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**HEARING DATE: 3/14/01**  
**AT: 10:00 a.m.**

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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In re	:	
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CONTIFINANCIAL CORPORATION, <i>et al.</i> ,	:	Chapter 11
	:	Case No. 00 B 12184 [AJG]
Debtors.	:	(Jointly Administered)
	:	
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**APPLICATION OF TOGUT, SEGAL & SEGAL LLP, AS  
 COUNSEL FOR CONTIMORTGAGE CORPORATION  
 AND AFFILIATES, FOR SECOND INTERIM AND FINAL  
 ALLOWANCE OF COMPENSATION FOR PRE-CONFIRMATION  
 SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES**

TO THE HONORABLE ARTHUR J. GONZALEZ,  
 UNITED STATES BANKRUPTCY JUDGE:

Togut, Segal & Segal LLP (“TS&S”), as bankruptcy counsel for  
 ContiMortgage Corporation (“CMC”) and certain of the above-referenced debtors  
 (collectively, the “CMC Debtors”),<sup>1</sup> as and for its application for second interim and final

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<sup>1</sup> TS&S represents the following entities as general bankruptcy counsel: ContiMortgage Corporation, California Lending Group, Inc., ZTS Corp., ContiInsurance Agency, Inc., Crystal Mortgage Company, Inc., Lenders M.D. Inc., Resource One Consumer Discount Company, Inc., Resource One Consumer Discount Company of Minnesota, Inc., Resource One of Delaware Valley, Inc., Resource One Mortgage of Oxford Valley, Inc., ResourceCorp Financial, Inc., Royal Mortgage Partners, L.P. and Fidelity Mortgage Decisions Corp.

allowance of compensation for professional services rendered, and for reimbursement of expenses incurred, up to the successful confirmation of the Chapter 11 plan herein (the “Application”), respectfully shows this Honorable Court that:

**RELIEF REQUESTED**

**A. Second Interim Period**

1. This Application is made by TS&S pursuant to sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for allowance of interim compensation for services rendered to the CMC Debtors in the aggregate amount of \$284,144.50 and for reimbursement of expenses incurred in connection with the rendition of such services in the aggregate amount of \$12,430.19 for the three and one-half month period September 1, 2000 through December 19, 2000 (the “Second Interim Period”).

2. During the Second Interim Period, TS&S attorneys and paraprofessionals expended a total of 801.3 hours for which compensation is requested. A schedule setting forth the number of hours expended by the partners, associates and paraprofessionals of TS&S, their respective hourly rates and the year in which each attorney was admitted to practice is attached hereto as Exhibit “1”. A schedule specifying the type of expenses for which TS&S is seeking reimbursement and the total amount for each such category is attached hereto as Exhibit “2.”

3. TS&S maintains computerized records of the daily time slips completed by all TS&S attorneys and paraprofessionals. Preceding the time entries is a chart listing the names, billing rates and time spent by each of the attorneys and

paraprofessionals rendering services on behalf of the CMC Debtors. In support of this Application, copies of these computerized records, together with a computer generated detailed itemization of the expenses incurred by TS&S for which reimbursement is sought, have been furnished to the CMC Debtors, the Court, the United States Trustee and counsel for each of the Unofficial Committees (as defined herein).<sup>2</sup>

4. By Order dated October 26, 2000 (the “First Interim Fee Order”), this Court previously allowed interim compensation and reimbursement of expenses on account of professional services rendered by TS&S on behalf of the CMC Debtors during the period May 17, 2000 through August 31, 2000 (the “First Interim Period”) in the amount of \$197,498 and \$7,827.09, respectively. Other than sums awarded pursuant to the First Interim Fee Order and the payments described below made in accordance with the terms of the Administrative Order establishing procedures for interim compensation and reimbursement of professionals dated June 21, 2000 (the “Administrative Fee Order”), TS&S has not received payment of any compensation or reimbursement of expenses in this Chapter 11 case.

5. Pursuant to the terms of the Administrative Fee Order, TS&S submitted four monthly invoices seeking compensation for services rendered and reimbursement of expenses incurred during the Second Interim Period: (i) for the period September 1, 2000 through September 30, 2000 in the amounts of \$52,241.50 for fees and \$1,354.71 for expenses (the “Fourth Invoice”); (ii) for the period October 1, 2000 through October 31, 2000 in the amounts of \$74,304 for fees and \$1,971.04 for expenses (the “Fifth Invoice”); (iii) for the period November 1, 2000 through November 30, 2000

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<sup>2</sup> Due to their voluminous nature, the computerized records are not being filed with the Court but are available from the undersigned upon request.

in the amounts of \$89,159.50 for fees and \$3,468.58 for expenses (the “Sixth Invoice”); and (iv) for the period December 1, 2000 through December 19, 2000 in the amounts of \$68,439.50 for fees and \$5,635.86 for expenses (the “Seventh Invoice”).

6. In accordance with the terms of the Administrative Fee Order, TS&S was paid: (i) \$34,768.40 of its fees (80% of the amount invoiced, less \$8,781<sup>3</sup>) and \$1,354.71 for reimbursement of its expenses relating to the Fourth Invoice; (ii) \$59,443.20 of its fees (80% of the amount invoiced) and \$1,971.04 for reimbursement of expenses relating to the Fifth Invoice; and (iii) \$54,751.60 of its fees (80% of the amount invoiced) and \$5,635.86 for reimbursement of expenses relating to the Sixth Invoice. As of the date hereof, TS&S has not received any payments on its Seventh Invoice.

