

Docket #: 1714

MCDERMOTT, WILL & EMERY
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11 Case Nos.
	: :
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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**FIFTH AND FINAL FEE APPLICATION OF MCDERMOTT, WILL & EMERY,
AS SPECIAL LABOR COUNSEL FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS, FOR ALLOWANCE OF
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED
AND FOR REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES**

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

McDermott, Will & Emery ("McDermott," or the "Applicant"), special labor 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 Fifth 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 McDermott 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. McDermott seeks interim allowance of \$257.00 as compensation for professional services rendered, and \$94.26 as reimbursement for actual and necessary expenses incurred by McDermott during the Sixth Interim Fee Period. During the Sixth Interim Fee Period, McDermott attorneys and paraprofessionals expended a total of .5 hours for which compensation is requested. McDermott requests that the Court allow the amounts requested.

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

4. The fees charged by McDermott in these cases are billed in accordance with its existing billing rates and procedures in effect during the Sixth Interim Fee Period. The rates McDermott charges for the services rendered by its professionals and paraprofessionals in these chapter 11 cases are the same rates McDermott 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.

5. Pursuant to the UST Guidelines, annexed hereto as Exhibit "B" is a schedule setting forth all McDermott 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 McDermott, the hourly billing rate charged by McDermott for services performed by such individual, the aggregate number of hours expended in this matter and fees billed therefore, and the year in which each professional was first licensed to practice law.

6. Annexed hereto as Exhibit "C" is a schedule specifying the categories of expenses for which McDermott is seeking reimbursement and the total amount for each such expense category.

7. Pursuant to Section II.D. of the UST Guidelines, annexed hereto as Exhibit "D" is a summary of McDermott's time billed during the Sixth Interim Fee Period, broken down by project categories as hereinafter described.

8. McDermott maintains computerized records of the time spent by all McDermott attorneys and paraprofessionals in connection with representation of the Committee. Subject to redaction for the attorney-client privilege, copies of these computerized records 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.

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

10. 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. McDermott has served this Application on all of the members of the Fee Review Committee.

11. 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, McDermott reserves the right to request additional compensation for such services and reimbursement of such expenses in the ordinary course of business.

BACKGROUND

12. 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.

13. 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. On February 5, 2002, the Committee selected McDermott to serve as its Special Labor Counsel.

14. 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.

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

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

17. On October 22, 2003, the Court confirmed the Debtors' Plan of Liquidation (the "Plan") under chapter 11 of the Bankruptcy Code.

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

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

19. The legal services rendered by the Applicant during the Sixth Interim Fee Period were limited to preparation and review of the fee application for the Fifth Interim Fee Period.

STATEMENT OF THE APPLICANT

20. The foregoing professional services performed by McDermott 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.

21. The professional services performed by McDermott on behalf of the Committee during the Sixth Interim Fee Period required an aggregate expenditure of .5 recorded hours by McDermott's members, counsel, associates and paraprofessionals. Of the aggregate time expended, .5 recorded hours were expended by partners and counsel of McDermott.

22. During the Sixth Interim Fee Period, McDermott's hourly billing rates were \$515.00 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of \$515 (based upon .5 recorded hours for attorneys at McDermott'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 McDermott professional and paraprofessional who performed services in these cases during the Sixth Interim Fee Period, the hourly rate charged by McDermott for services performed by each such individual, and the aggregate number of hours and charges by each individual.

ACTUAL AND NECESSARY DISBURSEMENTS OF MCDERMOTT

23. As set forth in Exhibit "C" hereto, McDermott has disbursed \$94.26 as expenses incurred in providing professional services during the Bankruptcy cases. With respect to photocopying expenses, McDermott charged \$.20 per page, and with respect to facsimile

expenses, McDermott 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 McDermott's direct operating costs, which costs are not incorporated into the McDermott's hourly billing rates. Only clients who actually use services of the types set forth in Exhibit "C" 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 McDermott 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.

24. In addition, due to the locations of the Committee members and other professionals in relation to McDermott'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 McDermott's overhead for the purpose of setting billing rates. McDermott 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 MCDERMOTT

25. By this Application, McDermott requests final allowance of \$434,131.83 for the Full Case Fee Period, representing \$409,255.75 as compensation for professional services rendered and \$24,876.08 as reimbursement for actual and necessary expenses McDermott

incurred. In accordance with McDermott's previously approved fee applications in these chapter 11 cases, McDermott has thus far received \$374,517.38 in payment of fees and disbursements. \$41,594.57 remains due and owing by the Debtors to McDermott. Since the Commencement Date, McDermott has voluntarily written off fees in an aggregate amount of \$19,955.25.

