

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re	)	Chapter 11 Cases
Adelphia Communications Corp., <u>et al.</u> ,	)	Case No. 02-41729 (REG)
Debtors.	)	Jointly Administered

---

**FINAL APPLICATION OF BOIES, SCHILLER & FLEXNER LLP,  
AS SPECIAL COUNSEL FOR DEBTORS AND DEBTORS IN  
POSSESSION, FOR ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED FROM  
JUNE 26, 2002 THROUGH AUGUST 12, 2005**

TO THE HONORABLE ROBERT E. GERBER,  
UNITED STATES BANKRUPTCY JUDGE:

Boies, Schiller & Flexner LLP (“BS&F”), special counsel for the above-captioned debtors and debtors in possession in these cases (the “Debtors”), in support of its application (the “Application”) for allowance of compensation for professional services rendered and reimbursement of expenses incurred from June 26, 2002 through August 12, 2005 (the “Application Period”), respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. By this Application, and pursuant to section 330 of the Bankruptcy Code (the “Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), BS&F requests that this Court authorize: (a) allowance of compensation for professional services BS&F rendered to the Debtors during the Application Period in the amount of \$29,800,291.50; and (b) the reimbursement of actual and necessary expenses BS&F incurred when rendering such professional services in the amount of \$1,975,818.65.

2. During the course of its representation of the Debtors, BS&F has voluntarily written off approximately \$750,411.84 in fees and expenses, agreed to an additional \$2,267,499 reduction of fees following extensive discussions with the Debtors and reduced its standard billing rate for a number of partners during the course of its representation, resulting in an additional discount to the Debtors of \$576,384 for a total reduction of \$3,594,294.84.

3. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the “Standing Order of Referral of Cases to Bankruptcy Judges,” dated July 10, 1984. Venue of these cases and this Application is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are section 330 of the Code and Bankruptcy Rule 2016.

#### **BS&F’S FEES AND EXPENSES**

4. BS&F's services in these cases have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the Application Period, the continued variety and complexity of the issues involved in these cases and the need to address those issues on an expedited basis have required BS&F, in discharge of its professional responsibilities, to devote substantial time by its professionals on a daily basis, and often through night and weekend work.

5. In accordance with section II.B. of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, issued January 30, 1996 (the “UST Guidelines”), BS&F makes the following disclosures:

- (a) On February 25, 2004, the Debtors filed their proposed plan of reorganization and related disclosure statement. On February 4, 2005, the Debtors filed their first amended joint plan of reorganization and related disclosure statement. On

April 21, 2005, the Debtors announced that they had signed definitive agreements to sell substantially all of their U.S. assets to Time Warner Inc. and Comcast Corporation. On June 24, 2005, the Debtors filed their Second Amended Plan of Reorganization and related Disclosure Statement. On September 28, 2005, the Debtors filed their Third Amended Plan of Reorganization and related Disclosure Statement. A hearing to consider the Disclosure Statement is scheduled for October 20, 2005.

- (b) To the best of BS&F's knowledge, all quarterly fees have been paid to the U.S. Trustee and all required monthly operating reports have been filed;
- (c) BS&F is advised that as of July 31, 2005, the Debtors had approximately \$316,030,000 in cash and cash equivalents, which include certain restricted cash;
- (d) BS&F understands that the Debtors are paying undisputed administrative expenses in the ordinary course of business from cash generated from operations; and
- (e) With the exception of asserted liens of the Debtors' prepetition lenders and postpetition lenders and various contractors, the Debtors' funds are generally unencumbered.

#### **PRIOR FEE APPLICATIONS**

6. To date, BS&F has filed with the Court five prior fee applications, the first four of which have been the subject of fee hearings before this Court and with respect to which BS&F has been awarded the fees and expenses set forth on the Adelphia Payment History chart on the following page (the "Payment History Chart"). Also included on the Payment History Chart are the fees and expenses that have not yet been approved and that are included in the Fifth Fee Application and in this Application.

7. As shown on the Payment History Chart, the total amount of fees that are still subject to a holdback for the period June 26, 2002 through February 29, 2004 aggregate \$1,015,699.90.

## Adelphia Payment History

Fee Period	Full Fees Prior to Any Reductions	Voluntary Fee Reductions	Fees Submitted to Company for Payment	Negotiated Fee Reductions	Fees Submitted to Court (Net Reductions)	Fees Paid	Fees Held Back	Return of Fees Held Back	Cumulative Fees Due at End of Period
First Fee Application June 26, 2002 – October 31, 2002	\$2,939,316.65	\$59,535.65	\$2,879,781.00	\$0.00	\$2,879,781.00	\$2,303,825.00	\$575,956.00	\$0.00	\$575,956.00
Second Fee Application November 1, 2002 – February 28, 2003	\$2,606,816.00	\$12,068.00	\$2,594,748.00	\$0.00	\$2,594,748.00	\$2,075,798.00	\$518,950.00	\$0.00	\$1,094,906.00
Third Fee Application March 1, 2003 – June 30, 2003	\$3,126,607.19	\$65,440.19	\$3,061,167.00	\$597,499.00 <sup>1</sup>	\$2,463,668.00	\$2,448,934.00	\$612,233.00	\$1,707,139.00 <sup>2</sup>	\$0.00
Fourth Fee Application July 1, 2003 – October 31, 2003	\$3,582,456.00	\$134,505.00 <sup>3</sup>	\$3,447,951.00	\$170,000.00 <sup>4</sup>	\$3,277,951.00	\$2,758,360.80	\$689,590.20	\$344,795.10 <sup>5</sup>	\$344,795.10
Fifth Fee Application November 1, 2003 – February 29, 2004	\$3,488,204.00	\$133,680.00	\$3,354,524.00	\$0.00	\$3,354,524.00	\$2,683,619.20	\$670,904.80	\$0.00	\$1,015,699.90
Current Fee Application March 1, 2004 – August 12, 2005	\$17,651,186.50	\$921,567.00	\$16,729,619.50	\$1,500,000.00	\$15,229,619.50	\$9,116,808.00	\$2,279,201.00	\$0.00	\$7,128,511.90 <sup>6</sup>
<b>Totals</b>	<b>\$33,394,586.34</b>	<b>\$1,326,795.84</b>	<b>\$32,067,790.50</b>	<b>\$2,267,499.00</b>	<b>\$29,800,291.50</b>	<b>\$21,387,345.00</b>	<b>\$5,346,835.00</b>	<b>\$1,454,435.10</b>	<b>\$7,128,511.90</b>

<sup>1</sup> See Agreement dated December 5, 2003 between BS&F and Adelphia Fee Committee to reduce total fees of \$8,535,696 for the First, Second and Third Fee Application Periods by \$597,499.