7. As set forth in the Certification of Albert Togut, the senior member of TS&S, attached hereto as Exhibit “3,” all of the services for which compensation is sought were rendered for and on behalf of the CMC Debtors in connection with their Chapter 11 cases.

**B. Final Allowance of Compensation and Expenses**

8. In addition to seeking approval of the compensation earned and expenses incurred during the Second Interim Period, TS&S presently seeks a final allowance of compensation for professional services rendered on behalf of the CMC Debtors during the period May 17, 2000 through and including the Second Interim Period in the aggregate amount of \$531,017. This aggregate amount consists of

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<sup>3</sup> The Unofficial Noteholders Committee (as defined below) objected to fees sought by TS&S in the Fourth Invoice aggregating \$8,781. As a result, such fees have not yet been paid.

(i) \$246,872.50 for professional services rendered on behalf of the CMC Debtors during the First Interim Period (of which \$197,498 was previously allowed pursuant to the First Interim Fee Order), and (ii) \$284,144.50 for professional services rendered during the Second Interim Period.

9. Additionally, TS&S requests a final allowance of reimbursement of its actual and necessary disbursements incurred during the period May 17, 2000 through and including the Second Interim Period of \$20,257.28. This amount consists of (i) \$7,827.09 of disbursements previously awarded to TS&S pursuant to the First Interim Fee Order, and (ii) \$12,430.19 for actual and necessary disbursements incurred by TS&S during the Second Interim Period.

10. For purposes of this Application, TS&S incorporates the first interim fee application, dated October 2, 2000, together with the exhibits and supplement thereto (the "First Fee Application"), as though set forth in full herein.

## **BACKGROUND**

### **A. Introduction**

11. On May 17, 2000, the CMC Debtors, together with ContiFinancial Corporation ("CFN") and certain other affiliated entities (collectively, the "CFN Entities" and, together with the CMC Entities, the "Debtors") filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.<sup>4</sup> The Debtors' cases are being jointly administered for procedural purposes only. The Debtors are operating their businesses

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<sup>4</sup> Royal Mortgage Partners, L.P. ("Royal") and Fidelity Mortgage Decisions Corporation ("Fidelity") filed their respective petitions with the Clerk of the Court on August 14, 2000. An order authorizing the joint administration of the Royal and Fidelity cases with the original cases was entered on August 15, 2000.

and managing their properties and assets as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors' Chapter 11 cases.

12. Prior to the Petition Date, two unofficial committees were formed by the Debtors' pre-petition bank group (the "Unofficial Bank Group Committee") and holders of certain notes issued by CFN prior to the Petition Date (the "Unofficial Noteholders Committee," and together with the Unofficial Bank Group Committee, the "Unofficial Committees"). The Unofficial Noteholders Committee has been represented by Akin Gump Strauss Hauer & Feld, L.L.P., and the Unofficial Bank Group Committee has been represented by Weil Gotshal & Manges LLP. Between them, the Unofficial Committees represent substantially all of the debt in these cases.

13. On May 24, 2000, the United States Trustee appointed an official committee of unsecured creditors ("Official Committee"), but upon request of its members, the United States Trustee disbanded the Official Committee on June 29, 2000. Following the disbandment of the Official Committee, the Unofficial Committees continue to function as they did prior to the Petition Date and continue to be represented by the same attorneys.

14. The Debtors were engaged in the consumer finance business by originating and servicing home equity loans. The Debtors originated, purchased, sold and serviced home equity loans, concentrating on lending to individuals whose borrowing needs were generally not being served by traditional financial institutions due to such individuals' impaired credit profiles and other factors. These loans were primarily for debt consolidation, home improvements, education or refinancing and are most often secured by first mortgages on one to four family residential properties.

15. On June 21, 2000, this Court entered an order authorizing the Debtors to sell their servicing business to Fairbanks Capital Corp. (“Fairbanks”), which sale was consummated on July 14, 2000. After unsuccessful efforts to consummate a sale of their remaining origination business lines, the Debtors determined to wind-down and terminate such remaining origination lines.

16. On September 13, 2000, the Debtors filed their initial joint plan of reorganization, together with a related disclosure statement. Amended plans and related disclosure statements were subsequently filed by the Debtors on November 7, 2000, November 9, 2000 and December 18, 2000.

17. By Order dated November 10, 2000, the Court approved the Debtors’ disclosure statement, dated November 9, 2000 (the “Disclosure Statement”), as containing “adequate information” as such term is defined under section 1125 of the Bankruptcy Code.

18. On December 18, 2000, the Debtors filed their third amended joint plan of reorganization (the “Joint Plan”). In accordance with a scheduling Order previously entered by the Court, a hearing on confirmation of the Joint Plan was held on December 19, 2000. At the conclusion of that hearing, the Court entered an Order confirming the Joint Plan (the “Confirmation Order”).

19. As contemplated by the Confirmation Order and Joint Plan, it is currently anticipated that the “Effective Date” and “Initial Distribution Date” shall each occur over the next several weeks.

## RETENTION OF TS&S

20. By Orders dated May 18, 2000 and July 19, 2000, the CMC Debtors were authorized to retain TS&S as their counsel on an interim and final basis, respectively (the "Retention Orders"). Copies of the Retention Orders are attached hereto as Exhibit "4."

21. In considering this Application, it should be noted that TS&S is a highly specialized "boutique"; its practice is currently limited, almost exclusively, to insolvency and bankruptcy matters pending in this Court. TS&S has considerable experience in representing Chapter 11 debtors, and has likewise acted in a professional capacity in hundreds of cases representing the interests of debtors, creditors' committees, secured creditors, and trustees.

