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Return Date: To Be Scheduled
Return Time:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: CITYSCAPE FINANCIAL CORP., and CITYSCAPE CORP., Debtors.	Chapter 11 Case Nos. 98 B 22569 – 22570 (ASH) (Jointly Administered)

APPLICATION OF ELLIOTT ASSOCIATES, L.P. AND WESTGATE INTERNATIONAL, L.P. UNDER BANKRUPTCY CODE SECTION 503(b)(4) FOR ALLOWANCE OF REASONABLE COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED

Name of Applicant: Elliott Associates, L.P. and Westgate International, L.P.

Authorized to Provide
Professional Services to: N/A

Date of Retention: N/A

Period for Which Compensation
and Reimbursement is Sought: September 1, 1998 – June 30, 1999

Amount of Compensation Sought
as Actual, Reasonable, and Necessary: $312,209.00

Amount of Expense Reimbursement
Sought as Actual, Reasonable, and Necessary: $27,323.68

This is the first and final application for allowance of reasonable contributions for professional services rendered and reimbursement of expenses incurred in making a substantial contribution to the chapter 11 cases pursuant to 11 U.S.C. § 503(b)(4).

Compensation is not requested for the time expended for the preparation of this application.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: CITYSCAPE FINANCIAL CORP., and CITYSCAPE CORP., Debtors.	Chapter 11 Case Nos. 98 B 22569 – 22570 (ASH) (Jointly Administered)

APPLICATION OF ELLIOTT ASSOCIATES, L.P. AND WESTGATE INTERNATIONAL, L.P. PURSUANT TO SECTION 503(b)(4) OF THE BANKRUPTCY CODE FOR REASONABLE COMPENSATION AND REIMBURSEMENT FOR ACTUAL, NECESSARY EXPENSES IN MAKING A SUBSTANTIAL CONTRIBUTION IN THESE CHAPTER 11 CASES

TO THE HONORABLE ADLAI S. HARDIN, JR.,
UNITED STATES BANKRUPTCY JUDGE:

Elliott Associates, L.P. ("Elliott") and Westgate International, L.P. ("Westgate," and together with Elliott, the "Elliott Entities"), by and through their attorneys Weil, Gotshal & Manges LLP ("WG&M"), submit this application pursuant to section 503(b)(4) of title 11 of the United States Code ("Bankruptcy Code"), for reimbursement of amounts paid to WG&M for certain professional services rendered and

actual and necessary expenses incurred, as attorneys for the Elliott Entities, that made a substantial contribution in these chapter 11 cases, and respectfully represents:

Introduction

1. Cityscape Financial Corp. ("Cityscape") was a consumer finance company engaged in the business of originating, selling and servicing residential mortgage loans. Through its then-wholly owned subsidiary, Cityscape Corp. ("CSC"), Cityscape was licensed or registered to do business in nearly every state.

2. On October 6, 1998 (the "Commencement Date"), Cityscape and CSC (collectively, the "Debtors") filed petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

3. Pursuant to section 1129 of the Bankruptcy Code, on June 10, 1999, the Bankruptcy Court granted an order confirming the Debtors' First Amended Joint Plan of Reorganization, dated April 27, 1999 (the "Plan") and a related disclosure statement (the "Disclosure Statement").[1] On or about July 1, 1999, the Plan became effective.

4. The Elliott Entities seek reimbursement of expenses incurred for professional services rendered by WG&M which services were integral to a consensual confirmation of the Plan. Specifically, the efforts of the Elliott Entities led to the modification of the release provisions contained in the Original Plan (as defined below), which modifications increased the potential recoveries for all creditors and holders of

[1] All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Plan.

equity interests by allowing such parties to pursue claims against, and obtain recoveries from, third parties and, where applicable, their insurance carriers.

5. WG&M is an international law firm with its principal place of business in New York, New York, and with regional offices in a number of cities in the United States, and various cities in Europe. In addition to its other areas of expertise, WG&M is particularly proficient and experienced in the reorganization of distressed business entities both outside of and under chapter 11 of the Bankruptcy Code. Over the course of years, WG&M has developed a large Business Finance and Restructuring Department specializing in the restructuring and reorganization of such distressed entities. The services rendered by the Business Finance and Restructuring Department are closely coordinated with those of WG&M's Corporate, Tax and Litigation departments, as well as other departments required by the particular case.