<sup>2</sup> On December 18, 2003, the Court approved payment of all of the amounts held back in the First, Second and Third Fee Application Periods totaling \$1,707,139. Adelphia subtracted the \$597,499 agreed fee reduction from this amount resulting in a payment to BS&F of \$1,109,640 (\$1,707,139 - \$597,499 = \$1,109,640).

<sup>3</sup> Note that BS&F's Fourth Fee Application indicated a total voluntary fee reduction of \$114,149.30 (paragraph 8). As discussed with counsel to the Fee Committee and confirmed by BS&F's letter of May 11, 2004 to James Beldner, the correct amount of the voluntary fee reduction was \$134,505.

<sup>4</sup> See July 28, 2004 e-mail from Mark Spieker (Adelphia's Director of Restructuring) to Christopher Boies referencing \$170,000 agreed to fee reduction.

<sup>5</sup> On June 15, 2004, the Court approved payment of half of the amounts previously held back totaling \$344,795.10. Adelphia subtracted the \$170,000 agreed fee reduction from this amount resulting in a payment to BS&F of \$174,795.10 (\$344,795.10 - \$170,000 = \$174,795.10).

<sup>6</sup> The cumulative fees due at the end of the Current Fee Application Period consist of 100% of BS&F's fees for January 1, 2005 – August 12, 2005 (\$3,833,611), the fees held back during the Current Fee Application Period (\$2,279,201), and the fees held back during the Fourth Fee Application Period (\$344,795.10) and the Fifth Fee Application Period (\$670,904.80) (\$3,833,611 + \$2,279,201 + \$344,795.10 + \$670,904.80 = \$7,128,511.90).

### Adelphia Payment History

Fee Period	Expenses Submitted for Payment	Expenses Paid	Expenses Due
First Fee Application June 26, 2002 - October 31, 2002	\$192,185.00	\$192,185.00	\$0.00
Second Fee Application November 1, 2002 - February 28, 2003	\$167,907.00	\$167,907.00	\$0.00
Third Fee Application March 1, 2003 - June 30, 2003	\$87,243.00	\$87,243.00	\$0.00
Fourth Fee Application July 1, 2003 - October 31, 2003	\$185,758.00	\$185,758.00	\$0.00
Fifth Fee Application November 1, 2003 - February 29, 2004	\$230,030.00	\$230,030.00	\$0.00
Current Fee Application March 1, 2004 - August 12, 2005	\$1,112,695.65	\$683,711.22	\$428,984.43
<b>Totals</b>	<b>\$1,975,818.65</b>	<b>\$1,546,834.22</b>	<b>\$428,984.43</b>

8. BS&F filed its Fifth Fee Application on July 16, 2004 requesting allowance of fees and expenses incurred for the period from November 1, 2003 through February 29, 2004. However, the hearing to consider the application was adjourned to December 7, 2004 so that the Debtors, BS&F and the Debtors' Fee Committee (as that term is defined in paragraph 63 hereof) could review the application and resolve any issues that might be raised by it. To date, BS&F believes that its Fifth Fee Application has not yet been approved by the Court. BS&F has tried to ascertain the status of its Fifth Fee Application over the past several months pursuant to communications with counsel to the Fee Committee and Adelpia's Assistant General Counsel for Litigation without success.

### **THE CURRENT FEE APPLICATION**

9. This Application also includes requests for allowance of \$15,229,619.50 in fees and \$1,112,695.65<sup>7</sup> <sup>8</sup> in expenses for the period from March 1, 2004 through August 12, 2005 (the "Current Application Period"). Pursuant to the Compensation Order, BS&F has received \$9,116,808 from the Debtors in payment of services rendered and expenses incurred during the Current Application Period. This amount represents 100% reimbursement for expenses incurred and 80% payment for services rendered *through December 2004*. BS&F has submitted to the Debtors

---

<sup>7</sup> BS&F reserves its right to seek at a later date reimbursement of expenses incurred during the Current Application Period that may not have been posted as of the date hereof.

<sup>8</sup> At Adelpia's request and direction, Jefferson Wells International Inc. ("Jefferson Wells"), an investigative firm, was retained to perform a forensic examination of certain of the Debtor's computer hardware and software as well as telecommunications systems. In March 2004 BS&F paid Jefferson Wells' invoices totaling \$80,478.08. BS&F in turn included this amount on its March invoices to Adelpia. Adelpia requested that Jefferson Wells bill them directly and that the \$80,478.08 previously paid by BS&F be reimbursed.

The applicable records attached hereto represent the pre-reimbursed amount, while the actual expenses and reimbursements requested herein do not include the \$80,478.08 which was reimbursed to BS&F in December 2004.

monthly bills for the period from January 1, 2005 through August 12, 2005 in the amount of \$3,833,611 in fees and \$428,984.43 in expenses, but has not yet received *any* payment from the Debtors with respect to these bills.

10. During the Current Application Period, BS&F determined, in the exercise of its billing judgment, to write off approximately \$475,204.50<sup>9</sup> in fees and expenses, as reflected in the monthly billing statements served pursuant to the Compensation Order. Additionally, a number of BS&F's partners' rates were billed below their standard billing rates which resulted in an additional discount of \$446,362.50 for the Current Application Period. BS&F also agreed to a \$1,500,000<sup>10</sup> reduction in fees for the period April 1, 2004 through October 31, 2004. Consistent with the directive of the Fee Committee, BS&F does not bill for fees and expenses for work done in connection with matters raised by the Fee Committee, but reserves its rights to seek compensation for some or all of these fees and expenses at a later date. BS&F's total write offs for the Current Application Period is \$2,421,567.

