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Objection Deadline: September 9, 2006 @ 4:00 p.m.

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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

JOINT MOTION FOR ORDER PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING: (I) CERTAIN AMENDMENTS TO DEBTORS' EXISTING EMPLOYMENT AGREEMENT WITH WILLIAM SCHLEYER AS CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF ADELPHIA COMMUNICATIONS CORPORATION; (II) IMPLEMENTATION OF EXTENDED EVP POST-CLOSING INCENTIVE PROGRAM; AND (III) IMPLEMENTATION OF EXTENDED EMPLOYEE POST-CLOSING INCENTIVE PROGRAM

Adelphia Communications Corporation ("ACC") and the other above-captioned debtors and debtors in possession (collectively with ACC, the "Debtors"), together with the Official Committee of Unsecured Creditors appointed in these cases (the "Creditors' Committee"), each by their attorneys, respectfully represent as follows:

PRELIMINARY STATEMENT

1. By this motion (the "Motion"), the Debtors seek authority to (a) amend their existing employment and compensation agreement with William Schleyer, Chairman of the Board and Chief Executive Officer of ACC (the "CEO"), (b) implement an extended post-closing incentive program for the Debtors' two Executive Vice Presidents, and (c) implement an extended post-closing incentive program for certain key employees at the level of Senior Vice President and below. The requested relief is critical to securing a successful culmination of these cases and maintaining the value of the estates for the benefit of the Debtors' creditors. The Creditors' Committee not only recognizes the necessity of the requested relief but was the driving force behind the negotiations of the terms reflected in all three components of the relief requested herein. The Creditors' Committee fully supports the compensation arrangements and incentive programs further described below. The Creditors' Committee and the Debtors support the compensation arrangements and incentive programs further described below because, among other reasons set forth below, they expect that these programs will provide the high degree of cooperation and alacrity that is required of management, particularly the Debtors' senior management, to effectuate a smooth transition to reduced post-emergence management.

2. As the Court is aware, on July 31, 2006, the Debtors closed the sale of substantially all of their assets to Time Warner NY Cable LLC and Comcast Corporation (the "Sale") and the Debtors' Third Modified Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Century-TCI Debtors and Parnassos Debtors (the "JV Plan") became effective. Since then, distributions in excess of $1.2 billion have been made to creditors under the JV Plan.

3. Notwithstanding the closing of the Sale and the consummation of the JV Plan, ultimate recoveries for the remaining creditors in these cases will be determined in large part by

work that remains to be completed. The Debtors have a number of ongoing responsibilities, including: oversight and assistance with the audit; calculation of purchase price adjustments in connection with the Sale; continuing work on the restatement; the claims reconciliation process; compliance with the post-close requirements under the asset purchase agreements executed in connection with the Sale; compliance with the government settlement; and the completion of certain tax filings — just to name a few. ACC remains a public company subject to reporting and disclosure requirements that are closely monitored by the SEC. The financial ramifications of the foregoing obligations are significant; absent careful attention to these and other ongoing responsibilities, the estates could needlessly lose millions of dollars that would otherwise be available for distribution to creditors. Moreover, on August 18, 2006, the Debtors filed their Fifth Amended Joint Chapter 11 Plan for Adelphia Communications Corporation and Certain of its Affiliated Debtors (the "Affiliated Plan") and related disclosure statement (the "Disclosure Statement"). The hearing to consider approval of the Disclosure Statement is currently scheduled for September 11 and 12, 2006. The solicitation and confirmation of the Affiliated Plan will require the efforts of numerous of the Debtors' remaining employees and is a time-sensitive and critical next step on the road to emergence for the remaining Debtors.

4. In recognition of the need to retain key personnel, on July 14, 2006, the Debtors filed a motion (the "Post-Closing Motion") for entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing implementation of a Post-Closing Incentive Program (as defined in the Post-Closing Motion) and granting related relief. See Docket No. 11603. No party objected to the relief requested in the Post-Closing Motion, and on July 26, 2006, the

Bankruptcy Court entered an order authorizing the Debtors to implement the Post-Closing Incentive Program (the "Post-Closing Order").[1] See Docket No. 11683.