6. The professional services for which reimbursement is requested were rendered primarily by Brian S. Rosen, Larren M. Nashelsky and Alexander Simon, a partner, counsel and associate, respectively, in the Business Finance and Restructuring Department. Reimbursement is also sought with respect to professional services rendered by certain other attorneys and paralegals in the Business Finance and Restructuring Department, all of whom assisted in the substantial contribution to the reorganization process.

7. This Application does not request reimbursement for the total professional charges incurred by the Elliott Entities in connection with the reorganization of the Debtors. Rather, the Elliott Entities have limited this request to professional services rendered by WG&M which fall within the principles governing the allowance of

reasonable compensation under sections 503(b)(3)(D) and 503(b)(4). In that context, WG&M has eliminated professional services which were rendered for and redounded exclusively to the benefit of the Elliott Entities or did not substantially contribute to the reorganization of the Debtors in these chapter 11 cases. Conversely, the Elliott Entities request reimbursement for WG&M's charges for professional services that substantially benefited the prosecution and successful conclusion of these chapter 11 cases and, consequently, the general interests of all parties.

8. This Application covers a period from September 1, 1998 through June 30, 1999. In connection with the professional services rendered by WG&M during this period, the aggregate charges to the Elliott Entities for which reimbursement is sought equaled $312,209.00, representing approximately 1002.5 hours expended by WG&M professionals. In addition, this Application seeks $27,323.68 in reimbursement of expenses incurred by WG&M professionals. For the Court's convenience, a brief summary of the events which led to confirmation of the Plan and the inclusion of revised release provisions contained therein is discussed in further detail below.

Background

A. Elliott's and Westgate's Involvement with the Debtors

9. In or about August 1997, Cityscape decided to raise $50 million in working capital through a private placement of certain Series B Convertible Preferred Stock and warrants to purchase shares of Cityscape's common stock. On September 15, 1997, pursuant to a Securities Purchase Agreement and a Registration Rights Agreement, each dated as of September 15, 1997, Elliott and Westgate purchased shares of Cityscape's Series B Preferred Stock and warrants to purchase Cityscape's common

stock for an aggregate purchase price of $20,000,000. Elliott and Westgate also purchased $4,000,000 and $4,250,000 (face amount) of Cityscape's 12-3/4% Series A Senior Notes due 2004 (the "Senior Notes"), respectively, and Elliott purchased $3,000,000 (face amount) of Cityscape's 6% Convertible Subordinated Debentures due 2006 (the "Subordinated Debentures").

B. Accounting Irregularities/
Restatement of Financial Statements

10. On November 24, 1997, Cityscape issued its quarterly report on Form 10-Q for the period ended September 30, 1997 and an accompanying press release disclosing, inter alia, that (i) Cityscape was selling off a substantial portion of its domestic assets (the home equity residuals) to enhance liquidity and, in connection therewith, was recording a pre-tax charge of $57.7 million attributable to an "unrealized loss" on the valuation of those domestic assets, and more specifically to the fact that the "fair value" previously ascribed to the assets (and recorded in Cityscape's financing statements) was inconsistent with what the assets were actually worth on the open market, and (ii) Cityscape was taking an additional $13 million write-off because of a "change in valuation assumptions" used to determine the value of other domestic assets (Sav-A-Loan residuals) that were previously recorded in its financial statements with the SEC. At the same time, Cityscape announced that Robert Grosser, its chief executive officer and president, had resigned.[2]

[2] In October 1997, the SEC commenced a formal investigation of Cityscape's reporting of acquisitions of certain mortgage-lending companies in England in 1996. In addition, the New York State Department of Banking fined Cityscape $50,000, required it to provide the banking department with certain operating information on a timely basis and imposed certain restrictions on its business.

11. Thereafter, on or about March 31, 1998, Cityscape issued its annual report on Form 10-K for the year ended December 31, 1997 (the "1997 10-K"), disclosing, inter alia, that (i) Cityscape's access to the capital markets was severely constrained and (ii) Cityscape was taking a $148 million write-off on the aggregate valuation of its domestic assets for 1997. The 1997 10-K further disclosed that, in January 1998, Cityscape's British subsidiary, City Mortgage Corporation Limited ("CSC-UK"), consented to revise certain terms of its loans in the UK at the request of the UK government's Office of Fair Trading, and that, due to the requested revisions, Cityscape recognized an impairment in the value of its mortgage servicing receivables in the UK of $106.2 million and wrote off unamortized goodwill of $52.7 million recorded in connection with its UK operations. The Independent Auditors' Report accompanying the 1997 10-K expressed substantial doubt about Cityscape's ability to continue as a going concern.

