane trips to discuss case strategy and action items with other QSCL lawyers who may be on the trip and/or with SEC representatives who are frequently on the same flights.

On many, many occasions when the Receiver and his counsel are required to fly, the actual travel time is far greater than that billed. Post-9/11 travel requires arrival at the airport far earlier than in the past. Flight delays (both departure and arrival) and/or cancellations are the standard, not the exception. On more than one occasion the Receiver has been forced to stay

overnight unexpectedly through no fault of his own. These delays are not usually billed. In short, the Receiver makes the time adjustment on the front end and is very conscientious of fees and does his best to be as fair and reasonable as possible. The Receiver is mindful of the Court's concern and has instructed all timekeepers to be more detailed in describing the work they do while traveling and to describe the entire travel time as well as the time billed in the future. The Receiver reviewed the invoices covered by this Amended Application and has adjusted one of the entries resulting in a decrease of \$770.00 in fees and certifies that the entries which were not adjusted are appropriate given the work accomplished by the Receiver during the travel.

d. Intra-Office Conferences.

The Receiver has examined each invoice covered by the Application as to office conferences and is not sure what the Court means by "no further explanation." Unless the Receiver has missed or misunderstood something, each reference to an office conference references what it addressed although sometimes in a general manner. However, in an effort to address the Court's concern, the Receiver has revised the invoices attached hereto as Exhibit "A" and has highlighted the revised entries for the Court's convenience. The Receiver will point out that (1) the office conferences are absolutely essential given the number of people gathering information and performing tasks on multiple fronts given the complexity of this case; (2) a concerted effort is made to only bill "one side" of the office conferences and/or to divide the time between timekeepers - *i.e.*, a 30-minute meeting is billed evenly by the attorneys; (3) the conferences represent less than 4% of the overall hours and fees for the period covered by the Application; (4) office conferences are used to "downstream" information from senior attorneys to junior attorneys to allow tasks to be performed by junior attorneys at lower billing rates; (5) if the Receiver had used counsel other than his firm, conversations with the client (the Receiver) would be necessary and typically allowed; and (6)

generalness in description is mandated because of the need to protect the attorney-client privilege and to not telegraph to third parties what actions the Receiver is contemplating (if invoices are made public by virtue of applications for fees before the action can be taken). The Receiver and all timekeepers will endeavor to do a better job in the future of describing items covered by office conferences but they are, simply, necessary and are not, in the opinion of the Receiver, abusive. However, in a further effort to address the Court's concern, the Receiver has adjusted several entries downward resulting in a reduction of fees of \$250.00.

e. **Other Adjustments.**

In reviewing the invoices the Receiver discovered that in some instances Michael D. Clark and Clark B. Will billed time to the Megafund Corporation/CIG, Ltd. Receivership Estate which should have been billed to the Sardaukar Holdings Receivership Estate. Those entries have been transferred and result in a reduction of fees of \$5,055.00. They now appear on the Sardaukar invoices and are highlighted.

The Receiver has also discovered that the billing rates used from invoice to invoice vary. In some instances they are higher than they should be and in some instances they are lower. The Receiver has made sure all rates are standard and are those reflected in paragraph 11(e) of this Amended Application. This has resulted in an increase of \$585.00 on the November 2005 invoice.

**APPLICATION FOR FEES AND EXPENSES
OF THE RECEIVER AND HIS ATTORNEYS**

6. This Amended Application seeks the approval and payment of fees and reimbursable expenses for the Receiver and QSCL for the time period from November 1, 2005 through March 31, 2006 as to the Megafund Corporation/CIG, Ltd. Receivership Estate and only that estate.

7. **Pursuant to Paragraph 16 of the Order Appointing Receiver, and prior to it being vacated, the Receiver has paid himself and QSCL 90% of the fees (\$86,120.55) and**

AMENDED SECOND INTERIM APPLICATION TO ALLOW AND PAY FEES AND EXPENSES (MEGAFUND) - Page 5

100% of the expenses (\$13,228.13) through February 28, 2006. No amounts for March, 2006 have been paid. The purpose of this Amended Application is to request Court approval of all fees and expenses and to allow payment of the 10% fee holdback (it was \$9,568.95; now \$9,060.20 after adjustments) portion and the March, 2006 fees and expenses (\$22,358.44).

8. During the period covered by this Amended Application, the Receiver has incurred fees and expenses with respect to his activities and those of QSCL as to these proceedings on a monthly basis as follows:

| Month | Fees | Expenses |
|---------------|---------------------|--------------------|
| November 2005 | \$22,654.00 | \$3,248.08 |
| December 2005 | \$11,663.00 | \$1,327.17 |
| January 2006 | \$35,032.00 | \$606.08 |
| February 2006 | \$21,253.00 | \$8,046.80 |
| March 2006 | \$21,555.50 | \$802.94 |
| TOTAL: | \$112,157.50 | \$14,031.07 |

9. Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of November 1, 2005 through March 31, 2006: (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.

10. Attached hereto as Exhibit "B" are copies of each expense item which exceeds \$500.00 for the months covered by this Amended Application.

