

GIBSON, DUNN & CRUTCHER LLP  
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Special Counsel for Debtors  
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
-In re	:	Chapter 11
	:	
CITYSCAPE FINANCIAL CORP.,	:	Case No. 98 B 22569 (ASH)
and CITYSCAPE CORP.,	:	and 98 B 22570 (ASH)
	:	(Jointly Administered)
Debtors	:	
-----X	:	

**AMENDED APPLICATION OF GIBSON, DUNN & CRUTCHER LLP FOR  
ALLOWANCE OF FINAL COMPENSATION FOR SERVICES RENDERED  
THROUGH JUNE 30, 1999 AND REIMBURSEMENT OF EXPENSES**

Name of Applicant:	GIBSON, DUNN & CRUTCHER, LLP
Date of Retention:	October 6, 1998
Period for Which Compensation and Reimbursement is Sought:	October 6, 1998 through June 30, 1999
Amount of Compensation Sought As Actual, Necessary and Reasonable:	\$ 1,346,238.00 <sup>1</sup>

<sup>1</sup> As set forth more fully in the Application, it is GD&C's belief that approximately \$325,000 of the fees charged to the Debtors by GD&C, and approximately \$50,000 of the disbursements incurred on the Debtors behalf by GD&C will be reimbursable by the Debtors' insurance providers.

Amount of Expense Reimbursement  
Sought as Actual, Necessary,  
and Reasonable

\$ 110,045.03

This is:

A Final Application

The total time expended for the preparation of this final application is approximately 51.6 hours.

**IN RE CITYSCAPE FINANCIAL CORP. AND CITYSCAPE CORP.<sup>1</sup>**

**Application of Gibson, Dunn & Crutcher LLP for Final Compensation for Services  
Rendered Through June 30, 1999 and Reimbursement of Expenses**

Professionals and Paraprofessionals Rendering Services<sup>2</sup>  
From October 7, 1998 Through June 30, 1999

<u>NAME</u>	<u>POSITION</u>	<u>YEAR ADMITTED</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
J.J. Stochlic	Partner	1972	470.90	\$495.00	\$233,095.50
J.J. Stochlic	Partner	1972	54.20	\$475.00	\$25,745.00
S.P. Griffiths	Partner	1986	8.30	\$475.00	\$3,942.50
S.P. Griffiths	Partner	1986	29.40	\$455.00	\$13,377.00
R.F. Serio	Partner	1985	82.70	\$475.00	\$39,282.50
R.F. Serio	Partner	1985	109.10	\$420.00	\$45,822.00
J.P. Ricciardi	Partner	1975	17.80	\$435.00	\$7,743.00
J.P. Ricciardi	Partner	1975	12.80	\$390.00	\$4,992.00
A.H. Offenhartz	Partner	1989	77.70	\$360.00	\$27,972.00
P.J. Beshar	Partner	1989	169.00	\$375.00	\$63,375.00
P.J. Beshar	Partner	1989	130.00	\$335.00	\$43,550.00
T.D. Pritchard	Of Counsel Attorney	1978	11.50	\$330.00	\$3,795.00
T.D. Pritchard	Of Counsel Attorney	1978	164.10	\$310.00	\$50,871.00
A.S. Trundle	Associate	1992	28.00	\$350.00	\$9,800.00
A.S. Trundle	Associate	1992	13.60	\$325.00	\$4,420.00
L.J. La Sala	Associate	1992	42.60	\$340.00	\$14,484.00
L.J. La Sala	Associate	1992	183.50	\$315.00	\$57,802.50
L.E. Moore	Associate	1992	264.10	\$340.00	\$89,794.00
F.A. Walters	Associate	1994	83.60	\$315.00	\$26,334.00
F.A. Walters	Associate	1994	54.10	\$295.00	\$15,959.50
A.D. Rotstein	Associate	1994	70.50	\$295.00	\$20,797.50

<sup>1</sup> As of January 1, 1999, GD&C increased its customary rates routinely billed to the firm's clients. The new rates are reflected herein. In addition, Exhibit "A" is more detailed summary of the time billed at each rate. GD&C intends to seek compensation for all time expended in representing the Debtors from and after January 1, 1999 at the new rates.

<sup>2</sup> In the interests of simplifying review of its application, GD&C has voluntarily written off all time attributable to professionals and paraprofessionals who billed one hour or less to matters pertaining to the representation of the Debtors. This voluntary write-off of fees represents a reduction of \$2,193.50 with respect to the compensation sought herein.

L.A. McLaughlin	Associate	1995	419.60	\$310.00	\$130,076.00
L.A. McLaughlin	Associate	1995	14.70	\$280.00	\$4,116.00
P.A. Nyquist	Associate	1995	23.80	\$235.00	\$5,593.00
S. Foster	Associate	1995	37.40	\$310.00	\$11,594.00
S. Foster	Associate	1995	23.00	\$280.00	\$6,440.00
M.N. Labovitz	Associate	1997	21.50	\$290.00	\$6,235.00
M.N. Labovitz	Associate	1997	5.80	\$240.00	\$1,392.00
L.A. Brady	Associate	1997	587.00	\$290.00	\$170,230.00
C.H. Jeanfreau	Associate	1999	325.90	\$215.00	\$70,068.50
C.H. Jeanfreau	Associate	1999	118.70	\$180.00	\$21,366.00
J.G. Felakos	Associate	Not Yet Admitted	73.50	\$215.00	\$15,802.50
J.G. Felakos	Associate	Not Yet Admitted	116.40	\$180.00	\$20,952.00
G.K. Winston	Law Clerk	Not Yet Admitted	3.50	\$155.00	\$542.50
K.L. Goldmark	Summer Associate	Not Yet Admitted	32.30	\$155.00	\$5,006.50
R.D. Neznamy	Paralegal	n/a	54.90	\$130.00	\$7,137.00
R.D. Neznamy	Paralegal	n/a	49.50	\$125.00	\$6,187.50
E. Oquendo	Paralegal	n/a	27.00	\$100.00	\$2,700.00
E. Oquendo	Paralegal	n/a	2.20	\$95.00	\$209.00
N.M. Mandel	Paralegal	n/a	40.10	\$85.00	\$3,408.50
V. Briggs	Paralegal	n/a	47.70	\$105.00	\$5,008.50
V. Briggs	Paralegal	n/a	84.30	\$85.00	\$7,165.50
J.N. Kasibhatla	Paralegal	n/a	56.30	\$95.00	\$5,348.50
E. Rossi	Paralegal	n/a	301.00	\$105.00	\$31,605.00
E. Rossi	Paralegal	n/a	4.00	\$85.00	\$340.00
N.A. Reese	Paralegal	n/a	4.50	\$105.00	\$472.50
E.M. Scheidt	Paralegal	n/a	6.70	\$90.00	\$603.00
D.H. Sinkman	Paralegal	n/a	3.50	\$95.00	\$332.50
R.T. Nelson	Other Support Staff	n/a	3.50	\$95.00	\$332.50
S. Raber	Other Support Staff	n/a	30.20	\$100.00	\$3,020.00

