

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

**In re:**

**CONSECO, INC. et al.,<sup>1</sup>**

**Debtors.**

)  
) **Chapter 11**  
)  
) **Case No. 02-B 49672**  
) **(Jointly Administered)**  
) **Honorable Carol A. Doyle**  
) **Hearing Date: February 4, 2004**  
) **Hearing Time: 11:00 a.m. (Central Time)**  
) **Objection Date: November 10, 2003**

**APPLICATION PURSUANT TO SECTIONS 328 AND 330 OF THE  
BANKRUPTCY CODE, BANKRUPTCY RULE 2016 AND LOCAL  
BANKRUPTCY RULE 607 OF FRIED, FRANK, HARRIS, SHRIVER &  
JACOBSON, CO-COUNSEL TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF THE HOLDING COMPANY  
DEBTORS, FOR FINAL ALLOWANCE OF COMPENSATION FOR  
PROFESSIONAL SERVICES RENDERED AND FOR  
REIMBURSEMENT OF EXPENSES INCURRED DURING THE  
PERIOD FROM JANUARY 3, 2003 THROUGH SEPTEMBER 9, 2003**

Pursuant to sections 328 and 330 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Local Rule 607 of the Bankruptcy Rules for the United States District Court and the United States Bankruptcy Court for the Northern District of Illinois (the "Local Bankruptcy Rules"), the Retention Order (as defined below), the Interim Compensation Order (as defined below), and the United States Trustee for the Northern District of Illinois, Eastern

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<sup>1</sup> The Debtors are the following entities: (i) Conseco, Inc., CIHC, Incorporated, CTIHC, Inc., Partners Health Group, Inc. (collectively, the "*Holding Company Debtors*"), (ii) Conseco Finance Corp., Conseco Finance Servicing Corp. (collectively, the "*CFC Debtors*"), and (iii) Conseco Finance Corp. - Alabama, Conseco Finance Credit Corp., Conseco Finance Consumer Discount Company, Conseco Finance Canada Holding Company, Conseco Finance Canada Company, Conseco Finance Loan Company, Rice Park Properties Corporation, Landmark Manufactured Housing, Inc., Conseco Finance Net Interest Margin Finance Corp. I, Conseco Finance Net Interest Margin Finance Corp. II, Green Tree Finance Corp. - Two, Conseco Agency of Nevada, Inc., Conseco Agency of New York, Inc., Green Tree Floorplan Funding Corp., Conseco Agency, Inc., Conseco Agency of Alabama, Inc., Conseco Agency of Kentucky, Inc., and Crum-Reed General Agency, Inc.

Division (the "UST") Fee Review Committee Billing Guidelines (the "UST Guidelines");<sup>2</sup> the law firm of Fried, Frank, Harris, Shriver & Jacobson ("Fried Frank"), counsel for the Official Committee of Unsecured Creditors of the Holding Company Debtors (the "Committee") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby submits this application (the "Application") for final allowance of (i) compensation for professional services rendered by Fried Frank on behalf of the Committee during the period from January 3, 2003 through September 9, 2003 (the "Fee Period") in the amount of \$6,030,988.00 (the "Fees"), and (ii) reimbursement of the actual and necessary expenses incurred during the Fee Period in the amount of \$554,848.06 (the "Expenses"). The Fee Period represents the period from the Committee's retention of Fried Frank through the Confirmation Date (as defined below).<sup>3</sup> In support of this Application, Fried Frank respectfully states as follows:

#### **Summary of the Chapter 11 Cases**

1. The Debtors' Chapter 11 Cases comprise the third largest chapter 11 bankruptcy in the history of corporate bankruptcies in the United States. In addition to the Holding Company Debtors' restructuring of approximately \$7 billion in long term debt obligations, the Debtors successfully sold off a substantial part of their business -- the finance company business -- for over \$1 billion in a bankruptcy court-approved auction process. The Debtors' Chapter 11 Cases included the filing of a complex plan of reorganization and six amended versions thereof, the active involvement of state insurance regulators, a contested

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<sup>2</sup> Based on discussions with the UST, Fried Frank understands that the UST Guidelines represent areas of concern for the UST, and not blanket prohibitions. Accordingly, this Application (a) sets forth those instances where Fried Frank's billing and expense reimbursement practices vary from the UST Guidelines and (b) discusses why Fried Frank believes such variances are appropriate.

