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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
Bethlehem Steel Corporation, Inc., et al.,	)	01-15288 (BRL) through 01-
	)	15302, 01-15308 Through 01-
Debtors.	)	15315 (BRL)
	)	(Jointly Administered)

APPLICATION FOR ALLOWANCE OF INVESTMENT MANAGEMENT FEE PURSUANT TO REIMBURSEMENT AGREEMENT BETWEEN DEBTORS AND USWA

The United Steelworkers of America, AFL-CIO (“USWA” or the “Union”) hereby submits this application for final allowance of the investment management fee under the terms and conditions of letter agreements between the Debtors and the USWA, dated November 22, 2002 and November 5, 2001 (the “USWA Letter Agreements”) and this Court’s orders dated January 7, 2002 and February 6, 2003 (the “Reimbursement Orders”) for services rendered by its investment financial advisor, Potok, Campbell and Co., LLC (“Potok”), and in support of this Application respectfully represents as follows:

Summary of Relief Requested

The Union submits this Application pursuant to the terms of a November 22, 2002 Letter Agreement providing for payments by Bethlehem Steel Corp., et al. (“Bethlehem”) for services rendered by Potok to the USWA. The Letter Agreement provided for payment of a monthly work fee and an investment advisor or “success” fee. Potok has received payments

under the Letter Agreement totaling \$450,000, representing the monthly work fee of \$75,000 for the period November 1, 2002 through April 30, 2003. This Application seeks approval for the payment of the success fee in the amount of \$2.5 million, the full amount available under the Letter Agreement.

### Background

1. Bethlehem Steel Corporation and its consolidated subsidiaries filed voluntary petitions under chapter 11 on October 15, 2001. The second largest integrated steel producer in the United States as of the commencement of the case, Bethlehem produced a wide variety of steel products, including hot-rolled, cold-rolled and coated sheets, tin mill products, carbon and alloy plates, rails, specialty blooms, carbon and alloy bars, and large-diameter pipes. Its principal operations were comprised of three divisions, Burns Harbor, Sparrows Point, and Pennsylvania Steel Technologies. The Burns Harbor Division operated facilities Indiana and in Lackawanna, New York. The Sparrows Point Division operated a facility near Baltimore, Maryland and two facilities in Pennsylvania. The Pennsylvania Steel Technologies Division, operated a facility in Steelton, Pennsylvania.

2. As set forth in detail in the Disclosure Statement for the Debtors' Plan of Liquidation ("Disclosure Statement"), as of October 2001, Bethlehem employed approximately 13,200 employees, about 80% of whom were covered by a master collective bargaining agreement and certain plant specific agreements with the USWA. At the time, the Debtors sponsored defined benefit pension plans covering the USWA-represented employees and provided healthcare and life insurance to most of its retirees, their dependents and to surviving

spouses. For 2002, the Debtors' cash spending for retiree insurance benefits approximated \$228 million.<sup>1</sup>

3. Bethlehem is one of dozens of domestic steel companies that have sought Chapter 11 protection since 1998 as a result of the industry-wide impact of excess capacity created by the flood of steel imports. Adverse economic conditions affecting key customers in the automotive and other industries compounded the industry's problems. As described by the Debtors at the time of the filing, a principal objective of the Chapter 11 case was to negotiate a modified labor agreement with the Union to address, among other things, improved productivity and cost reductions, and to find a solution for the company's burgeoning retiree health care obligation. *See* Motion for Entry of an Order Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code Approving and Authorizing the Debtors to Reimburse Certain Professional Fees and Expenses of the United Steelworkers of America ("Fee Reimbursement Motion"), ¶¶ 11, 13-14. Bethlehem and the USWA engaged in discussions throughout 2001 regarding the need to modify the existing collective bargaining agreements *Id.*, ¶14. In light of the magnitude and complexity of the interests at stake, the significance of Bethlehem's strategic position in an industry in massive financial distress, and the Union's need for experienced financial and other technical expertise and assistance, the Union sought reimbursement for the costs of its professionals in undertaking the extensive due diligence and other analyses required to participate in collective bargaining and restructuring negotiations with Bethlehem.

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<sup>1</sup> As of the commencement of the Chapter 11 cases, the Debtors estimated unfunded pension expenses to be \$1.85 billion and other unfunded post-retirement benefit obligations ("OPEB's") to be \$3 billion. Affidavit of Lonnie Arnett Pursuant to Bankruptcy Rule 1007-2, ¶ 24. Pension and OPEB costs were estimated at \$45 per ton in 2001.