**Total Professional Hours: 3880.60**  
**Total Paraprofessional Hours: 715.40**  
**Total Hours: 4,596.00**
**Total: \$1,346,238.00**

Blended Rate: \$ 292.92

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	:	(Jointly Administered)
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**AMENDED APPLICATION OF GIBSON, DUNN & CRUTCHER LLP FOR  
ALLOWANCE OF FINAL COMPENSATION FOR SERVICES RENDERED  
THROUGH JUNE 30, 1999 AS SPECIAL COUNSEL TO THE DEBTORS,  
AND REIMBURSEMENT OF EXPENSES**

Gibson, Dunn & Crutcher LLP ("GD&C"), special counsel to the debtors and debtors in possession, Cityscape Financial Corp. and Cityscape Corp. (collectively, "Cityscape" or the "Debtors"), hereby applies for the allowance of final compensation for professional services rendered with respect to those matters set forth in the Application To Retain, Employ and Compensate Gibson, Dunn & Crutcher LLP as Special Counsel to the Debtors, filed with this Court on October 7, 1998 (the "Application"), the accompanying Order Authorizing Retention of Gibson, Dunn & Crutcher LLP as Special Counsel for the Debtors, entered by this Court on October 7, 1998 (the "Retention Order"), the Supplemental Application to Retain, Employ and Compensate Gibson, Dunn & Crutcher LLP As Special Counsel For The Debtors, As Of February 8, 1998 (the "Supplemental Application") and the accompanying Order Authorizing Further

Retention Of Gibson, Dunn & Crutcher LLP As Special Counsel To The Debtors entered by this Court on February 19, 1999 (the "Supplemental Retention Order"), through June 30, 1999 and reimbursement of expenses incurred in connection therewith, and states as follows:

**FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT**

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges" dated July 10, 1984 of District Court Judge Robert T. Ward. Venue of this case and Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, respectively. GD&C makes this Application pursuant to section 331 of title 11 of the United States Code (the "Bankruptcy Code") and the Administrative Order entered by the United States Bankruptcy Court for the Southern District of New York (the "Southern District Bankruptcy Court") on June 20, 1991, as amended on April 19, 1995, establishing guidelines for fees and disbursements for professionals (the "Amended General Order"). GD&C requests allowance of final compensation for professional services rendered to the Debtors during the period from October 6, 1998 through June 30, 1999 (the "Compensation Period") in the amount of \$1,346,238.00. As set forth more fully in this Application, GD&C believes that approximately \$325,000 of this amount represents fees for which the Debtors may seek reimbursement from their insurance carriers. GD&C also requests final allowance for reimbursement of expenses incurred in connection with such services in the amount of \$110,043.03. GD&C believes that approximately \$50,000 of this amount represent disbursements for which the Debtors may seek reimbursement from their insurance carriers. A schedule setting forth the number of hours expended by partners, counsel, associates, and paraprofessionals of GD&C who rendered services to the Debtors during the Compensation

Period and their respective hourly rates is annexed hereto as Exhibit "A". A schedule specifying expenses for which GD&C is seeking reimbursement is annexed hereto as Exhibit "B".

2. As of the Petition Date, GD&C had received a retainer in the amount of approximately \$408,000.00 from the Debtors in connection with its representation of the Debtors (the "Retainer"). The total amount of this retainer, as of August 19, 1999, is \$ 423,383.82. The Retainer will be applied to any award of fees and expenses made to GD&C by the Court pursuant to this application.

3. GD&C has attempted to include in this Application all time and expenses relating to the Compensation Period. Delays in processing such time and receiving invoices for certain expenses, however, do occur. Accordingly, GD&C reserves the right to supplement this Application prior to the date set by this Court for hearing this Application to request additional compensation for professional services rendered and reimbursement of expenses incurred during the Compensation Period.

4. This is GD&C's first and final application for compensation and reimbursement of expenses in these chapter 11 cases.

**COMPLIANCE WITH UNITED STATES TRUSTEE'S GUIDELINES AND  
ADMINISTRATIVE ORDER M-104, AS AMENDED BY  
ADMINISTRATIVE ORDERS M-150 AND M-151**

5. Pursuant to section 586(a)(3)(A) of title 28 of the United States Code, the Executive Office of the United States Trustee has promulgated certain procedural guidelines governing the review by the Offices of the United States Trustee of applications for compensation and reimbursement of expenses under Bankruptcy Code section 330 (the "National Guidelines").

The National Guidelines became effective on May 1, 1995. Except as set forth herein, this Application materially complies with the National Guidelines.

6. Except as set forth herein, this Application materially complies with Administrative Order M-104, as amended by Administrative Orders M-150 and M-151, promulgated by the Southern District Bankruptcy Court, setting forth the guidelines for fees and disbursements for professionals in Southern District of New York Bankruptcy Cases (the "Southern District Guidelines").

7. Because of GD&C's belief that the Debtors' original, pre-packaged plan of reorganization would be rapidly confirmed, GD&C did not regularly provide the Debtors with monthly statements of fees and disbursements accrued. When it became clear that the original plan of reorganization would not be confirmed, GD&C nonetheless believed that a revised plan of reorganization would be approved shortly, and so did not commence sending statements of accrued fees and disbursements. However, attorneys from GD&C have been in regular communication with the Debtors, and have kept the Debtors well informed of the scope of GD&C's activities on behalf of the Debtors. Moreover, GD&C has frequently and on a regular basis provided to the Debtors informal estimates of fees and expenses accrued to date, as well as estimates of expected future billings. The Debtors never objected to this method of reporting GD&C's fees and expenses accrued to date. Commencing with the billing period ending May 31, 1999, GD&C commenced sending regular monthly bills to the Debtors.

8. In addition, certain GD&C professionals and paraprofessionals working on the matters assigned to GD&C as special litigation counsel, and especially those working on the Walsh Litigation, failed in certain circumstances to record their time in tenths of an hour and to



allocate in each entry the time spent on specific activities requiring more than one hour's work. In this regard, the Fee Application fails to comply with the Southern District Guidelines.<sup>1</sup>

9. In recognition of this discrepancy, GD&C has rounded down every quarter hour time entry contained in the Application to the next lowest tenth of an hour. This voluntary reduction in requested fees has resulted in a savings to the estate of approximately \$5,600.00. In addition, the litigation professionals and paraprofessionals working on the Walsh Litigation were recently asked to review diligently and in good faith their contemporaneous personal time records for tasks that required more than one hour's work and to describe better the time required for each specific task. They revised their time entries to reflect this additional information if the available records supported a more specific description. Otherwise, the time entries were left unchanged.

10. Annexed hereto as Exhibit "C" is GD&C's amended certification under section 504 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2016(a), the National Guidelines, and the Southern District Guidelines.

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<sup>1</sup> Specifically, these time entries were not prepared in accordance with Guideline Number 1 and Guideline Number 3, which provide in pertinent part:

Guideline No. 1: Each professional and paraprofessional must record time in increments of tenths of an hour, . . .