11. No agreement or understanding exists between BS&F and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case. See Affidavit of Christopher A. Boies, annexed hereto as Exhibit A.

12. Prior to June 25, 2002 ("the "Petition Date"), BS&F received payments, including retainers, totaling \$4,064,306 in the aggregate on behalf of services performed for the Debtors. As of the Petition Date, BS&F had outstanding prepetition invoices equal to \$655,656 in

---

<sup>9</sup> Fee reduction is reflected on BS&F's invoices.

<sup>10</sup> Fee reduction was taken after BS&F's invoices were distributed and therefore the reduction is not reflected on BS&F's invoices.

fees and \$23,106 in expenses (the “Prepetition Amounts”). A net retainer in the amount of \$1,500,000 is currently being held by BS&F as a prepetition retainer. Subject to Court approval, BS&F intends to apply the retainer against the Prepetition Amounts as well as fees allowed by the Court in connection with this Application.

13. BS&F maintains written records of the time expended by attorneys, law clerks and paraprofessionals in rendering professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by each person rendering such services. A copy of the daily time records for the Current Application Period, broken down by matter and listing the name of the attorney, law clerk or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services, is annexed hereto as Exhibit B.<sup>11</sup>

14. For the convenience of the Court and parties in interest, annexed hereto as Exhibit C is a list of the attorneys, law clerks and paraprofessionals who have worked on those matters during the Current Application Period, the aggregate time expended by each individual during that period, his or her hourly billing rate, and the amount of BS&F's fees attributable to each individual. Additionally, annexed hereto as part of Exhibit C is a list of all the matters for which services were rendered during the Current Application Period and the aggregate amount of hours and fees expended for each of those matters.

15. BS&F also maintains records of all actual and necessary out-of-pocket expenses relating to the rendition of professional services during the Current Application Period. A

---

<sup>11</sup> Copies of the daily time records are being provided to the Court and the Office of the United States Trustee. Parties in interest required to be served with BS&F monthly fee statements pursuant to the Compensation Order have previously been furnished with such daily time records. Copies of the time records will be made available to other parties in interest upon reasonable request. Due to their voluminous nature, BS&F's daily time records for prior periods are not attached to this Application. Such records are attached to prior Applications.



schedule setting forth the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit D.

16. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases (the “Administrative Order”), BS&F recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during the Current Application Period.

### **SUMMARY OF SERVICES RENDERED**

17. Recitation of each and every item of professional services that BS&F performed during the period of its engagement on behalf of the Debtors would unduly burden the Court. Hence, the following summary highlights the major areas to which BS&F devoted substantive time and attention from the time of its retention as Special Counsel to the Debtors to the time that BS&F, at the request of management, resigned as Special Counsel to the Debtors on August 11, 2005.<sup>12</sup> The details of BS&F's services for the Current Application Period are reflected in BS&F's annexed time records. Additionally, Exhibit B annexed hereto lists: (a) all attorneys, law clerks and paraprofessionals who have performed services in each respective Service Category; and (b) a breakdown of the hours spent and the amount of compensation requested for each attorney, law clerk and paraprofessional within each Service Category.

---

<sup>12</sup> The services described herein also include transition services provided after the date of BS&F's resignation as special counsel.

A. **Litigation**

18. BS&F has been involved in all aspects of the litigation that the Debtors have been involved in relating to the Rigases, the events surrounding the criminal investigations and indictments brought by the Department of Justice (the “USDOJ”), and the investigations and civil action brought by the United States Securities and Exchange Commission (the “SEC”). These activities, including the significant efforts to coordinate among the different litigations and investigations, to negotiate a possible global settlement of these matters, and to coordinate with the two committees in this bankruptcy, have included the following.

B. **USDOJ Criminal Investigation**

19. Since the spring of 2002, two criminal investigations were actively underway involving Adelphia. The first is an investigation that was run out of the United States Attorney’s Office in this District and resulted in the arrests on July 24, 2002 of John Rigas, Timothy Rigas, Michael Rigas, James Brown, and Michael Mulcahey, all former executives with Adelphia. Each of these individuals was indicted on 24 counts of conspiracy, securities fraud, bank fraud and related charges on September 23, 2002. A superceding indictment was filed on October 1, 2003.

20. James Brown subsequently pleaded guilty to certain of the charges against him. A criminal trial of the charges against John Rigas, Timothy Rigas, Michael Rigas, and Michael Mulcahey commenced on approximately March 1, 2004. On July 8, 2004, the jury returned a verdict of guilty with respect to all counts against John and Timothy Rigas except five counts of wire fraud and acquitted Michael Mulcahey of all counts. A mistrial was declared with respect to Michael Rigas after the jury acquitted him of wire fraud and conspiracy but could not reach a verdict on the remaining seventeen charges against him.

21. A second criminal investigation was being run out of the United States Attorney's Office in the Middle District of Pennsylvania, relating to possible violations by the Rigases of the Internal Revenue Code.

22. Since the departure of the Rigases from Adelphia in mid-May, 2002, including all times during this bankruptcy, Adelphia cooperated fully with both of these criminal investigations concerning any issues the prosecutors or investigators have sought to cover. For much of this time period, BS&F was the sole liaison between Adelphia and the USDOJ and, during all time periods, BS&F was heavily involved in all aspects of Adelphia's cooperation with the USAO. Work by BS&F in this area has ranged from preparing and providing numerous witnesses (ranging from line level employees to former directors and officers) for interviews, grand jury and trial testimony, and the production of hundreds of boxes worth of documents, often under heavy time pressure. We believe that the cooperation and assistance provided by the Debtors to the USDOJ through BS&F has substantially assisted the government in its pursuit of its indictments, in the guilty pleas entered by James Brown and Timothy Werth to charges of conspiracy, securities fraud and bank fraud, and the conviction of John Rigas and Tim Rigas. We believe that the cooperation and assistance provided by the Debtors to the USDOJ through BS&F was a significant factor in the USDOJ's decision to settle with, rather than to indict, Adelphia.