12. As a consequence of, among other things, the foregoing, the market price of Cityscape's common stock fell from a high during the first quarter of 1997 of $32.00 per share to a low during the second quarter of 1998 of $0.02 per share. In May 1998, Cityscape's common stock was delisted from trading on the NASDAQ SmallCap Market following the earlier delisting from trading on the NASDAQ National Market.

C. The Elliott Action and the Class Actions[3]

13. By Complaint, dated September 13, 1998, the Elliott Entities commenced an action in the United States District Court for the Southern District of New York against Cityscape and three of its current or former officers and/or directors, Robert Grosser, Robert C. Patent and Cheryl P. Carl alleging securities fraud and breach of contract arising out of the Series B Financing (the "Elliott Action").

14. In addition and as a result of, among other things, the events briefly discussed above, on or about September 29, 1997, a class action lawsuit 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 Cityscape's common stock during the period from April 1, 1997 through August 15, 1997. Between approximately October 14, 1997 and December 3, 1997, based upon Cityscape's restatement of its financial statements, nine (9) additional class actions complaints were filed against the same defendants, as well as certain additional Cityscape officers and directors. Four of these additional complaints were filed in the Eastern District and five were filed in the United States District Court for the Southern District of New York. On or about October 28, 1997, the plaintiff in the original action filed an amended complaint naming three additional officers and directors as defendants. The amended complaint also extended the proposed class period from November 4, 1996 through October 22, 1997. On or about February 2, 1998, an additional lawsuit brought on behalf of two

[3] From time to time, the various actions referred to in this "Section C," shall collectively be referred to as the "Class Actions."

individuals investors (not class actions) was filed against Cityscape and certain of its officers and directors in federal court in New Jersey.

15. In these actions, the various plaintiffs alleged that Cityscape and its senior officers and directors engaged in securities fraud by affirmatively misrepresenting and failing to disclose material information regarding the lending practices of the Debtors' UK subsidiary, and the impact that these lending practices would have on Cityscape's financial results. The plaintiffs further alleged that a number of public filings and press releases issued by Cityscape were false or misleading.

D. The Negotiation of the Plan and its Prepetition Solicitation

16. In light of the increasingly difficult operating environment due, in large part, to the Debtors' restatement of their financial statements during the second half of 1997 and into 1998 and their liquidity and capital needs, the Debtors' management determined to formulate a restructuring to be implemented pursuant to a prepackaged plan of reorganization and filing under chapter 11 of the Bankruptcy Code for each of the Debtors. In December 1997 and January 1998, the Debtors hired Jay Alix & Associates and CIBC Oppenheimer Corp. to serve as their restructuring and financial advisors, respectively.

17. In May 1998, the Debtors commenced negotiations with various creditors, including holders of the Senior Notes, the Subordinated Debentures and two unofficial committees, one representing certain holders of the Senior Notes (the "Unofficial Senior Noteholders' Committee") and the other representing holders of the Subordinated Debentures (the "Unofficial Subordinated Debentureholders' Committee" and together with the Unofficial Senior Noteholders' Committee, collectively, the

"Unofficial Committees"). By the end of August 1998, such negotiations led to a proposed plan of reorganization (the "Original Plan"), a copy of which was attached as an exhibit to the Debtors' Solicitation and Disclosure Statement, dated August 28, 1998 and related solicitation material (the "Solicitation Statement").