4. In the Fee Reimbursement Motion, Bethlehem sought approval of the November 5, 2001 USWA Letter, an agreement setting forth the terms for reimbursement of the reasonable costs and expenses of the USWA's professionals. In addition to outside law firms and actuarial consultants, the USWA initially retained Keilin & Co. to provide investment financial advice. Under the terms of the November 5 Letter Agreement, the financial advisors would be paid at a set monthly work fee of \$100,000 for a defined Reimbursement Period, plus reasonable expenses, all subject to an overall cap of \$1.5 million for all professional fees and expenses. In addition, the November 5 Letter Agreement provided for payment of a success fee upon confirmation of a plan or a sale of all or substantially all of the Debtors' assets.<sup>2</sup>

5. The Bankruptcy Court approved the reimbursement arrangement subject to certain conditions and modifications, including a reduction in the overall cap (exclusive of the success fee) to \$1.4 million. *See* Order Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code Authorizing the Debtors to Reimburse Certain Professional Fees and Expenses of the USWA, dated January 7, 2002. With regard to the success fee, the January 7 order provided that

the Debtors be, and, they hereby are authorized pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code to pay Keilin, the investment banker employed by USWA, a Success Fee of up to \$ 5 million in accordance with the terms and conditions of the Keilin Letter, Exhibit 'A2', but only upon the service and filing of an application for the payment of such Success Fee, and the occurrence of: (a) confirmation of a plan for reorganization for the Debtors or consummation of a sale of all or substantially all of the Debtors' assets which, in any case, supported by the USWA; and (b) review and determination of the

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<sup>2</sup> Reimbursement arrangements for USWA professionals had been approved in other steel industry bankruptcy cases. *E.g., In re LTV Steel Co., Inc.*, Case No. 00-43866 (Bankr. N.D. Ohio); *In re Republic Technologies, Int'l*, Case No. 01-51117 (Bankr. N.D. Ohio).

application by the Court pursuant to Section 330 of the Bankruptcy Code, after confirmation or sale.<sup>3</sup>

6. Thereafter, in October, 2002, the USWA replaced Keilin & Co. with Potok. The Debtors sought an amended order authorizing payment of Potok in place of Keilin. Under the November 22, 2002 Letter Agreement, the monthly work fee to be paid by the Debtors was reduced to \$75,000 and the success fee is \$2.5 million, rather than \$5 million. Otherwise, the terms and conditions under the November 22, 2002 Letter Agreement with respect to the work fee and the success fee are substantially the same as those under the November 5, 2001 Letter Agreement, as modified under the January 7, 2002 Reimbursement Order. Thus, the work fee remained subject to the overall cap of \$1.4 million and the success fee is payable upon confirmation of a plan or consummation of a sale of all or substantially all of the Debtors' assets, subject to the conditions in the Reimbursement Order.<sup>4</sup> Unlike the Keilin investment fee, the Potok investment fee is not subject to offset by the monthly work fee. The Bankruptcy Court approved the November 22, 2002 USWA Letter, and incorporated the same conditions applicable to the earlier Letter Agreement, by order dated February 6, 2003. A copy of the February 6 Order is attached as Exhibit A.

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<sup>3</sup> The United States Trustee appealed the January 7, 2002 order arguing, among other things, that the professional fee reimbursements must qualify under Section 503 of the Bankruptcy Code. In a July, 2002 opinion and order, the District Court upheld the Bankruptcy Court's order authorizing the payments pursuant to Sections 363(b) and 105(a). *In re Bethlehem Steel Corp.*, 2003 U.S. Dist. LEXIS 12909 (S.D.N.Y. July 28, 2002). The Bankruptcy Court's order regarding the success fee was not challenged on appeal and was not part of the District Court's determination.

<sup>4</sup> As set forth in the Debtors' Motion for Approval and Authorization to Amend Order Dated January 7, 2002 Authorizing Reimbursement of Certain Professional Fees and Expenses of USWA, *Nunc Pro Tunc* to October 22, 2002, the USWA terminated the services of Keilin & Co. by letter dated November 22, 2002 and informed Keilin that the Union would not support approval of the payment of the transaction fee. The USWA advised Bethlehem that the company would have no further obligation to Keilin or to USWA with respect to the services of Keilin.

7. As described by the Debtors over the course of the case and in the Disclosure Statement, various efforts were initiated throughout the case to secure a transaction or series of transactions as a means of resolving the bankruptcy case. Initially, none proved successful. No viable purchase, merger or other venture proposal emerged; potential partners were unwilling to offer meaningful consideration for the Debtors' assets or to consider a feasible labor agreement. The Debtors and the Union also undertook negotiations for a modified labor agreement that could form the basis of a stand-alone plan, although neither party abandoned the view that the preferred path, and the path that would yield the best result for all constituencies, would be an acquisition or merger.

8. Finally, in November, 2002, with the encouragement and facilitation of the USWA, the Debtors and International Steel Group, Inc. ("ISG"), entered into an agreement for the negotiation, on an exclusive basis, of a possible transaction. As set forth in greater detail in the Disclosure Statement, during the sixty day period of the agreement, the Debtors expended a substantial amount of time working with ISG and the USWA providing due diligence, exploring the potential synergies between the two operations, and addressing operational and employee-related issues. *See* Disclosure Statement, p.14. These negotiations ultimately led to an agreement with ISG for the purchase of substantially all of the assets of the Bethlehem debtor and non-debtor entities, the assumption of certain liabilities and the assumption of certain executory contracts and leases. USWA-represented employees were employed at the facilities to be sold to ISG. ISG's formal proposal, made in January, 2002, contained the basic terms of a new labor agreement reached with the USWA. *See* Debtors' Disclosure Statement, pp. 14-17

(summarizing the course of events leading to the consummation of the sale to ISG on May 7, 2003).

