

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re) Chapter 11 Cases
)
Adelphia Communications Corporation, et al.,) Case No. 02-41729 (REG)
)
Debtors.) Jointly Administered
)

**FINAL APPLICATION OF DREIER LLP, AS
SPECIAL COUNSEL TO THE DEBTORS AND DEBTORS-
IN-POSSESSION, FOR AN ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
SEPTEMBER 1, 2006 THROUGH FEBRUARY 13, 2007 INCLUSIVE**

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

DREIER LLP (“Dreier”), in its capacity as special counsel to Adelphia Communications Corporation, *et al.*, debtors and debtors in possession herein (collectively the “Debtors”), respectfully submits this application (the “Application”) seeking an order, pursuant to §§105(a), 328, 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016, (i) awarding Dreier a final¹ allowance of: (a) compensation for professional services rendered to and on behalf of the Debtors during the period September 1, 2006 through February 13, 2007, inclusive (the “Fee Period”) in the aggregate amount of \$32,672.50 and (b) reimbursement of Dreier’s actual, reasonable and necessary out-of-pocket expenses incurred during the Fee Period in the aggregate amount of \$404.50, and (ii) granting Dreier such other and further relief as is

1 Dreier has not previously filed any interim applications for allowance of compensation in these cases. As a result, contemporaneous with the filing of this Application Dreier is also filing a separate application for a first interim allowance of compensation and expense reimbursement consistent with the requirements set forth in the Fee Committee’s Final Compensation Procedures (defined below). This application is substantially similar in form as Dreier’s first interim fee application.

just and proper. In support of its Application, Dreier respectfully represents and sets forth as follows:

I.
FACTS

A. Background

1. On June 10, 2002, Century Communications Corporation, one of the Debtors, filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”). Thereafter, on June 25, 2002 (the “Petition Date”), each of the remaining Debtors filed voluntary petitions for relief under Chapter 11, Title 11 of the Bankruptcy Code.

2. On January 5, 2007, the Court entered an order (the “Confirmation Order”) confirming the First Modified Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain of its affiliated Debtors, dated as of January 3, 2007 (the “Plan”). Pursuant to the terms of the Plan, the “Effective Date” under the Plan was February 13, 2007.

3. Pursuant to Section 6.2(b) of the Plan and Paragraph 37 of the Confirmation Order, retained professionals are required to file fee applications for final awards of compensation not later than forty-five (45) days after the Effective Date.

B. Dreier Retention; Terms

4. On June 15, 2004, the Court entered an order (as amended, the “TB&F Retention Order”) appointing Traub, Bonacquist & Fox LLP (“TB&F”) as special counsel to the Debtors in connection with the investigation, prosecution and preservation of certain avoidance-type claims and actions. In accordance with a Supplemental Disclosure Affidavit filed with the Court on

March 14, 2005, TB&F's retention as special counsel to the Debtors was expanded to include additional services relating to providing advice and guidance to the Debtors as concerns the universe of mechanics' liens claims asserted against the Debtors' estates and, where appropriate, the responsibility of prosecuting objections to their allowance.

5. Effective as of September 1, 2006, the members, attorneys and staff of TB&F merged their practice with and into Dreier. Pursuant to an order of the Court dated December 14, 2006 ("Dreier Retention Order"), the Court approved Dreier's substitution for TB&F in connection with its engagement as special counsel to the Debtors herein for the purposes described above, with such substitution to be effective as of September 1, 2006. A true and correct copy of the Dreier Retention Order is annexed as Exhibit "A" hereto and incorporated herein by reference.

6. Pursuant to the terms of the Dreier Retention Order (which in turn approved Dreier's substitution for TB&F herein), Dreier is to be compensated on a time-spent basis, based on our current hourly rates, plus Dreier's reasonable out of pocket expenses for services provided from and after September 1, 2006.