5. The Post-Closing Motion and Post-Closing Order did not provide for retention of the Debtor's CEO, Mr. William Schleyer, and its President and Chief Operating Officer, Mr. Ronald Cooper, each of whom had the right under his employment agreement to terminate his employment for Good Reason (as defined in the employment agreement) upon the consummation of the Sale. After entry of the Post-Closing Order, the Board of Directors of ACC (the "Board") and the Creditors' Committee became concerned that additional incentives were needed in order to ensure that Mr. Schleyer remained in the Debtors' employ beyond the Sale, and that Brad Sonnenberg, the Debtors' General Counsel, and Vanessa Wittman, the Debtors' Chief Financial Officer (the "EVPs"), and approximately 45 other senior managers (the "Key Managers") who were covered by the Post-Closing Incentive Program remained in the Debtors' employ for a longer period than that contemplated by the Post-Closing Incentive Program. The CEO, EVPs, and Key Managers lead teams that have irreplaceable institutional knowledge of matters and projects that must be addressed and completed prior to the Debtors' successful emergence from chapter 11. Their intimate familiarity with the complicated issues that remain in these cases renders this group uniquely qualified to guard against the potential value degradation that threatens the estates if the post-closing tasks outlined above are not completed timely and properly. Simply put, there is no more certain nor cost-effective means for preserving estate value than the retention of the CEO, the EVPs, and the Key Managers for an additional period beyond that contemplated by the Post-Closing Incentive Program approved by the Post-Closing Order.

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[1] Copies of the Post-Closing Motion and the Post-Closing Order are annexed hereto as Exhibit A.

6. While each of the approximately 275 employees who, pursuant to the Post-Closing Incentive Program, has remained for the wind down and transition period is important to ongoing restructuring efforts, the CEO, the EVPs, and the Key Managers are the linchpins of their respective teams. The Debtors believe that many of the employees who have continued their employment with the Debtors during the pre-Sale and post-closing transition periods have done so, in large part, due to their close working relationships with the CEO, the EVPs, and the Key Managers.

7. The premature departure of the CEO, either of the EVPs, or even just a handful of the Key Managers could result not only in significant financial losses to the estate, but could also trigger more widespread departures among the Debtors' remaining personnel. Cognizant of this risk, the Creditors' Committee approached the Debtors with the goal of designing and implementing an enhanced compensation program for the CEO, the EVPs, and Key Managers that would provide them with an incentive to remain with the estates for a period of time sufficient to coordinate and oversee the work that remains to be done. Furthermore, the Creditors' Committee and the Debtors believe, and expect, that an enhanced compensation program will yield the exceptional cooperation and greater integration between the present management and the Creditors' Committee and its professionals and nominees that is essential to effectuating a smooth transition to the substantially reduced management team that will be winding down the Debtors after their chapter 11 cases are substantially concluded.

8. In order to facilitate the formulation of this program in what was a necessarily compressed timeframe, the Creditors' Committee deputized one of its members, along with counsel to certain members of the Creditors' Committee, to facilitate negotiations among the Board, the CEO, the EVPs, and certain of the Key Managers. After several weeks of discussions

among the principal participants, the parties reached an agreement in the last 24 hours as to the terms of the applicable post-closing compensation arrangements and incentive programs. While the extended programs impose a relatively modest incremental cost on the estates of approximately $4 million, the Debtors and the Creditors' Committee consider such money well spent. Accordingly, by this Motion, the Debtors and the Creditors' Committee together seek this Court's approval of: (a) certain amendments to the CEO's existing employment and compensation agreement (the "Schleyer Employment Agreement"); (b) implementation of an extended Post-Closing Incentive Program for the EVPs (the "Extended EVP Post-Closing Incentive Program"); and (c) implementation of an extended Post-Closing Incentive Program for the Key Managers (the "Extended Employee Post-Closing Incentive Program").

JURISDICTION

9. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

10. By this Motion, the Debtors and the Creditors' Committee seek entry of an order authorizing and approving (a) certain amendments to the Schleyer Employment Agreement, (b) the implementation of the Extended EVP Post-Closing Incentive Program, and (c) the implementation of the Extended Employee Post-Closing Incentive Program. The proposed amendments to the Schleyer Employment Agreement, the proposed terms of the Extended EVP

Post-Closing Incentive Program, and the proposed terms of the Extended Employee Post-Closing Incentive Program are annexed hereto as Exhibits B, C, and D, respectively.[2]

I. **Amendments to the Schleyer Employment Agreement**

A. *Background*

11. On June 9, 2006, the Debtors filed a motion (the "Schleyer/Cooper Motion") for entry of an order pursuant to sections 105 and 363 of the Bankruptcy Code authorizing and approving certain amendments to the Debtors' employment agreements with William Schleyer as Chairman and Chief Executive Officer and Ronald Cooper as President and Chief Operating Officer ("COO") of Adelphia Communications Corporation. See Docket No. 11164.