Guideline No. 3: In recording time, if the professional or paraprofessional expends more than 1 hour on a particular activity the time record for that day must include, internally in the description of services for that day, the amount of time spent on that activity.

## **BACKGROUND AND STATUS OF THE CASE**

11. On October 6, 1998 (the "Petition Date") each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. By order dated October 7, 1998, the Debtors' chapter 11 cases have been procedurally consolidated and are being jointly administered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

12. As of the Petition Date, the direct indebtedness of the Debtors exceeded \$605,000,000, represented by the Cityscape 12 3/4% Series A Senior Notes in the aggregate amount of \$332,515,500 and Cityscape 6% Convertible Subordinated Debentures in the aggregate amount of \$136,658,720, both including approximate and accrued interest through the Petition Date. At such time, the Debtors also had secured indebtedness of approximately \$135,000,000, which was repaid in full during the case with the proceeds of the debtor-in-possession financing.

13. As of the Petition Date, the Debtors were defendants in several class action law suits brought by holders of the Debtors' common stock alleging that the Company and its senior officers had violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Securities Class Actions"). The Debtors were also defendants in an action brought by purchasers of the Debtors' Series B Convertible Preferred Stock in 1997 alleging similar securities law claims (the "Elliott Litigation").

14. In April 1998, the Debtors began extensive negotiations with representatives of its creditor constituencies to develop and implement a "prepackaged" plan of reorganization in contemplation of the filing of petitions under chapter 11 of the Bankruptcy Code. These efforts culminated in the formulation of the Debtors' original plan of reorganization. This plan was

overwhelmingly accepted by all but one of the classes of creditors and shareholders entitled to vote on the original plan.

15. On the Petition Date, the Debtors filed their Solicitation and Disclosure Statement dated August 28, 1998 (the "Original Disclosure Statement") and their Joint Plan of Reorganization (the "Original Plan"). On October 7, 1998, the Court scheduled the hearing to consider approval of the Original Disclosure Statement and to confirm the Original Plan for November 13, 1998 (the "Confirmation Hearing"). Although the Debtors expected that the Original Plan would be confirmed at the originally scheduled Confirmation Hearing, deteriorating market conditions prevented the Debtors from obtaining the necessary commitment for exit financing, and it became necessary to adjourn the Confirmation Hearing.

16. In light of these developments, the Debtors decided on November 17, 1998 to suspend indefinitely all of their loan origination and purchase activities. The Debtors notified their brokers that they had ceased funding mortgage loans, other than loans that were in their origination pipeline and for which they had previously issued commitments. On or about December 18, 1998, the Debtors funded the last of the mortgage loans for which they had issued commitments as of November 17, 1998.

17. On March 25, 1999 the Debtors filed with this Court the First Amended Joint Plan of Reorganization (the "Amended Plan") and the First Amended Joint Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (the "Amended Disclosure Statement"). With a few exceptions, distributions to creditors under the Amended Plan were to be made only in the form of common stock of the reorganized company. The Court approved the Amended

Disclosure Statement on April 27, 1999, and confirmed the Amended Plan by Order dated June 10, 1999. The effective date of the Plan occurred on July 1, 1999.

### **RETENTION OF GIBSON, DUNN & CRUTCHER LLP**

18. By order, dated October 7, 1998, the Court approved, under Bankruptcy Code section 327(e), the Debtors' employment of GD&C as special counsel to the Debtors to render services as described in the Application for Retention.

19. By order, dated February 19, 1999, the Court approved, under Bankruptcy Code section 327(e), the Debtors' Supplemental Application to Retain, Employ, and Compensate Gibson, Dunn & Crutcher LLP to render services as described in the Supplemental Application.

20. GD&C is an international law firm which employs more than 600 attorneys. The firm maintains offices for the practice of law in New York City and several other cities in the United States and abroad. GD&C has extensive experience in the field of commercial litigation, and is particularly expert in the defense of claims involving allegations of securities fraud. As a consequence, GD&C brought to its representation of the Debtors a high level of experience and expertise in this practice area inuring to the benefit of the debtors and their estates.

21. Prior to the Petition Date, GD&C represented the Debtors as their primary outside counsel. GD&C's representation of the Debtors in this capacity included, but was not limited to, litigation, corporate governance, securities regulation, and corporate transactional matters. As a result of this long-standing representation to the benefit of the Debtors, GD&C was uniquely qualified to serve as Special Counsel based on its attorneys' familiarity with the Debtors' operation and employees and intimate knowledge of the facts, circumstances, and legal issues raised in the

Securities Litigations. As a result, GD&C attorneys were well acquainted with all of the potential witnesses likely to appear on behalf of the Debtors in the Securities Litigations.

22. Although numerous attorneys at GD&C have performed services on behalf of the Debtors within their specialized areas of expertise and within the scope of the Retention Order, the vast majority of services have been rendered by members of GD&C's Litigation Practice Group. Within that group, Jerry J. Stochlic, Robert F. Serio and Peter J. Beshar, all partners in GD&C's Litigation Practice Group, have been primarily responsible for rendering legal services to the Debtor within the scope of the Retention Order, and have expended substantial time in connection with GD&C's representation of the Debtors. Mr. Stochlic has extensive experience in diverse areas of commercial litigation, with a particular emphasis on litigation affecting banks and other financial institutions. Mr. Stochlic graduated from New York University in 1969, and earned his law degree from Brooklyn Law School in 1972. Mr. Serio has extensive experience in business and commercial litigation, and concentrates on securities, accountants' liabilities, banking, lender liability, and bankruptcy matters. Mr. Serio earned a law degree from the University of California at Los Angeles in 1985 and received a bachelor of arts degree *cum laude* from Harvard University in 1980. Mr. Beshar has extensive experience as a commercial litigator, focusing on securities, bankruptcy, and intellectual property litigation. Mr. Beshar graduated *magna cum laude* from Yale University in 1984 and *cum laude* from Harvard Law School in 1989.

23. In addition to Messrs. Stochlic, Serio and Beshar, Sean P. Griffiths, a member of GD&C's Corporate Transactions Practice Group has been primarily responsible for rendering legal services to the Debtors with regard to matters of SEC compliance, and other corporate

matters within the scope of the Retention Order. Mr. Griffiths, the Co-Chair of GD&C's Corporate Transactions Practice Group, focuses on mergers and acquisitions, corporate securities, general corporate and securities compliance, and general business law matters. Mr. Griffiths received his bachelor of science degree with highest distinction from Purdue University in 1983, and earned his law degree from the University of Virginia in 1986. Finally, associates in GD&C's Litigation Practice Group and Corporate Transactions Practice Group have devoted significant portions of their time to the representation of the Debtors within the scope of the Retention Order, often to the exclusion of other firm matters.