7. Dreier's engagement terms further contemplated a contingent fee component to the extent that Dreier (and TB&F before it) was directed by the Debtors to commence one or more of Avoidance Actions (as defined below). More specifically, the Dreier Retention Order provided that as related to services provided in connection with any commenced Avoidance Actions, in lieu of its ordinary and customary hourly rate for services rendered from and after the date such Avoidance Actions are commenced, Dreier's compensation would be modified as follows: (i) in the event that the aggregate amount sought in the commenced Avoidance Actions

is between \$0 and \$15,000,000, then Dreier shall continue to be compensated on a time-spent basis, at its full current hourly rate, plus reimbursement of expenses; (ii) in the event that the aggregate amount sought in the commenced Avoidance Actions is between \$15,000,000 and \$30,000,000, then Dreier shall be compensated at 70% of its current hourly rate, *plus* 10% of the Net Recovery to the Estate,² *plus* reimbursement of expenses; (iii) in the event that the aggregate amount sought in the commenced Avoidance Actions is between \$30,000,000 and \$45,000,000, then Dreier shall be compensated at 60% of its current hourly rate, *plus* 20% of the Net Recovery to the Estate, *plus* reimbursement of expenses; and (iv) in the event that the aggregate amount sought in the commenced Avoidance Actions is greater than \$45,000,000, then Dreier shall be compensated by an amount equal to the greater of (i) 60% of its current hourly rate, or (ii) a contingency fee of 25% of the Net Recovery to the Estate, *plus*, in either case, reimbursement of expenses. As relates to services performed that do not specifically relate to a commenced Avoidance Action (in other words, services related to the maintenance and monitoring of TAs (as defined below), those services were to be billed at Dreier's standard hourly rates as provided above. Additionally, in the event that Dreier was later directed by the Debtors to dismiss one or more of the commenced Avoidance Actions (each a "Withdrawn Action", and collectively the "Withdrawn Actions"), then for purposes of determining Dreier's compensation, the aggregate amount sought in such Withdrawn Actions shall be excluded from the calculation.

2 Pursuant to the Dreier Retention Order, the term "Net Recovery to the Estate" means either (a) cash or cash equivalent payable by the defendant, multiplied by the inverse of the distribution percentage being paid on similarly classified claims pursuant to a confirmed plan of reorganization; and/or (b) the product of any claim reduction or waiver (including defendant's waiver of claim pursuant to § 502(h) of the Bankruptcy Code, agreed to between the Debtors and the defendant, multiplied by the distribution percentage being paid on similarly classified claims pursuant to a confirmed plan of reorganization; and/or (c) the present cash value/equivalent of any other consideration paid/given by defendant in settlement or satisfaction of the commenced Avoidance Action, multiplied by the inverse of the distribution percentage being paid on similarly classified claims pursuant to a confirmed plan of reorganization.

8. Dreier's engagement terms further contemplated that in the event that the aggregate amount sought in the commenced Avoidance Actions is greater than \$100,000,000, then and the Debtors shall in good faith negotiate an appropriate modification to Dreier's compensation structure for those matters above the \$100,000,000 threshold; provided, however, such modification shall not result in Dreier being compensated in an amount less than 10% of the Net Recovery to the Estate on such matters.

C. Monthly Fee Statement Process

9. Pursuant to the 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 "Administrative Fee Order"), retained professionals are authorized to serve a monthly fee statement on or before the thirtieth (30th) day of each month following the month for which compensation is sought. Barring no objections, at the expiration of the twentieth (20th) day after the receipt of such monthly fee statement, the Debtors were authorized to pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each monthly statement, in each case subject to interim and/or final application and approved by the Court. If the Debtors received an objection to a particular fee statement, that portion of the fee statement to which the objection is directed was to be withheld pending resolution. However, the Debtors were authorized to pay the remainder of the undisputed fees and disbursements in the percentages set forth above. The Administrative Fee Order also requires that approximately every (120) days, but no more than every (150) days, each of the professionals shall serve and file with the Court and serve an interim or final application.

