

KRAMER LEVIN NAFTALIS & FRANKEL LLP  
 Attorneys for the Official Committee  
 of Unsecured Creditors  
 919 Third Avenue  
 New York, New York 10022  
 (212) 715-9100  
 Thomas Moers Mayer (TM-9357)  
 James C. McCarroll (JM-2758)

Docket #: 1711
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UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case Nos.
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BETHLEHEM STEEL CORPORATION,	:	01-15288 through
<u>et al.</u> ,	:	01-15302 (BRL), and
	:	01-15308 through
	:	01-15315 (BRL)
Debtors.	:	(Jointly Administered)
	:	
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**SIXTH INTERIM AND FINAL FEE APPLICATION OF KRAMER LEVIN  
 NAFTALIS & FRANKEL LLP, AS ATTORNEYS  
 FOR THE OFFICIAL COMMITTEE OF UNSECURED  
 CREDITORS, FOR COMPENSATION FOR  
 PROFESSIONAL SERVICES RENDERED AND FOR  
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES**

TO: THE HONORABLE BURTON R. LIFLAND  
 UNITED STATES BANKRUPTCY JUDGE:

Kramer Levin Naftalis & Frankel LLP (“Kramer Levin,” or the “Applicant”),  
 counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Bethlehem Steel  
 Corporation and certain of its direct subsidiaries, as debtors and debtors in possession in these  
 chapter 11 cases (collectively, the “Debtors”), hereby submits this Sixth Interim and Final Fee  
 Application (the “Application”) for (i) interim allowance of compensation for services rendered  
 and reimbursement of expenses for the period commencing June 1, 2003 through and including

October 22, 2003 (the “Sixth Interim Fee Period”) and (ii) final allowance of compensation for professional services performed by Kramer Levin for the period commencing October 15, 2001 through and including October 22, 2003 (the “Full Case Fee Period”), pursuant to sections 330(a) and 331 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and in support thereof, respectfully represents as follows:

**SUMMARY OF PROFESSIONAL COMPENSATION  
AND REIMBURSEMENT OF EXPENSES REQUESTED**

1. This Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the “Local Guidelines”), the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on May 30, 1996 (the “UST Guidelines”) and the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals entered in these cases (the “Administrative Order” and, collectively with the Local Guidelines and UST Guidelines, the “Guidelines”). Pursuant to the Local Guidelines, a certification regarding compliance with same is attached hereto as Exhibit ”A.”

2. Kramer Levin seeks interim allowance of \$150,550.70 as compensation for professional services rendered, and \$7,943.20<sup>1</sup> as reimbursement for actual and necessary expenses incurred by Kramer Levin during the Sixth Interim Fee Period. During the Sixth Interim Fee Period, Kramer Levin attorneys and paraprofessionals expended a total of 419.6

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<sup>1</sup> This amount includes \$1,440.22 of disbursements incurred during the Fifth Interim Fee Period that were submitted during the Sixth Interim Fee Period.

hours for which compensation is requested. Kramer Levin requests that the Court allow the amounts requested.

3. Filing of this Application was preceded by the First through Fifth Interim Fee Period Applications, which are on file with the Clerk of the Court and have been previously reviewed and approved by this Court. Annexed hereto as Exhibit “B” is a schedule which reflects the amount of interim fees and disbursements previously sought by the Applicant and the corresponding awards granted by this Court.

4. There is no agreement or understanding between Kramer Levin and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in these cases.

5. The fees charged by Kramer Levin in these cases are billed in accordance with its existing billing rates and procedures in effect during the Sixth Interim Fee Period. The rates Kramer Levin charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates Kramer Levin charges for professional and paraprofessional services rendered in comparable nonbankruptcy matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable nonbankruptcy cases in a competitive national legal market.

6. Pursuant to the UST Guidelines, annexed hereto as Exhibit “C” is a schedule setting forth all Kramer Levin professionals and paraprofessionals who have performed services in these chapter 11 cases during the Sixth Interim Fee Period, the capacities in which each such individual is employed by Kramer Levin, the hourly billing rate charged by Kramer Levin for services performed by such individual, the aggregate number of hours expended in this

matter and fees billed therefor, and the year in which each attorney was first licensed to practice law.

7. Annexed hereto as Exhibit “D” is a schedule specifying the categories of expenses for which Kramer Levin is seeking reimbursement and the total amount for each such expense category during the Sixth Interim Fee Period.

8. Pursuant to Section II.D. of the UST Guidelines, annexed hereto as Exhibit “E” is a summary of Kramer Levin’s time billed during the Sixth Interim Fee Period, broken down by project categories as hereinafter described.

9. Kramer Levin maintains computerized records of the time spent by all Kramer Levin attorneys and paraprofessionals in connection with representation of the Committee. Subject to redaction for the attorney-client privilege, copies of these computerized records for the Sixth Interim Fee Period will be furnished to the Court, the Debtors, the Fee Review Committee (as defined below) and the United States Trustee for the Southern District of New York (the “United States Trustee”) in the format specified by the UST Guidelines. Copies of the computerized records of time spent by all Kramer Levin attorneys and paraprofessionals in connection with representation of the Committee for the Sixth Interim Fee Period are annexed hereto as Exhibit “F”.