23. In addition to cooperating in the criminal investigations regarding certain individuals, BS&F has been heavily involved in efforts to negotiate a settlement and avoid the indictment of the Debtors, which could have significant and perhaps drastic consequences on the Debtors and its stakeholders.

24. During the first several months of 2005, these negotiations with the USDOJ – which became part of more global settlement negotiations involving the SEC and the Rigases – were especially intense. BS&F was heavily involved in all aspects of these negotiations, which were ultimately successful and led to three separate settlement agreements between Adelphia and the USDOJ, Adelphia and the SEC, and Adelphia and the Rigases. BS&F also was heavily involved in advising the Company during these negotiations, documenting the relevant agreements, and working to gain approval for these settlements in the Bankruptcy Court and the District Court. BS&F believes these settlements are highly advantageous to the Debtors, as recognized by the Bankruptcy Court in approving these settlements.

C. **SEC Civil Action**

25. Largely in conjunction with the USDOJ investigation, the SEC has likewise engaged in an investigation of Adelphia, the Rigases, Deloitte and related parties. On the same day that the Rigases were arrested, the SEC commenced a civil action in this District. The SEC suit named Adelphia, John Rigas, Tim Rigas, Michael Rigas, James Rigas, James Brown and Michael Mulcahey.

26. Adelphia cooperated with the SEC in its investigation of non-Adelphia defendants and other individuals and entities. These cooperation efforts were closely linked with the efforts to cooperate with the USDOJ.

27. BS&F also engaged in negotiations with the SEC concerning a potential settlement of the SEC's claims against Adelphia. These negotiations – which occurred in parallel with the negotiations with the USDOJ and the Rigases – were especially intense during the first several months of 2005. As discussed above, BS&F was heavily involved in these negotiations and

the related negotiations with the USDOJ and the Rigases, which were ultimately successful and led to three separate settlement agreements. BS&F also was heavily involved in advising the Company during these negotiations, documenting the relevant agreements, and working to gain approval for these settlements in the Bankruptcy Court and the District Court. BS&F believes these settlements are highly advantageous to the Debtors, as recognized by the Bankruptcy Court in approving these settlements

D. **Adelphia's Suit Against the Rigases**

28. On July 24, 2002, BS&F filed an adversary proceeding on behalf of Adelphia in the United States Bankruptcy Court for the Southern District of New York against members of the Rigas family, Peter Venetis, Ellen Rigas Venetis, James Brown, Michael Mulcahey and entities controlled by the Rigas family ("Rigas Adversary Proceeding"). BS&F was Adelphia's lead counsel in this action. An Amended Complaint was filed on November 15, 2002. The Amended Complaint alleges causes of action for violations of the Racketeer Influenced and Corrupt Organization Act, breach of fiduciary duty, securities fraud, fraudulent concealment, fraudulent misrepresentation, conversion, waste of corporate assets, breach of contract, fraudulent conveyance, unjust enrichment, and inducing breach of fiduciary duty. In the Rigas Adversary Proceeding, the Debtors sought recovery for the estate of well in excess of \$1 billion.

29. Work by BS&F in connection with this proceeding included all aspects of representing the Debtors and ranged from factual development such as document review and witness interviews; legal research; drafting the Complaint, Amended Complaint, motions for emergency relief, response to motions to dismiss, motion for summary judgment, evidentiary hearings on the Rigases' request for attorneys fees, preparation of other pleadings and briefs, attendance and argument at hearings before the Court, preparation of discovery materials, settlement discussions and

motions for the approval of settlement, communication and coordination with the creditors and equity committees in this bankruptcy; and communications with opposing counsel.

30. For example, on August 26, 2002, and in connection with the Rigas Adversary Proceeding, BS&F moved for an emergency order on behalf of the Debtors to enjoin the sale or transfer of various parcels of real property held in the name of, or under the control of, members of the Rigas family or entities that they control. By Memorandum Decision issued on the same date and by subsequent written order entered on September 10, 2002, the Court granted the Debtors' motion. This order helped ensure the preservation of assets that properly should be included in the Adelpia estate.

31. On November 26, 2002, and in connection with the Rigas Adversary Proceeding, BS&F further moved on behalf of the Debtors for an emergency order to freeze all of the assets of members of the Rigas family and entities that they control. By Memorandum Decision issued from the Bench on the same date, the Court granted the requested relief and froze all of the assets of the Rigas family members and their entities subject to expenditures for reasonable living expenses, necessary business expenses, and reasonable defense costs, including payment of attorneys fees in the pending civil and criminal actions against the Rigas family and entities they control.

32. On July 18, 2003, the Rigases filed a motion in the Chapter 11 cases seeking to modify the August 26, 2002 and November 26, 2002 temporary restraining orders to permit funding of the Rigases' criminal and civil defense costs from cash generated by the Rigas private cable companies managed by Adelpia ("Managed Entities"). On July 31, 2003, BS&F filed an opposition to the Rigases' motion. A hearing on this motion was held on August 1, 2003. In an opinion issued from the bench on the same date, and entered as an order on August 7, 2003, the Court permitted the

Managed Entities, subject to certain limitations, to pay certain specified defense costs on behalf of the Rigases and Michael Mulcahey. On August 12, 2003, BS&F filed a notice of appeal with respect to this August 7, 2003 Order, and researched and drafted Debtor's appellate briefs in this matter. Prior to oral argument on the appeal, the parties entered into a Stipulation and Order settling the appeal. This agreement was so ordered by the Bankruptcy Court on September 2, 2003. BS&F negotiated this settlement on behalf of the Debtors.

33. BS&F had primary responsibility for responding to lengthy motions to dismiss the Amended Complaint that Defendants filed on or about January 16, 2003.<sup>13</sup> BS&F devoted substantial resources to researching and drafting responses to each of the issues raised in Defendants' respective motions. On June 28, 2004, this Court denied the motions to dismiss the state common law claims. The motions to dismiss with respect to the other claims remain fully submitted.