10. Pursuant to the Administrative Fee Order, Dreier has submitted separate monthly statements for September-November 2006, December 2006, January 2007, and February 1-13, 2007. With regard to services related to Matter 001 (Avoidance Actions), each of these monthly fee statements sought payment at a rate equal to 60% of Dreier's usual and customary hourly rates, without regard to whether the services related to a commenced Avoidance Action or not; however, Dreier has since determined that services relating to matters other than commenced Avoidance Actions should have been invoiced at 100% of Dreier's usual and customary hourly rates, with payment on account thereof being subject to the Administrative Fee Order. With regard to services related to Matter 002 (Mechanics Liens), each of the monthly fee statements sought payment at a rate equal to 100% of Dreier's usual and customary hourly rates, as per the Court-approved engagement terms.

11. Thus, during the Fee Period, Dreier has incurred in the aggregate professional fees (before adjustment) of **\$34,666.50**. Of this amount, to date Dreier has received payment under monthly fee statements the aggregate sum of **\$20,224.89**. Dreier submits that per the express terms of its engagement herein, Dreier is entitled to a final allowance in the aggregate amount of not less than **\$32,672.50** (representing the sum of (x) 100% of its usual and customary rates for services that do not relate to commenced Avoidance Actions and (y) 60% of its usual and customary rates for services that relate specifically to commenced Avoidance Actions). In addition, during the Fee Period, Dreier has incurred in the aggregate out-of-pocket expenses in the amount of **\$404.50**, of which to date Dreier has received payment from the Debtors in the amount of **\$404.50**.

12. A summary of the total fees and expenses incurred by Dreier during the term of its

engagement appears in the table below:

Monthly Period	Fees Incurred	Expenses Incurred	Total Fees and Expenses Sought	Total Fees and Expenses Paid	Total Holdback
9/1/06-11/30/06	\$24,436.50	\$274.95	\$24,711.45	\$15,805.11	\$8,906.34
12/1/06-12/31/06	\$3,579.00	\$15.41	\$3,594.41	\$1,987.73	\$1,606.68
1/1/07-1/31/07	\$4,703.00	\$115.09	\$4,818.09	\$2,432.05	\$2,386.04
2/1/07-2/13/07	\$1,948.00	\$0.00	\$1,948.00	\$0.00	\$1,948.00
Subtotal	\$34,666.50	\$404.50	\$35,071.00	\$20,224.89	\$14,846.11
Less: Required Adjustment³	\$1,994.00	--	\$1,994.00	--	\$1,994.00
TOTAL	\$32,672.50	\$404.50	\$33,077.00	\$20,224.89	\$12,852.11

13. In addition to the foregoing, as of the date of this Application, the Debtors have not made a final determination what the final disposition of the Avoidance Actions and Potential Actions will be, or whether Dreier's (as successor to TB&F herein) engagement as special counsel shall be extended for purposes of handling such matters. Depending upon the ultimate determination made, TB&F and/or Dreier may become entitled to additional compensation per the express terms of their respective engagements herein. Consequently, in addition to awarding the compensation requested herein, Dreier hereby requests that the Court direct that the Debtors' estates reserve for Dreier (and to the extent applicable, TB&F) a sum sufficient to satisfy any

³ Dreier calculates that between September 1, 2006 and February 13, 2007, Dreier incurred an aggregate amount of \$4,985.00 in professional fees related to commenced Avoidance Actions. Pursuant to the terms of the Dreier Retention Order, Dreier is entitled to be compensated at the rate of 60% of its usual and customary hourly rates for such services, plus certain contingent fee entitlements. See Note 3, *infra*. As a result, Dreier has adjusted its final fee request herein by the required 40% discount (\$1,994.00) in order to arrive at a net fee due Dreier for such services for the period in question of **\$32,672.50**. Dreier has further adjusted its holdback figure to **\$12,852.11** in order to account for the referenced adjustment.

additional contingent fee entitlement that it/they may have under the terms of its/their engagement.