10. Since the commencement of these cases, pursuant to the Administrative Order, Kramer Levin has provided the appropriate notice to parties with a monthly fee statement following each month for which compensation was sought.

11. By order of this Court dated January 23, 2002, a Joint Fee Review Committee (the “Fee Review Committee”) was established to review all fee applications filed in the Debtors’ chapter 11 cases. The Fee Review Committee is comprised of Tracy Hope Davis,

Esq., a representative of the Office of the United States Trustee for this District, Kathleen Mills, Esq., Deputy General Counsel to the Debtors, and Terry Graffis of National City Bank, a representative of the Committee. Kramer Levin has served this Application on all of the members of the Fee Review Committee.

12. To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Sixth Interim Fee Period, but were not processed prior to the preparation of this Application, Kramer Levin reserves the right to request additional compensation for such services and reimbursement of such expenses in the ordinary course of the Debtors' business.

13. Further, to the extent that time or disbursement charges are incurred following the close of the Sixth Interim Fee Period, but prior to the effective date of the Debtors' plan of liquidation, Kramer Levin reserves the right to request additional compensation for such services and reimbursement of such expenses in the ordinary course of the Debtors' business.

### **BACKGROUND**

14. On October 15, 2001 (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

15. On October 24, 2001, the United States Trustee for the Southern District of New York appointed the Committee. On October 25, 2001 the Committee selected Kramer Levin to serve as its legal counsel. On November 1, 2001, the Committee selected KPMG to serve as its accountants and financial advisors, and McDonald Investments, Inc. to serve as its investment bankers and restructuring advisors.

16. On April 23, 2003, this Court approved the Debtors' sale of substantially all of their assets – except for avoidance actions under Chapter 5 of the Bankruptcy Code – to International Steel Group, Inc. (“ISG”).

17. On July 29, 2003, the Debtors filed their Plan of Liquidation (the “Plan”) under chapter 11 of the Bankruptcy Code and its accompanying Disclosure Statement.

18. Hearings in connection with approval of the Disclosure Statement and confirmation of the Plan were held on September 10, 2003 and October 22, 2003, respectively.

19. On October 22, 2003, the Court confirmed the Debtors' Plan of Liquidation under chapter 11 of the Bankruptcy Code.

20. No trustee or examiner has been appointed in the Debtors' chapter 11 cases.

**SUMMARY OF LEGAL SERVICES RENDERED  
DURING THE SIXTH INTERIM FEE PERIOD**

21. The legal services rendered by the Applicant during the Sixth Interim Fee Period are summarized below:

**A. General and Case Administration**  
Kramer Levin Billing Codes: 00001, 00002  
(Fees: \$30,588.00 / Hours Billed: 116.80)

22. Kramer Levin assisted the Committee with its governance, communicated with Committee members and unsecured creditors who are not Committee members, and organized and prepared for Committee meetings. As general bankruptcy counsel for the Committee, the Applicant has communicated regularly with Debtors' counsel regarding administrative and information sharing matters. In addition, the time recorded in these matters was used for administrative matters, such as maintaining the case file, and receiving and disseminating information regarding developments in the case. These matters also include time

incurred in preparation for hearings, including but not limited to review of documents and the creation of hearing binders.

23. Throughout the Sixth Interim Fee Period, the Applicant received and responded to numerous inquiries by creditors and parties in interest regarding the Debtors' bankruptcy cases. In addition, the time recorded in these matters was used for internal discussions, and the preparation of factual and legal memoranda.

**B. Bankruptcy Motions**

Kramer Levin Billing Code: 00004

(Fees: \$3,685.00 / Hours Billed: 10.00)

24. Throughout the Sixth Interim Fee Period, the Applicant reviewed, analyzed, summarized and provided recommendations to the Committee with respect to legal, financial and business aspects of numerous motions filed by the Debtors and other parties in these cases. Where the motions were highly complex, required detailed factual inquiries and diligence, and/or presented novel legal theories, Kramer Levin conducted research and coordinated the efforts of other Committee Professionals, as appropriate.

**D. Plan of Reorganization and Committee Meetings**

Kramer Levin Billing Codes: 00008, 00014

(Fees: \$83,804.50 / Hours Billed: 196.60)

25. During the Sixth Interim Fee Period, Kramer Levin engaged in substantive discussions with Committee Professionals to develop a liquidation structure that was appropriate for these bankruptcy cases. The Applicant spent significant time reviewing and analyzing certain tax issues associated with the Plan and the accompanying Disclosure Statement. The Applicant also conducted a thorough review of the Plan and provided the Debtors' with comments and revisions. The Applicant further engaged in discussions with the Debtors and their counsel regarding the claims resolution process, and issues regarding the organization and structure of

the Debtors' Liquidating Trust. These issues also included discussions with certain of the Debtors' employees regarding consulting arrangements with the liquidating trust.