34. BS&F also had primary responsibility for the Debtors' motion for partial summary judgment in this action seeking \$3.23 billion in damages and a constructive trust over assets. In this capacity, BS&F, for example, had responsibility for the discovery related to this motion and responding to the Rigases motion pursuant to Rule 56(e) requesting additional discovery prior to the Court's considering the motion, and the research and drafting for the supporting and reply memoranda of law in response to briefs that the Rigas Defendants and intervening banks separately filed opposing Adelpia's motion for partial summary judgment.

---

<sup>13</sup> John Rigas, Tim Rigas, Michael Rigas, James Rigas, Doris Rigas, and the Rigas Family Entities (collectively, the "Rigas Defendants") filed one motion to dismiss; Peter Venetis filed a second motion to dismiss; and Ellen Rigas Venetis filed a third motion to dismiss. On or about February 3, 2003, Michael Mulcahey joined in certain parts of the foregoing motions to dismiss. Because James Brown pleaded guilty to several charges and agreed to cooperate with the United States Attorney's Office in its investigation of the wrongdoing alleged, at least in part, in the Amended Complaint, Adelpia extended Mr. Brown's time to respond to the Amended Complaint.

35. In the third quarter, 2004, the Rigases again pursued payment of attorneys fees by the Rigas Managed Entities. BS&F had principal responsibility for responding to this motion and for handling the evidentiary hearing held on November 8, 2004 and continued on November 22, 2004. Adelphia was largely successful in opposing the Rigas request, as reflected in the Court's opinion dated March 24, 2005.

36. In February 2005, Adelphia filed an adversary proceeding on behalf of Adelphia against members of the Rigas family and certain Rigas properties seeking to enforce a series of agreements entered into in 1994 by the Rigas defendants, which conveyed certain real property to Adelphia. The Rigases had refused to transfer title to the relevant properties to Adelphia even though Adelphia had paid fair market value as part of the 1994 transactions.

37. BS&F took the lead on researching, drafting, and arguing responses to motions to lift the bankruptcy stay made by a holder of mortgages to foreclose on properties that were held by the Rigases but that were purchased and maintained using Adelphia funds.

38. BS&F also dealt with the Rigases on issues pertaining to the Rigas Managed Cable Entities.

39. Finally, BS&F was heavily involved in the intense negotiations with the Rigases with respect to a settlement of the Rigas Adversary Proceeding, as part of more global settlement negotiations also involving the USDOJ and the Rigases. These negotiations were a central part of, and ultimately resulted in, a resolution of the Company's claims against the Rigases as well a global resolution of the SEC's claims against the Company, and the USDOJ's investigation of the Company. In addition to its role during these negotiations, BS&F was also heavily involved in advising the Company during these negotiations, documenting the relevant agreements, and working



to gain approval for these settlements in the Bankruptcy Court and the District Court. BS&F believes these settlements are highly advantageous to the Debtors, as recognized by the Bankruptcy Court in approving these settlements.

E. **Adelphia v. Deloitte & Touche LLP**

40. On November 6, 2002, the Debtors filed a suit in the Court of Common Pleas for Philadelphia County against Deloitte & Touche LLP (“Deloitte”). The Complaint alleges causes of action for professional negligence, breach of contract, fraud, and other wrongful conduct arising out of Deloitte’s complicity in the wrongdoing by the Rigases. In this action, the Debtors are seeking recovery of damages suffered as a result of Deloitte’s wrongful conduct, as well as punitive damages. Those alleged damages could easily exceed \$1 billion.

41. BS&F was lead trial counsel to the Debtors in this action. Work by BS&F in connection with this action included all aspects of representing the Debtors and ranged from factual development such as document review and witness interviews; legal research; drafting the Complaint; preparation of discovery materials; coordination with local counsel; communication and coordination with the creditors and equity committees in this bankruptcy; and communications with opposing counsel.

42. In January 2003, Deloitte filed preliminary objections to the Debtors’ Complaint in this action, seeking dismissal of the action in its entirety. BS&F researched and drafted an opposition to these preliminary objections, which was filed in April 2003. Deloitte’s objections to the complaint were denied.

43. Deloitte subsequently filed a motion to transfer and consolidate another Pennsylvania state court action against Deloitte with the Debtor’s own action against Deloitte.

Together with Pennsylvania Counsel, BS&F researched and drafted an opposition to this motion, which was withdrawn by Deloitte days before argument.

44. On September 15, 2003, Deloitte filed and served an Answer to the Debtor's Complaint and Counterclaims. With assistance from Pennsylvania Counsel, BS&F drafted the Debtors' response to these the counterclaims.

45. Prior to its resignation as Debtors' Special Counsel, BS&F was heavily involved in the substantial discovery that has occurred in this litigation. For example, BS&F prepared for and took and defended numerous depositions; negotiated with opposing counsel regarding numerous discovery issues and disputes; and reviewed, drafted, prepared for, and/or argued discovery motions filed with the Court. BS&F also was heavily involved in the substantial expert work that has also been ongoing. In addition, as the trial date for this action approached, BS&F was heavily involved in all aspects of trial preparation and strategy. BS&F was also engaged in discussions concerning the potential for settlement with Deloitte as well as the preliminary discussions to arrange for a mediation that began in September 2005.

46. We believe that the prosecution of this action against Deloitte is likely to provide a substantial recovery for the Adelpia estate.

F. **The Rule 9019 Proceedings and Other Settlement Approval Proceedings**

47. As discussed above, BS&F was heavily involved in the successful efforts to negotiate settlements with the USDOJ, the SEC, and the Rigases. Pursuant to applicable law, these settlements, and the related settlements between the Rigases and the Government to which the Company was not a party, required approval by the Bankruptcy Court pursuant to Rule 9019 and/or approval by the District Courts before whom the criminal proceeding against the Rigases and SEC

Action are pending. Each of these settlements was ultimately approved by the relevant Courts, and BS&F was heavily involved in these efforts. For example, in connection with the relevant Rule 9019 motion before the Bankruptcy Court, BS&F was heavily involved in the preparation of the motion papers, the document and deposition discovery that resulted from the motion, and the oral argument on these issues before the Court. BS&F was also heavily involved in coordinating with the USDOJ and the SEC Adelpia's efforts to seek approval in the District Court of the settlements to which the government was a party. BS&F believes that the approval of each of the relevant settlement agreements has provided substantial benefits to the Debtors, as recognized by the Bankruptcy Court in approving these settlements.