II.
SUMMARY OF SERVICES
RENDERED DURING THE FEE PERIOD

14. In support of Dreier's Application, Dreier submits the following supporting documentation, all of which is incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	Dreier Retention Order
B1	Combined Detailed Daily Narrative Report of Professional Services Performed (Matter 001)
B2	Combined Detailed Daily Narrative Report of Professional Services Performed (Matter 002)
C	Summary of Out-of-Pocket Expenses
D	Certification of Steven E. Fox
E	Proposed Order

Each of the foregoing reports were prepared and maintained by Dreier in the ordinary course of its business. With regard to Exhibits "B1," "B2" and "C," respectively, these reports were prepared substantially contemporaneously with the performance of the professional services described or the incurrence of the expense for which reimbursement is sought hereby. The hourly time charges set forth herein, and reflected in Exhibits "B1" and "B2," represent the usual and customary rates charged by Dreier to its clients for the types of services rendered herein during the relevant periods.⁴ This final fee Application and the related exhibits comply with relevant provisions of the Fee Committee's Fee Memorandum ("Fee Memorandum"), as well as

⁴ Effective as of January 1, 2007, Dreier adjusted its usual and customary hourly rates in accordance with firm practice and policy.

the relevant provisions of the Fee Committee's Final Compensation Procedures ("Final Compensation Procedures").

15. Due to the specific services to be performed on behalf of the Debtors, for time and record keeping purposes, Dreier has not categorized the services it has performed during the Fee Period in accordance with the Guidelines promulgated by the Executive Office for the United States Trustee pursuant to the Bankruptcy Reform Act of 1994, dated January 30, 1996, but has billed the time spent on rendering services relating to each distinct task to two relevant categories. It should be noted that all of the actual services performed, based on the description of the services, could not have been placed in multiple categories, thus rendering sub-categorization of time unnecessary.

A. Avoidance Actions (Matter 001)

16. The tasks identified on Exhibit "B1" consist of services rendered by Dreier attorneys and paraprofessionals in connection with the investigation, commencement and maintenance of various avoidance-type (i.e., preference and/or fraudulent conveyance) actions (collectively, "Avoidance Actions") under the Bankruptcy Code. Each of the services described herein and rendered during the Fee Period were necessary to the preservation and maintenance of significant estate assets pending the negotiation and promulgation of the Plan.

17. Prior to the commencement of any Avoidance Actions, TB&F sent hundreds of proposed tolling agreements ("TAs") to potential avoidance defendants (the "PADs"). A significant number of those PADs signed TAs, thereby tolling the statute of limitations for the commencement of the Avoidance Actions (the "Potential Actions"). In total, TB&F was able to secure in excess of 200 TAs that tolled the statute of limitations on Potential Actions aggregating

in excess of \$2.5 billion. Those that did not sign a TA were the subject of adversary proceedings that we commenced in the Bankruptcy Court. In that connection, TB&F filed approximately 162 Avoidance Actions seeking to avoid and recover in excess of \$650 million in the aggregate.

18. At the time of the commencement of the Avoidance Actions, the Bankruptcy Court, upon Debtors' motion, entered an order (the "Stay Order"), inter alia, (i) staying the prosecution and defense of the Avoidance Actions, (ii) directing the procedure for abandoning and/or dismissing the Avoidance Actions and/or the Potential Actions, and (iii) requiring service of the summonses, complaints and Stay Order.

19. Throughout the pendency of the chapter 11 cases, TB&F (and more recently Dreier), continued to correspond with certain defendants, PADs, and their counsel. As circumstances warranted, in consultation with WF&G and with personnel of the Debtors, Dreier reviewed defenses and affirmative defenses asserted by certain defendants and PADs, and determined whether it was appropriate to dismiss the Avoidance Actions and/or abandon the Potential Actions. During the course of the Fee Period, Dreier filed Notices of Abandonment that resulted in the dismissal and abandonment of Avoidance Actions and Potential Actions aggregating in excess \$1.0 billion in pre-petition transfers. No objections to any of these Notices of Abandonment were filed.

20. Additionally, although the majority of TAs provided for the termination of the TA upon forty-five (45) days notice from either party, there were a significant number of PADs that insisted on a more specific, termination date. As a result, Dreier was required to continuously monitor the status of the TAs, and from time to time to enter into amendments with the PADs or their counsel providing for further extensions of the applicable termination dates.