26. The Applicant received and responded to numerous inquiries by creditors and other parties in interest regarding the Plan.

27. The Applicant also counseled the Committee to select candidates for liquidating trustee and counsel to the trustee as follows:

- (a) Applicant assisted the Committee in soliciting and identifying (i) four individual candidates for liquidating trustee, (ii) four law firms (including Applicant) seeking to prosecute large preference cases for the liquidating trustee on a pure contingency fee basis (iii) two law firms seeking to prosecute small preference cases for the liquidating trustee on a pure contingency fee basis, and (iv) three law firms seeking to serve as administrative counsel to the liquidating trustee; and
- (b) Applicant designed and coordinated a "sealed bid" process by which each candidate submitted a bid to serve as liquidating trustee, large case preference counsel, small case preference counsel or administrative counsel. Because Applicant was itself a candidate for large case preference counsel, Applicant saw none of the bids for counsel but instead ensured that all bids were sent directly to the Committee, and Applicant did not participate in the Committee members' discussions of which candidates to select. After approximately a week of discussions between Committee members, the Committee selected, by majority vote, Retired Bankruptcy Judge James Goodman as liquidating trustee, Applicant as large case preference counsel, Ian Gazes & Associates as small case preference counsel and King & Spaulding as administrative counsel based on the bids and such other factors as the individual Committee members deemed relevant, including qualifications and commitment of each candidate.

28. The Applicant also analyzed and reviewed preliminary issues surrounding the prosecution of the avoidance actions.

29. Also in connection with confirmation of the Plan, the Applicant engaged in discussions with Committee members and the Debtors regarding unsecured claims asserted by the Pension Benefit Guaranty Corporation.



30. The Applicant prepared for and conducted several Committee meetings during the Sixth Interim Fee Period. The Applicant coordinated the presentations made during these meetings, provided the Committee with detailed updates on key legal issues, and facilitated Committee discussion on all matters. The Applicant prepared minutes for these meetings, as appropriate, memorializing actions taken by the Committee.

**E. Employee Matters Fee Applications, and Retentions**

Kramer Levin Billing Codes: 00011, 00012, 00013

(Fees: \$11,405.70 / Hours Billed: 46.80)

31. The Applicant devoted time during the Sixth Interim Fee Period to reviewing Indenture Trustees' fees and preparing indenture trustee fee binders for transmittal and review.

32. During the Sixth Interim Fee Period, the Applicant also devoted time to preparing monthly fee statements and interim fee applications, all in accordance with Orders of this Court. The Applicant also devoted time to assisting other Committee Professionals with the preparation, filing and service of their monthly fee statements, and interim fee applications.

33. The Applicant also devoted time to analyzing the Debtors' retention of Gazes & Associates LLP as Special Conflicts Counsel to the Debtors in Connection with Pursuit of Preference Recoveries.

**F. Preference Actions and Wind-Up**

Kramer Levin Billing Codes: 000018 and 00019

(Fees: \$20,575.50 / Hours Billed: 47.20)

34. The Applicant devoted time during the Sixth Interim Fee Period to consulting with the selected liquidating trustee and his administrative counsel concerning the terms of the liquidating trust agreement and management of the liquidating trust following the effective date of the Plan. The Applicant's review encompassed issues pertaining to the sources

and adequacy of funding for the liquidating trust, as well as terms of compensation for the liquidating trustee.

35. The Applicant also undertook a somewhat detailed review of the issues surrounding prosecution of the preference actions, with an eye toward the potential magnitude of impact on recoveries for general unsecured creditors.

### **STATEMENT OF THE APPLICANT**

36. The foregoing professional services performed by Kramer Levin were appropriate and necessary. They were in the best interests of the Committee, the Debtors and other parties in interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved. The professional services were performed in an appropriately expeditious and efficient manner.

37. The professional services performed by Kramer Levin on behalf of the Committee during the Sixth Interim Fee Period required an aggregate expenditure of 419.60 recorded hours by Kramer Levin's members, counsel, associates and paraprofessionals. Of the aggregate time expended, 73.40 recorded hours were expended by partners and counsel of Kramer Levin, 259.00 recorded hours were expended by associates, and 87.20 recorded hours were expended by paraprofessionals of Kramer Levin.

38. During the Sixth Interim Fee Period, Kramer Levin's hourly billing rates for attorneys ranged from \$235.00 to \$650.00 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$410.09 (based upon 332.40 recorded hours for attorneys at Kramer Levin's regular billing rates in effect at the time of the performance of services). Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy

cases in a competitive national legal market. As noted, attached hereto is a schedule listing each Kramer Levin professional and paraprofessional who performed services in these cases during the Sixth Interim Fee Period, the hourly rate charged by Kramer Levin for services performed by each such individual, and the aggregate number of hours and charges by each individual.