#### **SERVICES RENDERED BY GD&C**

24. As described in the Debtors' Application, GD&C was retained to represent the Debtors in the following matters:

a. advising the Debtors on matters related to securities law compliance including, without limitation, the filing of all reports required under section 13 of the Securities Exchange Act of 1934, as amended, and other general corporate and financial matters; and

b. continuing the representation of the Debtors with respect to pending securities and contract litigation (to the extent necessary in light of the imposition of the automatic stay with respect to items i), ii) and iv) below) including:

i) the consolidated class action lawsuits commenced against Cityscape and certain of its directors and officers between September 1997 and December 1997, in the United States District Courts for the Eastern District of New York and the Southern District of New York, which have been consolidated by the federal Judicial Panel on Multidistrict

Litigation on December 5, 1997, captioned Ceasar, et al. v. Cityscape Financial Corp., et al., No. 97 Civ. 5668 (E.D.N.Y.) (Johnson, J.) (the "Ceasar Litigation");

ii) the lawsuit commenced against Cityscape and certain of its directors and officers on or about February 2, 1998, in the United States District Court for the District of New Jersey, captioned Gerald A. Liloia and Anthony J. Sylvester v. Cityscape, et al., No. 98 Civ. 298 (D.N.J.) (Lifland, J.), and which has been consolidated for pretrial purposes by the federal Judicial Panel on Multidistrict Litigation with the litigation pending in the United States District Court for the Eastern District of New York before Judge Johnson (the "New Jersey Litigation" and, together with the Ceasar Litigation, the "Securities Class Actions");

iii) the lawsuit commenced by Cityscape Corp. in the United States District Court for the Southern District of New York in January 1998 against Walsh Securities, Inc., captioned Cityscape Corp. v. Walsh Securities, Inc., No. 98 Civ. 0223, (S.D.N.Y.) (Stein, J.) (the "Walsh Litigation");

iv) the lawsuit commenced against Cityscape and certain of its directors and officers on or about September 14, 1998, in the United States District Court for the Southern District of New York by Elliott Associates, L.P. and Westgate International, L.P., captioned Elliott Associates, L.P. and Westgate International L.P. v. Cityscape Financial Corp. et al., No. 98 Civ. 6491 (S.D.N.Y.) (Berman, J.) (the "Elliott Litigation");

v) the investigation authorized by the Securities Exchange Commission in mid-October 1997, which is focused on Cityscape's financial statements for the quarter ended June 30, 1996, and particularly on the appropriateness of the accounting for the acquisitions of J&J Securities Limited and Greyfriars Group Limited.

25. Pursuant to the Supplemental Application to Retain, Employ and Compensate Gibson, Dunn & Crutcher LLP as Special Counsel for the Debtors, the Debtors also were authorized to retain GD&C to handle all claims and disputes resulting from the Debtors' business dealings with Wilshire Financial Services Group, Inc., Wilshire Funding Corporation, and certain related affiliates (collectively, "Wilshire"), including, but not limited to, claims related to that certain Asset Purchase Agreement among Wilshire Funding Corporation, Cityscape Funding Corporation IV, and Cityscape Corp., dated January 6, 1998.

26. The overriding objective of GD&C's representation of the Debtor as special counsel has been to defend the Debtors and their officers and directors from liability in those cases where claims have been asserted against them, to achieve the maximum recovery in those cases where the Debtors have asserted claims against third parties, and to aid the Debtors in remaining in compliance with all securities law reporting requirements. To achieve this result, GD&C has been required to render varied, complex and extensive professional services on behalf of the Debtors. Many matters in connection with GD&C's representation of the Debtors as Special Counsel have necessitated the rendering of services under severe time constraints.

27. It is GD&C's belief that substantially all of the fees charged by GD&C for services rendered to the Debtors with respect to (1) GD&C's defense of the individual directors and officers of the Debtors named as defendants in the Securities Class Action and the Elliott Litigation and (2) GD&C's response to the Examiner Motion, which covered many of the same facts and circumstances involved in the Elliott Litigation<sup>2</sup>, are subject to reimbursement by the

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<sup>2</sup> GD&C believes that the services performed in responding to the Examiner Motion are reimbursable by the Debtors' insurance carriers, because, among other reasons, GD&C [Footnote continued on next page]



Debtors' insurance providers. Prior to the Petition Date, the Debtors were informed by their insurance carriers that they recognized their obligation to reimburse the Debtors for the fees and disbursements billed to the Debtors by GD&C in connection with the Elliott and Securities Class Action Litigations. GD&C has no reason to believe that the same procedure will not be followed with respect to the fees and disbursements incurred in connection with the Elliott and Securities Class Action Litigations during the pendency of the Debtors' chapter 11 cases. GD&C charged approximately \$325,000 in fees for services rendered with respect to this matters, and incurred approximately \$50,000 in disbursements for expenses.

28. The description of services below summarizes the primary services rendered by GD&C during the Compensation Period, and highlights the benefits conferred upon the Debtors and their estates and creditors as a result of GD&C's services.

29. At all times during the Chapter 11 cases, GD&C maintained contemporaneous time records for each of the matters with respect to which GD&C represented the Debtors. Annexed hereto as Exhibit "D" is a copy of GD&C's contemporaneous time records in each such category for services rendered during the Compensation Period.

**A. The Ceasar Litigation**

30. On or about September 27, 1997, a putative class action lawsuit (the "Ceasar Litigation") was filed against Cityscape and two of its officers and directors in the United States District Court for the Eastern District of New York, on behalf of all purchasers of the Company's

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[Footnote continued from previous page]

believes that the Examiner Motion was nothing more than a thinly-veiled vehicle by means of which the plaintiffs in the Elliott Litigation attempted to evade the stay of discovery in place in that case.

common stock during the period from April 7, 1997 through August 15, 1997. At that time, GD&C was retained to represent the Company with respect to the Ceasar Litigation. Between approximately October 14, 1997 and December 3, 1997, nine additional class action complaints were filed against the same defendants, as well as certain additional Company officers and directors, in both the United States District Court for the Eastern District of New York and the United States District Court for the Southern District of New York. On or about February 2, 1998, an additional lawsuit brought on behalf of two individual investors, rather than on behalf of a putative class of investors, was filed against the Company and certain of its officers and directors in the United States District Court for the District of New Jersey (the "New Jersey Litigation" and, together with the Ceasar Litigation, the "Securities Class Actions").

31. The plaintiffs in these actions allege that the Company and its senior officers engaged in securities fraud by affirmatively misrepresenting and failing to disclose material information regarding the lending practices of the Company's UK subsidiary, and the impact these lending practices would have on the Company's financial results. Plaintiffs allege that a number of public filings and press releases issued by the Company were false or misleading. In each of the complaints, plaintiffs have asserted violations of Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934. Plaintiffs seek unspecified damages, including pre-judgment interest, attorneys' and accountants' fees, and court costs.

32. On June 12, 1998, the federal Judicial Panel for Multidistrict Litigation (the "MDL Panel") granted the Company's motion to consolidate the current and any future securities actions, for pre-trial purposes before Judge Sterling Johnson of the Eastern District of New York.

33. On September 23, 1998, Judge Johnson granted the unopposed motion filed by the plaintiffs in the Ceasar Litigation seeking appointment of lead plaintiffs and naming Stull, Stull & Brody and Milberg Weiss Bershad Hynes & Lerach as co-lead counsel ("Class Counsel").