<sup>3</sup> Although every effort has been made to include all Fees and Expenses incurred in the Fee Period in this Application, some Fees and Expenses might not be included in this Application due to delays caused by accounting processing procedures. Fried Frank reserves the right to make further application to this Court for allowance of such Fees and Expenses.

confirmation hearing which resulted in a month-long trial between the Holding Company Debtors and one of their unsecured creditor constituencies, and an intricate settlement reached between the Committee and the Official Committee of Conseco Trust Originated Preferred Security Debt Holders (the "TOPrS Committee"). Yet, despite the myriad issues that arose in the Debtors' Chapter 11 Cases, and the complicated economic settlements that were reached between the Debtors' various creditor constituencies, the Holding Company Debtors emerged from chapter 11 bankruptcy protection in just over 9 months with a reduction of their long-term indebtedness of approximately \$5 billion and the resolution of many of the difficult business issues that pre-dated the Holding Company Debtors' bankruptcy filing. Fried Frank respectfully submits that its efforts in connection with the Debtors' Chapter 11 Cases were critical to these events.

2. Throughout the Debtors' Chapter 11 Cases, Fried Frank, on behalf of the Committee, worked to ensure maximum recovery for all creditors to the Holding Company Debtors' estates. In that regard, Fried Frank counseled the Committee with respect to all aspects of the Debtors' Chapter 11 Cases. Since prior to the Petition Date (as defined below), Fried Frank played an active role in the collective efforts of the Holding Company Debtors, the Committee and the various professionals to stabilize the Debtors' business and to develop and implement a feasible and consensual plan of reorganization. In that regard, Fried Frank negotiated, on behalf of the Committee, with the Holding Company Debtors and other significant parties in interest, the terms of the restructuring. Fried Frank also worked with the Holding Company Debtors to structure the Plan and the related transactions in a manner that would maximize value for all parties. All of these efforts required the expenditure of considerable time and effort on the part of a number of Fried Frank attorneys and para-professionals.

### Background

3. On December 17, 2002 (the "Petition Date"), each of the Holding Company Debtors filed its respective voluntary petition for relief under the Bankruptcy Code, and the cases were consolidated for administrative purposes. Throughout the Debtors' Chapter 11 Cases, the Debtors operated their businesses and managed their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On January 2, 2003, this Court entered the Amended Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Official Committee Members (the "Interim Compensation Order"). The Interim Compensation Order sets forth procedures for all professionals in the Debtors' Chapter 11 Cases to seek interim compensation for services performed and reimbursement of expenses incurred.

5. On January 3, 2003, the UST appointed the members of the Committee at the Committee formation meeting. On that date, the Committee proceeded to retain, subject to Bankruptcy Court approval, Fried Frank with Mayer Brown Rowe & Maw ("Mayer Brown") as its co-counsel, and Houlihan Lokey Howard & Zukin and Greenhill & Co., LLC as its financial advisors. By this Court's Order dated February 12, 2003 (the "Retention Order," a copy of which is attached to this Application as Exhibit A), the Committee was authorized to retain Fried Frank as its counsel, effective as of January 3, 2003, to represent the Committee with respect to the Debtors' Chapter 11 Cases and all related matters. The Retention Order authorizes the Holding Company Debtors to compensate Fried Frank at Fried Frank's hourly rates charged for services of this type and to reimburse Fried Frank for actual and necessary out-of-pocket

expenses incurred, subject to application to this Court in accordance with the Bankruptcy Code, the Bankruptcy Rules, all applicable Local Bankruptcy Rules, and Orders of this Court.

6. On January 31, 2003, the Holding Company Debtors filed their Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan") with this Court. The Debtors have subsequently filed six amended versions of the Plan. On September 9, 2003 (the "Confirmation Date"), this Court confirmed the sixth amended version of the Plan.

**Fried Frank's Monthly and Quarterly Fee Applications**

7. During the Debtors' Chapter 11 Cases, in accordance with the Interim Compensation Order, Fried Frank filed the following monthly applications (the "Monthly Fee Applications")<sup>4</sup> requesting payment for 90% of Fried Frank's Fees and 100% of its Expenses incurred in each monthly period:

- i. On April 2, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$914,088.60 (90% of \$1,015,654.00) and Expenses in the amount of \$19,243.89 incurred during the month of January (the "First Monthly Fee Application").
- ii. On May 12, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$723,737.70 (90% of \$804,153.00) and Expenses in the amount of \$39,123.83 incurred during the month of February (the "Second Monthly Fee Application").
- iii. On June 23, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$881,446.50 (90% of \$979,385.00) and Expenses in the amount of \$139,366.11 incurred during the month of March (the "Third Monthly Fee Application").