G. **Other Litigation**

48. In its representation of the Debtors, BS&F has evaluated the potential liability of other individuals and entities (apart from those already named as defendants in the lawsuits against the Rigases and Deloitte) who may have caused damages to Adelpia as a result of their role in the wrongful conduct by the Rigases. BS&F has also evaluated whether certain of the potential secured and unsecured claims against the Adelpia estate are proper under the bankruptcy laws and other applicable legal principles.

H. **Insurance-related Litigation**

49. ABIZ v. Adelpia. On July 12, 2002, Adelpia Business Solutions, Inc. ("ABIZ"), a former Adelpia subsidiary, brought an adversary proceeding against the Debtors and several director and officer liability insurance carriers ("the Carriers") seeking an allocation of the proceeds from three director and officer liability insurance policies issued by the Carriers to Adelpia ("the D&O Policies"). The D&O Policies include a primary policy and two excess policies, which combined provide a total coverage of \$50 million.

50. ABIZ claimed in the adversary proceeding that it was entitled to a share of the proceeds from the D&O Policies based on the relative amount of the total premium paid.

51. BS&F represented the Debtors in the ABIZ adversary proceeding. Work by BS&F in connection with this proceeding included all aspects of representing the Debtors and ranged from factual development such as document review and document production; legal research; drafting a motion to dismiss, a motion to stay, and an answer substantially denying the allegations in ABIZ's Complaint; attendance and argument at hearings before the Court; preparation of discovery materials; and communications with opposing counsel.

I. **D&O Coverage Litigation**

52. Beginning in September 2002, several motions (the "D&O Motions") were filed in the Bankruptcy Court regarding coverage issues arising with respect to the Debtor's D&O Policies. On September 13, 2002, the Rigases filed a motion seeking relief from the automatic stay, to the extent applicable, to allow payment and/or advancement of defense costs under the D&O Policies. On September 23, 2002, James Brown filed a similar motion. On September 26, 2002, the three Carriers who issued the D&O Policies filed a motion seeking relief from the automatic stay, if applicable, so they could provide the Debtors with notice of rescission of the D&O Policies and join the Debtors as a defendant in a declaratory judgment action relating to the D&O Policies that had been commenced in the United States District Court for the Eastern District of Pennsylvania. In response, on October 16, 2002, the Debtors initiated an adversary proceeding against the Carriers seeking to enjoin the prosecution of the action in the Eastern District of Pennsylvania and sought an order enforcing or extending the automatic stay with respect to this action.

53. BS&F was counsel to the Debtors with respect to the D&O Motions. Work by BS&F in connection with the D&O Motions included all aspects of representing the Debtors and ranged from factual development such as document review and witness interviews; legal research; review of the motions and briefs filed by the parties; drafting briefs in connection with each motion; drafting the complaint in the adversary proceeding filed by Adelphia; appearing for and arguing on behalf of the Debtors at hearings before the Court; coordinating with Adelphia's creditors and equity committees regarding the strategy for these motions; and communication and coordination with counsel for the parties with an interest in the D&O coverage issues, including counsel for the Carriers, ABIZ, Adelphia's independent directors, and the Rigases.

54. We believe the Debtor's litigation of the D&O Motions will succeed in preserving proceeds of the D&O Policies as part of the Adelphia estate.

J. **Schleyer/Cooper Retention**

55. On January 21, 2003, the Debtors filed a motion for an order pursuant to 11 U.S.C. § 363 authorizing and approving Debtors' employment and compensation of William Schleyer as Chairman and Chief Executive Officer and Ronald Cooper as President and Chief Operating Officer of Adelphia. BS&F worked closely with lead bankruptcy counsel, Willkie Farr & Gallagher, in litigating this motion. Work by BS&F in connection with this motion included planning strategy with co-counsel; taking and defending depositions of Adelphia board members; witness preparation; review and editing court filings and discovery; participation in conferences with the Court in anticipation of the hearing on this motion; attending and presenting witnesses at an evidentiary hearing before the Court on this motion; preparation of discovery materials; communication and coordination with the creditors committee in this bankruptcy; coordination with

the United States Attorneys Office regarding its concerns regarding discovery with respect to this motion; and communications with objectors.

56. On March 4, 2003, the Court issued a bench decision and on March 7, 2003 signed an Order granting the Motion, subject to one structural change in Mr. Schleyer's employment agreement.

**K. Corporate Governance Adversary Proceeding**

57. On January 9, 2003, the Official Committee of Equity Security Holders of Adelpia (the "Equity Committee") commenced an adversary proceeding (the "Corporate Governance Adversary Proceeding") against Adelpia in the bankruptcy court seeking declaratory, equitable, and injunctive relief. The complaint seeks to force a shareholder meeting and effectively to transfer the voting rights appurtenant to the Rigas shares to minority shareholders. In addition to the complaint, the Equity Committee filed a motion for a preliminary injunction seeking the same relief on an interim basis. The Equity Committee filed an amended complaint on March 31, 2003, dropping its claim to force a shareholder meeting and adding a claim to invalidate the May 23 agreement between the Rigases and the Special Committee, which, among other things, transfers the right to vote the Rigas shares to the Special Committee.

58. While it was an active matter, BS&F was lead trial counsel for the Debtors in the Corporate Governance Adversary Proceeding. Work by BS&F in connection with this proceeding included all aspects of representing the Debtors and ranged from factual development such as document review and witness interviews; retention of an expert witness and preparation of an expert report; legal research; drafting a motion to dismiss and objections to the Equity Committee's

motion for a preliminary injunction; communication and coordination with the creditors committee in this bankruptcy; and communication with counsel for the Equity Committee.