**ACTUAL AND NECESSARY DISBURSEMENTS OF KRAMER LEVIN**

39. As set forth in Exhibit “D” hereto, Kramer Levin has disbursed expenses of \$7,943.20<sup>2</sup> in providing professional services during the Sixth Interim Fee Period. With respect to photocopying expenses, Kramer Levin charged \$0.20 per page, and with respect to facsimile expenses, Kramer Levin does not charge for facsimile transmissions, other than the cost of long distance facsimiles at applicable toll charge rates, which invariably are less than \$1.25 per page as permitted by the Guidelines. Each of these categories of expenses does not exceed the maximum rate set by the Guidelines. These charges are intended to cover Kramer Levin’s direct operating costs, which costs are not incorporated into the Kramer Levin’s hourly billing rates. Only clients who actually use services of the types set forth in Exhibit “D” are separately charged for such services. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and other facilities and services. The amount of the standard photocopying charge is intended to allow Kramer Levin to cover the related expenses of its photocopying service. A determination of the actual expenses per page for photocopying, however, is dependent on both the volume of copies and the total expenses attributable to photocopying on an annual basis.

40. The time constraints imposed by the circumstances of these cases have required Kramer Levin’s attorneys and other employees at times to devote time during the

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<sup>2</sup> This amount includes \$1,440.22 of disbursements incurred during the Fifth Interim Fee Period that were submitted during the Sixth Interim Fee Period.

evenings and on weekends to the performance of legal services on behalf of the Committee. These extraordinary services were essential to meet deadlines, timely respond to inquiries on a daily basis from parties in interest, and satisfy the demands of the Committee. Attorneys and other employees of Kramer Levin who worked late into the evenings or on weekends were reimbursed for their reasonable meal costs and their cost for transportation from the office to home. Kramer Levin's regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of services. The reimbursement amounts do not exceed those set forth in the Guidelines.

41. In addition, due to the locations of the Committee members and other professionals in relation to Kramer Levin's offices, frequent long distance telephone calls were required. On several occasions, overnight delivery of documents and other materials was required as a result of circumstances necessitating the use of such express services. These disbursements are not included in Kramer Levin's overhead for the purpose of setting billing rates. Kramer Levin has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were absolutely necessary, reasonable, and justified under the circumstances to serve the needs of the Committee.

#### **FINAL COMPENSATION REQUESTED BY KRAMER LEVIN**

42. By this Application, Kramer Levin requests final allowance of \$2,414,258.54 for the Full Case Fee Period, representing \$2,240,488.20 as compensation for professional services rendered and \$173,770.34 as reimbursement for actual and necessary expenses Kramer Levin incurred. In accordance with Kramer Levin's previously approved fee applications in these chapter 11 cases, Kramer Levin has thus far received \$2,155,260.11 in payment of fees and disbursements. \$258,998.43 remains due and owing by the Debtors to

Kramer Levin. Since the Petition Date, Kramer Levin has voluntarily written off fees in the aggregate amount of \$46,627.30, and expenses in the aggregate amount of \$12,392.34.

43. Kramer Levin advised and assisted the Committee in every phase of the Debtors' chapter 11 cases. A core team of three attorneys (specifically, Thomas Moers Mayer (a member of Kramer Levin), and James C. McCarroll and Gordon Z. Novod (Kramer Levin associates)) worked with the Committee throughout the pendency of these cases. Of the 5,401.8 hours billed by Kramer Levin partners, counsel and associates during the Full Case Fee Period, 3,703 hours, or approximately 68.55% of the total hours billed, were billed by this core group of three attorneys. When needed, Kramer Levin drew upon attorneys from other specialized departments to provide expertise on employment, environmental, corporate, and tax issues. Kramer Levin believes that it has assisted the Committee in these chapter 11 cases in an efficient and cost-effective manner and that, under the circumstances, its request for final approval of professional fees and reimbursement of expenses should be approved.

44. Applicant does not wish to burden the Court with an overly detailed or lengthy recitation of each and every matter with respect to which it rendered services on behalf of the Committee during the course of these cases. These matters have already been comprehensively described in Kramer Levin's prior interim fee applications. Accordingly, the following is intended to serve only as a summary description of the primary services rendered by Applicant during these cases and to highlight the benefits conferred upon the Committee, creditors, the Debtors, and the estates as a result of Applicant's efforts.

45. During the initial stages of these chapter 11 cases, a very substantial amount of professional services were required to be rendered, under severe time constraints, to deal with various critical issues and crises facing the Debtors' unsecured creditors and the

Committee as their representative. Throughout the early months of the Debtors' cases, Kramer Levin worked to preserve the operations of the Debtors, restructure the Debtors' obligations, and allow the Debtors a fresh start pursuant to a plan of reorganization. The Debtors ultimately effectuated this goal through marketing their assets, selling their assets to ISG and confirming a plan of liquidation.

