

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNOCO LLC; PATH AMERICA FARMER'S
MARKET, LP; PATH AMERICA KINGCO
LLC; PATH AMERICA TOWER, LP; PATH
TOWER SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA
VILLAGE KIRKLAND, LLC; DARGEY
DEVELOPMENT, LLC; DARGEY
ENTERPRISES, LLC; and PATH OTHELLO,
LLC,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

FIRST INTERIM FEE APPLICATION OF
MCCULLOUGH HILL LEARY, PS,
RECEIVER'S COUNSEL FOR
RECEIVERSHIP ENTITY POTALA TOWER
SEATTLE LLC

NOTED ON MOTION CALENDAR
February 26, 2016

Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), general
counsel for Michael A. Grassmueck (the "Receiver"), the court-appointed Permanent
Receiver in the above action, hereby submits the attached First Interim Fee Application for
McCullough Hill Leary, PS ("McCullough"), Receiver's counsel for the receivership entity,

1 Potala Tower Seattle LLC. Approval of McCullough's retention was granted pursuant to the
2 Order Granting Motion of Receiver Michael A. Grassmueck for Order in Aid of Receivership,
3 Dkt 168, on January 13, 2016. Allen Matkins is submitting this Application on behalf of
4 McCullough because McCullough has not yet appeared in this action. The Fee Application is
5 supported by a declaration of John C. McCullough, and is accompanied by a proposed Order.
6

7 Dated: February 11, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

8 By: *s/ David R. Zaro*

s/ Michael R. Farrell

9

David R. Zaro, Esq. #124334 (CA)

10 *(Pro Hac Vice Granted Oct. 26, 2015)*

11 Michael R. Farrell, Esq. #173831 (CA)

(Pro Hac Vice Granted Nov. 6, 2015)

12 Allen Matkins Leck Gamble Mallory & Natsis LLP

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Attorneys for Receiver

16 MICHAEL A. GRASSMUECK

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PATH AMERICA, LLC; PATH AMERICA
SNOCO LLC; PATH AMERICA
FARMER'S MARKET, LP; PATH
AMERICA KINGCO LLC; PATH
AMERICA TOWER, LP; PATH TOWER
SEATTLE, LP; POTALA TOWER
SEATTLE LLC; and LOBSANG
DARGEY,

Defendants, and

POTALA SHORELINE, LLC; and
POTALA VILLAGE KIRKLAND, LLC,

Relief Defendants.

Civil Action No. C-15-1350-JLR

FIRST INTERIM FEE APPLICATION OF
MCCULLOUGH HILL LEARY, PS,
COUNSEL FOR RECEIVERSHIP ENTITY
POTALA TOWER SEATTLE LLC

McCullough Hill Leary, PS ("McCullough Hill"), counsel retained by Michael

Grassmueck ("Receiver"), the Court-appointed permanent receiver for defendants Path America,
LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo
LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle LLC; and Lobsang
Dargey; and relief defendants Potala Shoreline, LCC; and Potala Village Kirkland, LLC.,

1 submits this first interim application for approval and payment of fees and reimbursement of
2 expenses on behalf of McCullough Hill. This application covers fees and expenses incurred
3 during the period November 2, 2015 through December 31, 2015 (the "First Application
4 Period"), for legal work performed on behalf of receivership entity Potala Tower Seattle, LLC
5 ("Potala Tower").
6

7 By this First Interim Fee Application, McCullough Hill seeks an order allowing interim
8 compensation for services rendered and expenses incurred during the First Application Period in
9 the amount of \$4,642.00 in fees, which were incurred at an effective blended billing rate of \$349
10 per hour; and authorizing the Receiver to pay 80% of the requested fees, or \$3,713.60. As
11 detailed below, McCullough Hill requests that the Court allow these fees on an interim basis.
12 For the Court's review and consideration, a proposed Order is submitted contemporaneously
13 herewith.
14

15 I. OVERVIEW

16 A. McCullough Hill's Employment

17 On November 2, 2015, the Receiver retained McCullough Hill to represent receivership
18 entity Potala Tower Seattle, LLC as special land use counsel to assist in obtaining land use
19 entitlements for the proposed "Potala Tower" (the "Proposed Project"), located at 2116 4th
20 Avenue in Seattle, Washington.
21