9. In conjunction with the sale to ISG, Bethlehem and the USWA negotiated a comprehensive agreement (the “Settlement Agreement”) resolving all issues between the parties related to the sale of Bethlehem to ISG and termination of their long-standing collective bargaining relationship. The Settlement Agreement provided for the termination, as of the ISG sale closing, of all collective bargaining agreements between Bethlehem and its subsidiaries and the USWA and any collective bargaining agreement obligations of Bethlehem and its subsidiaries. The Settlement Agreement also set forth the terms of the settlement and release with respect to all claims arising under the labor agreements; waiver of Bethlehem’s liability for any claims incurred under any retiree benefits program or death benefit after March 31, 2003; an agreement with respect to Bethlehem’s continued COBRA obligations; cooperation between Bethlehem and the USWA regarding implementation of a transition assistance program agreed to by the USWA and ISG; the termination as of December 18, 2002 of Bethlehem’s obligations under pension agreements with the USWA; and waiver by the USWA on behalf of itself and USWA-represented employees of Bethlehem’s obligations under the Worker Adjustment and Retaining Notification Act, among other provisions.<sup>5</sup>

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<sup>5</sup> The Settlement Agreement was expressly conditioned upon the approval and consummation of the sale to ISG. In its Motion for Entry of an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving Compromise and Settlement with United Steelworkers of America, AFL-CIO, the Debtors estimated that monetary benefits arising from the Settlement Agreement included \$1.5 billion for the release of retiree health insurance claims (also citing monthly savings of \$13 million in retiree medical costs) and the release of “incalculable” claims resulting from the termination of the labor agreements. The Settlement Agreement was approved by the Court on April 23, 2003.

10. Once the ISG sale was approved and consummated, the Debtors' filed their plan of liquidation for the distribution of the Debtors' remaining assets to creditors. Under the plan, unsecured creditors will obtain a recovery of \$15 million in ISG stock, plus the proceeds of preference actions.

The USWA's Critical Role in the Resolution of Bethlehem's Bankruptcy Case

11. The USWA played a critical role in identifying and pursuing a path that produced a successful sale of Bethlehem's assets that gained the support of all key constituents. As the Debtors and the USWA explored the basis for a new collective bargaining agreement throughout 2002, the USWA persistently encouraged ISG to pursue the acquisition of Bethlehem.<sup>6</sup> With the Union's support, ISG ultimately entered into the due diligence agreement on November 5, 2002, thus becoming the only interested prospective partner during the course of the bankruptcy case to reach a meaningful level of discussions regarding a substantial transaction. During the following sixty day period, the parties explored various restructuring alternatives that would ultimately shape the manner in which Bethlehem's operations could emerge from bankruptcy. On January 6, 2003, ISG and the USWA reached a tentative agreement for an initial collective bargaining agreement covering employees at the former LTV and Acme Steel facilities. The tentative agreement was structured to provide the framework for the collective bargaining agreement that would cover Bethlehem employees in the event that ISG

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<sup>6</sup> In September, 2002, the Union's Basic Steel Industry Conference outlined the principles of a framework for reaching agreements in the difficult environment facing the Union's membership. Among other principles, the Union would seek a company financially able to invest in the steel facilities and meet its obligations; promote streamlined and simplified operating procedures that reduce the supervisory bureaucracy; increase its role in training, safety and basic operations, and protect members' living standards, including retiree health protections.



was successful in an acquisition of substantially all of the Debtors' assets.<sup>7</sup> Moreover, ISG agreed to vigorously pursue the acquisition of substantially all of the Debtors' assets and to use its best efforts to close such a transaction by April 30, 2003.

12. Between the beginning of January and the middle of March, 2003, the USWA negotiated with ISG over the specific terms of the transition of employment and benefits as a result of the proposed transaction. At the same time, the Union and Bethlehem negotiated the Settlement Agreement resolving all issues arising out of the termination of their collective bargaining relationship.

13. In the course of the negotiations culminating in the Settlement Agreement, the parties faced numerous significant issues that needed to be resolved, each of which contained complexities and complications. For example, the parties believed that significant operational restructuring was essential for eliminating costs and enabling the acquired facilities to operate more competitively. Moreover, the parties concluded that the restructuring could be more effectively implemented by managing the inevitable workforce reductions so as to reduce future employee turnover by encouraging high service employees to retire as an integral part of the restructuring. Thus, the alternatives under discussion would result in a substantial reduction of employment at the Bethlehem facilities. At the same time, under the existing defined benefit pension plans, shutdown retirement benefits would be triggered and would have been available to alleviate the economic consequences of job loss.

14. However, the PBGC had unexpectedly moved to terminate the pension plans with an effective termination date in December, 2002, prior to the contemplated changes.

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<sup>7</sup> ISG and the USWA reached a tentative agreement on May 5, 2003 covering workers at the Bethlehem facilities.

See Disclosure Statement, pp. 19-20. This meant that the parties could not count on the availability of shutdown benefits as an element of their restructuring plans. Consequently, the parties had to explore other methods to reduce the economic losses for employees under restructuring plans that required a small workforce. With the assistance of its professionals, including Potok, the USWA proposed a transition fund in its negotiations with ISG that would be used to entice senior employees to transition towards early retirement. Such a program would serve to reduce the pain of the restructuring on less senior employees and to reduce employee turnover.