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<sup>4</sup> The Monthly Fee Applications are attached to this Application as Exhibits B through I.

- iv. On June 30, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$672,479.10 (90% of \$747,199.00) and Expenses in the amount of \$115,239.53 incurred during the month of April (the "Fourth Monthly Fee Application").
- v. On June 30, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$825,804.00 (90% of \$917,560.00) and Expenses in the amount of \$87,578.95 incurred during the month of May (the "Fifth Monthly Fee Application").
- vi. On September 18, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$531,057.15 (90% of \$590,063.50) and Expenses in the amount of \$65,939.30 incurred during the month of June (the "Sixth Monthly Fee Application").
- vii. On September 18, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$476,506.80 (90% of \$529,452.00) and Expenses in the amount of \$57,520.83 incurred during the month of July (the "Seventh Monthly Fee Application").
- viii. On October 9, 2003, Fried Frank submitted an application to this Court for interim compensation for Fees in the amount of \$402,769.35 (90% of \$447,521.50) and Expenses in the amount of \$30,835.62 incurred during the month of August through the Confirmation Date (the "Eighth Monthly Fee Application").

8. As no objections were filed with respect to the Monthly Fee Applications, Fried Frank filed seven separate certificates of no objection to the First, Second, Third, Fourth, Fifth, Sixth and Seventh Monthly Fee Applications.<sup>5</sup> In accordance with the Interim Compensation Order, Fried Frank has received payment from the Debtors for interim compensation of 90% of its Fees in the amount of \$4,017,555.90, and 100% of its Expenses in the amount of \$400,552.31, requested in Fried Frank's First, Second, Third, Fourth, and Fifth

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<sup>5</sup> As the twenty day period for objecting to Fried Frank's Eighth Monthly Fee Application has not yet passed, Fried Frank has not yet filed a certificate of no objection with regard to the Eighth Monthly Fee Application.

Monthly Fee Applications. By this Application, Fried Frank seeks allowance of 100% of its Fees and Expenses incurred during the entire Fee Period for these Chapter 11 Cases.

9. Additionally, on August 15, 2003, Fried Frank submitted a quarterly fee application (the "Quarterly Fee Application") for interim allowance of Fried Frank's Fees and Expenses incurred in the months for which monthly fee applications were filed between April 1, 2003 and June 30, 2003. As no objections to the Quarterly Fee Application were filed, Fried Frank filed a certificate of no objection on October 3, 2003.

#### **Summary of Services Rendered**

10. Set forth below is a description of the services rendered by Fried Frank during the Fee Period. Fried Frank believes that its services were rendered in a highly efficient manner, by attorneys and para-professionals with high levels of skill in the areas for which they rendered services. The attorneys and para-professionals of Fried Frank maintain daily detailed records of their time concurrently with the rendition of professional services. To the extent possible, each and every conference, telephone conversation, negotiating session, letter, memorandum, factual investigation, drafting activity and research project that occupied the time of a Fried Frank professional is set forth in such time records. Accordingly, the following is intended to serve as a summary description of the principal professional services Fried Frank rendered, and to highlight the benefits that were thereby conferred upon the Committee.

#### **Reasonable and Necessary Services Rendered by Fried Frank Categorized by Subject Matter**

11. The professional services that Fried Frank rendered during the Fee Period are grouped into the numbered and titled categories of the subject matters (the "Subject Matters") described in Paragraphs 12 through 21.<sup>6</sup>

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<sup>6</sup> There is some overlap between certain matters and accordingly, time spent with respect to certain matters may be found in multiple Subject Matters.



12. Matter 3: Employment Matters

As part of the Holding Company Debtors' restructuring, the Committee engaged in a thorough process with the Holding Company Debtors to ensure that the compensation arrangements for the officers and other employees who would be leading reorganized Conseco after its emergence from bankruptcy protection were appropriate and structured in the best interests of all parties. In this regard, Fried Frank spent numerous hours during the Fee Period negotiating, preparing, and reviewing all key executive employment agreements, as well as discussing, analyzing, and reviewing all matters relating to the Senior Key Employee Retention Program. In order to gain Bankruptcy Court approval of these agreements, Fried Frank reviewed any and all necessary pleadings and assisted the Debtors with related court documents. Fried Frank also spent time negotiating and preparing separation agreements (and any related pleadings) for those individuals that the Holding Company Debtors, with the Committee's input, decided would not remain with the Company on a post-emergence basis. Fried Frank also spent significant time working with the Holding Company Debtors and Gary Wendt to reach a settlement following the consensual resolution of claims between Mr. Wendt and the Holding Company Debtors, which brought closure to the various issues involving Mr. Wendt and allowed the new company's management to focus on the performance of reorganized Conseco. Additionally, the settlement with Mr. Wendt allows reorganized Conseco to reduce certain go-forward payments that are claimed by Mr. Wendt and resolves certain pre-petition claims asserted against the Debtors by Mr. Wendt.