34. On the Petition Date, all claims against the Company were stayed by operation of the automatic stay. However, claims against the individual officers and directors were not so stayed. The Debtors continued to have an obligation to defend the individual officers and directors pursuant to the Debtors' indemnity obligations. These indemnity obligations were assumed pursuant to section X.D of the Debtors' Amended Plan.

35. During the Compensation Period, at the request of the Debtors, GD&C attorneys were actively involved in the defense of those officers and directors of the Debtors who were named defendants in the Securities Class Actions.

36. GD&C attorneys expended substantial time researching plaintiffs' claims and legal and factual defenses. GD&C attorneys also began preparations for potential motions to dismiss with respect to both the Ceasar Litigation and the New Jersey Litigation. Although these motions were not filed, the legal and factual research conducted with respect to these motions, and the arguments developed in connection therewith, were vital to the negotiations conducted by GD&C attorneys on behalf of the Debtors concerning a possible settlement of the Securities Class Actions. The complicated settlement negotiations required detailed discussions of the merits of these cases not only with Class Counsel but also with counsel for the Debtors' insurance carriers. In the event that these settlement negotiations had proven unsuccessful, these motions to dismiss would have been filed.

37. In addition, GD&C attorneys have also expended substantial efforts in preparing to defend claims asserted against the Debtors' United Kingdom subsidiary. This effort required the presence of several GD&C attorneys in London for meetings with the Debtors' English counsel, and to conduct witness interviews for defense of this potential action and of the Securities Class Actions. Unsuccessful resolution of the claims against the Debtors' U.K. subsidiary could have had a substantially harmful effect on the Debtors' operations.

38. Recently, GD&C attorneys, acting on behalf of the Debtors, reached an agreement in principle with the plaintiffs' co-lead counsel in the class action to settle the Securities Class Actions. The parties are currently in the process of drafting a settlement agreement. These settlement agreements remain subject to the approval of the courts having jurisdiction of the Ceasar and New Jersey Litigations. All funds to be used for settlement purposes will be provided by the Debtors' insurance carriers.

39. GD&C spent approximately 470 hours during the cases representing the Debtors with respect to the Securities Class Actions, for which it seeks fees of approximately \$123,411.00.

40. GD&C believes that all of the fees and expenses incurred in its defense of the Debtors' officers and directors with respect to the Securities Class Actions are reimbursable by the Debtors' insurance carrier.

## **B. The Walsh Litigation**

41. On January 13, 1998, GD&C attorneys filed a complaint on behalf of the Company in the United States District Court for the Southern District of New York against Walsh Securities, Inc. ("Walsh") alleging breach of an agreement for the purchase and sale of mortgage

loans. The Company brought its claims against Walsh after many loans purchased from Walsh between June 20, 1996 and August 23, 1996 fell into default. These loans generally fall into two categories: (1) loans for which the actual property values were at least 10 percent less than indicated by the property appraisals (the "Appraisal Variance Loans"), and (2) loans that were the subject of a lawsuit brought by Walsh in New Jersey, which alleges that these loans (the "New Jersey Loans") were part of a fraudulent "flip" scheme in which the mortgages were obtained based on inflated appraisals. Those loans are now the subject of a federal investigation brought by the Office of the United States Attorney for the District of New Jersey. Six defendants, including a former employee of Walsh, have pleaded guilty thus far.

42. On March 5, 1998, Walsh filed a motion to dismiss the Walsh Litigation in its entirety, claiming, with respect to the Appraisal Variance Loans, that Cityscape waived its right to demand repurchase of these loans and that Cityscape failed to provide adequate notice of any basis to demand repurchase of these loans. With respect to the New Jersey Loans, Walsh argued that Cityscape could not recover because Cityscape's only allegation was that the loans were the result of "fraudulent transfers of title" and Walsh did not warrant or make any representations about title to the properties.

43. GD&C, on behalf of the Company, moved for partial summary judgment on the New Jersey Loans and opposed Walsh's motion in its entirety. Briefing was completed on these motions on August 17, 1998. In addition to researching and drafting briefs on behalf of the Company with respect to these motions, GD&C attorneys engaged in extensive discussions with counsel for Walsh about discovery and document production, and prepared and served on Walsh several demands for the production of documents. Review of the documents subsequently

produced by Walsh required substantial expenditure of attorney time during the Compensation Period. GD&C attorneys also conducted interviews of the Company's employees in connection with preparing and defending these pretrial motions.

44. On December 23, 1998, Judge Stein of the Southern District denied Walsh's Motion to Dismiss with respect to all but sixty-nine of the Appraisal Variance Loans, finding that Cityscape had raised triable issues of material fact with respect to these loans. Judge Stein also denied Walsh's Motion to Dismiss with respect to the New Jersey Loans. With respect to sixty-nine of the Appraisal Variance Loans, Judge Stein granted Walsh's Motion to Dismiss, holding that, because Cityscape did not comply with the express terms of its agreement relating to those loans, Cityscape could not bring claims with respect to those loans. Finally, Judge Stein denied Cityscape's Motion for Summary Judgment with respect to the New Jersey loans, holding that Walsh's allegations in its New Jersey lawsuit that the New Jersey loans had been fraudulently obtained were insufficient to establish as a matter of law that Walsh had breached its representations to Cityscape.

45. While these motions were under consideration by the court, GD&C attorneys actively assisted the Debtors in responding to a document subpoena issued by the Office of the United States Attorney for the District of New Jersey in connection with an investigation being conducted by that office into the activities of Walsh and certain of its employees and affiliates.

46. On January 21, 1999, GD&C attorneys, acting on behalf of the Debtors, moved for Partial Reconsideration of Judge Stein's December 23, 1998 order. That motion was denied by the Court on February 1, 1999. Thus, Cityscape proceeded to prepare for trial of its remaining claims against Walsh, in the amount of approximately \$7,000,000.

47. Pursuant to the discovery schedule ordered by Judge Stein, all discovery in connection with the case was to take place over a period of approximately four months. Thus, during the spring and early summer of 1999, GD&C attorneys engaged in active discovery, taking or defending twelve depositions, and submitting and responding to extensive interrogatories and demands for document discovery. Cityscape also retained and prepared an expert witness, who submitted a comprehensive report. Discovery closed on June 25, 1999. As a result of the extremely abbreviated discovery schedule, this pre-trial discovery took place under severe time constraints.

48. While these trial preparations were ongoing, GD&C attorneys were also actively engaged in settlement negotiations with counsel for Walsh. Walsh's awareness of GD&C's preparations for trial has undoubtedly influenced Walsh's willingness to engage in settlement discussions. While these settlement negotiations are still ongoing and a definitive agreement is yet to be reached, counsel stated before Judge Stein that one element of any settlement proposal from Walsh will be a seven figure upfront payment to Cityscape.