15. In addition to producing a resolution that provided a return to general unsecured creditors, the sale to ISG preserved a substantial number of jobs, with attendant benefits to the economic well-being of local communities in which former Bethlehem facilities continues to operate. In addition, the sale represents a important step in the consolidation of the domestic integrated steel industry. Industry consolidation is a critical element for the creation of a more stable economic environment for domestic steel producers, their suppliers and other constituents. The realized value on the sale of the assets represented the highest and best offer that was available to the Debtors and provided the highest return on a risk adjusted basis.<sup>8</sup>

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<sup>8</sup> The alternative of a stand-alone plan was considered and ultimately rejected as a viable option for Bethlehem, for a variety of reasons. Significantly, a stand-alone resolution would have done nothing to improve the underlying weaknesses of a fragmented industry, thereby contributing to continued instability. A stand alone plan for Bethlehem thus would not have resolved fundamental industry problems. A number of the steel companies that emerged from bankruptcy since 1998 have been unable to stay out of bankruptcy or survive at all. Thus, the Union was determined to promote a solution that provided the best chance for Bethlehem to survive bankruptcy as a going concern and not collapse thereafter. Moreover, resolving difficult cost issues required radical changes in management and supervisory structures which are key elements of ISG operations at other companies. The USWA believed that implementing these changes stood the best chance of success in a new corporate environment with ISG's managers.

16. Potok served as the USWA's investment banker during the defining phase in this case, beginning with the identification of ISG as a viable purchaser through the negotiation of the sale agreement, the labor agreement with ISG and the Settlement Agreement between Bethlehem and the USWA. During the course of its engagement, Potok reviewed extensive financial information provided by the Debtors, including detailed labor cost, financial and operational performance and projections for its respective facilities and on a consolidated basis, as well as information provided during the course of the negotiations between the Debtors and ISG for the potential sale of the Debtors' assets, including valuations of assets and liabilities that would be assumed or discharged through the acquisition and the ability of the Debtor to generate sufficient funds to cover its administrative expenses and priority claims and provide some recovery to unsecured creditors. Potok provided sophisticated financial and strategic guidance and advice to the USWA in the course of the various negotiations between the USWA, ISG and the Debtors leading to the ground-breaking labor agreement with ISG and comprehensive settlement of all remaining issues with Bethlehem. Potok thus provided professional services during the critical phase of the case that were invaluable to the USWA's ability to facilitate a successful resolution of the bankruptcy case. As a result of the labor agreement with ISG, the sale agreement and the Settlement Agreement, Bethlehem was sold as a going concern, jobs were saved, and the economic devastation of a shuttered steel company was avoided.

Potok Is Entitled to the Full Amount of the Success Fee

17. The successful resolution of these cases required the contribution and dedication of many parties and their professionals. The USWA believes that Potok's

contribution was of particular importance given the nature of the services provided. The Union was motivated by multiple goals. First, the Union was determined to protect its membership from the financial disaster of a company-wide liquidation. The Union also wanted to promote a solution that would lead to a more stable industry. Moreover, the Union recognized that any solution had to be accepted by the key constituencies in the bankruptcy. All of these important objectives required heavy reliance upon experienced financial expertise. The review and strategic analysis provided by Potok enabled the Union to evaluate difficult, complex and risky alternatives. Potok's unique background in restructurings in unionized environments was also important for the Union's evaluation of the restructuring alternatives.<sup>9</sup> For example, Potok provided advice and analysis regarding the risks inherent in implementing cost reduction programs under the alternative, stand-alone proposal under consideration. Potok advised the USWA regarding the risks of attempting to implement significant overhead cost reductions in the context of a long- established corporate culture and organizational habits.

18. Through Potok's analysis and advice, the USWA was able to evaluate the risks of a stand-alone plan not only to its membership constituencies but to the industry.<sup>10</sup> A risk-inherent stand-alone plan would jeopardize the confidence not only of the hourly workforce, but also customers and trade creditors, proving highly detrimental to the enterprise, perhaps even before the emergence from bankruptcy. In addition to Potok's contribution to the Union's assessment of the restructuring alternatives, the USWA benefited from Potok's work

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<sup>9</sup> A representative list of Potok's engagements on behalf of labor organizations is attached to this Application as Exhibit B.

<sup>10</sup> Indeed, Potok concluded that the most reasonable valuation of the equity of the stand-alone enterprise, which would be distributed to unsecured creditors, would be zero.

and analyses in connection with each of its negotiations with the parties leading up to the completion of the sale. For example, based on Potok's reviews of various recovery analyses prepared by other professionals, the USWA repeatedly urged ISG to restructure its proposals and provide additional consideration to the Debtors so that a transaction could be successfully consummated.

#### Potok's Qualifications

19. Potok, Campbell and Co., LLC was formed to serve as a financial advisor to labor unions. Its senior principal, Leon Potok, has served as financial advisor to labor unions since 1977. Principals and professionals joining the firm formerly had been affiliated with various investment banks or investment funds, including Bear Stearns, Merrill Lynch, Bank of America, New York Life Insurance Company-Investment Division, and American Capital Strategies. The USWA selected Potok as its financial advisor for several reasons. First, Potok was selected for its financial expertise and its extensive and broad-ranging experience in corporate finance transactions, including mergers and acquisitions, bankruptcy and restructurings, in a wide variety of industries. Second, Potok was selected for its experience in difficult, large and complex bankruptcy proceedings and restructurings. *See* Exhibit B attached hereto. Potok has developed an expertise in financial issues relating to pension and health care benefits. Over the last decade, Potok has served as advisor in a number of cases that have involved actual or potential Section 1113 and 1114 proceedings. Third, Potok was selected for its expertise in the steel industry. Potok has gained extensive expertise in the steel industry and markets through its representation of the USWA and certain labor-management committees in various projects relating to steel companies. Potok served as the key financial advisor to the

USWA in its collective bargaining negotiations in the early 1990's and formulated and assisted in the negotiations of the various VEBA trusts established in the industry during that period. *See* Exhibit B hereto.