12. Subsequent to the filing of the Schleyer/Cooper Motion, certain creditor constituencies, including the Creditors' Committee, expressed concerns regarding the relief requested therein as it pertained to the CEO.[3] As a result of further negotiations, the CEO, the Board, and the Creditors' Committee have now agreed to the terms on which the Schleyer/Cooper Motion should be granted with respect to the CEO, as well as the terms on which Mr. Schleyer shall be employed for an extended period following the closing of the Sale.

13. As set forth more fully in the Schleyer/Cooper Motion, the Schleyer Employment Agreement contemplated that Mr. Schleyer, under certain circumstances, would be eligible to receive additional compensation above and beyond his base compensation (the "Additional Compensation"). The provisions of the Schleyer Employment Agreement relating to Additional

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[2] The summaries provided herein are solely for the convenience of the reader. In the event of a conflict or inconsistency, the terms of the Schleyer Employment Agreement as amended, the Extended EVP Post-Closing Incentive Program, and the Extended Employee Post-Closing Incentive Program shall govern.

[3] The Schleyer/Cooper Motion was granted by this Court on August 8, 2006, with respect to the COO, and adjourned to September 12, 2006, with respect to the CEO (the "Cooper Order"). See Docket No. 11758.

Compensation, however, contemplated a stand-alone emergence of the Company. Accordingly, such provisions provided that awards would be granted in the form of restricted stock of reorganized ACC. In April 2004, when the Debtors announced that they were considering a sale of substantially all of their assets, in the interest of fairness, the Debtors and their stakeholders identified a need to amend the Schleyer Employment Agreement to align Mr. Schleyer's incentives with the Debtors' new strategy for emergence, and it was the understanding of the parties in these cases that the compensation paid to Messrs. Schleyer and Cooper would be outcome-neutral with respect to the Debtors' pursuit of either a stand alone plan of reorganization or the Sale. This was the agreement reached between the parties in the Summer of 2004, and this was the agreement on which Mr. Schleyer relied as he performed his duties over the past several years. To date, Mr. Schleyer is the *only* employee of the Debtors who has not had his compensation package adjusted to reflect the changed circumstances of these cases.[4] After extensive arm's length negotiations and in recognition of the central role that Mr. Schleyer has played and will continue to play in the Debtors' successful Sale and emergence, the Debtors, the Creditors' Committee, and Mr. Schleyer have proposed amendments to the Schleyer Employment Agreement that will both (a) preserve the economic essence of Mr. Schleyer's previously negotiated compensation and (b) ensure his willingness to continue to lead the Debtors' reorganization efforts. Accordingly, the Debtors now seek authority, inter alia, (a) to amend the provisions of the Schleyer Employment Agreement relating to Additional

[4] In the Fall of 2004, the Debtors sought and obtained approval of an amended Performance Retention Plan, an amended Severance Plan and Employment Agreements, and a Key Employee Continuity Program for director-level and above employees (excluding the top four officers of the company). Subsequently, in the Spring of 2005, this Court approved an amended Short Term Incentive Plan for the Debtors' General Counsel and a Key Employee Continuity Plan and an Amended Performance Retention Plan for both Executive Vice Presidents. Finally, on August 8, 2006, the Court entered the Cooper Order.

Compensation to provide that such awards will be paid in cash and (b) to establish compensation incentives that will ensure Mr. Schleyer's continued employment with the Debtors.

B. *Equity Awards*

14. The Schleyer Employment Agreement provides for an award of $10.2 million in stock of reorganized ACC upon a successful stand-alone emergence of the Debtors (the "Equity Award"). In light of the completion of the Sale rather than a stand-alone emergence, the proposed amendments to the Schleyer Employment Agreement will entitle Mr. Schleyer to receive immediately upon approval of this Motion $10.2 million in cash in lieu of the Equity Award. This provision simply ensures that Mr. Schleyer maintains the benefit of the economic bargain that was struck at the outset of his employment with Debtors. The Schleyer Employment Agreement also currently contemplates that the CEO may be awarded a discretionary bonus of up to $5.1 million in stock of reorganized ACC post-emergence (the "Discretionary Equity Award"). In order to preserve Mr. Schleyer's opportunity to be compensated for exemplary service, the amended Schleyer Employment Agreement will also entitle Mr. Schleyer to receive a cash payment of $5.1 million in lieu of the Discretionary Equity Award. This payment will be made on the effective date of a plan of reorganization for the Company or the date of commencement of liquidating distributions under chapter 7 of the Bankruptcy Code (either date, "Emergence").