18. The key elements of the Original Plan were set forth in two provisions. The first provision was the treatment of the claims of creditors and the interests of equityholders. The second provision was the Original Plan's insupportable releases (and related injunctions) which attempted to cause the release by and of a myriad of parties, including, without limitation, the Debtors' then-current and former officers and directors, shareholders and legal and financial advisors to the Debtors[4] (collectively, the "Released Parties"). These releases purported to be effective to protect the Released

[4] In addition, Section XI.C of the Original Plan purported to contain a release of claims to be received by the following other parties:

(i) any official creditors' committee appointed in the Debtors' chapter 11 cases, each member, consultant, attorney, accountant or other representatives of the Creditors' Committee;

(ii) the Unofficial Committee of Senior Noteholders, each member, consultant, attorney, accountant or other representatives of such committee;

(iii) the Unofficial Committee of Subordinated Debentures, each member, consultant, attorney, accountant or other representatives of such committee;

(iv) the indenture trustees of the Debtors' existing warehouse facilities; and

(v) the CIT Group/Equipment Financing, Inc. and Greenwich Capital Financial Products, Inc. (the lenders under the Debtors' existing warehouse facilities) and each of their then-current and former officers, directors, shareholders, employees, consultants, attorneys, accountants, financial advisors and other representatives.

Parties against any claim or action brought by the Debtors and **all other parties which hold claims against, or interests in, the Debtors** (the "Releasing Parties").

19. The scope of the purported releases being received by the Released Parties was equally insupportable. Pursuant to the Original Plan, the Released Parties would have received broad releases from the Releasing Parties with respect to all matters in any way relating to, among other things, the Debtors, their chapter 11 cases, and the Original Plan or Solicitation Statement. These releases would have included a release by the Elliott Entities, the plaintiffs in the Class Actions (and all other similarly situated non-insider equityholders) of all claims and causes of action related to, among other things, the accounting irregularities/restatement of the Debtors' financials discussed above and the Debtors' failure to disclose its severe liquidity crisis or improper financial statements. For many parties, including the Elliott Entities and the plaintiffs in the Class Actions, potential recoveries against the Released Parties would have been the only recoveries received by those parties in these chapter 11 cases. However, the release provisions of the Original Plan intended to destroy any such possible recoveries.

20. The temerity of the Debtors' request for releases under the Original Plan for the Released Parties was further compounded by the Debtors' abject failure in the Solicitation Statement (or elsewhere) to discuss, or even address; (i) the bases for the releases contained in the Original Plan, (ii) the necessity for such releases, (iii) the consideration being provided under the Original Plan by the Released Parties, (iv) any settlements between the Released Parties and the Debtors, (v) whether any investigations were performed (by a special committee comprised of independent members of the Debtors' board of directors or otherwise) with respect to the accounting

irregularities/restatement of the Debtors' public financials, (vi) the report from, or results of, any such investigations, and (vii) what contribution was being provided under the Original Plan by D&O (or other) insurance carriers, parties who may very well have been liable on claims against the Debtors' current and/or former officers and directors.

E. Motion to Appoint an Examiner

21. Due to (a) the dearth of information in the Solicitation Statement with respect to, among other things, (i) the Debtors' accounting irregularities/restatement of its financial statements, (ii) short sales of stock during 1997 and 1998 by the Debtors' current and former officers and directors and/or the Debtors' financial advisors, (iii) potential claims of the Debtors' estates against any of the Debtors' current and former officers and directors, the Debtors' financial advisors or the Debtors' other professionals, related to the foregoing, which claims were being released under the Original Plan, and (iv) the propriety of releasing such claims under the Original Plan. and (b) the speed at which the Debtors were attempting to cram these cases through the Court and over the objection of parties in interest, the Elliott Entities sought the appointment of an examiner to perform a detailed investigation into the foregoing actions taken in 1997 and 1998 by the Debtors, their officers, directors and their various advisors. Specifically, by Order to Show Cause, dated October 6, 1998, the Elliott Entities sought entry of an order, pursuant to section 1104(c) of the Bankruptcy Code, directing the appointment of an examiner and for deferral of consideration of the Solicitation Statement and the Original Plan (the "Examiner Motion").

22. The Examiner Motion was supported by the Securities and Exchange Commission and by the plaintiffs in the Class Actions. The Examiner Motion

was opposed by the indenture trustees of the Debtors' various indentures and the Unofficial Committees.