20. Finally, Potok was selected for its expertise with respect to labor issues. Potok is dedicated to providing investment banking and financial advisory services to unions and employee groups and has served such groups in a variety of assignments. In connection with such assignments Potok has earned the confidence of labor leaders by providing unions with a realistic and objective analysis as well as the perspective of the business and financial community. The firm's senior partner, Leon Potok, has served as the primary professional actively and continuously involved in these bankruptcy cases. Mr. Potok founded the firm in 2002 as a successor to other entities in which he served as principal and served similar functions. Mr. Potok previously served as principal at American Capital Strategies and Keilin & Co., and as an investment professional at New York Life Insurance Company. Mr. Potok began his professional career as financial advisor to labor unions in the research department of the United Auto Workers in Detroit. Mr. Potok graduated with an advanced degree in economics from the University of Massachusetts at Amherst, and with an advanced degree in business administration from the Columbia University School of Business.

21. Under the Reimbursement Orders, approval of the payment of the success fee is subject to: (a) application for payment; (b) confirmation of a plan or consummation of a sale of all of the Debtors' assets, in either case, supported by the USWA, and (c) review and determination of the application by the Court pursuant to Section 330 of the Bankruptcy Code after confirmation or sale. Section 330 of the Bankruptcy Code applies by its terms to

professionals retained pursuant to Section 327 or Section 1103. *See* 11 U.S.C. §330(a)(1). Potok was retained by the Union to provide services to the Union and therefore is not a professional retained under either Section 327 or Section 1103. The reference to Section 330 in the Reimbursement Orders was intended to provide a means of assessing whether the entire success fee (which was \$5 million at the time of the original Reimbursement Order, rather than the \$2.5 million fee under the Letter Agreement covering Potok) would be approved based upon a review at the end of the case. *See* Transcript of hearing held December 19, 2001, pp. 46, 72 (attached as Exhibit C hereto).

22. The USWA submits that all of the conditions have been met and that Potok is entitled to the full \$2.5 million provided under the Letter Agreement. For the reasons set forth above, the services provided by Potok were essential to the Union's ability to fulfill its pivotal role in the case—a role recognized by the Debtors and other parties from the very outset. The Debtors' focus on labor costs and the need to find a solution that would permit a successful outcome necessarily required the Union's deep involvement in formulating a resolution. Potok's services contributed significantly to the Union's ability to facilitate the ultimate outcome. The ISG sale, which the USWA encouraged and facilitated through the negotiation of the ISG labor agreement and the Settlement Agreement with the Debtors, represents a highly favorable outcome under the circumstances. In addition, the size and complexity of the case, Potok's experience and the level of services provided justify payment of the full management fee.<sup>11</sup>

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<sup>11</sup> By way of comparison, Potok was recently awarded a fee of \$1.5 million for services provided to the USWA in the National Steel bankruptcy, a case which was neither as large nor as complex as Bethlehem. A copy of the order approving the agreement, and relevant excerpts, is attached as Exhibit D.

Waiver of Memorandum

Because there are no novel issues of law presented, the Applicant respectfully requests that the Court waive the requirement of a separate memorandum of law in support of this Application.

Conclusion

For the foregoing reasons, the USWA respectfully requests that the application for an investment management fee payable to Potok in the amount of \$2.5 million be granted.

Date: November 14, 2003

Respectfully submitted,

COHEN, WEISS AND SIMON LLP

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Attorneys for United Steelworkers of America



# **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re** : **Chapter 11 Case Nos.**  
:   
**BETHLEHEM STEEL CORPORATION,** : **01-15288 (BRL) through**  
**et al.** : **01-15302, 01-15308**  
: **through 01-15315 (BRL)**  
: **Debtors.** : **(Jointly Administered)**  
:   
-----X

**ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF  
THE BANKRUPTCY CODE APPROVING AND AUTHORIZING  
AMENDMENT OF ORDER, DATED JANUARY 7, 2002, AUTHORIZING  
REIMBURSEMENT OF CERTAIN FEES AND EXPENSES OF THE UNITED  
STEELWORKERS OF AMERICA *NUNC PRO TUNC* TO OCTOBER 1, 2002**

Upon the motion dated December 23, 2002 (the “Motion”) of Bethlehem Steel Corporation and its affiliated debtors (collectively, “Bethlehem” or the “Debtors”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), to amend the Order of the Court, dated January 7, 2002 (the “Reimbursement Order”), authorizing Bethlehem to reimburse the United Steelworkers of America (the “USWA”) for certain fees and expenses to substitute Potok, Campbell and Co., LLC (“Potok”), for Keilin & Co., LLC (“Keilin”), as financial advisor for the USWA and otherwise provide for the approval of the terms and conditions for payment of Potok’s fees and expenses, *nunc pro tunc* to October 1, 2002, all as more fully described in the Motion; and upon the objection to the Motion by the statutory committee of unsecured creditors, dated January 27, 2003 (the “Objection”), which objection has been withdrawn; and the Court having jurisdiction to consider and determine the Motion as a core proceeding in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested by the Motion is necessary and in the best interests of Bethlehem; and

due notice of the Motion having been provided; and sufficient cause appearing therefor, it is