26. McDermott advised and assisted the Committee in every phase of the Debtors' chapter 11 cases. A core team of two attorneys (specifically, Joseph E. O'Leary and Scott A. Faust (partners of McDermott), worked with the Committee throughout the pendency of these cases. Of the 887 hours billed by McDermott partners, counsel and associates during the Full Case Fee Period, 761 hours, or approximately 86% of the total hours billed, were billed by this core group of two attorneys. When needed, McDermott drew upon attorneys from other specialized departments to provide expertise on employment, benefits, legislative and tax issues. McDermott 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.

27. 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. 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.

28. 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, McDermott 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.

29. 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.

30. In accordance with the Committee's concern that members be kept apprised of all matters, Applicant prepared for and conducted numerous conference calls and in-person meetings of the full Committee to discuss the many applications filed with the Court as well as any other matters of significance that impacted labor and pension issues. McDermott organized and attended Committee meetings to discuss, among other things, analysis of collective bargaining agreements, review of labor aspects of various business plans, conferences with union officials, review of KERP proposals, the ISG Sale, the preparation, negotiation and filing of the Plan and Disclosure Statement; and various other applications filed with the Court. Applicant prepared the necessary labor related 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.

31. 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 and general labor relations matters.

32. During the Full Case Fee Period, the Applicant devoted significant time to coordinating and supervising the analysis and formulation of 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, McDermott analyzed ISG's assumption of COBRA obligations. The Applicant summarized its views on these matters for the Committee in memoranda and during meetings and conference calls.

33. The Applicant prepared for and participated in numerous Committee meetings during the Full Case Fee Period. The Applicant prepared and delivered the presentations made during these meetings relating to labor, employment and benefit issues and , provided the Committee with detailed updates on key legal issues, and facilitated Committee discussion on these matters.

34. The Applicant also prepared for and participated in meetings with the Debtors – both with and without Committee members – during which a wide variety of labor and employment issues were discussed. Included in these discussions were complex employee benefit and labor issues relating to modification of the Debtors' collective bargaining agreement and termination of the Debtors' defined benefit pension plan.

STATEMENT OF THE APPLICANT

35. The foregoing professional services performed by McDermott 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.

36. The professional services performed by McDermott on behalf of the Committee during the Application Period required an aggregate expenditure of 887 recorded hours by McDermott's members, counsel, associates and paraprofessionals. Of the aggregate time expended, 761 recorded hours were expended by partners and counsel of McDermott, and 126 recorded hours were expended by associates of McDermott.

37. During the Full Case Fee Period, McDermott's hourly billing rates for attorneys ranged from \$235 to \$570 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$461.39 (based upon 887 recorded hours for attorneys at McDermott'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 as Exhibit "E" is a schedule listing each McDermott professional and paraprofessional who performed services in these cases during the Full Case Fee Period, the hourly rate charged by McDermott for services performed by each such individual and the aggregate number of hours and charges by each individual.

ACTUAL AND NECESSARY DISBURSEMENTS OF MCDERMOTT

38. As set forth in Exhibit "F" hereto, McDermott has disbursed \$24,876.08 as expenses incurred in providing professional services during the Bankruptcy cases. With respect

to photocopying expenses, McDermott charged \$.20 per page, and with respect to facsimile expenses, McDermott 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 McDermott's direct operating costs, which costs are not incorporated into McDermott's hourly billing rates. Only clients who actually use services of the types set forth in Exhibit "F" 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 McDermott 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.

39. The time constraints imposed by the circumstances of these cases have required McDermott'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 Debtors. 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 McDermott 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. McDermott'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.

40. In addition, due to the locations of the Committee members and other professionals in relation to McDermott'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 McDermott's overhead for the purpose of setting billing rates. McDermott 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

41. 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).

42. In the instant case, McDermott 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. McDermott further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Committee.

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

44. In sum, the services rendered by McDermott 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

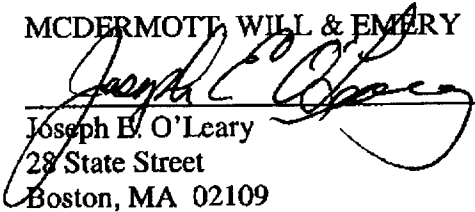
45. Notice of this Application has been provided to the United States Trustee, the Debtor, the attorneys for the Debtor, the members of the Fee Review Committee, and counsel for the Debtors' pre-petition secured lenders and post-petition lenders. McDermott submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE McDermott respectfully requests that this Court enter a final Order (i) awarding to the Applicant compensation in the amount of \$409,255.75 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 \$24,876.08; (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 \$41,594.57; (iv) authorizing the Debtors to pay McDermott'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: Boston, Massachusetts
November 21, 2003

MCDERMOTT WILL & EMERY



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of Unsecured Creditors