21. As noted above, throughout the Fee Period Dreier carefully limited the nature and extent of the services provided to the Debtors to insure that they were strictly within the scope of services contemplated and authorized under the Dreier Retention Order. In that connection, Dreier coordinated its activities with WF&F from time to time to insure that both the scope and intent of the engagement was respected, and further that there was no duplication of services being provided by either WF&G or any other retained professional. In addition, throughout the course of the project Dreier attorneys were ever mindful of the time being expended in relation to the relative complexity, importance and nature of the assignment presented. In each instance, Dreier successfully completed the task at hand within time and expense parameters that viewed objectively would be considered reasonable under the circumstances.

B. Mechanics' Liens (Matter 002)

22. The tasks identified on Exhibit "B2" consist of, among other things, Dreier's providing advice and guidance to the Debtors as concerns the universe of mechanics' liens claims asserted against the Debtors' estates. Dreier, working closely with the Debtors' counsel and the Debtors, performed the following mechanics lien-related services during the Fee Period: Dreier (i) reviewed various mechanics lien claims and documentation submitted in support thereof, (ii) drafted numerous letters to mechanics lien claimants requesting supporting data and documentation, and prepared and maintained appropriate schedules identifying data requested of claimants; and (ii) performed detailed legal research as to a multitude of mechanics lien issues arising under applicable state law.

23. As set forth in Exhibits "B1" and "B2" hereto, the aggregate cost of the professional services rendered during the Fee Period net of applicable adjustments (see Note 4, infra) is \$32,672.50.⁵

III.
SUMMARY OF EXPENSES INCURRED

24. During the Fee Period, Dreier has been required to incur actual and necessary expenses in connection with the performance of the above-described services in the aggregate amount of \$404.50, for which Dreier has not previously applied (except by way of the aforementioned monthly statements under the Administrative Fee Order). A summary breakdown of these out-of-pocket expenses, by disbursement category, is annexed hereto as Exhibit "C" and incorporated herein by reference.

25. Exhibit "C" hereto itemizes by category the expenses incurred by Dreier during the Fee Period in rendering legal services to the Debtors. All expenses for which reimbursement is sought were incurred in connection with the rendition of professional services to the Debtors, and were reasonable and necessary.

26. From time to time Dreier has utilized certain services, including overnight couriers and long distance telephone services. There have been occasions when the Debtors required information and documents on an expedited basis. Although Dreier makes every effort to use regular postal services when possible, overnight delivery of documents and long distance conference calls were occasionally and unavoidably required.

⁵ As of the date hereof Dreier has neither been requested nor made any voluntary or involuntary reductions to either the professional fees and/or expenses requested herein, as per Paragraphs 1-12 of the Final Compensation Procedures.

27. Dreier made every effort to minimize the out-of-pocket expenses incurred in connection with its representation of the Debtors in these cases. Dreier believes the expenditures for which reimbursement is sought herein were appropriate and well warranted. Dreier maintained detailed records of all out-of-pocket expenses incurred in connection with its representation of the Debtors. To the extent that such detailed records are necessary, they are available to supplement the summary of charges set forth in Exhibit "C." Accordingly, Dreier requests reimbursement of expenses incurred as special counsel to the Debtors during the Fee Period in the amount \$404.50.

IV.
APPLICABLE LEGAL STANDARDS

28. Section 330(a) of the Bankruptcy Code, as amended by the Bankruptcy Reform Act of 1994 provides the guidelines for awards to a professional person employed under §§327 or 1103, and it states in pertinent part as follows:

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for -

(i) unnecessary duplication of services; or

(ii) services that were not -

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

11 U.S.C. §330.

A. The Loadstar Method

29. Although the Supreme Court has not ruled on the proper method for determining reasonable fees under Section 330(a), the Court has established guidelines generally applicable to awards of attorneys' fees under other federal statutes, which require that the fee awarded be reasonable. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986) (construing standards for award of fees under §304(d) of the Clean Air Act) (“*Delaware Valley I*”); *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987) (“*Delaware Valley II*”). In *Delaware Valley I*, the Court concluded that the “loadstar” approach to determining fees for services performed, as articulated in *Lindy Bros. Builders, Inc. of Phila. et al. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973), *remand* 540 F.2d 102 (3rd Cir. 1976), was preferable to other, more subjective methods: “[T]he ‘loadstar’ figure includes most, if not all, of the relevant factors comprising a reasonable attorney's

fees”. 478 U.S. at 565. Courts in this Circuit have generally followed the lodestar guidelines for fee awards. *In re United States Football League*, 887 F.2d 408, 413 (2d Cir. 1989); *City of Detroit v. Grinnel Corp.*, 560 F.2d 1093, 1098 (2d Cir. 1977) (“*Grinnel II*”); *City of Detroit v. Grinnel Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) (“*Grinnel I*”).