46. To ensure that the Committee was fully informed of all developments in these cases, Applicant has extensively consulted and communicated with the Committee. In certain instances, Applicant has been in daily communication with the Debtors' counsel, McDonald Investments, and KPMG regarding the status of matters affecting the Debtors' estates. Applicant has spent a substantial amount of time coordinating the Committee, which is comprised of creditors located in several different states and countries, into a cohesive and responsive group.

47. In accordance with the Committee's desire that members be kept apprized of all matters, Applicant prepared for and conducted numerous conference calls and in-person meetings of the full Committee to discuss the many motions filed with the Court by the Debtors and various other parties, as well as other matters of significance. Applicant prepared the necessary agendas and documents for distribution at the Committee's telephonic and in-person meetings in order to assist the Committee in its understanding of matters that would be addressed. These documents included, among other materials, status reports and summaries regarding the Debtors' assets and liabilities, avoidance actions and asset sales, as well as summaries of various motions, stipulations, objections, responses and orders submitted to the Court.

48. The Applicant responded, both in writing and via telephone, to numerous creditor inquiries regarding the Debtors' bankruptcy cases. Inquiries included questions regarding general case information, case status, specific motions, claims, Plan and pension/benefit issues. The Applicant assisted a number of creditors in filing notices of appearance and requests for service in these cases. Additionally, the Applicant attended the Section 341 Creditors' meeting and answered questions from creditors at the meeting.

49. During the Full Case Fee Period, the Applicant reviewed and analyzed the Debtors' DIP Financing proposal, including detailed discussions with the Committee and the Debtors regarding the Debtors' DIP Financing needs and opportunities. After conducting research regarding the Debtors' assets and collateral relating to the DIP Loan agreement, the Applicant negotiated the terms of the Interim and Final DIP orders with the Debtors and the DIP lenders. The Applicant conducted extensive research relating to the Debtors' mortgages, including review of various UCC lien searches. Additionally, the Applicant reviewed the Chicago Cold Rolling loan documents and summarized the same for the Committee.

50. Kramer Levin analyzed several motions concerning sales of the Debtors' assets. The Applicant spent time analyzing the proposed purchase by the Debtors of LTV's interest in Columbus Coatings Company ("CCC"), a joint venture between the Debtors and LTV. The Applicant investigated the reasonableness of this transaction by consulting with KPMG and McDonald, as well as with McDermott, Will, & Emery. Kramer Levin prepared a summary for the Committee of this proposed transaction and discussed the transaction with several Committee members, as well as counsel for the Debtors' pre-petition secured lenders. After the Court approved the Debtors purchase of CCC, the Applicant spent time analyzing and discussing the

financial and legal implications of refinancing CCC by consulting with the Committee, KPMG, McDonald, the Debtors' pre-petition lenders, and the Debtors.

51. Kramer Levin also spent time reviewing, researching, and investigating the sale of the Weyhill Guesthouse by engaging in discussions with the Debtors, the Committee, real estate agents, developers and local businessmen concerning the transaction.

52. Further, Kramer Levin devoted time to the analysis of the proposed sale of a significant portion of the Debtors' real estate in the Bethlehem area (the "Majestic Sale"). The Applicant discussed the Majestic Sale with several Committee members and answered questions from the Committee. Kramer Levin Environmental attorneys conducted extensive diligence, including a site visit and numerous discussions with the Debtors' personnel, regarding environmental issues relevant to the transaction. In addition, during the Full Case Fee Period, Kramer Levin devoted significant time to analyzing and formulating recommendations with respect to various issues concerning various environmental issues concerning the Lackawanna, Johnstown, and Cambria sites, as well as related to the ISG Sale Agreement.

53. During the Full Case Fee Period, the Applicant devoted significant time to analyzing and formulating recommendations with respect to various issues concerning labor, pension, OPEB, COBRA and ERISA matters. These efforts included detailed review of the Trade Adjustment Act and data and charts generated by KPMG, as well as extensive discussions with Committee members, the Debtors, and various entities representing the beneficiaries of these programs. The Applicant spent significant time researching and analyzing the effects of the termination or modification of the pension and other retiree benefits. Additionally, Kramer Levin analyzed ISG's assumption of COBRA. The Applicant summarized its views on these matters for the Committee in memoranda and during meetings and conference calls.



54. Throughout the Full Case Fee Period, the Applicant has reviewed, analyzed, summarized and provided recommendations to the Committee with respect to legal, financial and business aspects of numerous motions filed by the Debtors and other parties in these cases. To adequately protect unsecured creditors' rights and assert the Committee's positions, Kramer Levin drafted summary and recommendation memoranda for the Committee with respect to most motions filed; discussed with the Committee the possibility of preparing responsive pleadings to numerous motions; and prepared and filed certain responsive pleadings. Furthermore, several of the motions were highly complex, requiring detailed factual inquiries and diligence, and/or presented novel legal theories which required substantial legal research.