L. **Coordination with the Special Committee Investigation**

59. Throughout the fact finding the Debtors engaged in through its own investigations, the investigation of the Special Committee and the work of BS&F in connection with the litigation brought by or against the Debtors, BS&F worked closely with the Special Committee and its counsel. These efforts were central to coordinating cooperation with the government investigations as described above, pursuing a return of assets of the Debtors, and commencing litigation based on the fact finding conducted by the Special Committee and other investigations to address the massive damages caused to Adelphia. This coordination effort was also central to the efficient and speedy progress of the Special Committee in conducting its investigation and in the ability of the Debtors to amass together the information necessary to pursue the return of assets and recover damages caused to Adelphia by the Rigases, Deloitte and others as well as to obtain the information necessary to proceed with the review and audit of Adelphia's financial statements.

M. **Litigation Coordination with the Creditors and the Equity Committees.**

60. In connection with the various litigation matters being pursued by the Debtors and litigation facing the Debtors (including the issue of indictment of the Debtors), BS&F coordinated its efforts with both the equity and creditors' committees. These coordination efforts, as with many of the other coordination efforts, were central to maintaining the best possible litigation position on all of the many fronts to ensure the Debtors are well positioned to maximize their recoveries under all possible viable litigations that may be brought by or on behalf of the Debtors or the committees. For example, BS&F regularly updated the committees on the status of litigation being considered or brought by the Debtors and sought the advice and comment from counsel for the

committees to pleadings and other documents filed by the Debtors in the different litigations described herein. In addition, BS&F worked closely with the committees with respect to the adversary proceeding filed by the committees against certain of the Debtor's lenders, and is monitoring and participating in this litigation on behalf of the Debtor. These coordination efforts were central to our overall efforts of representing Debtors in their litigation matters while appropriately taking into consideration all of the different stakeholders whose interests need to be considered in connection with those efforts.

N. **Corporate Matters**

61. BS&F has advised the Debtors on general corporate matters, including among other things, advising on corporate governance reform and implementation; drafting and revising corporate governance documents; working with the Board of Directors and Board Committee members; analysis of officer and director indemnification issues; and various research and analysis of a number of general corporate issues. BS&F played a central role in advising the Company and the Board in restructuring and retaining new senior management and new Board members. In this regard, BS&F negotiated and prepared director indemnification agreements which all new directors have executed since joining the Board. BS&F was also instrumental in working with the Board and its various committees in connection with the significant corporate governance initiatives that were undertaken in response to the Rigas' wrongdoing and the adoption of the Sarbanes-Oxley Act of 2002, and the rules and regulations promulgated thereunder. BS&F, in advising the Board on best practices, drafted amendments to Adelpia's By-Laws, developed Whistleblower procedures and other company policies, prepared state of the art charters for the Compensation, Audit, Nominating and Governance Committees, attended Board and committee meetings and prepared minutes for such meetings, facilitated the creation of the Lead Director position, prepared Adelpia's Corporate



Governance Guidelines and Code of Business Conduct and Ethics and conducted a detailed analysis of the Breeden Report (prepared for Worldcom) and advised the Board and management with respect to Adelphia's response to, and adoption of, certain recommendations made therein. BS&F also worked with Adelphia's Board and senior management in connection with their interactions with the USDOJ, the SEC, various congressional investigations and other interested parties on Adelphia's corporate governance initiatives.

O. **Transition Services**

62. On August 11, 2005, at the request of management, BS&F resigned as Special Counsel to Debtors. Since that time, BS&F has worked diligently to ensure an orderly and efficient transition of the matters on which BS&F was working to other counsel identified by the Debtors. This transition work has included meetings and communications with other Adelphia counsel to insure a smooth transition and an effective transfer of information and knowledge from BS&F; the identification and transfer of relevant files and work product; and ongoing coordination as any issues or questions arise. BS&F anticipates that it will be required to render transition services after August 12, 2005, the last date of the Current Application Period. Consequently, BS&F reserves the right to file a supplemental fee request seeking payment of transition fees and reimbursement of transition expenses. BS&F will file its supplemental request ten (10) days before the hearing scheduled for the Court to consider this Application.

P. **Fee Statements/Fee Applications**

63. During the entire engagement, in accordance with the Court's order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002, BS&F has served monthly statements on the relevant service parties. In addition, BS&F has worked to comply with the directives of the

fee committee (the “Fee Committee”) and the requirements of the fee protocol approved by the Court on March 7, 2003, by participating in negotiations with the Fee Committee and providing relevant fee materials so that the Fee Committee may monitor the fees incurred in these cases.

### **EVALUATING BS&F’S SERVICES**

64. As highlighted above, during the Current Application Period, BS&F provided extensive services to facilitate the Debtors' discharge of their duties as debtors in possession and otherwise move these cases forward. Moreover, BS&F has provided day-to-day legal advice respecting the ordinary course operation of the Debtors’ businesses. All of these services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

65. “[T]he ‘lodestar’ method of fee calculation developed by the Fifth Circuit, see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a ‘reasonable’ attorney fee in all the federal courts, including the bankruptcy courts.” In re Cena’s Fine Furniture, Inc., 109 B.R. 575, 581 (E.D.N.Y. 1990); In re Poseidon Pools of America, Inc., 216 B.R. 98, 100 (E.D.N.Y. 1997). Accord In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) (“In determining the ‘reasonableness’ of the requested compensation under § 330, Bankruptcy Courts now utilize the ‘lodestar’ method”).

66. “The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate, with the ‘strong presumption’ that the lodestar product is reasonable under § 330.” Drexel, 133 B.R. at 22 (citations omitted). BS&F’s hourly rates and fees

charged are consonant with the market rate for comparable services. The hourly rates and fees charged by BS&F are the same as (or less than) those generally charged to, and paid by, BS&F's other clients. Indeed, unlike fees paid by most BS&F clients, due to the "holdbacks" of fees from prior monthly fee statements and the delays inherent in the fee application process, the present value of the fees paid to BS&F by the Debtors is significantly less than fees paid monthly by other BS&F clients.