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)." 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 period covered by this Amended Application showing that a total of more than 528 hours of attorney, Receiver, and paraprofessional 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 that 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 or lower than the rates charged by other practitioners of similar experience levels in the Northern District of Texas. During the course of these proceedings, the following timekeepers at QSCL have performed legal services on behalf of the Receiver with respect to these proceedings:

Lawyers:

- Michael J. Quilling (\$350.00 per hour), licensed in Texas in 1982 and Texas Board Certified in Business Bankruptcy Law and Civil Trial Law, Texas Super Lawyer 2004-2006;
- Clark B. Will (\$350.00 per hour) licensed in Texas in 1980;
- James H. Moody (\$350.00 per hour) licensed in Texas in 1978, Texas Super Lawyer 2004-2006;
- Kenneth A. Hill (\$300 per hour) licensed in Texas in 1991, Board Certified Business Bankruptcy Law;
- Chuck Baum (\$275.00 per hour) licensed in Texas in 1984;
- John Paul Stanford (\$275.00 per hour) licensed in Texas in 1989, Board Certified Business Bankruptcy Law;
- D. Dee Raibourn (\$250.00 per hour) licensed in Texas in 1998;
- Michael D. Clark (\$225.00 per hour) licensed in Texas in 1997; and
- Brent Rodine (\$150.00 per hour) licensed in Texas in 2005.

QSCL Attorney Profiles of all lawyers are attached hereto as Exhibit "C". During the course of these proceedings, the following paralegals have performed services on behalf of the Receiver with respect to these proceedings:

Paralegals:

- Stephen M. Tomasky (\$110.00 per hour) senior claims administrator for six years, has processed thousands of claims in receivership cases;
- Leslie D. Finn (\$100.00 per hour) claims administrator for four years, has processed thousands of claims in receivership cases;
- Lisa Smith (\$100.00 per hour), claims administrator and investor relations for four years, has processed hundreds of claims in receivership proceedings;
- Christine Price (\$85.00), bankruptcy paralegal for six years; and
- Thomas Bruce (\$65.00 per hour) litigation paralegal for two years.

(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. As to the Megafund Corporation/CIG, Ltd. Receivership Estate, the primary assets are located in Flower Mound, Texas. The Receiver has seized a couple of vehicles, three houses and office contents and furnishings. The Receiver has also seized all known computer and hard copy books and records.

Megafund Corporation received at least \$17 million of investor funds, much of which was improperly diverted before about \$11 million was passed along to CILAK International and CIG,

Ltd. which also diverted funds and sent the balance of about \$9.5 million to Sardaukar Holdings. The Receiver is in the process of liquidating the vehicles, houses and office contents.

Other actions by the Receiver are described in the Interim Report submitted simultaneously with the Second Interim Fee Application.

(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 trustees 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.

APPLICATION FOR FEES AND EXPENSES OF THE RECEIVER'S ACCOUNTANT

12. This Amended Application also seeks the approval and payment of fees and reimbursable expenses for LSSM for the time period from July 1, 2005 to March 31, 2006 as to the Megafund Corporation/CIG, Ltd. Receivership Estate and only that estate.

13. **No amounts have been paid to the accountants for fees and expenses as to this Receivership Estate. The purpose of this Application is to request Court approval of all fees and expenses and to allow payment of the fees and expenses (\$69,232.91).**

14. Exhibit "D," which is attached hereto and incorporated herein by reference for all purposes conveys the following information for the time period of July 1, 2005 through March 31,

AMENDED SECOND INTERIM APPLICATION TO ALLOW AND PAY FEES AND EXPENSES (MEGAFUND) - Page 10

2006: (a) the number of hours worked by each accountant and staff member on a particular day; (b) the manner and type of work performed by each accountant 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 accountant and/or staff member. Each of the invoices attached hereto as Exhibit "D" reflect aggregate expenses by category during a given month. There are no expense items which exceed \$500.00 during the period covered by this Application.

15. Attached hereto as Exhibit "E" are copies of each expense item which exceeds \$500.00 for the months covered by this Amended Application.

FIRST COLONIAL FACTORS

16. In support of this request for interim allowance of compensation and reimbursement of expenses, the Receiver respectfully directs this Court's attention to those factors generally considered by Bankruptcy Courts in awarding compensation to professionals for services performed in connection with the administration of a debtor's estate, as enumerated in section 330 of the Bankruptcy Code and developed by case law. Specifically, section 330 provides, inter alia, that the allowance of professional compensation should be based upon the time, nature, extent and value of the services rendered as well as consideration of the cost of comparable services rendered in a non-bankruptcy context. The controlling authority in the Fifth Circuit is *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977). That case identified twelve (12) factors that should govern this Court's decision:

(a) The Time and Labor Required. The Receiver and LSSM respectfully refer the Court's attention to Exhibit "D" which details the involvement of LSSM's accountants in this case during the period covered by this Amended Application showing that more than 368 hours of Accountant and staff time have been expended.