ORDERED, ADJUDGED AND DECREED:

1. It is in the best interests of Bethlehem and all parties in interest that the Motion be, and, it hereby is granted and the Reimbursement Order be, and it hereby is, amended to substitute Potok for Keilin as financial advisor for the USWA and otherwise provide for the terms and conditions for the payment of Potok's fees and expenses in accordance with and as specified in the USWA Letter (as defined in the Motion, a copy of which is annexed thereto as Exhibit "D"), pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

2. The Court shall retain exclusive jurisdiction to construe and enforce the terms of the USWA Letter, any application made by Potok, and this Order.

3. Bethlehem shall have no further obligation to Keilin pursuant to the terms of the November 5 Letter and the Reimbursement Order.

4. Any request for indemnification made by Potok in respect of services to be performed pursuant to the USWA Letter shall be subject to the following:

(a) All requests of Potok for indemnity, contribution, or otherwise shall be by means of an application therefor (interim or final, as the case may be) (the "Application") and shall be subject to review by the Court to assure that such payment is reasonable based upon the circumstances of the litigation or settlement as to which indemnity is requested; *provided, however*, that in no event shall Potok be indemnified or receive contribution if it is determined that Potok acted in bad faith, engaged in self-

dealing, or breached its fiduciary duty, if any, or committed gross negligence or willful misconduct; and

(b) In no event shall Potok be indemnified or receive contribution or other payment if the Debtors, their estates, or the Creditors' Committee assert a claim for, and the Court determines by final order that such claim arose out of, Potok's own bad faith, self-dealing, breach of fiduciary duty, if any, gross negligence, or willful misconduct; and

(c) If Potok seeks reimbursement for attorneys' fees from the Debtors, the invoices and supporting time records for such attorneys shall be included in Potok's Application for indemnification and such invoices and time records shall be subject to the United States Trustee's Guidelines for Compensation and Reimbursement and Expenses and the approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code; and

(d) To the extent this order is inconsistent with the USWA Letter or the Reimbursement Order, the terms of this Order shall govern.

5. The Debtors be, and, they hereby are, authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to pay to Potok a success fee of up to \$2.5 million in accordance with the terms and conditions of the USWA Letter, but only upon the service and filing of an application for the payment of such success fee, and the occurrence of:

(a) confirmation of a plan of reorganization for the Debtors or consummation of a sale of all or substantially all of the Debtors' assets which is, in any case, supported by the USWA; and

(b) review and determination of the application by the Court pursuant to section 330 of the Bankruptcy Code, after the confirmation or sale.

6. The Debtors' authority to reimburse Potok pursuant to this Order is subject to the outcome of the appeal of the Reimbursement Order that is pending in the United States District Court for the Southern District of New York, styled as Carolyn S. Schwartz, United States Trustee, Appellant, v. Bethlehem Steel Corporation, et al., Civil No. 02 CV 2854 (MBM).

7. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York as to the filing of a memorandum of law is waived.

Dated: New York, New York  
February 6, 2003

/s/Burton R. Lifland  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit B**

### Selected Assignments of Potok Principals

<u>Company</u>	<u>Nature of Assignment</u>	<u>Client</u>
US Airways	Bankruptcy proceeding	CWA
Wheeling Pittsburgh	Bankruptcy proceeding	USWA
Special Metals	Bankruptcy proceeding	USWA
Kaiser Aluminum	Bankruptcy proceeding	USWA
AMR	Labor cost concession request	APFA
Lucent Technologies	Asset sales and corporate restructuring	CWA and IBEW
Hathaway Shirt	Asset sale and restructuring	UNITE
Bruno's	Bankruptcy proceeding	UFCW
FSC Paper	Bankruptcy proceeding	PACE
US Airways	Business plan analysis and labor cost concession request	ALPA
Pan Am	Bankruptcy proceeding	ALPA
Goodyear Tire	Business plan analysis and labor cost concession request	USWA
McLouth Steel	Asset sale and bankruptcy proceeding	USWA
Wheeling Pittsburgh	Bankruptcy proceeding	USWA
Algoma Steel	Business plan analysis	USWA
Sidbec-Dosco	Restructuring	USWA
CSC Steel	Bankruptcy proceeding	USWA
LTV Steel	Bankruptcy proceeding	USWA
Republic Engineered Steels	Business plan and capital expenditure analysis	USWA
Bethlehem – Bar, Rod and Wire Division	Proposed acquisition	USWA
American National Can	Plant competitiveness analysis	USWA
Navistar Corporation	Restructuring	UAW
Rouge Steel	Restructuring	UAW
Chrysler Corporation	Restructuring	UAW

# **Exhibit C**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter  
of  
BETHLEHEM STEEL CORPORATION,  
Debtors.

Case No.  
01-15288

-----x

December 19, 2001

United States Custom House  
One Bowling Green  
New York, New York 10004

Debtors' mtg to sell 145 tons of nitrogen oxide emission reduction credits free and clear of liens, claims and encumbrances; 105(d) case conference; hrg on objs, if any, to bidding procedures and expense reimbursement; fnl hrg for Chicago Cold Rolling mtg to use cash collateral to provide adequate protection; mtg for approval of professional fees for US Steel Workers of America; mtg to sell surplus assets; Cred Comm's mtg auth employment of KPMG as accountants and financial advisors, and McDonald Investments as investment banker and restructuring advisor.