67. The hours expended by BS&F were necessary. "[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity or project should be disallowed *only* where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive." Drexel, 133 B.R. at 23 (emphasis added). Moreover, in passing upon the reasonableness of hours expended, courts should be mindful of the "practical judgments, often within severe time constraints, [professionals make] on matters of staffing, assignments, coverage of hearings and meetings, and a wide variety of similar matters." Id. These judgments are presumed to be made in good faith. Id.

### **BS&F'S REQUEST FOR FINAL COMPENSATION**

68. Section 330(a)(1) of the Code provides, in pertinent part, that the court may award to a professional person, including the debtor's counsel, as follows:

reasonable compensation for actual, necessary services rendered by  
the . . . professional person, or attorney . . . .

11 U.S.C. § 330. The Congressional intent expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation in order to attract qualified and competent practitioners to bankruptcy cases.

69. BS&F's request for compensation is reasonable. The services rendered by BS&F, as highlighted above, required substantial time and effort, much of which occurred under substantial pressure and during nights and weekends.

70. The services rendered by BS&F during the entire Application Period were performed diligently and efficiently. Accordingly, when possible BS&F delegated tasks to lower cost junior attorneys and law clerks or, for discrete matters, to attorneys with specialized expertise in the particular task at issue. That approach may have required intra-office conferences or the services of individual attorneys who spent only a few hours on a particular matter, but the net result was enhanced cost efficiency.

71. During the course of our representation, BS&F has been able to consolidate the bulk of the work to a relatively small number of lawyers. By coordinating and consolidating work in this way, BS&F has been able to obtain economies for the estate by reducing the need to coordinate across a larger population of associates and by ensuring that persons assigned to tasks already have a large base of working knowledge concerning Adelpia, the issues it faced, and the tasks that are already underway. Nonetheless, because of the large number of matters and issues facing the estate on which BS&F has performed legal services and the overlap of those issues with one another, there were a significant number of separate timekeepers that necessarily performed work on Adelpia's behalf. BS&F has taken significant steps to coordinate the efforts of those different timekeepers through the firm's internal structure, including the oversight of associates' work by more senior associates and/or partners working on the matters.

72. Although duplication of effort has been avoided to the greatest extent possible, some duplication may have occurred as a result of the intensity of the matters in which BS&F was

engaged, the complexity of the issues that arose during these cases, and the urgent basis upon which some of these services were rendered. Any duplication of effort was de minimis, was covered by BS&F's write-offs in the exercise of billing judgment and otherwise unavoidable.

73. In many instances, BS&F has been able to successfully resolve disputes without the need to request assistance from the Court. When necessary, however, BS&F actively represented the Debtors' interests before the Court and, through litigation or settlement, substantially furthered the Debtors' reorganization efforts.

74. During the Application Period, BS&F encountered novel and complex legal issues, often requiring extensive research and drafting. BS&F brought to bear legal expertise in many areas, including litigation, tax, regulatory issues, and corporate governance. BS&F attorneys have rendered advice in all of these areas with skill and dispatch.

### **DISBURSEMENTS**

75. BS&F incurred actual and necessary out-of-pocket expenses during the Application Period in connection with the rendition of the professional services described above, in the amounts set forth in Exhibit D.<sup>14</sup> By this Application, BS&F respectfully requests allowance of such reimbursement in full.

76. The disbursements for which BS&F seeks reimbursement include the following:

- a. Duplicating - Internal charged at \$0.15 per page, based upon the cost of supplies and other factors. The charge per page includes a charge for

---

<sup>14</sup> BS&F's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in BS&F's accounting system.

maintaining the duplicating facilities; external and in-house document reproduction center charges are billed at actual cost without any mark-up;<sup>15</sup>

- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.25 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by BS&F for machine maintenance, supplies used in operating the fax machine and other factors;
- c. Computer Research Charges - BS&F's practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment;
- d. Overtime Expenses - BS&F's practice is to allow any attorney working 10 hours or more to charge a working meal to the appropriate client. The meal charge is limited to \$20 per person;
- e. Local Car Service - BS&F's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after working more than three hours after their normal workdays have ended;
- f. Delivery Services - BS&F's practice is to charge postal, overnight delivery and courier services at actual cost; and
- g. Travel Expenses - BS&F's practice is to charge all travel expenses, including airfare, lodging, meals, other transportation, mileage and tolls at actual cost without any mark-up.

### **PROCEDURE**

77. BS&F has provided notice of this Application to: (i) the Office of the United States Trustee; (ii) counsel to the agents for the Debtors' prepetition and postpetition bank lenders; (iii) counsel to the Committees; (iv) the Debtors; (v) the Fee Committee; and (vi) all other parties that have filed a notice of appearance in these cases prior to the date hereof.

### **CONCLUSION**

---

<sup>15</sup> BS&F's document reproduction costs have included the copying and imaging of millions of pages of documents requested by the government and turned over to the government, the banks and others in connection with the various litigations and investigations facing the Debtors.

WHEREFORE, BS&F respectfully requests that this Court enter an order:

(a) awarding BS&F final compensation from the Debtors for services rendered from June 26, 2002 through August 12, 2005, inclusive, in the amount of \$29,800,291.50;

(b) awarding BS&F reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$1,975,818.65;

(c) authorizing BS&F to apply the \$1,500,000 retainer it is currently holding on behalf of the Debtors against (i) the Prepetition Amounts and (ii) fees and expenses allowed in connection with the Application but which remain unpaid as of the date of the order;

(d) directing the Debtors to pay to BS&F the outstanding balance, after application of the \$1,500,000 retainer, of all fees and expenses approved by the Court in connection with this Application; and

(e) granting such other and further relief as may be just.

Dated: October 3, 2005

BOIES, SCHILLER & FLEXNER LLP

By: /s/Christopher Boies  
Christopher A. Boies (CB-3900)

333 Main Street  
Armonk, New York 10504  
(914) 749-8200