49. GD&C spent approximately 2,272 hours during the cases representing the Debtors in the Walsh litigation, for which it seeks fees of approximately \$679,137.00

### **C. The Elliott Litigation**

50. On or about September 14, 1998, Elliott Associates, L.P. and Westgate International, L.P. filed a complaint in the United States District Court for the Southern District of New York against Cityscape and certain of its officers and directors. The complaint asserted claims for securities fraud and breach of contract arising out of the private placement in September 1997 of the Company's Series B Convertible Preferred Stock. Plaintiffs, who had

purchased approximately \$20 million of the Series B preferred shares, sought unspecified damages, including pre-judgment interest, attorney's fees, other expenses, and court costs.

51. On October 5, 1998, GD&C attorneys, acting on behalf of the Company and the defendant officers and directors, filed a motion to dismiss the complaint pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act. Briefing on this motion was completed on October 27, 1998, when GD&C attorneys filed (on behalf of the individual officers and directors of the Debtors) a Reply Memorandum of Law in response to the Opposition Memorandum of Law filed by counsel for the plaintiffs. This briefing required a substantial expenditure of effort by GD&C attorneys in conducting legal and factual research and in drafting the Memoranda of Law.

52. On December 9, 1998, the case was transferred from Judge Deborah Batts to Judge Richard Berman, also of the Southern District of New York.

53. Judge Berman held a preliminary status conference in this matter on Wednesday, February 17, 1999. A follow-up status and settlement conference was scheduled by Judge Berman for April 9, 1999. That conference was adjourned until June 15, 1999.

54. On August 4, 1999, GD&C attorneys, acting on behalf of the officers and directors of Cityscape (claims against the Debtors were discharged as a result of the Debtors' confirmed Plan of Reorganization), entered into an agreement to settle this action with counsel for plaintiffs Elliott Associates, L.P. and Westgate International, L.P. The settlement of this action has been funded with proceeds supplied by the Debtors' insurance carriers. The release given to their insurers by the Debtors explicitly provides a carve-out for payment of GD&C's fees and disbursements incurred in connection with the Elliott Litigation.



55. GD&C spent approximately 442 hours during the cases representing the Debtors with respect to the Elliott Litigation, for which it seeks fees of approximately \$99,865.00

**D. Examiner Goldin's Request for Information**

56. On October 20, 1998, this Court entered an order granting the motion of Elliott Associates L.P. and Westgate International L.P. for appointment of an Examiner pursuant to section 1104(c) of the Bankruptcy Code (the " Examiner Order").

57. That order directed the Examiner to conduct a preliminary investigation into the merits of the case and specifically to examine:

- a) whether the facts related to the Debtors' restatements of their financial statements and write-downs of assets for the period beginning with the quarter ended June 30, 1996 may give rise to potential claims of the Debtors' Estates against any of the Individual Defendants<sup>3</sup> (or any other of the Debtors' current and former officers and directors) and/or the Debtors' financial advisors and other professionals;
- b) the results of any investigations with regard to the restatements of the Debtors' financial statements and write-downs of assets performed by the Debtors, any special committee of the Debtors' boards of directors or any independent third-party;
- c) the extent to which, if at all, any person who may be liable on a Potential Claim and who is being released under the Plan is contributing to the Plan;
- d) the facts and circumstances with respect to alleged short sales of the Debtors' common stock during 1997 and 1998 by the Individual Defendants (or any other of the Debtors' current and former officers and directors) and/or the Debtors' financial advisors and other professionals'
- e) the extent to which the proceeds of insurance policies of the Debtors that might cover a Potential Claim are being used to fund payments under the Plan; and

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<sup>3</sup> As defined in the Examiner Motion, the Individual Defendants were those officers and directors of the Debtors named as defendants in either the Elliott Litigation or the Ceasar Litigation.

f) the extent to which the proceeds of insurance policies of the Debtors might be available to satisfy Potential Claims.

58. On October 22, 1998, the Court approved the appointment of the Honorable Harrison J. Goldin, of Goldin Associates L.L.C., to act as Examiner. Pursuant to the Court's Order, the deadline for Examiner Goldin to submit his report was November 9, 1998.

59. Because of GD&C's role as Special Counsel in the Securities Class Actions, the Elliott Litigation, and the SEC Investigation, GD&C was most familiar with the facts and circumstances under investigation. Therefore, at the request of Latham & Watkins, the bankruptcy counsel to the Debtors, GD&C took the lead in responding to the Examiner's request for information.

60. On October 26, 1998, in response to the request of Examiner Goldin, GD&C submitted on behalf of the Debtors a detailed summary of the facts, circumstances, and legal analyses pertaining to the matters identified in paragraphs (a) -(f) of the Examiner Order (the "Debtors' Response"). GD&C also collected, retrieved and produced an extensive amount of documents requested by the Examiner pursuant to his investigation. This document production necessitated the expenditure of substantial amounts of attorney time, on an emergency and after hours basis, in locating, organizing and reviewing documents to be produced by the Debtors. GD&C attorneys prepared several of the Debtors' officers and directors for interviews with the Examiner, and prepared and defended the deposition of the Debtors' Chief Executive Officer taken by counsel for the plaintiffs in the Elliott Litigation in connection the Examiner's investigation and in furtherance of the Elliott Plaintiff's objections to the Original Plan. Finally, Mr. Serio, Mr. Beshar and Mr. Griffiths were interviewed by Examiner Goldin pursuant to his

investigation. Substantial amounts of attorney time were expended in preparation for all these interviews.

61. On November 9, 1998, the Examiner submitted his report. The Examiner found that (a) there were no facts that could give rise to potential claims by the Debtors' Estates against the Individual Defendants, any other of the Debtors' current and former officers and directors, or any of the Debtors' financial advisors or other professionals with respect to the restatements and write-downs described in paragraph (a) of the Examiner Order; and (b) there was no evidence that any of the Debtors' current or former officers and directors had engaged in any short sales as defined in paragraph (d) of the Examiner Order. The Examiner's report, while based on his own independent and through investigation, adopted and endorsed many of the facts and circumstances discussed in the Debtors' Response prepared by GD&C.

62. GD&C spent approximately 374 hours during the cases responding to the Examiner's requests for information, for which it seeks fees of approximately \$109,000.00.

63. It is GD&C's belief that, because the Examiner Motion was nothing more than a thinly-veiled attempt to evade the stay of discovery in place in the Elliott Litigation, the fees and expenses incurred by GD&C while representing the Debtors in connection with the Examiner Motion are reimbursable by the Debtors' insurance carriers.

#### **E. The SEC Investigation**

64. On or about October 15, 1997, the Securities Exchange Commission (the "SEC") authorized an investigation into the Company's financial statements for the quarter ended June 30, 1996 (the "SEC Investigation"). This investigation was focused particularly on the

appropriateness of the accounting for the acquisitions of J&J Securities Limited and the Greyfriars Group Limited.

65. During the Compensation Period, GD&C attorneys actively assisted the Debtors with respect to the SEC Investigation, reviewing documents produced and testimony given by other parties to the investigation, preparing directors and officers of the Debtors to give testimony before the SEC, and debriefing those officers and directors after their testimony.

