

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: January 14, 2003, 9:45 a.m.

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

**FIRST APPLICATION OF BOIES, SCHILLER AND FLEXNER LLP,
AS SPECIAL COUNSEL FOR DEBTORS AND DEBTORS IN
POSSESSION, FOR INTERIM ALLOWANCE OF
COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
JUNE 26, 2002 THROUGH OCTOBER 31, 2002**

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

Boies, Schiller and Flexner LLP (“BS&F”), attorneys for the above-captioned debtors and debtors in possession in these cases (the “Debtors”), in support of its first interim application (the “First Application”) for allowance of compensation for professional services rendered and reimbursement of expenses incurred from June 26, 2002 through October 31, 2002 (the “First Application Period”), respectfully represents:

PRELIMINARY STATEMENT

1. By this First Application and pursuant to sections 330 and 331 of 11 U.S.C. § 101 et al. (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), BS&F requests that this Court authorize: (a) interim allowance of compensation for professional services BS&F rendered to the Debtors during the First Application

Period in the amount of \$2,879,781.00;¹ and (b) the reimbursement of actual and necessary expenses BS&F incurred in connection with the rendering of such professional services in the amount of \$192,185².

2. This Court has jurisdiction over this First 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, of District Court Judge Robert T. Ward. Venue of these cases and this First Application is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

GENERAL BACKGROUND

3. On June 10, 2002, Century Communications Corporation ("CCC") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and on June 26, 2002 (the "Petition Date"), Adelphia Communications Corporation and certain of its subsidiaries and affiliates (collectively, "ACC") commenced cases under chapter 11 of the Bankruptcy Code. On September 30, 2002, Century/ML Cable Venture ("CML") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

¹ As set forth in BS&F's monthly fee statements submitted during the First Application Period, BS&F determined to "write off" approximately \$59,535.65 in fees in the exercise of its billing judgment. Such write off amounts are not included in the amounts requested in this First Application. The write offs for billing judgment purposes are general in nature and not specific to any one or more entries in the attached daily time records. Accordingly, the time records represent the "pre-billing judgment" amount, while the actual fees and reimbursements requested herein represent the amounts that have been reduced by the billing adjustment amounts.

² BS&F reserves its right to seek at a later date compensation for expenses incurred during the First Application Period that may not have been posted as of yet and thus are not included herein.

4. The Debtors are continuing in possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. By order dated June 26, 2002, the Debtors' cases, except for debtor CML, were consolidated for procedural purposes and are being jointly administered.

5. No trustee or examiner has been appointed in these cases.

6. On July 11, 2002, an Official Committee of Unsecured Creditors was appointed in these cases, and on July 31, 2002, an Official Committee of Equity Security Holders was appointed in these cases (together, the "Committees").

BS&F'S FEES AND EXPENSES

7. 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 First Application Period, the 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 professionals from many legal disciplines on a daily basis, and often through night and weekend work.

8. 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, BS&F makes the following disclosures:

- (a) No plan of reorganization or disclosure statement has been filed in these cases. Presently, unless extended by order of this Court, the Debtors' exclusive period to file a plan or plans under section 1121 of the Bankruptcy Code would end on February 21, 2003 and the period to solicit acceptance thereto would end on April 21, 2003.

- (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 October 31, 2002, the Debtors had approximately \$471 million in cash on hand, which amount includes Tranche B of the DIP financing facility and certain restricted cash.
- (d) BS&F is advised that the Debtors are paying undisputed administrative expenses in the ordinary course of business from cash generated from operations.
- (e) With the exception of asserted liens of the Debtors' prepetition lenders, the Debtors' funds are generally unencumbered.

9. For the First Application Period, pursuant to this Court's Order Under Local Rule 2016-1 and 11 U.S.C. §§105(a) and 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002 (the "Compensation Order"), BS&F has received or is expected to receive \$2,496,009.80 as payment for services rendered and expenses incurred in these cases.³ This amount represents 100% payment of the reimbursement for expenses incurred and 80% payment for services rendered by BS&F. Pursuant to the Compensation Order, 20% of the fees for professional services is subject to a "hold back."

10. By this First Application, BS&F seeks interim allowance in full of compensation for services rendered and expenses incurred during the First Application Period. Consistent with BS&F's understanding of the Office of the U.S. Trustee's position, and the Court's practice with respect to payments of hold back amounts, BS&F does not seek payment of the hold

³ On November 20, 2002, BS&F submitted its Statement for Allowance of Interim Compensation for Services Rendered and Reimbursement of Expenses Incurred for the period October 1, 2002 through October 31, 2002 (the "Statement"), seeking payment in the amount of \$665,405, after holdback. The deadline for objections to the Statement was December 10, 2002. No objections have been received, and BS&F expects that it will receive payment on account of the Statement in the amount of \$665,405 prior to the hearing to consider this First Application. The \$2,496,009.80 amount set forth above includes amounts received pursuant to the Statement.

back amount at this time. BS&F reserves the right to request payment of some or all of the hold back amount in subsequent interim fee applications.