22. Particularly relevant to this case is Applicant's extensive experience in representing Chapter 11 debtors, including: (i) Daewoo International (America) Corp., the U.S.-based trading arm for the Daewoo group of companies now undergoing the largest non-sovereign debt restructuring ever attempted with aggregate liabilities exceeding \$80 billion; (ii) Joan and David Helpert, Incorporated, the owner/operator of the Joan & David® luxury footwear and accessory retail chain with stores located worldwide; (iii) Rockefeller Center, which involved the restructuring of more than \$1.3 billion of debt, and the reorganization of entities owning and operating 12 historic land-marked buildings in the heart of Manhattan; (iv) the Olympia & York Tower B Company's World Financial Center, which involved the restructuring of more than \$1 billion of debt; (v) Fleetwood Litho & Letter Corporation, which involved the sale of substantially all of Fleetwood's assets for approximately \$30 million, and the confirmation of a liquidating plan within nine months after the commencement of that



case; and (vi) Mr. Goodbuys Corporation which involved a restructuring of over \$150 million of debt and which was the largest Chapter 11 reorganization proceeding in the Eastern District of New York when it was filed.

23. TS&S's experience in representing committees is also extensive. By way of example, TS&S represented the Official Employees' Committee in the Ames Department Stores Chapter 11 case in which a Chapter 11 Plan was confirmed involving a restructuring of more than \$1 billion. The firm's engagement, pursuant to Court Order, was to represent the interests of all of Ames' more than 56,000 employees. The Ames Employees' Committee was the first of its type ever appointed in New York.

24. TS&S was also counsel for the creditors' committee in *Finley, Kumble, et al.* which concerned the liquidation of the then fourth largest law firm in the United States with assets of more than \$75 million. A Chapter 11 plan has been confirmed and Albert Togut, the senior member of TS&S, is now the Trustee of the liquidating trust established under the plan. TS&S was also counsel to the creditors' committee in the law firm liquidation case of *Bower & Gardner*, and is presently counsel to Mr. Togut as the Chapter 11 plan administrator. TS&S was also counsel to the creditors' committee in the Chapter 11 law firm liquidation case of *Shea & Gould*, and is now counsel to Mr. Togut as the Chapter 11 plan administrator in that case.

25. Most recently, Mr. Togut was appointed as the Chapter 11 Trustee for the twelve partnership debtors in the jointly administered cases of *Kingston Square Associates, et al.*, which owned apartment complexes in Florida, New Jersey, Long Island, and New York City and which were the subject of secured claims of approximately \$400 million. TS&S represented the Trustee, and a Chapter 11 plan in those cases was confirmed and substantially consummated in the second half of 1999.

26. Mr. Togut has written and lectured on many topics under the former Bankruptcy Act and current Bankruptcy Code, and has been interviewed for newspaper articles and financial news radio and television programs. In the past several years, Mr. Togut has chaired the Plan Process Task Force of the Chapter 11 Business Bankruptcy Committee of the American Bar Association Section of Business Law, and has served on the prestigious Bankruptcy Committee of the Association of the Bar of the City of New York to which he has just been reappointed.

27. Scott E. Ratner, the attorney who, along with Mr. Togut, has provided most of the day-to-day services required by the CMC Debtors, has been practicing bankruptcy and corporate reorganization law since September, 1987, and became a member of the TS&S firm on January 1, 1999. Mr. Ratner received his A.B., magna cum laude, from Princeton University in 1984. In 1987, he received his J.D., magna cum laude, from the University of Pennsylvania Law School, where he was an editor of the University of Pennsylvania Law Review and was selected to be a member of the Order of the Coif, a national honor society for law school graduates.

28. The paraprofessionals employed by TS&S are all college graduates. Paraprofessionals are billed based upon their experience; recent graduates are billed at lower hourly rates than those with a year or more experience.

29. Due to the size, complexity, sophistication and exigency of these Chapter 11 cases, many of the professional services rendered by TS&S for the CMC Debtors were rendered by Messrs. Togut and Ratner. To the extent that less complicated work had to be performed requiring a lesser degree of experience and expertise, such services were rendered by associates and/or paraprofessionals employed by TS&S.

30. It is believed that the work encompassed by this Application for which compensation is sought was performed efficiently and at the lowest cost to the estates. The use of senior attorneys has enabled TS&S to bill far fewer hours than would ever have been possible if more junior people had been asked to perform the same professional services.

31. All of the work summarized in this Application was performed in such a manner as to insure minimal duplication of services in an effort to keep the administration expenses to these estates to a minimum.

**SUMMARY OF SERVICES RENDERED  
BY TS&S DURING THE CHAPTER 11 CASES**

32. The recent confirmation of the Joint Plan -- a mere seven months after the Petition Date -- represents the successful culmination of these large and complex Chapter 11 cases involving the restructuring of more than a billion dollars of indebtedness. The favorable results achieved are attributable, in significant part, to the highly expert and extensive legal services rendered by TS&S and other professional firms on behalf of the Debtors.

33. Rather than burden the Court with an overly detailed or lengthy recitation of each and every matter TS&S addressed during these Chapter 11 cases, the following is a summary description of the primary services rendered by TS&S during these cases which highlights the benefits conferred upon the CMC Debtors, their estates and creditors as a result of TS&S's efforts. All of the professional services rendered by TS&S on behalf of the CMC Debtors and their estates are set forth in the computerized time records maintained by TS&S, and the Court is respectfully referred to those records for the details of all of the work performed by Applicant.