66. Furthermore, GD&C attorneys reviewed, organized and produced documents responsive to Examiner Goldin's request for information concerning the SEC Investigation, and produced, in cooperation with Price Waterhouse LLP, an executive summary of the background and status of the SEC Investigation to aid Examiner Goldin in his own investigation.

67. Finally, GD&C attorneys, in cooperation with accountants from Price Waterhouse LLP, were interviewed by Examiner Goldin in connection with his investigation.

68. GD&C spent approximately 216 hours during the cases representing the Debtors with respect to the SEC Investigation, for which it seeks fees of approximately \$65,548.00.

#### **F. The Wilshire Adversary Proceeding**

69. On February 19, 1999, the Court authorized the Debtors' further retention of GD&C to represent the Debtors with respect to claims and disputes arising out of the Debtors' business relations with Wilshire Financial Services Group, Inc., Wilshire Funding Corporation, and certain related affiliates ("Wilshire"). GD&C attorneys, upon the authorization of GD&C's retention, then expended substantial time in investigating with the factual and legal bases for litigation against Wilshire, and understanding the details of Wilshire Financial Services Group's own chapter 11 case.

70. On March 10, 1999, GD&C attorneys, after extensive legal research and interviews with the Debtors, filed with the Bankruptcy Court a detailed complaint against Wilshire Funding Corporation and Wilshire Servicing Corporation alleging breach of an Asset Purchase Agreement dated January 8, 1998 and certain related Assignment and Assumption Agreements dated January 8, 1998 and January 21, 1998.

71. GD&C attorneys also served document production requests on Wilshire, and served a document subpoena on the U.S. Bank National Association with respect to this matter. The resultant document production from the U.S. Bank National Association materially assisted the Debtors in evaluating their strategy with regard to the case.

72. On April 29, 1999, the Debtors and Wilshire entered into a stipulation setting a deadline of June 15, 1999 for Wilshire's Answer, and establishing a discovery and trial schedule. On June 15, 1999, Wilshire served its Answer, and asserted several affirmative defenses and counterclaims.

73. On June 30, 1999, the Debtors served a second request for production of documents on Wilshire. On the same date, Wilshire served on the Debtors a request for the production of documents and a set of interrogatories.

74. On July 27, 1999, after extensive negotiations with counsel for Wilshire, GD&C attorneys, acting on behalf of the Debtors, entered into a Settlement Agreement and Release with counsel for Wilshire.

75. On July 29, 1999, GD&C attorneys, acting on behalf of the Debtors, filed a stipulation in the Bankruptcy Court discontinuing the Wilshire Adversary Proceeding. On that

same date, pursuant to the terms of the Settlement Agreement and Release, Wilshire wired \$269,887.79 to Cityscape.

76. GD&C spent approximately 248 hours during the cases representing the Debtors with respect to the Wilshire Adversary Proceeding, for which it seeks fees of approximately \$80,456.00.

**G. The Botchman Claim**

77. On March 4, 1999, Jay L. Botchman, a creditor of the Debtors ("Botchman") filed a motion pursuant to Federal Rule of Bankruptcy Procedure 2004 seeking the examination of the debtors, and production of documents by the debtors. This motion was in support of the renewed claim filed on March 18, 1999 by the Mortgage Loan Fee Trust 1997, an entity owned and controlled by Botchman.

78. GD&C attorneys, in their capacity as litigation and corporate counsel to the Debtors, at the request of Debtor's bankruptcy counsel, Latham & Watkins, took the lead in voluntarily responding to a limited degree to Botchman's motion, a tact that had been urged by the Court during a status conference on Botchman's claim. On an expedited basis, GD&C attorneys gathered responsive documents from GD&C's files, from the Debtors' files, and from the files of Clifford Chance, the Debtors' UK counsel. GD&C attorneys also drafted responses and objections to Botchman's discovery requests, negotiated the scope of discovery that was allowed to Botchman, and drafted and negotiated with Botchman's counsel a stipulation of confidentiality. Although ultimately the stipulation was not executed, GD&C lawyers reviewed the gathered responsive documents, prepared them for production, and ultimately made three separate productions of documents to Botchman.

79. Following both the production of the Debtors' documents to Botchman and the filing of an objection to Botchman's Claim filed by Latham & Watkins on behalf of the Debtors, Botchman withdrew his claim on July 23, 1999.

80. GD&C spent approximately 76 hours during the cases representing the Debtors with respect to the Botchman claims, for which it seeks fees of approximately \$22,377.00.

### **ALLOWANCE OF COMPENSATION**

81. GD&C is cognizant of the factors considered by the courts in determining allowances of compensation under sections 330 and 331 of the Bankruptcy Code. Application of these factors to this Application more than justifies the compensation requested.

#### **(1) The Time and Labor Required**

82. GD&C's professional services were rendered very frequently on an emergency and after hours basis, requiring substantial time and effort. During the Compensation Period, approximately 4,596 recorded hours have been expended by GD&C's partners, counsel, associates and paraprofessionals in providing the requested professional services. Exhibit "D" hereto details the time and labor expended by GD&C on behalf of the Debtors.

#### **(2) The Rates Charged For Such Services**

83. During the Compensation Period, GD&C's hourly billing rates ranged from \$ 360 to \$515 per hour for partners ; \$180 to \$360 for counsel and associates, and \$85 to \$125 for paraprofessionals. Based on the recorded hours expended by GD&C's attorneys and paraprofessionals, the average hourly billing rate for GD&C's services was approximately \$290.

84. The amounts charged to the Debtors for the particular services rendered approximate the rates charged other clients of the firm for such services. Indeed, if the firm's retention in these matters was not pursuant to the Bankruptcy Code, GD&C would charge the Debtors and expect to receive, on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered.

85. In connection with the provision of its legal services, GD&C has sought, within the parameters required for effective legal representation, to minimize legal expenses. Moreover, consistent with its belief that strict fee management inures to the benefit of the Debtors, their creditors, the Court, and ultimately the public, GD&C diligently monitored the integrity of its bills. GD&C carefully reviewed each and every time entry of all professionals and paraprofessionals who worked on these cases to determine the reasonableness of the monthly totals for services rendered.

**(3) The Necessity of the Services and Benefit to the Estate**

86. As detailed above, the services GD&C provided to the Debtors were necessary to preserve and enhance the Debtors' business operations, and conferred substantial benefit on the Debtors' estates. In particular, the plaintiffs in the Elliott Litigation were very active in the Debtors' Chapter 11 cases. GD&C's defense of the claims asserted in the Elliott Litigation, therefore, had a substantial and positive effect on the Debtors' ability to proceed with these Chapter 11 cases. GD&C's services within the scope of the Retention Order have furthered the Debtors' ultimate objective of successfully reorganizing their business. Specifically, GD&C's services have benefited the estate by:



a. producing, as a result of the Wilshire Settlement, an immediate cash payment of \$267,887.79 from Wilshire, and an agreement by Wilshire to forward to the Debtors additional sums owed to the Debtors as those sums are collected from third parties;

b. creating an environment for settlement in the Walsh Litigation as a result of which any settlement entered into will very likely include a seven-figure down payment made to the Debtors, in addition to promises of future payment;

c. settling all claims against the directors and officers of the Debtors asserted in the Ceasar and Elliott Litigations, using funds from the Debtors' insurance carriers and providing for payment of the Debtors' legal fees by the Debtors' insurance carriers; and

d. providing, on extremely short notice, the information required by Examiner Goldin, which information enabled the Examiner to issue a report exculpating the Debtors, their officers, and directors, for any wrongdoing of the sort insinuated by the Elliott plaintiffs in their motion seeking appointment of the Examiner.