55. During the Full Case Fee Period, the Applicant spent time reviewing and commenting on the retention applications of McDonald Investments, KPMG and McDermott, Will & Emery. The Applicant also devoted time to analyzing and discussing the Debtors' retention of CSFB and Greenhill. The Applicant reviewed the CSFB and Greenhill retention agreements and conferred with the other Committee Professionals regarding same. In addition, the Applicant engaged in detailed discussions with the Committee members and Debtors on this matter.

56. The Applicant prepared for and conducted numerous Committee meetings during the Full Case Fee Period. The Applicant coordinated the presentations made during these meetings, provided the Committee with detailed updates on key legal issues, and facilitated Committee discussion on all matters. The Applicant prepared minutes for these meetings, as appropriate, memorializing actions taken by the Committee.

57. The Applicant also prepared for and participated in meetings with the Debtors – both with and without Committee members – during which a wide variety of cases

issues were discussed. Topics of these discussions included joint ventures, financing, pending and potential asset sales, contract negotiations, refinancing a significant non-debtor operating entity, and complex employee benefit and labor issues relating to modification of the Debtors' collective bargaining agreement and termination of the Debtors defined benefit pension plan. Throughout the Bankruptcy cases, the Applicant had discussions with, and reviewed credentials of candidates to prosecute preference actions. The Applicant also prepared for and participated in meetings and teleconferences with the Committee during which candidates to prosecute the preference actions as well as the selection of a liquidating trustee were considered.

58. During the Full Case Fee Period, various parties, including the Debtors, have sought Court Approval of assumption, rejection or other actions with respect to executory contracts. The Applicant, in conjunction with KPMG and McDonald, has analyzed each such proposed transaction and provided recommendations to the Committee regarding the legal, financial and business implications thereof.

59. Additionally, the Committee played a material role in the Debtors' negotiation of a new contract with its information services provider, Electronic Data Systems ("EDS"). The services provided by EDS were deemed by the Debtors to be critical. Upon analysis by the Applicant and KPMG of the nature and extent of these services, the Committee came to agree with the Debtors' view. The Applicant devoted a significant amount of time to participating in the negotiations of a new contract among EDS and the Debtors, including devoting significant time to understanding and summarizing for the Committee the financial aspects of the proposed transaction, as well as the legal and financial implications of the several alternatives. Ultimately, with extensive assistance and input from the Committee, the Debtors obtained an agreement from EDS to reduce its claim in the Debtors' bankruptcy cases by \$1

million dollars, and the Debtors entered into a new contract with EDS that was acceptable in all material respects to the Committee.

60. In accordance with Orders of this Court, the Applicant devoted time to preparing monthly fee statements and interim fee applications. The Applicant also devoted time to assisting other Committee Professionals with the preparation, filing and service of their monthly fee statements, and interim fee applications. Additionally, the Applicant devoted time to coordinating the review of Indenture Trustees' fees.

61. During the Full Case Fee Period, the Applicant engaged in substantive discussions with the Committee and Committee Professionals regarding development of a model for reorganizing the Debtors' assets. In connection with these discussions, the Applicant performed limited research and analysis to understand the potential roles of certain vendors with respect to a reorganized Bethlehem entity.

62. Applicant, in conjunction with McDonald Investments and KPMG, reviewed, analyzed and summarized a myriad of documents related to the Debtors' business, financial operations and liquidation. Applicant regularly reported to the Committee on the results of the Debtors' businesses.

63. As the Debtors' bankruptcy cases progressed, the Applicant, on behalf of the Committee, continued its negotiations with the Debtors, and other major parties in interest to develop a strategy for restructuring the Debtors' obligations and allowing the Debtors to reorganize pursuant to a plan of reorganization. The Debtors ultimately effectuated this goal through marketing their assets first by agreeing to a 60-day exclusivity arrangement with ISG and later through an auction (the "Auction") before this Court whereby the Debtors' acceptance of ISG's bid was subject to higher and better offers.

64. As the Court knows, one of the few times that Applicant clashed with Debtors' counsel in open court was over the 60-day exclusivity given to ISG. At the Court's December 2002 status conference, Applicant predicted that the exclusivity would lead to ISG being the only bidder for the Debtors' assets. Applicant was also concerned that the Debtors' focus on ISG would diminish the chances for a stand-alone plan. Applicant proved prescient: the Debtors determined that they could not pursue a stand-alone plan, and ISG proved to be the only serious bidder for the Debtors' assets. ISG originally proposed to pay nothing to unsecured creditors.

65. Kramer Levin devoted significant time to reviewing and analyzing ISG's offer to purchase the Debtors' assets (the "ISG Sale Agreement"). Prior to the Auction, the Applicant reviewed various ISG term sheets and press releases, and at the direction of the Committee, the Applicant prepared its own term sheet. The Applicant engaged in extensive discussions with the Debtors, the other Committee Professionals, and the Committee regarding the terms of the ISG Sale Agreement. In addition, the Applicant analyzed, and formulated recommendations for the Committee with respect to, various issues concerning the sale of the Debtors' assets to ISG, including analysis of the benefits to ISG of structuring its acquisition as a "G" reorganization under Section 368(g) of the Internal Revenue Code, and other strategic alternatives.