22 The Receiver selected McCullough Hill as special land use counsel because of the firm's
23 extensive experience and expertise in representing clients through the City of Seattle land use
24 entitlement process. McCullough Hill also has extensive knowledge of the Proposed Project, as
25 it represented Potala Tower Seattle in a similar capacity prior to the appointment of the Receiver.
26 John C. McCullough has 30 years of land use and real estate law experience in the City of Seattle
27

1 and is the Managing Partner of the firm. Biographical information on both Mr. McCullough and
2 associate Katie Kendall is attached as Exhibit B to the Declaration of John C. McCullough in
3 support of the First Interim Fee Application of McCullough Hill Leary, PS, Special Land Use
4 Counsel for Receivership Entity Potala Tower Seattle, LLC ("McCullough Decl.").

5
6 **B. Representation of Receivership Entity Potala Tower Seattle**

7 Prior to the Receiver's engagement of McCullough Hill, the firm previously represented
8 Potala Tower Seattle in seeking to obtain two revisions to a Master Use Permit ("MUP"), the
9 land use approval in the City of Seattle. Potala Tower had sought (1) a change of use to allow a
10 hotel use in the Proposed Project and (2) minor design changes to the exterior of the proposed
11 tower. McCullough Hill also assisted Potala Tower Seattle with other building permit issues that
12 would arise during the City of Seattle's review process. At the conclusion of McCullough Hill's
13 engagement with Potala Tower Seattle, the MUP revisions had not yet been obtained.
14

15 The Receiver retained McCullough Hill to work with the City of Seattle to resolve the
16 remaining issues related to the land use entitlements. This work included written and oral
17 communications with the staff of the City's Department of Planning and Development¹ to
18 attempt to resolve an issue regarding the proposed design of the building, assuring that any
19 relevant fees were paid to ensure that the project permits were not canceled by the City, and
20 advised the Receiver on a Purchase and Sale Agreement entered into by Potala Tower Seattle to
21 purchase Transferrable Development Rights, which are required by the City's Land Use Code for
22 this Proposed Project.
23

24
25 **II. FEE APPLICATION**

26 McCullough Hill has recorded its time in the recognized category of representing a
27
28

1 receivership entity in asset analysis and recovery. As explained above, time in this category
 2 pertains to resolving issues with the City of Seattle regarding land use entitlements for Potala
 3 Tower Seattle.

Name	Title	Rate	Hours	Fees
J. McCullough	Managing Partner	\$550	3.4	\$1870.00
K. Kendall	Associate	\$280	9.9	\$2,772.00
TOTAL		\$830	13.3	\$4,642.00
Avg. Hourly Rate				\$349.00

9 III. THE REQUESTED FEES ARE REASONABLE AND SHOULD BE ALLOWED

10 A. Representation of Receivership Entity Potala Tower Seattle

11 McCullough Hill has staffed each task as efficiently as possible, using a team of two
 12 attorneys. Indeed, McCullough Hill's average hourly rate was \$349.00 during the First
 13 Application Period.
 14

15 McCullough Hill believes its request is fair and reasonable and that the fees incurred
 16 were necessary to prepare the Proposed Project for liquidation. McCullough Hill's request for
 17 compensation is based on its customary billing rates charged in similar matters.
 18

19 VI. CONCLUSION

20 McCullough Hill has worked diligently to represent receiver entity Potala Tower Seattle
 21 and provided a valuable service to the Receivership estate in that regard. Therefore, McCullough
 22 Hill respectfully requests an order:

- 23 1. Approving and allowing fees totaling \$4,642.00 for the First Application Period;
- 24 2. Authorizing the Receiver to pay 80% of the allowed amount of McCullough Hill's

27 ¹ As of January 1, 2016, The City of Seattle Department of Planning and Development is now known as the
 28 Seattle Department of Construction and Inspections.

1 fees, which totals \$3,713.60, out of assets to the Receivership Estate;

2 3. Granting such other and further relief as is appropriate.

3 DATED this 10th day of February, 2016.

4
5 By: s/John C. McCullough
6 WSBA #12740
7 McCULLOUGH HILL LEARY PS
8 Counsel for Receivership Entity Potlatch Tower Seattle
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2016, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

Dated: February 11, 2016

s/ Michael R. Farrell
Michael R. Farrell, Esq. #173831 (CA)
(Pro Hac Vice Granted Nov. 6, 2015)

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