(b) Novelty and Difficulty of Questions Presented. The Receiver believes that the accounting and tracing questions encountered in representing the Receiver were of a complex and specialized nature.

(c) Skill Requisite to Perform Services Properly. The Accountants' firm has numerous members, including members who have performed services on behalf of the Receiver and who specialize exclusively in the practice of bankruptcy and insolvency accounting. Due to their expertise and skill in this highly specialized realm, the Receiver believes far more time would have been expended by less experienced professionals and with considerably less rewarding results. The array of financial and accounting consideration presented in this proceeding and the prompt and skillful action taken upon those problems by the Accountants required a very high degree of expertise and experience. Prompt, skillful action was utilized by the Accountants in providing professional services to the Receiver in this proceeding.

(d) Exclusion of Other Employment. The Receiver is unable to estimate the extent of other employment the Accountants were precluded from accepting by reason of the employment as accountants for the Receiver herein, but does not believe it to be significant.

(e) Customary Fees. The fees applied for herein are equivalent to customary fees allowed in other proceedings for similar services rendered and results obtained.

(f) Whether the Fee is Fixed or Contingent. The fees of the Accountants are fixed insofar as funds exist with which to pay them from the Receivership Estate. Payment of such fees, however, is subject to Court approval.

(g) The Amount Involved and the Results Obtained. This case involves in excess of \$17 million invested by hundreds of persons and entities. The accounting and tracing issues are complex

and the bank records are extensive and voluminous, encompassing over 5,800 line item entries. As a result of the efforts of the Accountants, much of the work has already been accomplished.

(h) The Experience, Reputation, and Ability of Accountants. As stated above, the Accountants specialize in the practice of accounting and consultation. Much of the Accountants' practice has been devoted to asset management, accounting services, development of accounting data, preparation of tax returns for estates, formulation of plans of reorganization and consultation with creditors and estate representatives. The Accountants are recognized as experts in the accounting field and possess a reputation of high quality, integrity, and ability. They are regularly employed in cases pending before the Court in this district.

- Milo H. Segner (\$350.00 per hour) licensed in Texas in 1988; has in excess of 30 years experience providing forensic accounting services for receivership and bankruptcy estates. Mr. Segner has provided expert testimony in matters relating to insolvency and money tracing. He has been appointed Federal Bankruptcy Trustee and Receiver in both Federal and State courts;
- James R. Shaw (\$350.00 per hour) licensed in Texas in 1981; has in excess of 25 years experience providing accounting support for receivers and bankruptcy trustees. Mr. Shaw has provided expert testimony in areas of forensic accounting and tax matters;
- Edward Kogozi (\$210.00 per hour) licensed in Texas in 2000; has more than nine years experience preparing Federal and State income tax returns;
- Reed Nordyke (\$110.00 per hour), paraprofessional with in excess of 20 years experience in information technology, database construction and management; and

- Scott Reese (\$90.00 per hour), paraprofessional with seven years experience in database construction and records management.

(i) Undesirability of the Case. The Receiver does not believe the subject case or the representation of the Receiver in this proceeding was "undesirable."

(j) Nature and Length of the Professional Relationship with the Client. Prior to the institution of this proceeding, the Accountants have represented the Receiver from time to time with regard to general accounting matters and consultation in similar proceedings.

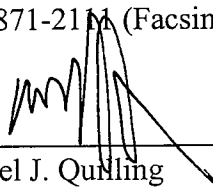
(k) Awards in Similar Cases. The Receiver believes that the services rendered herein for the Receiver have substantially benefitted this estate and that such services are of a reasonable value. The Receiver further represents that these fees are in conformity with fees allowed in similar proceedings for similar services rendered and results obtained.

WHEREFORE, the Receiver respectfully requests that the Court allow the requested compensation for professional services and expenses rendered by the Receiver, his legal counsel, and his accountants, and authorize the Receiver to pay QSCL \$9,060.20 (10% holdback) and \$22,358.44 (March 2006 fees and expenses) and LSSM \$69,232.91 (fees and expenses for July 2005 through March 2006).

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
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Dallas, Texas 75201-4240
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(214) 871-2111 (Facsimile)

By:



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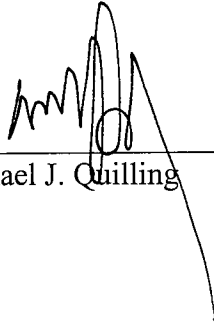
ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of May, 2006, a true and correct copy of the above and foregoing Amended Application was served, via first class mail, with full and proper postage prepaid thereon, to:

| | |
|---|---|
| Stephen J. Korotash Securities and Exchange Commission 801 Cherry Street, Suite 1900 Fort Worth, Texas 76102 | Scott Baker 10830 North Central Expressway Suite 475, B4 Dallas, Texas 75231 |
| Steve Smoot Smoot Law Firm, P.C. 4545 Mt. Vernon Houston, Texas 77006 | Bradley C. Stark 16960 Washington Street Riverside, California 92504 |
| Pamela C. Stark 16960 Washington Street Riverside, California 92504 | |

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



Michael J. Quilling