34. TS&S has rendered extensive professional services on behalf of the CMC Debtors and their estates in fulfilling its professional responsibilities during the pendency of these Chapter 11 cases. These large and highly complex Chapter 11 cases have required thoughtful effort by the members, associates and paraprofessionals of TS&S. Whenever possible, potential disputes have been resolved without resort to the Court. Where necessary, TS&S has actively represented the CMC Debtors' interests before the Court.

35. Additionally, to the extent appropriate, TS&S has coordinated its efforts with Dewey Ballantine LLP ("Dewey"), as bankruptcy counsel to the CFN Debtors and special counsel to the CMC Debtors, to deal with the commonality of interests held among the Debtors in the Chapter 11 cases pending before this Court, and to avoid unnecessary duplication of effort. TS&S submits that it has achieved the foregoing in an efficient manner, always mindful of the costs to the CMC Debtors' estates.

**A. First Interim Period**

36. TS&S was required to render substantial professional services during the First Interim Period on a wide array of matters involving the commencement and prosecution of these Chapter 11 cases, including, without limitation:

**1. Chapter 11 Petitions, First-Day Orders  
And Commencement Of Cases Generally**

37. TS&S actively assisted in the preparation and filing of the Chapter 11 petitions commencing these cases on behalf of the CMC Debtors. In that connection, TS&S was required to engage in an intense due diligence process which

included the review and analysis of voluminous historical, business, financial and corporate documentation and data concerning the CMC Debtors. Additionally, TS&S professionals were required to confer extensively with representatives of the CMC Debtors and the CFN Debtors, and participated in numerous meetings and conferences with those representatives.

38. In addition to the Chapter 11 petitions and related exhibits, TS&S also assisted in the preparation and presentation to the Court, on behalf of the CMC Debtors, of various applications and related pleadings for “first-day” orders:

- authorizing the Debtors to maintain existing bank accounts and business forms;
- extending the Debtors’ time to file schedules of assets and liabilities and their statements of financial affairs;
- prohibiting utilities from altering or discontinuing service to the Debtors;
- authorizing the Debtors to pay pre-petition payroll and related employee benefits; and
- authorizing the Debtors to retain various professionals.

39. In connection with the commencement of their Chapter 11 cases, TS&S also assisted the CMC Debtors in fielding and responding to numerous inquiries from third parties. In that regard, TS&S participated in extensive correspondence, telephone conferences and/or meetings with the CMC Debtors’ personnel, outside professional advisors, creditors, the United States Trustee, and the Court concerning, among other things, the financial condition and business affairs of the CMC Debtors, and the administration of their Chapter 11 cases.

40. Shortly following the Petition Date, TS&S also assisted the CMC Debtors in preparing for the organizational meeting of creditors conducted by the United States Trustee and, along with the CMC Debtors, attended and participated in such meeting.

**2. Transition To Debtor-in-Possession Status**

41. During the First Interim Period, TS&S was also required to render significant services to the CMC Debtors in aiding their transition to debtor-in-possession status.

42. TS&S professionals engaged in extensive communications with representatives of the CMC Debtors concerning the duties and responsibilities of a debtor-in-possession and prepared written memoranda and guidelines for this purpose. As a consumer finance company with a complex business, the CMC Debtors also had numerous questions concerning their operations under Chapter 11 -- which inquiries TS&S professionals always attempted to respond to and answer in a timely and meaningful fashion.

43. During the First Interim Period, TS&S also worked extensively with representatives of the CMC Debtors to identify steps and measures that could be taken to facilitate both their transition to debtor-in-possession status and the administration of the Chapter 11 cases generally. In that connection, TS&S assisted Dewey in the preparation and filing of various pleadings with the Court, including applications for orders:

- limiting the notice required to be given by the Debtors in connection with certain bankruptcy matters;

- authorizing the Debtors to reject certain real property leases and extending the Debtors' time to assume or reject other leases;
- authorizing the Debtors to retain and compensate ordinary course professionals; and
- establishing certain procedures for the interim compensation of retained professionals by the Debtors' estates.

44. During the First Interim Period, TS&S also had primary responsibility for researching, drafting and obtaining Court approval on behalf of the CMC Debtors to:

- sell certain foreclosed properties in the ordinary course of business;
- pay certain prepetition employee claims in excess of \$4,300; and
- satisfy the prepetition incentive bonus claim of Hal Willard.

45. In each instance, TS&S worked closely with counsel to the Unofficial Committees to explain the nature of the relief being sought by the CMC Debtors and the reasons for same. The relief sought by the CMC Debtors was granted by the Court without opposition, obviating the need for contested hearings and further expense to the estates.

### 3. Claims Resolution

46. During the First Interim Period, TS&S also assisted the CMC Debtors in laying the foundation for the claims resolution process. Coordinating closely with Dewey and the Debtors' accountants, TS&S worked diligently to insure that the

schedules of assets and liabilities and statement of financial affairs for each of the CMC Debtors was completed and filed on a timely basis.

47. Following the completion and filing of the schedules and statement of financial affairs, TS&S, together with Dewey, sought and obtained on behalf of the Debtors an order establishing September 14, 2000 as the bar date for the filing of proofs of claim.

48. TS&S assisted Dewey in preparing the necessary application and forms of order and notice establishing a claims bar date. Upon the establishment of a bar date, TS&S actively coordinated with Donlin, Recano & Co. -- the Court appointed claims agent in these cases (the "Claims Agent") -- to insure that proper notice of the bar date was given to all of the CMC Debtors' creditors.

