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6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel.LAUREN)
9 KINGRY, Superintendent of the Arizona)
Department of Financial Institutions,)

10 Plaintiff,

v.

11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

12 Defendant.)

Cause No. CV2009-020595

PETITION NO. 20

PETITION FOR ORDER TO APPROVE
REIMBURSEMENT OF DFI
RECEIVERSHIP FUND FOR 4th
QUARTER 2009 ADMINISTRATIVE
EXPENSES

(Assigned to Judge Sam Myers)

15 Lauren Kingry, as the court appointed Receiver, respectfully petitions the Court as
16 follows:

17 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*
18 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial
19 Institutions as Receiver of Landmarc. On July 10, 2009, this Court entered its *Order*
20 *Appointing Permanent Receiver and Injunction* (collectively "Receivership Order").
21

1 2. Pursuant to A.R.S. §6-131.01 the Arizona Department of Financial Institutions
2 (“DFI”) is authorized to fund the operations of a receivership in which the Superintendent is
3 the receiver and to be reimbursed for those expenditures upon order of the receivership Court.

4 3. Specifically, A.R.S. §6-131.01 provides as follows:

5 A. The superintendent may be appointed as a receiver of a financial
6 institution or enterprise under his supervision. No bond is required of the
7 superintendent for acting as a receiver.

8 B. All reasonable expenses of the department relating or apportioned to
9 a receivership, including receiver fees and attorney fees, costs of preliminary or
10 other examinations of the person placed into receivership and expenses relating
11 to the management of any office or other asset of the person placed in
12 receivership, shall be awarded by the court for payment to the department out of
13 the assets of the receivership. The department shall assess those expenses
14 against the receivership quarterly and shall deposit those amounts in the
15 department receivership revolving fund, as provided in section 6-135.01. Those
16 assessments have priority over the other creditors of the receivership.
17 Notwithstanding the other provisions of this subsection, on request by the
18 superintendent, the court may award personal property of the receivership to the
19 department as partial compensation for the services rendered during the
20 administration of the receivership.

21 C. The superintendent shall maintain a complete accounting of each
receivership in which he is appointed as receiver.

 4. A.R.S. §6-135.01, which establishes the DFI Receivership Revolving Fund,
provides as follows:

 A. A department receivership revolving fund is established to be
administered by the superintendent. The fund shall consist of monies from the
following sources:

 1. Monies awarded and received as fees and costs in receiverships in
which the superintendent was the receiver, as provided in section 6-131.01.

 2. Monies received from the department revolving fund, as provided in
section 6-135, subsection B.

1 B. Monies in the fund may be used to pay any costs incurred by the
2 department arising out of the administration of a receivership in which the
superintendent is the receiver.

3 C. The superintendent shall submit to the legislature with the
4 department's annual budget request a full and complete account of the
department receivership revolving fund through the end of its most recent fiscal
year.

5 5. On August 26, 2009, the Court entered its *Order Re: Petition No. 2, Order*
6 *Governing the Administration of the Receivership* ("Order No. 2"), which provides in
7 pertinent part as follows:

8 9. Petitions for Payment of Fees. Pursuant to A.R.S. § 6-131.01(B),
9 and notwithstanding the Receivership Order, the Receiver may seek an award
10 from the Court for all reasonable expenses of the Department of Financial
Institutions relating or apportioned to this receivership, including the fees of the
11 Special Deputy Receiver, attorneys and accountants, costs of preliminary or
other examinations of the person or persons in receivership and expenses
12 related to the management of offices or assets of the person or persons in
receivership by filing a petition, which petition shall not be required to include
13 as exhibits the itemized statements of services rendered to, and costs incurred or
expended on behalf of, the Receivership, provided that the petition includes a
14 statement that anyone desiring additional information concerning the services
and costs to be paid under the pay petition may obtain redacted information
15 from the Receiver by delivering to the Receiver and the Receiver's general
counsel, Guttilla Murphy Anderson, P.C., a written request specifying the
16 additional information requested at least three days prior to the date set for
hearing on the pay petition. Upon request of the Court, the Receiver shall make
17 available for in camera review by the Court, the itemized statements and
supporting documentation for the services and costs to be paid under the pay
petition.