C. *Payment of Debtors' Severance Obligations*

15. The current Schleyer Employment Agreement provides for a severance payment upon a termination by Mr. Schleyer for "Good Cause" (as defined therein). The Sale constituted "Good Cause" within the meaning of the Schleyer Employment Agreement and the amended Schleyer Employment Agreement provides that Mr. Schleyer will be deemed to have resigned as of July 31, 2006 and will be entitled to such severance payment upon approval of this Motion.

D. *Terms of Post-Closing Employment*

16. The amended Schleyer Employment Agreement establishes March 31, 2007 (the "Schleyer Termination Date") as the definitive date of termination of Mr. Schleyer's employment (whether as CEO and Chairman or as consultant, as described below) with the Debtors, unless such employment is extended by mutual agreement or terminated prior to such date. Though the Debtors have made provisions to ensure that Mr. Schleyer is available to lead the Debtors to emergence, they are also working to conclude their chapter 11 cases expeditiously. In order to afford Mr. Schleyer an opportunity to pursue other employment opportunities should Emergence occur prior to March 31, 2007, the amended Schleyer Employment Agreement provides that Mr. Schleyer will resign immediately as CEO and Chairman of the Board upon Emergence. After such resignation, Mr. Schleyer would continue as a consultant to the Debtors until the Schleyer Termination Date in order to effect a smooth wind-down of the estates. Pursuant to the amended Schleyer Employment Agreement, after Emergence, the Debtors may terminate Mr. Schleyer's employment as a consultant prior to March 31, 2007 upon thirty days' prior written notice.

17. The proposed amendments to the Schleyer Employment Agreement also provide that the CEO shall be paid a bonus of 100% of his base salary (including the base salary, the "Schleyer Adjusted Base Salary") for the period from July 31, 2006 (the date of the Sale) until the Schleyer Termination Date. The Schleyer Adjusted Base Salary shall be paid bi-weekly.

II. Extended EVP Post-Closing Incentive Program[5]

A. *Terms of Continued Service with Debtors*

18. In lieu of participation in the Post-Closing Incentive Program, the EVPs will participate in the Extended EVP Post-Closing Incentive Program and continue their employment with the Debtors from August 1, 2006 through December 31, 2006 (the "Post Close Period"). In the event the Company is required to file a Form 10-K, and at the sole discretion of the Creditors' Committee, the EVPs may continue to be employed by the Company from January 1, 2007 through March 31, 2007 (the "Extended Post Close Period"), provided the Creditors' Committee or Plan Administrator (as applicable) provides appropriate notice.

19. The Extended EVP Post-Closing Incentive Program provides that EVPs employed during the Post Close Period will receive a bonus (the "Post-Close Bonus") equal to five months of Adjusted Base Salary (as defined in the Post-Closing Motion). Furthermore, EVPs employed during the Extended Post Close Period will receive a bonus (the "Extended Post-Close Bonus") equal to three months of Adjusted Base Salary.

20. The Company or Plan Administrator (as applicable) may terminate one or both EVPs prior to the end of the Post Close Period (or the end of the Extended Post Close Period, as applicable) only (a) for cause, (b) upon mutual agreement between the EVP and the Company ("Mutual Termination"), or (c) as a result of the EVP's death or disability. Following any termination of an EVP's employment during the Post Close Period or Extended Post Close Period (as applicable), each EVP will be entitled to receive his or her accrued but unpaid

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5 As previously set forth, the terms of the Extended EVP Post-Closing Incentive Program are annexed hereto as Exhibit C. To the extent it is determined that it is appropriate and/or necessary to prepare formal documentation amending the EVPs' employment agreements, such documentation will be prepared and executed in connection with approval of the Motion.

Adjusted Base Salary (as defined in the Post-Closing Motion) and benefits through the date of termination, paid on the date of termination. Furthermore, in the event the Debtors or Plan Administrator seek to terminate one or both EVPs without cause and such EVPs do not agree to a Mutual Termination, such EVP may be required to forego providing services to the Debtors. In such circumstances, the EVP will remain an employee of the Debtors and will still be entitled to receive his or her aggregate Post-Close Bonus (and Extended Post-Close Bonus, as applicable) on the date of termination.

