

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY  
STATE OF OKLAHOMA

**FILED**  
IN DISTRICT COURT

**FEB 25 2004**

POTTAWATOMIE COUNTY, OK  
CECIL DUNLAP, COURT CLERK  
BY \_\_\_\_\_ DEPUTY

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )

Case No. C-03-1239

v. )

The Hickman Agency, Inc., an Oklahoma )  
corporation; Merl William Hickman, Sr., )  
an individual; Sarah L. Hickman, )  
an individual; and Merl William )  
Hickman, Jr., an individual, )  
 )  
Defendants, )

and )

Stephanie Hickman Matthews, an individual;) )  
Angela Friguletto, an individual; Peter )  
Friguletto, an individual; Sandra Friguletto, )  
an individual; and Christy Hickman, )  
an individual, )  
 )  
Defendants Solely For )  
Purposes of Equitable Relief. )

**PLAINTIFF'S OBJECTION TO PAYMENT OF COMPENSATION**  
**TO ATTORNEYS FOR DEFENDANTS**

Plaintiff, the Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Plaintiff"), respectfully objects to the "Application of the West Law Firm Attorneys for Defendants for Payment of Compensation" for the following reasons:

On December 17, 2003, Plaintiff filed a Petition for Permanent Injunction and Other Equitable Relief ("Petition") and an Application for a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, and Order for Accounting, pursuant to Section

406.1 of the Oklahoma Securities Act ("Act"), Okla. Stat. Ann. tit. 71, §§ 1-413, 501, 701-703 (West 2004). This Court issued a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, and Order for Accounting against Defendants The Hickman Agency, Inc., Merl William Hickman, Sr., Sarah L. Hickman and Merl William Hickman, Jr.

On February 19, 2003, Terry W. West and Bradley C. West filed an application on behalf of the West Law Firm ("Application") seeking compensation in the sums of \$11,126.25 for 49.45 hours expended in this case during the period December 17, 2003 through February 18, 2004, and \$120.00 for the services of a legal assistant. The Application seeks the compensation from the receivership estate.

#### **RECEIVERSHIP ESTATE IS COMPRISED SOLELY OF INVESTOR ASSETS**

Over a period of several years, Defendants defrauded investors and spent almost all money received from such investors. The Receiver estimates that investors will recover a small proportionate share of their invested funds at the conclusion of the pending receivership. To authorize the expense of any portion of the remaining funds to pay for legal representation of or any other benefit to these Defendants would result in a further reduction in recovery to investors. Plaintiff objects to any such payment from the receivership estate.

#### **ATTORNEYS FEES FOR DEFENDANTS ARE NOT ALLOWED**

Applicants state they have counseled with Defendants "for the purpose of assisting with efforts being undertaken by the Receiver for the assembly of all available assets for the eventual distribution to investors." They also state they have worked to determine the location of potential assets and their delivery to the Receiver. However, Plaintiff asserts that the legal

representation that is the subject of the Application was for the sole benefit of the Defendants. In *Securities & Exchange Commission v. Capital Counsellors, Inc.*, 512 F. 2d 654 (2<sup>nd</sup> Cir., 1975), an application for the allowance of a claim against a securities receivership estate for legal services was filed. The Court stated "...the award of attorneys' fees in a case such as this is entrusted to the sound discretion of the district judge."

The Court further stated:

"Defendant's attorneys' fees are not typically allowed. As said in 2 Tardy, Smith on Receivers s 639, at 1779 (2d ed. 1220): 'Ordinarily the services of an attorney employed by defendant to represent him in the receivership proceedings are solely for his benefit and are not to be paid for out of funds brought into court for the benefit of plaintiff and other claimants against the defendant.'"

Applicants have made no showing that the representation they provided to Defendants justifies a departure from this ruling.

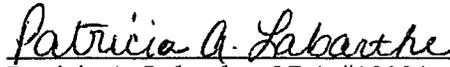
**APPLICANTS DEMONSTRATE NO MATERIAL BENEFIT  
TO RECEIVERSHIP ESTATE**

"There must be some showing that some material benefit accrued to an estate in receivership through the services of those not entrusted with its administration." *Securities & Exchange Commission v. Capital Counsellors, Inc., supra*. Applicants fail to show adequate detail from which to determine they have provided any measurable benefit to this receivership estate. In order to justify the further impairment to the investors' positions in this case, Applicants must, at a minimum, demonstrate such benefit. Plaintiff urges this Court to deny the Application in the absence of any such showing.

**CONCLUSION**

In light of the facts presented and the authorities cited, Plaintiff respectfully requests that this Court deny the Application for the reasons stated.

Respectfully submitted,



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**CERTIFICATE OF MAILING**

The undersigned certifies that on the 25<sup>th</sup> day of February, 2004, a true and correct copy of the foregoing was mailed via First Class Mail, postage prepaid, to the following:

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Bradley C. West  
The West Law Firm  
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