23. By order, dated October 20, 1998 (the "Examiner Order"), this Court granted the Examiner Motion, and directed the Office of the United States Trustee (the "U.S. Trustee") to appoint an examiner (the "Examiner") in the chapter 11 cases to investigate and examine:

(a) whether the facts and circumstances relating to the Debtors' restatements of their financial statements and write-down of assets for the period beginning with the quarter ended June 30, 1996 may give rise to the potential claims of the Debtors' estates against any of the individual defendants (or any other of the Debtors' current and former officers and directors) and/or the Debtors' financial advisors and other professionals (a "Potential Claim");

(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 Original Plan, is contributing to the Original 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 Original Plan; and

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

24. On October 22, 1998, the Court approved the appointment of Harrison Jay Goldin, as the examiner (the "Examiner").

25. Prior to the filing of a report by the Examiner and due to the improper release provisions contained in the Original Plan, the Elliott Entities filed that certain Objection of Elliott Associates, L.P. and Westgate International, L.P. to Confirmation of the Debtors' Plan of Reorganization, dated November 6, 1999 (the "Elliott Objection"). The Elliott Objection contained, among other objections, a detailed analysis of the release provisions of the Original Plan and the illegality of those provisions under applicable law. In addition to the Elliott Objection, the plaintiffs in the Class Actions and the U.S. Trustee also filed objections to the release provisions of the Original Plan.

26. On November 9, 1998, the Examiner issued his report (the "Examiner Report") and recommended that, among other things, the Court deny confirmation of any plan that contained third party releases as were contained in the Original Plan. See Examiner Report at 39-40.

27. The confirmation hearing on the Original Plan was originally scheduled for November 13, 1998. WG&M, as counsel for the Elliott Entities, prepared to argue against confirmation of the Original Plan. According to the Debtors, however, the confirmation hearing was adjourned due to fluctuating market conditions and the Debtors' inability to obtain necessary exit financing to allow them to emerge from chapter 11. In any event due to legal infirmities discussed in the Elliott Objection, the Original Plan should not have been confirmed as proposed.

28. Immediately after it became apparent to the Debtors that the Original Plan was unconfirmable, the Debtors, the Unofficial Committees and the Elliott Entities entered into negotiations to amend the Original Plan to satisfy, among other

things, the Elliott Entities' concerns with the release provisions. The Elliott Entities' efforts ultimately culminated, in December 1998, in a term sheet among the parties. The term sheet included "scaling back" the release provisions of the Original Plan to protect the rights of creditors and equityholders to proceed against third parties who may have been responsible for the accounting irregularities and other misdeeds alleged in the Elliott Action and the Class Actions (the "Revised Release Provisions").

29. Due to continued deterioration in the Debtors' businesses, the Debtors were unable to promptly convert the agreed term sheet into a revised chapter 11 plan. Eventually, effectuation of the term sheet became economically impossible but the Debtors and the Unofficial Committees agreed that the Revised Release Provisions would be included in any amended plan of reorganization for the Debtors.

30. Thereafter on April 27, 1999, the Debtors filed the Plan and the related Disclosure Statement. However, the Plan contemplated that the holders of Class 6 Subordinated Debenture Claims would not benefit from the Revised Release Provisions if the class voted to accept the Plan. Such a provision would have vitiated the Revised Release Provisions. Therefore, WG&M negotiated, on behalf of the Elliott Entities, to modify the treatment of Class 6 Subordinated Debenture Claims such that, even if such class voted to accept the Plan, the holders of such claims would benefit from the Revised Release Provisions. Such modification was agreed to on the eve of the hearing to approve the Disclosure Statement. Ultimately, the confirmed Plan contained the Revised Release Provisions negotiated by the Elliott Entities. It is clear that without such revised provisions, the Plan would have suffered the same fate as the Original Plan – unconfirmability.

I.

Professional Services Rendered by WG&M that Substantially Contributed to these Chapter 11 Cases

31. As stated, WG&M rendered substantial services that benefited the entire reorganization process. This Application seeks allowance of reasonable compensation to the Elliott Entities as reimbursement only for attorneys fees incurred and out-of-pocket expenses in connection with two related matters in this bankruptcy case:

(i) the objections to the release provisions contained in the Original Plan; and

(ii) the appointment of the Examiner.

Attached as Exhibit A are copies of time records that WG&M attorneys prepared contemporaneously with the rendition of services. These time records set forth in detail the professional services that were rendered for which the Elliott Entities seek reimbursement.

A. The Objections to the Release Provisions Contained in the Original Plan

32. As set forth in the accompanying memorandum of law, the actions of the Elliott Entities which led to the revisions of the release provisions of the Original Plan were a substantial contribution to the Debtors' chapter 11 cases. This is especially true since the Elliott Entities' efforts benefited all creditors and equityholders of the Debtors who are now able to pursue claims against, and recover damages from, third parties. This outcome was a direct result of the efforts of the Elliott Entities.