B E F O R E:

HON. BURTON R. LIFLAND,

Bankruptcy Judge.

## BETHLEHEM STEEL CORPORATION

1  
2 then at that point in time to say there is a \$5  
3 million success fee that is payable as an  
4 administrative expense to the union's investment  
5 banker did not seem to the committee to be  
6 appropriate.

7                   For that reason, understanding that  
8 what we have proposed is not really consistent  
9 with the statutory scheme of the Code, 330 doesn't  
10 apply to professionals of this sort. The Code  
11 doesn't address this situation terribly well, that  
12 is why we thought we would not object to the \$1.5  
13 million for six months, but that the half million  
14 dollars really should be approved at the end of  
15 the case, looking at what the result was at the  
16 end of the case.

17                   THE COURT: You mean the 5 million.

18                   MR. MAYER: The 5 million. I am  
19 sorry, I misspoke.

20                   MR. MILLER: Your Honor, as a point  
21 of clarification. It's going to be \$5 million if  
22 Your Honor approves the million and a half, so it  
23 will be three and a half million.

24                   MR. MAYER: That was correct. There  
25 will be a credit against.

1 BETHLEHEM STEEL CORPORATION

2 Exhibit A. But having been included, I think it  
3 becomes a problem.

4 MS. CECCOTTI: I understand. And my  
5 only concern at this very movement is that I  
6 cannot further enlighten --

7 THE COURT: Maybe Exhibit A was  
8 unfortunately negotiated by lawyers.

9 MS. CECCOTTI: I think I indicated  
10 there is a similar attachment in these other  
11 agreements. I don't think anybody, frankly,  
12 thought about it. It just got attached.

13 THE COURT: It's not the kind of  
14 precedent this Court wants to endorse.

15 MS. CECCOTTI: Understood. I will go  
16 back to the principals and determine how we will  
17 deal with it.

18 MR. MILLER: Your Honor, in respect  
19 of the success fee, I am not sure I understand  
20 Your Honor's ruling in that respect. Is it to be  
21 as proposed by the Creditors' Committee?

22 THE COURT: Yes.

23 MS. CECCOTTI: Your Honor, the issue  
24 that I have, there is once again this --

25 THE COURT: I invited your comment

# **Exhibit D**

EOD JUL 17 2003

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Case No. 02-08699
	)	
NATIONAL STEEL CORPORATION	)	(Jointly Administered)
et al.,	)	
	)	Chapter 11
Debtors.	)	
	)	Hon. John H. Squires

**ORDER UNDER 11 U.S.C. §§ 1114, 1113, 363 AND 105 AND  
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURES,  
APPROVING MEMORANDUM OF AGREEMENT BY AND BETWEEN  
DEBTORS AND UNITED STEELWORKERS OF AMERICA, AFL-CIO  
AND SHORTENING NOTICE TO THAT GIVEN**

Upon the motion dated July 2, 2003 (the "Motion"), of National Steel Corporation ("National Steel") and its affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for approval of the Memorandum of Agreement Regarding Sale, Effects of Sale, Section 1114 Matters and Certain Releases (the "Agreement," a copy of which is attached hereto as Exhibit A) by and between the Debtors and the United Steelworkers of America, AFL-CIO, on behalf of itself, its district councils and its local unions ("USWA" or the "Union"), and shortening notice to that given, as described in the Motion; and upon the entire record in these cases; and it appearing that the relief requested is in the best interest of the Debtors, their estates, creditors and interest holders and is a proper exercise of the Debtor's business judgment; and good and sufficient cause appearing therefor, it is hereby:

ORDER, ADJUDGED AND DECREED THAT:

1. The Motion is granted in its entirety.
2. The Debtors are authorized to enter into the Agreement.
3. Notwithstanding Rule 6004(g) of the Bankruptcy Rules, this Order shall

take effect immediately upon its entry.

7/15/03  
15 JUL 2003

  
United States Bankruptcy Judge

**EXHIBIT A**

**MEMORANDUM OF AGREEMENT  
REGARDING SALE, EFFECTS OF SALE, SECTION 1114 MATTERS  
AND CERTAIN RELEASES**

This Memorandum of Agreement regarding Sale, Effects of Sale, Section 1114 Matters and Certain Releases ("Agreement") is between National Steel Corporation, Debtor-in-Possession ("National" or the "Company"), and the United Steelworkers of America, AFL-CIO-CLC, on behalf of itself and its local unions ("USWA" or the "Union") (together, the "Parties").