49. It was essential that the CMC Debtors establish a mechanism by which they could ascertain the universe of claims asserted against their estates for plan of reorganization development and claims resolution purposes. By seeking, obtaining and noticing the establishment of a claims bar date early in these Chapter 11 cases, TS&S was able to assist the CMC Debtors in furthering their goal of reorganizing under Chapter 11 as expeditiously as possible.

#### **4. Plan of Reorganization Matters**

50. The Debtors commenced their respective Chapter 11 cases with the objective of reorganizing as expeditiously as possible to best preserve and maximize the value of their financial assets available for distribution to creditors.

51. As a result, during the First Interim Period, TS&S was required to assist the CMC Debtors in developing and promulgating a Chapter 11 plan.



52. In that connection, TS&S engaged in extensive research and analyses of various factual and legal issues implicated by a Chapter 11 plan, particularly certain matters raised and/or threatened by the Unofficial Committees on behalf of the CFN Debtors -- including substantive consolidation issues and potential avoidance actions under Chapter 5 of the Bankruptcy Code.

53. During the First Interim Period, TS&S also reviewed and analyzed various drafts of a Chapter 11 plan for the Debtors and related documents, including a proposed disclosure statement.

54. TS&S also participated in extensive telephone conferences, correspondence and meetings concerning Chapter 11 plan issues with representatives of the CMC Debtors, as well as representatives of, and advisors to, the CFN Debtors and the Unofficial Committees.

**5. Other Matters Relating to Conduct of Chapter 11 Cases**

55. During the First Interim Period, TS&S was also required to devote attention, and render services pertaining, to a number of matters involving the conduct of the CMC Debtors' Chapter 11 cases, the operation of their businesses, and the treatment of certain creditors.

**(a) Matters Relating to Real Property Leases**

56. As of the Petition Date, the CMC Debtors were parties to numerous unexpired leases of real property. In that regard, TS&S, together with Dewey, was required to render various services on behalf of the CMC Debtors, including reviewing and assisting in the preparation of pleadings resulting in Orders entered by the Court

authorizing the Debtors' rejection of certain leases and extending the Debtors' time to assume or reject other leases, and approving a settlement of the landlord's claims respecting the leased Hatboro facility.

57. During the First Interim Period, TS&S had primary responsibility for negotiating and drafting a stipulation compromising and settling the lease rejection claims of Bellemead Development Corp., as the landlord for the premises located in Jacksonville, Florida formerly occupied by the CMC Debtors.

58. During the First Interim Period, TS&S also had primary responsibility for researching and drafting an objection on behalf of the CMC Debtors to a motion filed by Duke-Weeks Realty Corp. seeking to compel the CMC Debtors to assume or reject a real property lease for premises located in Nashville, Tennessee.

**(b) Peaks/Parker Settlement**

59. During the First Interim Period, TS&S obtained Court authorization for the CMC Debtors to compromise and settle two related prepetition state court lawsuits, known as the Peaks/Parker actions. The underlying complaints in these actions asserted that CMC and other mortgage lenders and third parties had participated in a wrongful scheme to sell homes to unsophisticated purchasers for inflated prices.

60. To obtain Court authorization for the CMC Debtors to settle this matter, TS&S reviewed and analyzed the various pleadings in the underlying state court actions and the proposed settlement documents. TS&S also researched, prepared and filed the requisite pleadings to obtain Court approval of the settlement on behalf of the CMC Debtors.

(c) **Associates First Capital**

61. During the First Interim Period, TS&S was also required to assist the CMC Debtors in their efforts to block a competitor, Associates First Capital, from wrongfully soliciting and/or hiring employees of the CMC Debtors in violation of a no solicitation agreement the parties had entered into prior to the Petition Date.

62. In that connection, TS&S researched and/or investigated various factual and legal issues concerning the competitor's solicitation activities and prepared an adversary complaint, order to show cause and other related pleadings seeking to enjoin the improper activities.

63. Ultimately, it was not necessary for the CMC Debtors to seek any relief from the Court concerning this matter. The competitor refrained from wrongfully soliciting and/or hiring employees of the CMC Debtors, and the Fairbanks sale was consummated and the transfer of the servicing business accomplished without interference. TS&S believes that its preparedness in this regard helped dissuade First Associates Capital from continuing to engage in wrongful conduct.

(d) **Automatic Stay Issues**

64. In connection with their servicing business, the CMC Debtors are defendants in various wrongful foreclosure, lender liability and related actions in courts around the country. Notwithstanding the pendency of these Chapter 11 cases, a number of borrowers either commenced and/or continued to prosecute such actions against the CMC Debtors.

65. Accordingly, during the First Interim Period, TS&S worked very closely with the CMC Debtors and their various litigation and foreclosure counsel to insure that stay violations did not continue unabated.

66. In that connection, TS&S was required to review the underlying pleadings filed in various lawsuits against the CMC Debtors. TS&S also engaged in extensive telephone conferences and correspondence with plaintiffs' counsel concerning the cessation of such lawsuits. As a result of TS&S's efforts in this regard, the CMC Debtors were not required during the First Interim Period to seek the intervention of this Court to rectify any stay violations.

**6. Administrative and Other Matters**

67. The foregoing discussion only highlights the more significant professional services rendered during the First Interim Period by TS&S. During the First Interim Period, TS&S was also required to provide miscellaneous other services to the CMC Debtors.