33. Although, as discussed above and due to circumstances unrelated to the issues raised in the Elliott Objection, the Original Plan was not confirmed, it was clear that the release provisions of the Original Plan would not have been approved by

the Court. The Examiner concurred in Elliott's assessment that the third-party release provisions of the Original Plan should not have been approved by the Court. See Examiner Report at 39-40.

34. The Elliott Objection did, however, among other things, lead to the Debtors' withdrawal of the Original Plan and the agreement of the parties on the Revised Release Provisions. Specifically, the Elliott Entities' efforts led to a consensual plan of reorganization, the Plan, which protected the rights of creditors and shareholders to, among other things, obtain recoveries from third parties and, where applicable, their insurance carriers. The Revised Release Provisions will likely lead to recoveries by former creditors and stockholders of the Debtors in the range of [millions of dollars].

35. The Elliott Entities' participation in the plan process clearly meets the generally accepted "actual and demonstrable benefit to the debtor's estate, the creditors and stockholders" standard of recovery for making a substantial contribution to the bankruptcy estate. In re McLean Industries, Inc., 88 B.R. 36, 37 (Bankr. S.D.N.Y. 1988). Clearly, the efforts of the Elliott Entities in the plan process led to the inclusion of the Revised Release Provisions in the Plan and aided in a consensual plan of reorganization being confirmed by this Court. Lebron v. Mechem Financial Inc., 27 F.3d 937, 944 (3rd Cir. 1994); In re Richton Int'l Corp., 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981).

36. The Elliott Entities certainly proposed and prosecuted the Elliott Objection partially in connection with and in the advancement of their own claims. However, notably, the Elliott Entities did not advance a position that would maximize only their recoveries – such as requesting that only the Elliott Action be unaffected by the

release provisions contained in the Original Plan. Instead, the Elliott Entities sought to have the release provisions revised to be fair and in the best interests of the Debtors' estates. And most important, the efforts of the Elliott Entities in having the release provisions of the Original Plan modified clearly benefited the estates as a whole. In Lebron the Third Circuit acknowledged that "[c]reditors are presumed to be acting in their own interests," but that an allowance for substantial contribution will still be appropriate where the creditor "satisf[ies] the court that [its] efforts have transcended self-protection." Lebron at 944. The Elliott Entities' efforts, as described above, clearly transcended self-protection in these cases.

B. The Appointment of an Examiner

37. Similar to their efforts in prosecuting the Elliott Objection, the Examiner Motion was brought to assist the Elliott Entities and, through the Examiner Report, all parties in understanding (i) potential claims arising from the restatements and write-downs, (ii) alleged short sales of the Debtors' common stock, (iii) insurance coverage and the availability of insurance proceeds and (iv) the propriety of the non-debtor releases contained in the Original Plan. Without the appointment of the Examiner, parties such as the Elliott Entities and the plaintiffs in the Class Actions would not have been able to accurately assess the issues listed above and, without such assessment, would not have been able to reach an agreement on the Revised Release Provisions.

38. It is well-settled that efforts leading to the appointment of a chapter 11 trustee may constitute a substantial contribution. See, e.g., In re Stoecker, 128 B.R. 205, 211 (Bankr. N.D. Ill. 1991); In re Catalina Spa & R.V. Resort, Ltd., 97 B.R. 13, 18 (Bankr. S.D. Cal. 1989); In re Paolino, 71 B.R. 576, 580 (Bankr. E.D. Pa. 1987). Similarly, since the appointment of an examiner and a trustee are governed by the same

Bankruptcy Code section (§ 1104), the appointment of an examiner may also constitute a substantial contribution. See 11 U.S.C. § 1104.

39. The Examiner Motion allowed creditors and equityholders of the Debtors to have an independent third-party assess the release provisions proposed by the Debtors and report to those parties as to the propriety of such releases. The Elliott Entities' efforts directly contributed to the reorganization process by leveling the "playing field" on which the Elliott Entities, the Unofficial Committees and the Debtors negotiated the Revised Release Provisions, the result of which may inure to the benefit of many of the Debtors' creditors and equity interest holders.