Whereas, National and the USWA have maintained a collective bargaining relationship for decades and have been parties to successive collective bargaining agreements over that period; and

Whereas, on March 6, 2002, National filed for protection from its creditors under Chapter 11 of Title 11 of the United States Code and operated its plants for a period thereafter; and

Whereas, the Union has asserted certain claims and may assert others claims before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court") against the National estate (the "USWA Bankruptcy Claims"); and

Whereas the Pension Benefit Guaranty Corporation ("PBGC") sought the involuntary termination of certain of the National defined benefit plans effective December 6, 2002 under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"); and

Whereas, National and the PBGC have signed an agreement that provides for the PBGC to be the trustee of certain of National's pension plans effective May 31, 2003, with a plan termination date of December 6, 2002; and

Whereas, the Bankruptcy Court, by Order dated April 21, 2003, entered in Case No. 02-08699, has approved the sale of substantially all National's assets pursuant to an Asset Purchase Agreement (the "APA") with U.S. Steel ("USS") calling for such a sale to USS (the "Sale"); and

Whereas, the Sale closed on or about May 20, 2003 (the "Closing Date"); and

Whereas, at many of the assets that were part of the Sale USWA-represented employees were covered by labor and benefits agreements between National and the USWA, including the agreements listed below; and



Whereas, based upon an agreement with the USWA, upon the Closing Date of the Sale, USS has hired its bargaining unit work force from among USWA-represented former employees of National; and

Whereas, in connection with the Sale, USS and the USWA have entered into an agreement with respect to the terms and conditions of employment to apply at the former National facilities on and after the Closing Date (the "USS-National CBA"); and

Whereas, National intends to wind up its affairs and go completely out of business; and

Whereas, National and the Union have bargained fully and in good faith over the effects of the Sale on Union-represented former employees of the Company, including the subject of a Union release of all claims, including the USWA Bankruptcy Claims; and

Whereas, the Parties wish to reduce to writing their agreements on the above subjects.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS.**

1. **Consideration/Enforceability/Allowed Administrative Claims:** The Parties agree and acknowledge that:
  - a. The promises set forth in this Agreement constitute good and sufficient consideration.
  - b. This Agreement shall be enforceable and legally binding on the Parties.
  - c. National agrees that its obligations under this Agreement shall be performed in a timely manner and have the status of allowed administrative expenses of its estate, and the Bankruptcy Court order of approval required under Section 2 below shall so provide and shall direct National to pay all claims addressed herein.
  
2. **Effective Dates:**

This Agreement shall become effective upon entry of an order by the Bankruptcy Court approving this Agreement or, in case of appeal, by the appellate court, which order has in all events become final and non-appealable; provided, however, that Sections 7.c.(iv) and (viii) below shall take effect upon execution of this Agreement, subject to any further order of the Bankruptcy Court.

- g. For each of the National facilities, the Company shall provide the Union with both electronic and hard copy documents showing a listing of all USWA-represented retirees, surviving spouses and retirees receiving retiree benefits pursuant to agreements between the Company and the USWA.

8. Reimbursement of Expenses of Union

As agreed on April 8, 2003, National shall pay the actual costs and expenses incurred by the Union during the period of the instant bankruptcy cases, as follows: Cohen, Weiss & Simon, LLP (\$75,823.72); The Segal Company (\$42,190.96); Gore and Gore (\$4,545.00); and Potok, Campbell & Company, LLC (\$1,500,000.00).

9. Section 1113 Waiver

The Company hereby waives its right to seek relief under Section 1113 of the Bankruptcy Code respecting any of its collectively bargained agreements with the Union, including this Agreement.

10. Termination of CBAs

Effective upon the Closing Date, the Parties agree: (i) with respect to CBAs between National (or its related entities) and the Union, the CBAs and all obligations of any kind under the CBAs are forever terminated; and (ii) with respect to CBAs as to which National (or its related entities) may be indirectly liable, all obligations of any kind by National (or its related entities) under such CBAs are forever terminated. Any and all other agreements between the Parties (with the exception of this Agreement and releases between National and individual employees), whether oral or written, including, but not limited to, side letters, addendum agreements, and memoranda of understanding and all obligations thereunder, shall also terminate as of the Closing Date. To the extent any provision of this Agreement is inconsistent with any provision of the CBAs, the provisions of this Agreement shall govern and any such inconsistent provisions of the CBAs are null and void.

11. Termination of Collective Bargaining Relationships

Upon the Closing Date and the implementation of this Agreement, the collective bargaining relationships of the Parties shall come to an end. The Parties have had ample opportunity to negotiate over any and all issues and expressly waive any right to request bargaining over any issue not covered by this Agreement.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: ) Chapter 11  
)  
BETHLEHEM STEEL CORPORATION, *et al.*, ) 01-15288 (BRL) through 01-  
) 15302, 01-15308 Through 01-  
) 15315 (BRL)  
Debtors. )  
) (Jointly Administered)

CERTIFICATE OF SERVICE

BABETTE A. CECCOTTI, pursuant to 28 U.S.C. §1746, certifies as follows:

1. I am a partner with the law firm of Cohen, Weiss and Simon LLP, counsel for the United Steelworkers of America in the above-referenced proceedings.
2. On November 14, 2003, I caused to be served a copy of the Application for Allowance of Investment Management Fee Pursuant to Reimbursement Agreement Between Debtors and USWA on those parties on the attached service list by postage pre-paid first class mail.
3. I certify, under penalty of perjury, that the foregoing is true and correct.

Dated: November 14, 2003

/s/ Babette A. Ceccotti  
Babette A. Ceccotti

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The Hon. Burton R. Lifland  
United States Bankruptcy Court for the  
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