18 6. In accordance with Order No. 2, anyone desiring additional information
19 concerning the services and costs paid by DFI for which reimbursement is sought in this
20 petition may obtain redacted information from the Receiver by delivering to the Receiver and
21 the Receiver's general counsel, Guttilla Murphy Anderson, P.C., a written request specifying

1 the additional information requested at least three days prior to the date set for hearing on this
 2 petition.

3 7. For the fourth quarter of 2009 ending December 31, 2009, DFI incurred and
 4 paid a total of \$376,334 apportioned to this receivership for receiver fees and attorney fees,
 5 costs of preliminary or other examinations of Landmarc and expenses relating to the
 6 management of Landmarc.

7 8. A summary of those fees and expenses incurred and paid by the DFI is set forth
 8 below:

<u>Vendor</u>	<u>Service Period</u>	<u>Paid by DFI</u>			<u>Total</u>
		<u>Oct 09</u>	<u>Nov 09</u>	<u>Dec 09</u>	
Examination & Investigation					
Field Lawdahl	7/16 – 11/30	\$4,700	7,959	\$14,572	\$27,231
Management & Accounting					
Warfield & Co.	8/16 – 10/31	\$64,850	\$38,864	\$36,868	\$140,582
Attorney Fees					
Guttilla Murphy Anderson	6/24 – 8/31	\$64,352	-0-	\$133,997	\$198,349
Burch & Cracchiolo	7/9 – 10/30	-0-	10,173	-0-	\$10,173
Total 4th Quarter 2009 Administrative Expenses					\$376,334

16 9. Once approved by the Court, these administrative expenses will be paid from
 17 the general unsecured assets of Landmarc and the other receivership entities. No funds held
 18 in trust for the benefit of borrowers or investors and no funds or other assets which are the
 19

1 subject of a security interest or a potential ownership or equitable claim will be used to pay
2 these administrative expenses.¹

3 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

4 1. Awarding to the DFI Three Hundred Seventy Six Thousand Three Hundred
5 Thirty Four Dollars (\$376,334) as reimbursement for administrative expenses incurred and
6 paid during the quarter ending December 31, 2009;

7 2. Authorizing the Receiver to transfer Three Hundred Seventy Six Thousand
8 Three Hundred Thirty Four Dollars (\$376,334) as funds become available from the general
9 unsecured assets of the receivership estate in this action to the Arizona Department of
10 Financial Institutions Receivership Revolving Fund established under A.R.S. §6-135.01.

11 Respectfully submitted this 5th day of May, 2010.

12 GUTTILLA MURPHY ANDERSON, P.C.

13 /s/Patrick M. Murphy
14 Patrick M. Murphy
Attorneys for the Plaintiff

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¹ Although A.R.S. §6-131.01 would permit the Court to award reimbursement from trust funds or other assets subject to the beneficial ownership or security claims of others, the Receiver does not seek that authority here and does not anticipate that it will be necessary at any time in this case.

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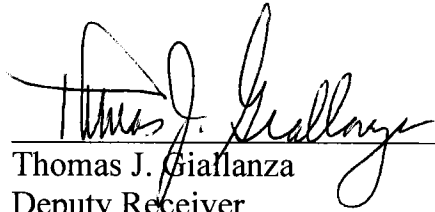
Verification

I, Thomas J. Giallanza, do hereby declare as follows:

I am the Court appointed Deputy Receiver in the action entitled *State of Arizona ex rel. v. Landmarc Capital & Investment Company*, pending before the Arizona Superior Court for Maricopa County, cause number CV2009-020595; I have read the foregoing Petition, and know the contents thereof; that the matters and things contained therein are true in substance and in fact, to the best of my information, knowledge and belief, except as to those matter and things alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed MAY 5, 2010, in Phoenix, Arizona.



Thomas J. Giallanza
Deputy Receiver

1157-001 (93500)