40. Such contribution to all creditors and equityholders is precisely what section 503(b) of the Bankruptcy Code seeks to promote and reward. That is exactly what WG&M and the Elliott Entities did in these cases. They undertook an important course of action, at great expense and risk to the Elliott Entities, which by definition could only benefit all the creditors and equityholders as a whole, and not just themselves.

II.

Disbursements Made By the Elliott Entities In Connection With Professional Services Rendered

41. Attached hereto as Exhibit B is a schedule setting forth a detailed itemization of the disbursements made during the relevant period. As set forth in Exhibit B hereto, WG&M disbursed $32,488.45 for expenses typically reimbursed in chapter 11 cases and incurred by WG&M in providing professional services during these chapter 11 cases. WG&M did not allocate disbursements for expenses to the matters for which substantial contribution reimbursement is sought. Although each expense charge is

itemized very specifically in WG&M's accounting records, the expenses were charged to the Elliott Entities without allocation to individual projects or matters. Although perhaps possible with some degree of accuracy, it would be a monumental task to attempt such allocation at this time. For this reason, WG&M proposes an equitable (and what WG&M believes to be a very conservative) allocation method for expenses. WG&M seeks compensation for approximately 84% of the total fees for professional services rendered by it to the Elliott Entities. Accordingly, WG&M seeks reimbursement for the same 84% of the total expense disbursements made by WG&M, or $27,323.68.

42. Charges for travel expenses, courier services, long distance telephone charges, and other disbursements to third parties are charged by WG&M to its clients at the actual amount paid. No overhead or other supplementary charge is added to these expenses. WG&M charges all of its clients $.20/page for photocopying expenses and $1.00/page for outgoing facsimile transmission. WG&M does not charge its clients for incoming facsimile transmissions. The rates charged by WG&M for Westlaw and Lexis computerized research varies according to the type of search conducted, the specific file searched and, in the case of Lexis, the number of searches conducted. The foregoing charges cover WG&M's direct operating costs for photocopying, facsimile facilities, and computerized research, which costs are not incorporated into the WG&M hourly billing rates. Only clients who actually use photocopying, facsimile, computerized research, and other office services of the types set forth in Exhibit B are separately charged for such service. The amount of the standard photocopying and facsimile charges permits WG&M to cover the related expenses of its photocopying and facsimile services. A determination of the actual expenses per page for photocopying and

facsimile services, however, is dependent on both the volume of copies or facsimiles and the total expenses attributable to photocopying and facsimiles on an annual basis.

III.

WG&M's Substantial Contribution
Warrants Allowance Of Reasonable Compensation

43. The plan of reorganization confirmed in these chapter 11 cases was the result of complex, adversarial and extended negotiations and legal maneuvering among the parties in interest. The Elliott Entities and WG&M believe that the professional services rendered by WG&M made a substantial contribution to the results which have been achieved.

44. As reflected by the total number of hours for professional services for which reasonable compensation is requested, it is obvious that the Elliott Entities made a substantial commitment to secure a fair result to these chapter 11 cases which is embodied in the release provisions contained in the Plan. The successful consummation of the Plan and the successful conclusion of these cases is a result of the efforts of many professionals who participated in the confirmation of the Plan. WG&M played a material and integral role among and within this group of professionals. Its services extended to the protection and benefit of the interests of creditors and shareholders beyond those of the Elliott Entities. For this reason, WG&M should be compensated as contemplated by section 503(b)(4) of the Bankruptcy Code so that the Elliott Entities may be reimbursed for the expenses they incurred in making a substantial contribution to these cases.

WHEREFORE WG&M respectfully requests the Court to enter an order:

(i) allowing to the Elliott Entities, as compensation for amounts paid to WG&M for the professional services rendered during the period from September 1, 1998 to June 30, 1999, that substantially contributed to these chapter 11 cases, reasonable compensation in the amount of $312,209.00;

(ii) allowing to the Elliott Entities, as compensation for amounts paid to WG&M for expenses incurred by WG&M in connection with the above-referenced professional services, reimbursement in the amount of $27,323.68;

(iii) authorizing and directing the payment of the foregoing amounts; and

(iv) granting the Elliott Entities and WG&M such other and further relief as is just.

Dated: New York, New York
August 20, 1999

By: /s/ Brian S. Rosen
Brian S. Rosen, Esq.
A Member of the Firm

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