68. TS&S, on behalf of the CMC Debtors, was in frequent communication with various third parties, including the Court, the United States Trustee, the Unofficial Committees and individual creditors and other parties-in-interest concerning the status, conduct and administration of these Chapter 11 cases.

69. TS&S also coordinated certain activities with the United States Trustee. In that connection, TS&S assisted the CMC Debtors in preparing for, appearing at, and participating in a meeting of creditors held in accordance with section 341 of the Bankruptcy Code.

70. TS&S has also had to review numerous pleadings and correspondence in the CMC Debtors' Chapter 11 cases and, to the extent warranted, extensive documents and pleadings relating to the sale of the servicing business to Fairbanks and pleadings relating to the CFN Debtors.

**B. Second Interim Period**

71. The time period covered by the Second Interim Period included, among other things, obtaining Court approval of the Disclosure Statement and promulgating and successfully confirming the Joint Plan on behalf of the Debtors. In addition to obtaining Court approval of the Disclosure Statement and confirmation of the Joint Plan, TS&S was required to render extensive services on behalf of the CMC Debtors relating to a variety of other matters relating to the conduct of these Chapter 11 cases.

72. The following is intended to serve only as a summary of the more significant services rendered by TS&S during the Second Interim Period.

**1. Promulgation and Confirmation of Joint Plan**

73. During the Second Interim Period, TS&S, on behalf of the CMC Debtors, devoted significant time and resources to negotiating, promulgating and confirming, as expeditiously as possible, the Debtors' Joint Plan.

74. As noted, the Joint Plan was preceded by several earlier versions, some of which were filed with the Court and others which were never publicly disseminated. In each instance, TS&S was required to assist in the preparation of these

draft plans on behalf of the CMC Debtors, together with Dewey as bankruptcy counsel to the CFN Debtors.

75. In connection with the promulgation of the Joint Plan, and the preparation of various drafts thereof, TS&S was required to devote significant time and resources. On several occasions during the Second Interim Period, TS&S's personnel were required to work literally around-the-clock. Several of these occasions involved negotiating and/or drafting sessions with representatives of the Unofficial Committees.

76. Significantly, the Joint Plan as confirmed embodies a compromise and settlement of certain issues relating primarily to whether the estates of each of the Debtors should be substantively consolidated. Based on extensive legal research and factual analyses performed by TS&S on behalf of the CMC Debtors, TS&S determined that it would be unfair for there to be a complete and unqualified pooling of the assets and liabilities of certain of the estates of the CMC Debtors (*i.e.*, the "Settlement Debtors" as defined in the Joint Plan) with those of the CFN Debtors.

77. As a result, during the Second Interim Period, TS&S was required to engage in extensive and sometimes contentious discussions and negotiations with representatives of each of the Unofficial Committees -- whose constituents hold more than \$1 billion in claims against CFN, representing more than 95% of the aggregate liabilities of all of the Debtors. Each of the Unofficial Committee vigorously sought the complete substantive consolidation of all of the Debtors' estates.

78. Ultimately, there was not an unqualified consolidation of the Debtors' estates, as urged by the Unofficial Committees. Instead, the Joint Plan confirmed by the Court contains a compromise and settlement of such issues. Pursuant to this compromise and settlement, the unsecured creditors of the Settlement Debtors

(i.e., CMC and each of the five “Resource One Debtors”) are entitled to receive a premium or enhanced distribution over and above what unsecured creditors of the other Debtors are entitled to receive. Depending upon the ultimate aggregate amount of allowed unsecured claims against the Settlement Debtors, the holders of such claims will receive a premium of 20% to 101% more Liquidating Trust Units (as defined in the Joint Plan) than they would have received if there was a complete and unqualified consolidation of the Debtors’ estates.

79. Notably, the early versions of the Joint Plan, including those filed with the Court on September 13 and November 7, did not provide for any premium or enhanced distribution to the holders of unsecured claims against the Settlement Debtors. The Joint Plan ultimately confirmed by the Court did, however, include such special treatment. Hence, the various versions of the Joint Plan that were prepared reflected the negotiations taking place between TS&S, on behalf of the CMC Debtors, and each of the Unofficial Committee.

80. TS&S believes that it played a critical role in achieving a favorable settlement of the substantive consolidation and related issues on behalf of the Settlement Debtors. In addition to resulting in improved treatment for the unsecured creditors of the Settlement Debtors, the compromise and settlement enabled all of the Debtors to avoid the enormous costs, delays and uncertainties likely attendant to a judicial determination of such issues. In short, TS&S believes it played an important part in facilitating the expeditious promulgation and confirmation of a consensual joint plan of reorganization in these cases.

81. During the Second Interim Period, TS&S, on behalf of the CMC Debtors, also actively participated in the various other matters attendant to the successful promulgation and confirmation of the Joint Plan.

82. Coordinating closely with Dewey, TS&S assisted in the preparation of the Debtors' Disclosure Statement approved by the Court on November 11, 2000, including various prior versions. In that regard, TS&S had primary responsibility for preparing the discussion of the compromise and settlement of the substantive consolidation issues that ultimately appeared in the Disclosure Statement.

83. During the Second Interim Period, TS&S also participated in the preparation of a memorandum of law in support of confirmation of the Joint Plan, the proposed Confirmation Order and various documents relating to the Joint Plan, including the Plan Administration Agreement and the Liquidating Trust Agreement. TS&S was also required to prepare for, and participate in, the various hearings conducted by the Court in connection with approving the Disclosure Statement and confirming the Joint Plan.