The Plan provided that the new board of directors of reorganized Conseco would be selected by the Committee. In that regard, Fried Frank worked extensively with Committee members, Korn/Ferry International (an outside search firm jointly retained by the Committee and

the Holding Company Debtors to assist in locating, interviewing and selecting candidates for reorganized Consec's new board of directors), and Kroll Associates Inc. (an outside search firm jointly retained by the Committee and the Holding Company Debtors to conduct background checks on a slate of qualified and promising candidates), to select the best directors available for reorganized Consec. Finally, with regard to the Director and Officer Loan Repricing Program contained in the Plan, Fried Frank spent numerous hours discussing, reviewing, and analyzing this program, as well as reviewing the documentation of this program as set forth in the Plan.

13. Matter 4: Tax Planning

In formulating the Debtors' restructuring, the Committee took an active role in working with the Debtors toward the successful implementation of a tax planning strategy that would maximize value for the restructured entity. The tax planning process was extensive and required significant time, analysis and discussion. In that regard, Fried Frank attorneys, especially those specializing in the area of tax planning, reviewed, analyzed, discussed, and researched the tax issues related to the Debtors' restructuring and tax planning, and the implications thereof. The tax issues in the Debtors' Chapter 11 Cases were complicated by the overlay of tax regulations applicable to insurance companies, the fact that a significant divestiture (i.e., the sale of substantially all of the assets of the CFC Debtors) took place during the Chapter 11 Cases, and the restructuring of CIHC as a life insurance company. Fried Frank professionals worked with the Holding Company Debtors to formulate and implement the tax planning, including reviewing and revising the tax-related aspects of the Plan and related disclosure statement (the "Disclosure Statement"). Fried Frank spent numerous hours reviewing, discussing, and analyzing the various tax-related pleadings filed in the Debtors' Chapter 11 Cases and the tax implications of various CFC transactions. Finally, Fried Frank tax

professionals reviewed, analyzed, discussed, and researched the terms of the economic settlement with the CFC Debtors.

14. Matter 5: Plan and Disclosure Statement

The Committee and Fried Frank worked closely with the Holding Company Debtors with respect to negotiating and drafting the terms of each version of the Plan, beginning with their collective efforts leading up to the Holding Company Debtors' filing of the first Plan and Disclosure Statement on January 31, 2003. The Holding Company Debtors' Disclosure Statement for the second amended Plan was approved by this Court on March 18, 2003. The Committee worked with the Holding Company Debtors to file six amended versions of the Plan (each of which was meant to resolve or address outstanding issues or disputes between various parties). Ultimately, the sixth amended version of the Plan was confirmed. Throughout the entire process, the Committee and Fried Frank played an active role in moving the Plan towards its ultimate confirmation.

Fried Frank spent numerous hours reviewing, analyzing, discussing, negotiating, and documenting the numerous drafts of the Plan and Disclosure Statement, including priority, classification, distribution, release, and indemnity issues. In that regard, Fried Frank played a major role in creating the various complicated formulas that govern the distributions in the Plan, which required the consideration of the various intercreditor agreements. Fried Frank also analyzed claims filed against the Holding Company Debtors and reviewed, analyzed and discussed claims cap issues with the Holding Company Debtors. With regard to the Plan Supplement, Fried Frank professionals negotiated, on behalf of the Committee, the various Plan related documents that were filed as part of the supplement to the Plan, including, among others, the New CNC Credit Facility, the New Warrant Agreement, the Registration Rights Agreement

and related corporate documents. Fried Frank also spent time researching and addressing various securities law issues related to the distributions under the Plan and the holders of claims.

Finally, Fried Frank participated in negotiations with respect to the numerous settlements and compromises embodied in the Plan. For example, Fried Frank expended significant time and effort working with the Holding Company Debtors to reach a settlement with the CFC Debtors that was an important part of the overall restructuring. Fried Frank also worked with its co-counsel, Mayer Brown, through numerous iterations of the release and indemnification provisions contained in the Plan to finally achieve provisions that were acceptable to all parties. Fried Frank also spent significant time on the Committee's efforts to reach a settlement with the TOPrS Committee. Fried Frank worked extensively with the counsel to the Holding Company Debtors and the TOPrS Committee to structure and implement the settlement in a manner that was acceptable to all parties. Fried Frank also reviewed, analyzed, discussed, and researched the pleadings, motions, and briefs with respect to the settlement and ultimate Plan confirmation.