66. The Committee's opposition to the ISG transaction, and Applicant's contention that re-configuring the transaction as a "G" Reorganization providing ISG stock to Bethlehem's unsecured creditors, helped persuade ISG to allocate \$15 million of its common stock to unsecured creditors as part of the ISG Sale Agreement. Furthermore, Kramer Levin extensively reviewed and commented on the bidding procedures and asset purchase agreement in

connection with ISG Sale Agreement and at the direction of the Committee, filed an objection to the ISG Sale Procedures Motion. Ultimately, the ISG Sale Procedures Order was revised to reflect changes satisfactory to the Committee. After the Auction was held, the ISG Sale Agreement was approved by this Court on April 23, 2003 (the “ISG Sale”).

67. After the Court approved the ISG Sale, the Applicant, as counsel to the Committee, played a pivotal role throughout the liquidation process in order to protect the rights of general unsecured creditors. Applicant worked closely with the Committee, as well as the Debtors and the Debtors’ counsel to maximize recoveries, safeguard the interests of general unsecured creditors and confirm a plan of liquidation.

68. Working with the Debtors, the Applicant reviewed and revised a draft plan of liquidation prepared by the Debtors. The Applicant and the Committee expended a significant amount of time reviewing and negotiating a plethora of issues related to the filing of a plan of liquidation by the Debtors. Applicant, with the assistance of KPMG, spent substantial time reviewing and analyzing with the Committee various financial analyses, valuations and projections related to the Debtors’ liquidation, as well as recoveries to general unsecured creditors. Applicant ensured that the plan included provisions vital to the protection of the interests of general unsecured creditors.

69. As a result of Applicant’s efforts and after comprehensive negotiations with the Debtors, the parties agreed upon a mutually acceptable plan of liquidation that was filed by the Debtors on July 29, 2003. The Committee unanimously determined to support the Plan, and ultimately, as modified and amended pursuant to Committee input, the Disclosure Statement filed therewith as well.

70. The Applicant prepared, at the direction of the Committee, a letter in support of the Plan for distribution to unsecured creditors. Hearings in connection with the Disclosure Statement and confirmation of the Plan were held on September 10, 2003 and October 22, 2003, respectively. The confirmation of the Plan on October 22, 2003, represents the culmination of substantial efforts by Applicant, the Committee and the Debtors to successfully negotiate a consensual plan of liquidation and exit Chapter 11 soon after the ISG Sale.

### **STATEMENT OF THE APPLICANT**

71. The foregoing professional services performed by Kramer Levin were appropriate and necessary. They were in the best interests of the Committee, the Debtors and other parties in interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved. The professional services were performed in an appropriately expeditious and efficient manner.

72. The professional services performed by Kramer Levin on behalf of the Committee during the Application Period required an aggregate expenditure of 6,729.78 recorded hours by Kramer Levin's members, counsel, associates and paraprofessionals. Of the aggregate time expended, 1,557.6 recorded hours were expended by partners and counsel of Kramer Levin, 3,844.20 recorded hours were expended by associates and 1,328.00 recorded hours were expended by paraprofessionals of Kramer Levin. Copies of the computerized records of time spent by all Kramer Levin attorneys and paraprofessionals in connection with representation of the Committee for the Full Case Fee Period are voluminous in nature and therefore not being filed with the Application. Instead, the Applicant has annexed hereto as Exhibit F is the time records for the Sixth Interim Fee Period. The Applicant's time records for

the First through Fifth Interim Fee Applications are available via the Court's Document Filing System (ECF) at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) and will be provided by the Applicant upon request.

73. Pursuant to the UST Guidelines, annexed hereto as Exhibit "G" is a schedule setting forth all Kramer Levin professionals and paraprofessionals who have performed services in these chapter 11 cases during the Full Case Fee Period<sup>3</sup>, the capacities in which each such individual is employed by Kramer Levin, the hourly billing rate charged by Kramer Levin for services performed by such individual, the aggregate number of hours expended in this matter and fees billed therefor, and the year in which each attorney was first licensed to practice law.

74. Pursuant to Section II.D. of the UST Guidelines, annexed hereto as Exhibit "H" is a summary of Kramer Levin's time billed during the Full Case Fee Period, broken down by project categories as hereinafter described.

75. During the Full Case Fee Period, Kramer Levin's hourly billing rates for attorneys ranged from \$200.00 to \$650.00 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$374.63 (based upon 5,401.78 recorded hours for attorneys at Kramer Levin's regular billing rates in effect at the time of the performance of services). Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive national legal market. As noted, attached hereto is a schedule listing each Kramer Levin professional and paraprofessional who performed services in these cases during

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<sup>3</sup> The schedule annexed hereto as Exhibit "G" does not take into account the time written-off in resolution of the Objection filed by the Office of the United States Trustee to the Applicant's Third Interim Fee Application. Pursuant to that compromise, the Applicant agreed to reduce its fees by \$5,968.00. Thus, the Applicant seeks allowance of fees incurred during the Full Case Fee Period of \$2,240,488.20 (reduced from \$2,246,456.20).

the Full Case Fee Period, the hourly rate charged by Kramer Levin for services performed by each such individual and the aggregate number of hours and charges by each individual.