84. In sum, TS&S was required to render extensive services during the Second Interim Period on a wide array of matters relating to the successful confirmation of the Joint Plan. To avoid any duplication of effort with Dewey acting on behalf of the CFN Debtors, TS&S limited its efforts to matters involving the CMC Debtors and, more particularly, the compromise and settlement of the substantive consolidation and related issues.

85. TS&S believes that its efforts in regard to the promulgation and confirmation of the Joint Plan were warranted and benefited the CMC Debtors' estates and creditors, as evidenced by the favorable results achieved -- including, the Court's



approval of the Disclosure Statement, the overwhelming acceptance of the Joint Plan by the creditors of the CMC Debtors entitled to vote thereon, the premium or enhanced distribution obtained for the unsecured creditors of the Settlement Debtors, and the confirmation of the Joint Plan.

**2. Avatar Financial Corp. and the Termination of the Debtors' Origination Business**

86. As noted, the Debtors recently determined to wind-down and terminate their home mortgage origination business line. As this Court and other parties following the Debtors' Chapter 11 cases are aware, such determination was made after the prospective purchaser of the origination business was unable to consummate the transaction.

87. Inasmuch as Avatar Financial Corp. ("Avatar") had been formed by the Debtors prior to the Petition Date for the sole purpose of facilitating the sale of the origination business line, the Debtors determined to liquidate and dissolve Avatar. Because Avatar was a wholly-owned subsidiary of CMC, TS&S was directed by the CMC Debtors to implement this objective.

88. Consequently, during the Second Interim Period, TS&S was required to render extensive services in connection with the liquidation and dissolution of Avatar. At the direction of the CMC Debtors, TS&S undertook the tasks necessary to commence a Chapter 11 case on behalf of Avatar. In that connection, TS&S prepared a Chapter 11 petition and related exhibits, schedules of assets and liabilities and various "first-day" pleadings in contemplation of a Chapter 11 filing by Avatar.

89. In the course of doing this work, it was determined that the assets, liabilities and business operations of Avatar were such that its substantive consolidation

with CMC was warranted and provided a more expeditious, appropriate and cost-effective mechanism to achieve the liquidation and dissolution of Avatar.

90. As a result, TS&S was required to undertake extensive work on an exigent basis to substantively consolidate Avatar with CMC prior to the confirmation of the Debtors' Joint Plan. Among other things, TS&S investigated and analyzed various legal and factual issues raised by Avatar's consolidation with CMC. TS&S also drafted the motion and supporting memorandum of law, as well as the ancillary pleadings, needed to obtain Court authority to substantively consolidate Avatar with CMC's estate.

91. During the Second Interim Period, TS&S presented oral argument at a hearing conducted by the Court in connection with the consolidation of Avatar with CMC. The relief sought was granted by the Court.

92. TS&S believes that its successful efforts with respect to the substantive consolidation of Avatar with CMC were warranted and beneficial to the CMC Debtors' estates and creditors. Among other things, TS&S's efforts helped promote the orderly liquidation and dissolution of Avatar without disrupting or delaying confirmation of the Debtors' Joint Plan.

### **3. Conduct of Chapter 11 Cases**

93. During the Second Interim Period, TS&S was required to render extensive services on behalf of the CMC Debtors relating to the general conduct of their Chapter 11 cases, including, but not limited to (i) estimating claims for purposes of implementing the Joint Plan; (ii) defending various motions by parties for relief from the automatic stay; and (iii) addressing various employee-related claims and issues.

(a) Claims Estimation

94. To facilitate implementation of the Joint Plan, the Debtors were required to seek to estimate in excess of 190 unliquidated, contingent and/or disputed claims. Since many of such claims were asserted against the estates of the CMC Debtors, TS&S was required to prepare and prosecute an appropriate omnibus claims estimation motion on behalf of the Debtors.

95. Working closely with representatives of the Claims Agent and Dewey, TS&S carefully reviewed and analyzed the claims asserted against the CMC Debtors that were subject to the omnibus claims estimation motion.

96. TS&S also undertook responsibility for preparing and filing the omnibus claims estimation motion and related pleadings. TS&S reviewed and analyzed the several objections filed by claimants of the CMC Debtors subject to the omnibus estimation motion, and engaged in extensive telephone conferences and correspondence with representatives of such claimants to resolve their objections and/or concerns on a consensual basis.

97. Following confirmation of the Joint Plan, the Court conducted a hearing on the Debtors' omnibus claims estimation motion. As a result of the prior efforts of TS&S in this regard (as well as those of Dewey), the omnibus motion was approved by the Court without opposition and all of the subject claims (with the exception of two claims for which the motion was adjourned) were estimated for purposes of distribution under the Joint Plan.

**(b) Automatic Stay and Related Issues**

98. As financial service companies engaged primarily in the origination and servicing of home mortgage loans, the CMC Debtors were involved in numerous legal actions prior to the Petition Date. For the most part, the CMC Debtors were the plaintiffs in such litigation seeking to enforce their rights and remedies under mortgage loans in default. However, having originated and/or serviced literally thousands of home mortgage loans, the CMC Debtors were also defendants in numerous wrongful foreclosure and lender liability-type actions commenced in courts around the country prior to the Petition Date (and on several occasions after the Petition Date).

99. Notwithstanding the pendency of these Chapter 11 cases, a number of borrowers commenced and/or continued to prosecute actions against the CMC Debtors. Consequently, during the Second Interim Period, TS&S continued to work very closely with the CMC Debtors and their various litigation and foreclosure counsel to insure that stay violations did not continue unabated.