15. Matter 6: CFC

As stated above, during the Debtors' Chapter 11 Cases, the Debtors successfully closed the sale of their finance company business for a total of approximately \$1 billion to two separate buyers through a section 363 Bankruptcy Court-approved sale process. Fried Frank, in its representation of the Committee, closely monitored the CFC sale process and the CFC Debtors' corresponding plan confirmation process to the extent they related to, or impacted the Holding Company Debtors' bankruptcy cases. Accordingly, this Subject Matter includes time spent reviewing and discussing issues related to the sale of the CFC Debtors, including analyzing

the asset purchase agreement and related agreements, reviewing bids and bidding procedures for the purchase of the CFC Debtors' assets, and attending the sale hearing.

Simultaneously with their sale process, the CFC Debtors received bankruptcy court approval of their disclosure statement and confirmed their Sixth Amended Joint Liquidating Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code. This Subject Matter includes the time Fried Frank attorneys spent reviewing and negotiating the terms of the plan and disclosure statement filed by the CFC Debtors, analyzing objections thereto that affected the Holding Company Debtors, and advising the Committee on the status of the CFC Debtors' confirmation hearing. This Subject Matter also includes time spent reviewing and analyzing the pleadings filed in the CFC Debtors' bankruptcy cases and reviewing, and discussing issues that related to the Holding Company Debtors.

Finally, this Subject Matter includes the considerable time spent by Fried Frank attorneys with respect to the review of possible intercompany claims between the Holding Company Debtors and the CFC Debtors and the negotiation, documentation and implementation of the intercompany settlement of claims between the Holding Company Debtors and the CFC Debtors. The settlement, which is a critical component of the plans of reorganization of both the Holding Company Debtors and CFC Debtors, was reached as a result of lengthy negotiations between the Holding Company Debtors, the CFC Debtors, the Committee, and the Official Committee of Unsecured Creditors of the CFC Debtors.

16. Matter 7: Debtor In Possession Financing

At the outset of these Chapter 11 Cases, the CFC Debtors sought and gained court approval of two different forms of debtor in possession ("DIP") financing. Because these DIP financings impacted the Holding Company Debtors, Fried Frank studied the documents

underlying these financings. This Subject Matter includes time spent analyzing the various motions and other pleadings filed by the CFC Debtors to gain court approval of their DIP financing, as well as reviewing the Court's Order regarding the CFC Debtors' DIP financing and the various amendments and modifications that were made thereto. This Subject Matter also includes time spent attending related hearings and meetings.

17. Matter 8: General Official Committee Matters

As part of Fried Frank's representation of the Committee, Fried Frank undertook to stay in close contact with every Committee member, keep them fully updated as to all developments in the Debtors' Chapter 11 Cases, and monitor their comments and answer their questions with regard to new issues that arose. In that regard, this Subject Matter describes time spent by Fried Frank communicating with the Committee and its individual members, responding to their questions and providing them with updates regarding the Debtors' Chapter 11 Cases. Additionally, the Committee scheduled meetings both among itself, and with the Holding Company Debtors and other constituencies as needed. As such, this Subject Matter includes time spent preparing for and attending such general meetings with Committee members, financial advisors, counsel to various parties, and other relevant parties regarding the Debtors' Chapter 11 Cases. Additionally, this Subject Matter describes time spent reviewing and discussing general issues related to the Company's restructuring that do not fall into the more specific categories set forth in this Application. Finally, this Subject Matter includes time spent preparing, reviewing and revising the Committee's joint retention application for Fried Frank and Mayer Brown, and compiling relevant information to be included therein.

18. Matter 9: Litigation Matters

As noted above, these Chapter 11 Cases included a lengthy confirmation hearing resulting from the TOPrS Committee's objections to Plan confirmation. In that regard, the TOPrS Committee took extensive discovery of the Holding Company Debtors, who ultimately produced over 20,000 pages of documents, including depositions of approximately fifteen individuals in five states. Fried Frank attorneys spent numerous hours in activities related to the TOPrS Committee's litigation, including reviewing and analyzing the vast documentation produced by the Holding Company Debtors in response to the TOPrS Committee's subpoenas, attending the depositions taken by the TOPrS Committee, reviewing the pertinent information that arose from such depositions and reporting to Committee members. Fried Frank also took an active role in defending the discovery subpoena sent by the TOPrS Committee to the Committee, including researching, analyzing, discussing, and drafting the Committee's motion to quash such subpoenas, participating in various court hearings, and coordinating and producing a limited number of responsive documents.