30. Under the lodestar calculation, a reasonable hourly rate is set by the court based on a number of factors, including the difficulty of the task, the prevailing market rate for counsel of the petitioner's experience, counsel's normal billing rate, and the rates awarded by other courts in similar circumstances. In *Grinnel II*, the Second Circuit Court calculated attorneys’ fees by “multiplying the number of hours expended by each attorney involved in each type of work on the case by the hourly rate normally charged for similar work by attorneys of like skill in the area”. 560 F.2d at 1098. Once the base or “loadstar” rate is established, “other less objective factors such as the risk of litigation, the complexity of the issues, and the skill of the attorneys, could be introduced to determine a final fee amount.” *Id.* The American Bankruptcy Institute favors the lodestar approach as “giving the courts a simple mathematical formula to apply as the starting point for the analysis, with the reasonableness inquiry narrowed principally to the hourly rate and time spent factors.” *American Bankruptcy Institute National Report on Professional compensation in Bankruptcy Cases* (G.R. Warner rep. 1991) p.144 (hereinafter cited as “*American Bankruptcy Institute Survey*”).

31. The second step to be taken in a lodestar analysis is to determine the nature and extent of services rendered. As is set forth more fully in the foregoing paragraphs and in Exhibits “B1” and “B2” hereto, Dreier professionals and paraprofessionals expended a total of 104.8 hours in rendering legal services to the Debtors during the Fee Period. Dreier respectfully

submits that the hours worked by Dreier personnel were reasonable and necessary, given the circumstances of these cases.

32. The next step to be taken is to establish a reasonable hourly rate. Section 330(a) of the Bankruptcy Code provides for the award of reasonable compensation for actual and necessary services performed by professionals employed pursuant to §§327 or 1103 of the Bankruptcy Code “based on the time, the nature, the extent, and the value of comparable services other than in a case under this title”. *See also, Collier on Bankruptcy*, § 330.02, p. 330-2-5 (15th ed. 1989). The Bankruptcy Code thus rejects the “principle of economy” which existed under the Bankruptcy Act. “Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code”. 124 Cong. Rec. 11,089 (daily ed. Sept. 28, 1978) (Statement of Congressman Edwards on policies underlying Section 330). *Accord In re Bible Deliverance Evangelistic Church*, 39 B.R. 768, 774 (Bankr. E.D. Pa. 1984); *In re Penn-Dixie Industries, Inc.*, 18 B.R. 834, 838 (Bankr. S.D.N.Y. 1982).

33. In this Application, Dreier has supplied this Court with the information necessary to determine the reasonableness of the fees requested as outlined in the subparagraphs of Bankruptcy Code §330(a)(3). Exhibits “C1” and “C2” provides detailed records of the actual time spent on the services rendered (¶A). The rates charged by Dreier are set forth on the summary at the beginning of this Application and in the “Attorney Recap” at the end of each category of time records in Exhibits “B1” and “B2” (¶B). Dreier believes that its summary of the services rendered, together with the details of its time records shows that the services it rendered to the Debtors were necessary and/or beneficial to these estates at the time the services were rendered (¶C). Dreier further believes that its time records, together the totality of its services

herein and the progress of these cases, show that Dreier performed its services in a reasonable amount of time, which was commensurate with the task at hand and the nature of these cases (§D). Dreier maintains that all professional persons are board certified and/or have demonstrated skills and experience in the bankruptcy field (§E). Finally, Dreier maintains that its rates charged and compensation sought herein are comparable to what Dreier and other legal practitioners seek and obtain from non-bankruptcy clients for similar such services (§F).