11. During the First Application Period, BS&F determined, in the exercise of its billing judgment, to write off approximately \$59,535.65 in fees, as reflected in the monthly billing statements served pursuant to the Compensation Order.

12. 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, Esq., annexed hereto as Exhibit A.

13. Prior to the Petition Date, BS&F received payments, including retainers, totaling \$4,064,306 in the aggregate on behalf of services performed for the Debtors. A retainer in the amount of \$1,500,000 will continue to be held by BS&F as a prepetition retainer.

14. 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 First 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.⁴

⁴ 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.

15. 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 First Application Period, the aggregate time expended by each individual during the First Application Period, his or her hourly billing rate during the First Application Period, 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 and the aggregate amount of hours and fees expended for each of those matters.

16. BS&F also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit D.

17. 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 an application period.

SUMMARY OF SERVICES RENDERED

18. Recitation of each and every item of professional services that BS&F performed during the First Application Period would unduly burden the Court. Hence, the following summary highlights the major areas to which BS&F devoted substantive time and attention during the First Application Period. The full breadth of BS&F's services 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.

B. Litigation

19. BS&F has been involved in all aspects of the litigation the Debtors have been involved in relating to the Rigases and the events surrounding the criminal investigations and indictments brought by the Department of Justice and the investigations and the civil action brought by the United States Securities and Exchange Commission. These activities, including the significant efforts to coordinate among the different litigations and to coordinate with the two formal committees in this bankruptcy have included the following.

C. USDOJ Criminal Investigation.

20. Since early April of this year, two criminal investigations have been actively underway. The first is an investigation run out of the United States Attorney's Office in this District and has 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 were indicted on 24 counts of conspiracy, securities fraud, bank fraud and related charges on September 23, 2002. A second criminal investigation is being run out of the United States Attorney's Office in the Middle District of Pennsylvania. Since new management took over from the Rigases in mid-May, 2002, including all times during this bankruptcy, Adelphia has cooperated fully with both of these criminal investigations concerning any issues the prosecutors or investigators involved in those investigations have sought to cover. Work in this area has ranged from coordinating activities with the Covington firm as counsel to the Special Committee, preparing and providing several witnesses ranging from line level employees to directors and officers for interviews and grand jury testimony

and the production of hundreds of boxes worth of documents. We believe the cooperation and assistance provided by the Debtors to the USDOJ has substantially assisted the government in its pursuit of its indictments and in the recent guilty plea entered by James Brown to one charge each of conspiracy, securities fraud and bank fraud. In addition to cooperating in the criminal investigations regarding certain individuals, BS&F has been closely involved in efforts to avoid the indictment of the Debtors, a situation that could have significant and perhaps drastic consequences on the Debtors and its stakeholders.

D. **SEC Civil Action.**

21. Largely in conjunction with the USDOJ investigation, the SEC has likewise engaged in an investigation of Adelphia, the Rigases and related parties. On the same day that the Rigases were arrested, the SEC commenced a civil action pending before Judge Wood in this District. The SEC suit names Adelphia, John Rigas, Tim Rigas, Michael Rigas, James Rigas, James Brown and Michael Mulcahey. Adelphia has cooperated with the SEC in its investigation of these and other individuals and entities. These cooperation efforts are closely linked with the efforts to cooperate with the USDOJ, including because the Debtors cooperation with both the prosecutors and the SEC will be a significant consideration in the determination of whether the Debtors will be indicted.

E. **Adelphia's suit against the Rigases.**

22. On July 24, 2002, the Debtors filed an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York against members of the Rigas family, Peter Venetis, James Brown, Michael Mulcahey and entities controlled by the Rigas family ("Rigas Adversary Proceeding"). 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 seeks recovery for the estate of well in excess of \$1 billion.

23. On August 26, 2002, and in connection with the Rigas Adversary Proceeding, the Debtors moved for an emergency order 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's motion. This order will help prevent any potential spoliation of assets that properly should be included in the estate.

24. BS&F is lead trial counsel for the Debtors in the Rigas Adversary Proceeding. Work by BS&F in connection with this proceeding has included all aspects of representing the Debtors and has ranged from factual development such as document review and witness interviews; legal research; drafting the Complaint, Amended Complaint, motion for emergency relief, and other pleadings; attendance and argument at hearings before the Court; preparation of discovery materials; communication and coordination with the creditors and equity committees in this bankruptcy; and communications with opposing counsel.

25. BS&F believes that the prosecution of this action against the Rigases could provide a substantial recovery to the Adelpia estate.

F. **Adelpia v. Deloitte & Touche LLP.**

26. 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.

27. BS&F is lead trial counsel to the Debtors in this action. Work by BS&F in connection with this action has included all aspects of representing of the Debtors and has 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.

28. We believe that the prosecution of this action against Deloitte could provide a substantial recovery for the Adelphia estate.

G. **Other Litigation.**

29. In its representation of the Debtors, BS&F is evaluating 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 Adelphia as a result of their role in the wrongful conduct by the Rigases. BS&F is also evaluating whether certain of the potential secured and unsecured claims against the Adelphia estate are proper under the bankruptcy laws and other applicable legal principles.