This Subject Matter also includes time spent preparing for and participating in various Bankruptcy Court hearings including with respect to the month-long confirmation hearing. Fried Frank assisted the Debtors with respect to the strategy relating to the various objections to the Plan. In addition, Fried Frank participated in the confirmation hearing, updated and advised the Committee, and ultimately negotiated and analyzed the economic settlement between the Holding Company Debtors, the Committee, and the TOPrS Committee.

As with any large Chapter 11 case, the Holding Company Debtors and other interested parties in these Cases filed numerous pleadings, motions, and briefs. In that regard, this Subject Matter includes time spent reviewing, analyzing, discussing, and responding to

various pleadings and other Bankruptcy Court filings related to the Holding Company Debtors' restructuring. In addition, this Subject Matter includes time spent reviewing and preparing pleadings regarding the Holding Company Debtors' proceedings concerning the GM Building, which was the subject of a critical arbitration and subsequent settlement, and monitoring related Bankruptcy Court hearings. Finally, this Subject Matter includes time spent reviewing, analyzing, and discussing the pleadings filed in connection with the estimation of certain claims filed against the Holding Company Debtors, as well as monitoring and participating in the related estimation hearings. The level of claims was a significant issue in the restructuring because the claims had to be below certain levels in order for the Plan to become effective.

19. Matter 10: Communications with Non-Committee Creditors

As Committee counsel in the Debtors' Chapter 11 Cases, it has been necessary for Fried Frank to communicate with unsecured creditors that are not members of the Committee that had questions or comments with regard to the Plan and/or the Holding Company Debtors' restructuring process in general. Accordingly, this Subject Matter includes time spent discussing and responding to inquires regarding the Holding Company Debtors' restructuring status with various creditors that are not members of the Committee. In that regard, Fried Frank spent several hours with various creditors discussing the terms, conditions, and process relating to the settlement reached with the TOPrS Committee.

20. Matter 11: Regulatory Matters

As noted above, the Holding Company Debtors are holding companies for one of the largest groups of life and health insurance companies in the United States. Consequently, state insurance regulators took an active role in the Holding Company Debtors' restructuring, closely monitoring the reorganization documents, and working with the Holding Company



Debtors and the Committee to ensure a strong and viable reorganized Conseco. As such, Fried Frank attorneys worked with the state insurance regulators to address their concerns. This Subject Matter includes time spent researching, analyzing, and addressing the various insurance and other regulatory and rating issues that arose from time to time. Obtaining certain regulatory approvals was a condition to the confirmation and consummation of the Plan, and was a time intensive process that required numerous meetings and filings with multiple regulatory authorities. In that regard, Fried Frank also spent significant time preparing, reviewing and communicating with various regulatory counsel, with respect to certain required regulatory filings and approvals. The regulatory process was, at times, very time consuming and involved.

This Subject Matter also includes time spent meeting, communicating and coordinating with the state insurance regulators, Korn/Ferry International (an outside search firm jointly retained by the Committee and the Holding Company Debtors to assist in locating, interviewing and selecting candidates for reorganized Conseco's new board of directors), and Kroll Associates Inc. (an outside search firm jointly retained by the Committee and the Holding Company Debtors to conduct background checks on a slate of qualified and promising candidates). Additionally, Fried Frank participated in weekly conference calls with respect to insurance subsidiary and regulatory issues with Conseco, and provided updates to the Committee with respect to these issues.

21. Matter 12: Fee Applications

This Subject Matter includes time spent preparing, revising, reviewing, and filing the various Monthly Fee Applications and the quarterly fee application submitted to this Court for Fried Frank's fees and expenses associated with these Chapter 11 Cases. This Subject Matter also includes time spent reviewing and discussing the proposed UST Guidelines.

### Applicable Authority

22. In awarding compensation pursuant to section 328 of the Bankruptcy Code to counsel for an official creditors' committee, this Court must take into account the reasonableness of the terms and conditions of employment. Section 328(a) of the Bankruptcy Code provides in pertinent part:

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. § 328(a).

23. In awarding compensation pursuant to section 330 of the Bankruptcy Code to counsel for an official creditors' committee, this Court must take into account the cost of comparable non-bankruptcy services, among other factors. Section 330(a) of the Bankruptcy Code provides in pertinent part:

(1) ...[T]he court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(...)