21. The Extended EVP Post-Closing Incentive Program seeks to provide some flexibility for the EVPs to pursue other opportunities should the Debtors emerge from chapter 11 in the near term. If Emergence occurs prior to the end of either the Post Close Period or the Extended Post Close Period, as applicable, the EVPs may elect to voluntarily terminate their employment (an "Effective Date Termination"). In such circumstance, the EVPs' vast knowledge and experience in these cases would nonetheless remain at the disposal of the estates, should it be deemed necessary. Upon an Effective Date Termination, the EVPs have agreed to remain available to consult for the Company, if requested by the Creditors' Committee in its sole discretion, from the date of the Effective Date Termination through the three month anniversary of the Effective Date Termination, provided the Creditors' Committee provides appropriate notice. In the event of an Effective Date Termination, the EVPs shall each be entitled to receive the *pro rata* share of the Post-Close Bonus and/or Extended Post-Close Bonus, as applicable, that relates to the period between August 1, 2006 and the date of the Effective Date Termination, as well as the *pro rata* portion of the annual Adjusted Base Salary every two weeks.[6]

[6] The Debtors and the EVP will enter into a customary consulting agreement which contains customary expense reimbursement and indemnity provisions.

22. The Extended EVP Post-Closing Incentive Program provides that if an EVP terminates his or her employment for "good reason" (other than an Effective Date Termination), he or she will be paid his or her aggregate Post-Close Bonus (and Extended Post-Close Bonus, as applicable) and his or her aggregate Adjusted Base Salary from such termination through the end of the Post Close Period (and Extended Post Close Period, as applicable). However, if an EVP voluntarily terminates employment prior to the end of either the Post Close Period or Extended Post Close Period without good reason, such EVP will forfeit any unpaid bonus amounts.

B. *Payment of Bonuses to EVPs*

23. The Extended EVP Post-Closing Incentive Program provides that 50% of an EVP's Post-Close Bonus will be paid on the date that is the earlier of: (a) the end of the Post Close Period; and (b) the date of Emergence. The remaining 50% of each EVP's Post-Close Bonus will be paid at the end of the Post Close Period. The Extended EVP Post-Closing Program further provides that 100% of an EVP's Extended Post-Close Bonus (if applicable) will be paid at the end of the Extended Post Close Period.

C. *Payment of Debtors' Severance Obligations*

24. The EVPs' current employment agreements provide for the payment of severance upon a termination by the Debtors without cause. The Extended EVP Post-Closing Incentive Program provides that the EVPs will be entitled to receive such severance payment upon approval of the implementation of such program.

III. Extended Employee Post-Closing Incentive Program

A. *Bonus Structure*

25. The CEO and the EVPs, in consultation with the Creditors' Committee, have identified a group of Key Managers at the level of Senior Vice President or below whose continued employment they have determined is of invaluable benefit to the estates. The Key

Managers who are selected to participate in the Extended Employee Post-Closing Incentive Program (the "Participants") shall participate in such program in lieu of participation in the previously approved Post-Closing Incentive Program. Each Participant shall be offered participation in the Extended Employee Post-Closing Incentive for an assigned period of time (the "EKERP Period"). The program provides that Participants shall be entitled to receive a bonus (the "EKERP Bonus") equal to a percentage of their Adjusted Base Salary (as defined in the Post-Closing Motion and Post-Closing Order). The bonus percentage and amount will increase for longer periods of employment with the Debtors. Specifically, Participants assigned an EKERP Period from August 1, 2006 through November 30, 2006 will receive a bonus equal to 50% of an amount equal to the Aggregate Adjusted Base Salary for the period from August 1, 2006 through the earlier of the end of the EKERP Period or November 30, 2006. Participants assigned an additional EKERP Period from December 1, 2006 through April 30, 2007 will receive a bonus equal to 75% of an amount equal to the Aggregate Adjusted Base Salary for the period from December 1, 2006 through the earlier of the end of such EKERP Period or April 30, 2007. Participants employed on or after May 1, 2007 will receive a bonus equal to 100% of an amount equal to the aggregate Adjusted Base Salary for the period from May 1, 2007 until the end of their assigned EKERP Period.