**(4) The Complexity, Importance, and Nature of the Problem, Issue or Task Addressed**

87. The complexity, importance and nature of the matters GD&C has addressed within the scope of the Retention Order justify the compensation sought by GD&C in this Application. During the Compensation Period, GD&C has encountered and successfully resolved complex and difficult legal problems in the areas of securities regulation and securities and contract litigation, all of which required specialized expertise in these areas. As more fully detailed above, GD&C

believes that it has been able to resolve these difficult and complex questions in an expeditious and efficient manner.

**(5) Customary Compensation**

88. GD&C relies on the Court's experience and knowledge with respect to the compensation awards in similar cases. Given that frame of reference, GD&C submits that, in light of the circumstances of the case and the substantial benefits derived from GD&C's assistance, compensation in the amount requested is fair and reasonable.

**(6) Time Constraints Required by the Exigencies of the Case**

89. On many occasions, GD&C attorneys rendered services on behalf of the Debtors under severe time constraints. Moreover, during the Compensation period, GD&C attorneys frequently performed services on behalf of the Debtors within the scope of the Retention Order to the preclusion of other firm matters and clients. Often, the services were performed well after regular business hours.

**(7) Experience, Reputation, and Ability of The Attorneys Rendering Services**

90. GD&C's services have been rendered in a highly efficient manner by attorneys who have achieved a high degree of expertise in the field of securities regulation, litigation, and other matters within the scope of the Retention Order. The skill and competency of the GD&C attorneys who have represented the Debtors are unquestionable. GD&C's highly professional and expert group of attorneys has ensured that the representation of the Debtors within the scope of the Retention Order has progressed in an efficient and expeditious manner.

**(8) Nature and Length of the Professional Relationship With The Client**

91. Prior to the commencement of the Debtors' chapter 11 cases, GD&C represented the Debtors as their primary outside counsel in all matters, including, but not limited to, corporate governance, compliance with securities regulations, corporate transactions and litigation. GD&C has a long-standing legal relationship with the Debtors in this case.

92. The GD&C attorneys assigned to represent the Debtors within the scope of the Retention Order have worked continuously on this matter since GD&C's retention with respect to those matters described in the Retention Order. This continuity of service has minimized the potential for duplication of effort and has promoted efficiency.

93. Based on the factors to be considered under sections 330 and 331 of the Bankruptcy Code, the results GD&C have achieved to date more than justify allowance in full of GD&C's compensation and reimbursement request.

**DISBURSEMENTS**

94. For this Compensation Period, GD&C requests reimbursement of \$110,043.03 for reasonable and necessary out-of-pocket expenses incurred on behalf of the Debtors within the scope of the Retention Order. Exhibit B attached hereto summarizes the actual expenses incurred by GD&C on behalf of the Debtors during the Compensation Period and Exhibit D details each of the expenses incurred. Each of the charges reflected on Exhibits B and D is based on the actual and necessary expenses incurred by GD&C, in the exercise of reasonable discretion, on behalf of the Debtors. As set forth more fully in paragraph 25 of this Application, GD&C believes that approximately \$50,000 of disbursements incurred in connection with GD&C's representation of

the Debtors with respect to the Securities Class Action and Elliott Litigations are reimbursable by the Debtors' insurance carriers.

95. GD&C's normal billing rates do not take these expenses into consideration. Rather, GD&C bills each expense to the applicable client. A prime example of the rationale for such an approach is photocopying expense. Because of the great disparity between the photocopying requirements of different clients, it is virtually impossible to absorb photocopying costs fairly and equitably into GD&C's normal billing rates. Accordingly, GD&C charges each client for photocopying expenses separately. Similarly, GD&C charges each client separately for telephone, postage, overnight courier, travel expenses, computerized legal research and messenger services in each case at GD&C's cost. GD&C does not charge for incoming or outgoing facsimile transmissions.

96. GD&C does not include the amortization of the cost of any investment, equipment or capital outlay in its charges for these services.

97. Any services billed by a third party vendor, with the exception of certain computerized research charges, are charged to the Debtors in the precise amount billed to and paid by GD&C. Like many large law firms, GD&C has negotiated a special arrangement with one computerized research company under which GD&C pays a flat rate monthly fee for computerized research services. Consistent with its general policy of billing out-of-pocket expenses only to clients for whom the use of such services is required, GD&C separately charges each client for computerized research. To account for such charges and pass through GD&C's cost savings resulting from its special arrangement, GD&C charges those clients for whom such services are required eighty percent of the rates charged by the computerized research company to the general

public for such services. These charges are intended to cover GD&C's direct costs for computerized research. A determination of GD&C's actual direct cost for computerized research, however, is dependent on both the volume of the research performed and the total expenses attributable to such research on an annual basis.

98. The time constraints frequently imposed by the circumstances of these cases have required GD&C's attorneys and other employees to devote time during the evenings and on weekends to perform legal services on behalf of the Debtors. These extraordinary services were essential in addressing the necessities of time imposed by the prosecution and defense of crucial litigation. Consistent with firm policy, and to ensure the personal safety of attorneys and other employees of GD&C, the cost of transportation home was reimbursed for attorneys and employees working late into the night. Unlike many New York firms, GD&C does not charge clients for reimbursement of meals for attorneys who worked late. GD&C only charges clients for reimbursement for overtime meals if the client is present.

99. The time constraints frequently imposed by the circumstances of GD&C's representation of the Debtors occasionally required overtime secretarial support and the use of overtime support staff from GD&C's outside business services provider. These extraordinary services were essential in addressing the necessities of critical litigation and in meeting deadlines. The charges for overtime include only time for work performed in connection with GD&C's representation of the Debtors, and do not include amounts that are included in the firm's overhead. GD&C has sought reimbursement only for those overtime expenses paid. The amount billed to GD&C for such overtime services is \$2,921.88.

100. GD&C has not sought reimbursement for proofreading services, word processing, luxury accommodations, or deluxe meals. GD&C also has not sought reimbursement for first class airfare.

101. GD&C has made every effort to minimize its disbursements in this case. Each of the expenses incurred by GD&C in providing professional services to the Debtors was necessary, reasonable, and justified under the circumstances to serve the needs of the Debtors, their estates, and creditors.

Dated: New York, New York  
August 25, 1999

GIBSON, DUNN & CRUTCHER LLP

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