(3) (A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including —

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a).

24. Fried Frank submits that the terms and conditions of its employment by the Committee with respect to the Debtors' Chapter 11 Cases are reasonable. If these cases were not under the Bankruptcy Code, Fried Frank would charge the Debtors, and expect to receive on a current basis, an amount at least equal to, if not more than, the amounts requested in this Application. Further, Fried Frank has demonstrated by this Application that the work it performed on behalf of the Committee, and Fried Frank's Fees and Expenses, were necessary, reasonable and timely performed in light of the complexity and size of the Debtors' Chapter 11 Cases, the nature of the issues encountered, and the issues resolved. Therefore, Fried Frank believes that the results obtained in the Chapter 11 Cases more than justify the Fees and Expenses requested in this Application.

#### **Professional Services Rendered**

25. Subject to this Court's approval, Fried Frank charged the Committee for its legal services on an hourly basis in accordance with its ordinary and customary rates for Bankruptcy Court authorized engagements in effect on the date the services are rendered, and

submits that such rates are reasonable.<sup>7</sup> In the normal course of business, Fried Frank revises its hourly rates from time to time. Fried Frank's hourly rates for professional services rendered by bankruptcy and restructuring partners, "of counsel," and "special counsel" in non-Bankruptcy Court authorized and approved engagements are higher than the hourly rates charged by such professionals in connection with Bankruptcy Code section 1103 engagements. The hourly rates for partners, "of counsel," and "special counsel" who are not bankruptcy and restructuring professionals are not so adjusted. Fried Frank's bankruptcy and restructuring associates and legal assistants have one hourly rate for all engagements. Because Fried Frank's fees: (a) are based on hourly rates that correspond to the degree of effort expended on the Committee's behalf, and (b) are Fried Frank's usual and customary rates for services of this nature, Fried Frank believes that these rates are reasonable.

26. Often times it was necessary for more than one Fried Frank professional to attend a hearing, meeting, or conference call. Fried Frank made every effort to ensure that each and every individual who attended such activity was necessary and provided a benefit to the estate. Fried Frank senior professionals who attended such sessions did not merely passively supervise the junior professionals' work, nor did junior professionals bill the estate for time dedicated to observing a senior professionals' review of the junior associates' work product. While Fried Frank does not believe that the amount of time billed in this Application for intra-office conferences, "meet and confer time," multiple attendees at hearings, meetings, depositions, or conferences is more than 5% of Fried Frank's fees contained in this Application,

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<sup>7</sup> Fried Frank has only billed the estate for non-working travel time at one-half the professional's hourly rate, pursuant to the USF Guidelines. In light of the fact that a majority of the depositions and all of the court hearings in these Chapter 11 Cases have taken place outside of New York City, this discounting of the professional's hourly rate has resulted in a reduction of Fried Frank's fees over the entire Fee Period in the amount of \$19,626.50.

it is Fried Frank's position that to the extent such time does exceed 5%, it was beneficial to the estate and should be reimbursed in full. Of course, Fried Frank did not bill the estate for professional or para-professional time spent carrying out clerical tasks, such as scheduling, making travel arrangements, or faxing.

27. Fried Frank respectfully submits that the services rendered on behalf of the Committee were an important part of the Debtors' restructuring efforts and that the fees related thereto are reasonable in all respects.

#### Actual and Necessary Expenses

28. Fried Frank customarily charges its clients for all ancillary services incurred, including photocopying charges, long distance telephone calls, conference call charges, mobile telephone long distance charges, facsimile transmissions, messengers, courier mail, computer and data bank time, word processing, secretarial overtime and temporary employees, overtime meals, overtime and late night transportation, travel,<sup>8</sup> lodging,<sup>9</sup> meal charges for business meetings, printing, transcripts, filing fees, document retrieval, and similar items.<sup>10</sup> Subject to this Court's approval, Fried Frank requests reimbursement of all such charges incurred on behalf of the Committee.

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<sup>8</sup> Pursuant to the directive of the UST announced at the Committee Formation Meeting and the UST Guidelines, charges for air travel were charged at the coach class rate on the day of travel. As such, these adjustments have led to Fried Frank reducing the Expenses requested by this Application by \$9,832.72. Although Fried Frank attorneys made every effort to book flights as far in advance as possible, often times it was not possible to make long-term arrangements given the constantly changing nature of court hearing and deposition dates.