B. *Payment of EKERP Bonuses*

26. The Extended Employee Post-Closing Incentive Program provides that 50% of a Participant's aggregate EKERP Bonus will be paid on the date that is the earlier of: (a) the end of the Participant's EKERP Period; (b) the effective date of a plan or plans of reorganization for substantially all of the Debtors; and (c) January 31, 2007. The remaining 50% of each Participant's aggregate EKERP Bonus will be paid at the end of the Participant's EKERP Period.

In recognition of the employment opportunities that may be foregone by such employees as a result of their commitment to work for the Debtors for an extended period of time, Participants who are terminated without cause prior to the end of their EKERP Period will be entitled to receive their aggregate EKERP Bonus on their date of termination and his or her aggregate adjusted Base Salary through the end of the EKERP Period. However, Participants who voluntarily terminate their employment prior to the end of the EKERP Period will forfeit any unpaid EKERP Bonus amounts.

C. *Discretionary EKERP Bonuses*

27. While the Creditors' Committee, the CEO, or the EVPs have identified all Participants as integral to the Debtors' reorganization efforts, certain Participants hold the proverbial "keys to the castle." Therefore, under the Extended Employee Post-Closing Incentive Program, the CEO and EVPs will be authorized to award incremental awards (each, a "Discretionary EKERP Award") in addition to EKERP Bonuses to up to ten Participants. The Debtors have agreed to consult with the Creditors' Committee prior to making any Discretionary EKERP Award greater than 50% of the applicable Participant's proposed aggregate EKERP Bonus. As a further layer of oversight, each Discretionary EKERP Award is subject to the approval of the administrator of the Debtors' plan or plans of reorganization (the "Plan Administrator").

28. It is estimated that the incremental cost of the Extended Employee Post-Closing Incentive Program (*i.e.*, the difference in cost of the Participants' participation in the Extended Employee Post-Closing Incentive Program in lieu of the Post-Closing Incentive Program) is $4 million. Such amount includes any Discretionary EKERP Awards that may be granted.

APPLICABLE AUTHORITY

29. Section 363(b) of the Bankruptcy Code provides in pertinent part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business property of the estate." 11 U.S.C. § 363(b). Courts interpreting section 363(b) have held that transactions should be approved pursuant to this provision when, as here, they are supported by management's sound business judgment. See, e.g., In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (outlining requirements for sale of assets pursuant to section 363); and In re Phoenix Steel Corp., 82 B.R. 334, 336-36 (Bankr. D. Del. 1987).

30. Courts recognize the applicability of section 363(b) to the use of estate property to compensate individuals employed outside the ordinary course of business. See, e.g., In re McDonald Bros. Construction, Inc., 114 B.R. 989, 994 (Bankr. N.D. Ill. 1990; In re First Services Corp., 25 B.R. 66, 69 (Bankr. D. Conn. 1982).

31. Section 105(a) of the Bankruptcy Code is the basis for a bankruptcy court's broad exercise of power in the administration of a case under title 11. To that end, section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. §105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. See In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. See, e.g., In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); In re Cooper

Props. Liquidating Trust, Inc., 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

32. The Debtors and the Creditors' Committee jointly submit that the relief requested herein is the product of extensive arm's length negotiations and supported by the reasonable business judgment of the Board and the Compensation Committee of the Board, as applicable. The proposed amendments to the Schleyer Employment Agreement, the Extended EVP Post-Closing Incentive Program, and the Extended Employee Post-Closing Incentive Program, taken together, represent the surest and most cost-effective means of retaining the CEO, the EVPs, and the Key Managers, each of whom is vital to maximizing estate value.

PROCEDURE

33. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the agents for the Debtors' prepetition and postpetition lenders; (c) counsel to the Creditors' Committee; (d) counsel to the Equity Committee; (f) counsel to the Compensation Committee of the Board; (g) all parties who have filed a request for service of all pleadings pursuant to Bankruptcy Rule 2002 as of the day prior to the service hereof; and (h) counsel to Messrs. Schleyer and Cooper.

34. As this Motion presents no novel issue of law, the Debtors request that the Court dispense with the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith.

35. No previous request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form annexed hereto as Exhibit E, granting the relief requested herein and such other and further relief as this Court may deem just or proper.

Dated: September 1, 2006

WILLKIE FARR & GALLAGHER LLP

By: /s/ Shelley C. Chapman
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