**ACTUAL AND NECESSARY DISBURSEMENTS OF KRAMER LEVIN**

76. As set forth in Exhibit “I” hereto, Kramer Levin has disbursed \$173,770.34 as expenses incurred in providing professional services during the Full Case Fee Period. With respect to photocopying expenses, Kramer Levin charged \$0.20 per page, and with respect to facsimile expenses, Kramer Levin does not charge for facsimile transmissions, other than the cost of long distance facsimiles at applicable toll charge rates, which invariably are less than \$1.25 per page as permitted by the Guidelines. Each of these categories of expenses does not exceed the maximum rate set by the Guidelines. These charges are intended to cover Kramer Levin’s direct operating costs, which costs are not incorporated into the Kramer Levin’s hourly billing rates. Only clients who actually use services of the types set forth in Exhibit “G” are separately charged for such services. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and other facilities and services. The amount of the standard photocopying charge is intended to allow Kramer Levin to cover the related expenses of its photocopying service. A determination of the actual expenses per page for photocopying, however, is dependent on both the volume of copies and the total expenses attributable to photocopying on an annual basis.

77. The time constraints imposed by the circumstances of these cases have required Kramer Levin’s attorneys and other employees at times to devote time during the evenings and on weekends to the performance of legal services on behalf of the Committee. These extraordinary services were essential to meet deadlines, timely respond to inquiries on a daily basis from parties in interest, and satisfy the demands of the Committee. Attorneys and other employees of Kramer Levin who worked late into the evenings or on weekends were



reimbursed for their reasonable meal costs and their cost for transportation from the office to home. Kramer Levin's regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of services. The reimbursement amounts do not exceed those set forth in the Guidelines.

78. In addition, due to the locations of the Committee members and other professionals in relation to Kramer Levin's offices, frequent long distance telephone calls were required. On several occasions, overnight delivery of documents and other materials was required as a result of circumstances necessitating the use of such express services. These disbursements are not included in Kramer Levin's overhead for the purpose of setting billing rates. Kramer Levin has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were absolutely necessary, reasonable, and justified under the circumstances to serve the needs of the Committee.

**THE REQUESTED COMPENSATION SHOULD BE ALLOWED**

79. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 provides that a court may award a professional employed under section 328 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, 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) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

80. In the instant case, Kramer Levin respectfully submits that the services for which it seeks compensation in this Application were, at the time rendered, believed to be necessary for, beneficial to, and in the best interests of the Committee. Kramer Levin further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Committee.

81. Whenever possible, Kramer Levin sought to minimize the costs of Kramer Levin's services to the Committee by utilizing junior attorneys and paraprofessionals to handle the more routine aspects of case administration.

82. In sum, the services rendered by Kramer Levin were necessary and beneficial to the Committee, and were consistently performed in a timely manner commensurate with the complexity, importance, and nature of the issues involved, and approval of the compensation sought herein is warranted.

### NOTICE

83. Notice of this Application has been provided to the United States Trustee, the Debtors, the attorneys for the Debtors, the members of the Fee Review Committee, and

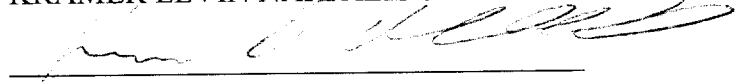
counsel for the Debtors' pre-petition secured lenders and post-petition lenders. Kramer Levin submits that no other or further notice need be provided.

**CONCLUSION**

WHEREFORE Kramer Levin respectfully requests that this Court enter a final Order (i) awarding to the Applicant compensation in the amount of \$2,240,488.20, representing all remaining and pending billable time for services rendered by the Applicant as counsel to the Committee; (ii) awarding reimbursement of necessary and actual expenses incurred and recorded in the Applicant in the amount of \$173,770.34; (iii) pursuant to the Debtors' confirmed Plan of Reorganization, directing the Debtors to pay the Applicant its unpaid fees and expenses in the total amount of \$258,998.43; (iv) authorizing the Debtors to pay Kramer Levin's fees and expenses incurred after October 22, 2003 in the ordinary course of business; and (v) granting the Applicant such other and further relief as this Court deems just and proper.

Dated: New York, New York  
November 21, 2003

KRAMER LEVIN NAFTALIS & FRANKEL LLP



Thomas Moers Mayer (TM-9357)  
James C. McCarroll (JM-2758)  
919 Third Avenue  
New York, New York 10022  
(212) 715-9100

Attorneys for the Official Committee of  
Unsecured Creditors