<sup>9</sup> Pursuant to the directive of the UST announced at the Committee Formation Meeting and the UST Guidelines, charges for hotel accommodations were capped at \$250 per night in Chicago. These adjustments have led to Fried Frank reducing the Expenses requested by this Application by \$2,898.29.

<sup>10</sup> In accordance with the UST's Guidelines, Exhibit J contains an itemized list of fees for court reporters, experts, and other authorized outside services that were included in Fried Frank's Monthly Fee Applications.

29. The time constraints frequently imposed by the circumstances of these Chapter 11 Cases required Fried Frank attorneys and other employees to devote substantial amounts of time during evenings and weekends to providing professional services on the Committee's behalf. In virtually every instance, these extraordinary services were essential to meet deadlines imposed by the Court, the Bankruptcy Code, and at times, the necessities of the Debtors' businesses, the administration of the estates, or critical litigation. As a consequence, Fried Frank was required to incur overtime secretarial charges to discharge its professional responsibilities. Fried Frank attempts to reduce overtime secretarial charges and to limit them to necessary instances by encouraging its attorneys to use a secretarial "mini-center." If a secretary is not needed at the attorney's desk for the entire evening, the attorney is required to bring his or her work to a cluster of secretaries. The client is only charged for the word processing charges associated with the document, rather than charging the client for an evening of secretarial overtime, whether or not such secretary was used for the entire time. Similarly, overtime charges of administrative employees, such as research and document specialists, were incurred when necessary to discharge Fried Frank's professional responsibilities and provide the most cost-effective legal services to the Committee.

30. Fried Frank's attorneys and other employees who worked late into the evenings were reimbursed for their reasonable meal costs and their costs for transportation home. Such transportation costs were necessary expenses because it is Fried Frank's policy to ensure safe transportation for its attorneys and employees during the hours that public transportation cannot be deemed safe. In light of Fried Frank's location at the southern tip of Manhattan, it is often times very difficult to find a taxicab late in the evening, and as such, Fried Frank provided for its attorneys and employees to make use of a private car service. The cost of private car

rides, while sometimes greater than the cost of a taxicab ride, was a necessary and beneficial expense to the estate, as it allowed Fried Frank attorneys the ability to stay late in the evening hours to complete necessary tasks without the apprehension or worry about finding quick, reliable, and safe transportation home in the evening. It is Fried Frank's regular practice to charge its clients for these and other out-of-pocket expenses incurred during the rendition of professional services on the client's behalf.

31. Fried Frank charges: (a) \$0.12 per page for duplication and (b) \$1.25 per page for outgoing telecopier transmissions (plus related toll charges). Fried Frank does not charge its clients for incoming telecopier transmissions. Fried Frank has negotiated a discounted rate for Westlaw computer assisted legal research, which is approximately \$125/hour of online use of the standard Westlaw databases. Computer assisted legal research is used whenever the researcher determines that using Westlaw is more cost effective than using traditional (non-computer assisted legal research) techniques. In addition, because certain key parties to these Chapter 11 Cases were located outside of New York, Fried Frank incurred long distance telephone charges, and when necessary, overnight delivery charges. Fried Frank made every effort to minimize such disbursements by using e-mail and facsimile when possible. The expenses incurred in the rendition of professional services were necessary, reasonable, and justified under the circumstances and enabled Fried Frank to serve the needs of the Committee to the benefit of all creditors.

#### Conclusion

32. For the reasons set forth above, Fried Frank respectfully submits that the professional services rendered and disbursements incurred and posted on behalf of the Committee were of substantial benefit to the Committee, other creditors, and the Debtors. Fried

Frank further submits that it provided services in an economical and efficient manner.

Accordingly, Fried Frank respectfully requests that the Court grant the full relief requested in this Application.

WHEREFORE, FRIED FRANK requests entry of the proposed Order attached as Exhibit K granting final approval and allowance of its Fees and Expenses in the total amount of \$6,585,836.06 consisting of (a) \$6,030,988.00 for reasonable and necessary professional services rendered by Fried Frank (100% of its Fees during the Fee Period), and (b) \$554,848.06 for actual and necessary Expenses (100% of its Expenses incurred during the Fee Period less the reductions required by the UST Guidelines) incurred on behalf of the Committee during the Debtors' Chapter 11 Cases. Fried Frank further requests that the Debtors be directed to disburse to Fried Frank the unpaid Fees and Expenses allowed and approved by this Court.

Dated: October 9, 2003  
New York, NY

Respectfully submitted,  
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

*Bonnie Steingart by APM w/ permission*

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