34. In addition, by this Application Dreier is not seeking compensation excluded by Bankruptcy Code §330(a)(4)(A). There is no unnecessary duplication of services either by Dreier personnel or between Dreier personnel and other professionals working in the bankruptcy estates on behalf of the Debtors (§i). Dreier did not perform services for which compensation is now being sought which services were not “reasonably likely to benefit the debtor’s estate” (§ii). Certainly, not all our efforts were successful; however, at the time we rendered the services such a reasonable likelihood existed.

B. The Johnson Factors

35. The lodestar calculation has largely supplanted the twelve factor test of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), which had gained prominence under the Bankruptcy Act. *In re First Colonial Corp. of America*, 544 F. 2d 1291 (5th Cir. 1997); *In re Cena's Fine Furniture, Inc.*, 109 B.R. 575, 581 (Bankr. E.D.N.Y. 1990) (the Supreme Court makes clear that the lodestar amount is presumed to subsume the twelve factors articulated by *Johnson*); *In re Paster*, 119 B.R. 468, 469 (E.D.Pa. 1990) (the lodestar method of fee calculation is the appropriate method of determining attorney’s fees in all federal courts, including the bankruptcy courts). The Supreme Court, in another context, acknowledged that the

lodestar was the “centerpiece” for the computation of a reasonable hourly rate; however, the Court suggested that the twelve *Johnson* factors could be considered for adjustments to the lodestar calculation. *Blanchard v. Beraeron*, 489 U.S. 67, 74 (1989).

36. Some of the more pertinent lodestar guidelines and their application are discussed below.

1. Time Limitations or Other Circumstances. Throughout the Fee Period, the matters dealt with by Dreier in these cases have required attention on a timely basis given the impending expiration of the various TAs.
- b. Amounts Involved and Results Obtained. Since TB&F’s initial engagement and Dreier’s subsequent substitution therefor, Dreier has worked closely with the Debtors, WF&G and avoidance action defendants and/or counter-parties to tolling agreements concerning the investigation and validation of various asserted defenses to the subject actions, and where appropriate disposed of the underlying action. To date, Dreier has succeeded in reaching all of the goals set for it by the Debtors.
- c. “Undesirability” of the Case. Because of the short time frame involved, the resources required, and the largely contingent nature of the fee arrangement here, there is a significant risk of limited compensation for completing a monumental task, thus making this a less than attractive engagement.
- d. Fee Awards in Similar Cases. As set forth herein, the fees requested by Dreier are reasonable and are commensurate with the fees sought awarded in many similar cases, and are consistent with the retention agreement approved by the Court.
- e. The Skills Required and Experience of Counsel. From the experience and quality of the work produced, the results achieved, it is clear that Dreier has demonstrated that it had the skills and the ability necessary to perform the services for which it was retained.
- f. The Character of Services Rendered. The high caliber of the services provided by Dreier is apparent from the results achieved to the discreet project in the short period of time allotted. Where court involvement has been required, Dreier has conducted itself with the highest level of professionalism.
- g. The Result Obtained and Benefit to the Estates. The quantitative and qualitative results to the estates of Dreier’s representation of the Debtors have been amply documented herein.

37. The application of the foregoing factors to all of the services provided by Dreier establishes that the services rendered by Dreier were reasonable and necessary, given the scope and the complexity of these cases and the nature of the services performed.

V.
CONCLUSION

38. This Application is made without prejudice to Dreier's right to supplement this compensation request pursuant to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, applicable local rules, and the Dreier Retention Order.

WHEREFORE, based upon the foregoing, Dreier hereby respectfully requests that the Court issue and enter an order, pursuant to §§ 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016, and the Administrative Fee Order of the Bankruptcy Court for the Southern District of New York, the Plan and the Confirmation Order: (i) awarding Dreier (a) a final allowance of compensation for professional services rendered for and on behalf of the Debtors during the Fee Period in the aggregate amount of \$32,672.50, (b) reimbursement of its actual, reasonable and necessary out-of-pocket expenses incurred during the Fee Period in the


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aggregate amount of \$404.50, and (ii) granting Dreier such other and further relief as is just and proper.

Dated: New York, New York
March 30, 2007

Respectfully submitted,

DREIER LLP

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