H. **Insurance Related Litigation.**

30. ABIZ v. Adelphia. On July 12, 2002, Adelphia Business Solutions, Inc. ("ABIZ"), a former Adelphia 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 Adelphia (“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.

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

32. BS&F represents the Debtors in the ABIZ adversary proceeding. Work by BS&F in connection with this proceeding has included all aspects of representing the Debtors and has 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.

33. D&O Coverage Litigation. Beginning in September 2002, several motions (the “D&O Motions”) were filed in the bankruptcy court regarding coverage issues arising with respect to the Debtors’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 provided 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.

34. BS&F is counsel to the Debtors with respect to the D&O Motions. Work by BS&F in connection with the D&O Motions has included all aspects of representing of the Debtors and has 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 committee regarding the strategy for these motions; and communication and coordination with counsel for the parties with in interest an the D&O coverage issues, including counsel for the Carriers, ABIZ, Adelphia's independent directors, and the Rigases.

35. On November 15, 2002, consistent with the arguments made by the Debtors in connection with the D&O Motions, the Court limited access to the D&O proceeds. We believe that the Debtors's litigation of the D&O Motions succeeded in preserving the proceeds of the D&O Policies as an important part of the Adelphia estate.

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

36. Throughout the fact finding the Debtors have 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 has worked closely with the Special Committee and its counsel. These efforts have been 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 Adelpia. This coordination effort has been 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 return of assets and recompense damages caused to Adelpia by the Rigases, Deloitte and others as well as to obtain the information necessary to proceed with the review and audit of Adelpia's financial statements.

J. **Litigation Coordination with the Unsecured Creditors and the Equity Committees.**

37. 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, have been 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, we have regularly updated the committees on the status of litigation being considered or brought by the Debtors and sought the advise and comment from counsel for the committees to pleadings and other documents filed by the Debtors in the different litigations described herein. We consider these coordination efforts 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.

K. **Corporate Matters**

38. During the First Application Period, BS&F advised the Debtors on general corporate matters, including corporate governance reform and implementation, senior management

and employee retention and terminations, Board of Directors and Committee advice and assistance and research and analysis of a number of corporate issues among others.

EVALUATING BS&F'S SERVICES

39. As highlighted above, 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.

40. “[T]he ‘lodestar’ method of fee calculation developed by the Third 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”).

41. “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.

42. 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 INTERIM COMPENSATION

43. The allowance of interim compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

[A] debtor's attorney, or any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

44. Concerning the level of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor's attorney:

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

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

45. BS&F submits that its request for interim allowance of 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.

46. The services rendered by BS&F during the First 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. While that approach may have required intra-office conferences or involved individual attorneys who spent only a few hours on the matter at hand, the net result was enhanced cost efficiency.

47. During the course of our representation, BS&F has been able to assign a relatively small number of associates to work on a large number of specific assignments. By coordinating and consolidating work in a relatively small number of attorneys where possible, 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 faces, 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 are a significant number of separate timekeepers that necessarily must perform 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 familiar with and working on the various matters.

48. 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. However, BS&F believes that any duplication of effort was de minimus, is covered by BS&F's write-offs in the exercise in billing judgment and otherwise unavoidable, and was beneficial to the estates in that thorough knowledge of the background and the history of these cases makes each successive task more efficient.

49. 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.

50. During the First Application Period, BS&F encountered certain 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, corporate governance, employee benefits, and bankruptcy. BS&F attorneys have rendered advice in all of these areas with skill and dispatch.

DISBURSEMENTS

51. BS&F incurred actual and necessary out-of-pocket expenses during the First Application Period in connection with the rendition of the professional services described above, in

the amounts set forth in Exhibit D.⁵ By this First Application, BS&F respectfully requests allowance of such reimbursement in full.

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

- a. Duplicating - Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;⁶
- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.15 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by BS&F for machine maintenance, phone line rental and supplies used in operating the fax machine;
- 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 later than 8:00 p.m. and any legal assistants working later than 7:30 p.m. 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 8:00 p.m.; and
- f. Delivery Services - BS&F's practice is to charge postal, overnight delivery and courier services at actual cost.

PROCEDURE

53. BS&F has provided notice of this First Application to: (i) the Office of the United States Trustee; (ii) counsel to the agents for the Debtors' prepetition and postpetition bank

⁵ 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.

⁶ BS&F's document reproduction costs at this stage 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.

lenders; (iii) counsel to the Committees; (iv) the Debtors; and (v) all other parties that have filed a notice of appearance in these cases prior to the date hereof.⁷

54. No previous application for the relief sought herein has been made to this or any other court.

CONCLUSION

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

(a) interim compensation from the Debtors for services rendered from June 26, 2002 through October 31, 2002, inclusive, in the amount of \$2,879,781;

(b) reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$192,185;

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

Dated: December 11, 2002

BOIES, SCHILLER AND FLEXNER LLP

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

333 Main Street
Armonk, New York 10504
(914) 749-820

⁷ 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.