100. Upon learning of each such stay violation, TS&S reviewed the underlying pleadings filed against the CMC Debtors in the lawsuits. Coordinating with the CMC Debtors and/or their defense counsel, TS&S would then engage in extensive telephone conferences and correspondence with plaintiffs' counsel concerning the cessation of such lawsuits.

101. As a result of TS&S's efforts, the CMC Debtors were not required during the Second Interim Period to seek the intervention of this Court to rectify any stay violations. However, during the Second Interim Period, the CMC Debtors were subject to more than a dozen motions for relief from the automatic stay filed by plaintiffs in various wrongful foreclosure and lender liability-type lawsuits.

102. In each instance, TS&S was required to review and analyze the stay motion and related pleadings and conduct an investigation into the legal and factual issues raised thereby. Whenever appropriate and possible, TS&S sought to resolve consensually the matters raised by the stay motion and would prepare the stipulation and requisite pleadings necessary to obtain Court approval for such settlements.

103. If a consensual resolution was not possible, TS&S would research and draft an appropriate response on behalf of the CMC Debtors in opposition to the stay relief request. On several occasions during the Second Interim Period, TS&S was also required to prepare for, and present oral argument in opposition to the stay motions at, hearings conducted by the Court.

104. The following are brief summaries of several of the stay relief matters addressed by TS&S during the Second Interim Period:

(i) **Bowen**

105. TS&S assisted CMC in vacating a post-petition sanctions order (the “Sanctions Order”) entered by a Utah Bankruptcy Court. TS&S’s initial efforts focused on obtaining the vacatur on consent. When those efforts failed, TS&S prepared, and through local counsel, filed a motion in the Utah Bankruptcy Court to vacate the Sanctions Order under Fed.R.Civ.P. 60(b). Prior to a hearing on the Rule 60(b) motion, the opposing party moved in this Court for relief from the automatic stay to permit it to prosecute the Sanctions Order in the Utah Bankruptcy Court or, in the alternative, to file a late proof of claim in the Debtors’ Chapter 11 cases. TS&S prepared a response to the motion in which it opposed the request for stay relief, but consented to the filing of a late

proof of claim so long as the claim reconciliation process was conducted before this Court.

106. At a hearing held on November 8, 2000, this Court denied the relief for stay request and authorized the filing of a late proof of claim. TS&S prepared an appropriate order in furtherance of this Court's ruling, which order was signed by the Court on November 28, 2000. Thereafter, the Bowens consented to vacate the Sanctions Order in the proceeding before the Utah Bankruptcy Court. By order dated December 20, 2000, the Utah Bankruptcy Court vacated the Sanctions Order against CMC.

(ii) **Sandra Vanden Broeck**

107. During the Second Interim Period, Sandra Vanden Broeck, *et al.* moved to modify the automatic stay to continue a pre-petition action pending in a Michigan state court, which asserted various claims against CMC (and others) arising from CMC's purchase of certain loans from the originator of the mortgages. In preparing its response to the lift stay motion, TS&S determined that the plaintiffs had failed to file a proof of claim in response to the bar date. TS&S prepared an objection opposing stay relief on that ground, among others. Thereafter, the Vanden Broeck plaintiffs sought authority to file a late claim on due process grounds or alternatively, that the failure to timely file was the result of "excusable neglect" under Bankruptcy Rule 9006(b).

108. Prior to the hearings on the lift stay and late claim motions, TS&S and plaintiffs' counsel reached a settlement pursuant to which the Vanden Broeck plaintiffs agreed to withdraw the lift stay motion, with prejudice - - so that the claims in the Michigan state court action will be resolved as part of the claims reconciliation

process before this Court. CMC agreed to permit them to file a late claim in the Debtors' Chapter 11 cases. TS&S prepared a Stipulation and Order memorializing the parties' agreement and obtained consent to the terms of the settlement from the constituent parties in these cases. The Stipulation and Order was approved by this Court on December 20, 2000.

**(iii) Garcia**

109. During the Second Interim Period, Ruben Garcia and Elida Garcia moved to modify the automatic stay to continue a pre-petition action filed less than one prior to the Petition Date, which asserted various claims against CMC (and others) under the Truth-in-Lending Act as well as other grounds. TS&S conferred with CMC's Texas counsel in the action and determined that there had been little or no progress in the action pre-petition Date and that stay relief was unwarranted under the established standard in this circuit for such stay relief. TS&S prepared an objection to the lift stay motion and obtained an affidavit from Texas counsel regarding the status of the action. At a hearing held on November 21, 2000, the Court denied the motion, without prejudice to plaintiffs' reinstating the motion based upon a change of circumstance.

**(iv) Mumford**

110. Less than one month prior to the Petition Date, the Mumford plaintiffs filed a self-styled class action in a Maryland state court against Resource One Consumer Discount Company, Inc. ("Resource One"), one of the CMC Debtors, on behalf of themselves and a putative class of unnamed plaintiffs. By motion dated November 9, 2000, the Mumford plaintiffs moved for relief from the automatic stay to

proceed against insurance proceeds, if any, covering the claims asserted in the action and for class certification. After investigation, TS&S determined that there was no insurance covering the claims in the action. Nevertheless, TS&S prepared a confidentiality agreement so that counsel for the Mumford plaintiffs could independently confirm the nature and extent of the Debtors' insurance coverage, without compromising the sensitive nature of the information. In addition, TS&S researched the standards for class certification and determined that the Mumford plaintiffs' request was untimely and they could not, in any event, satisfy the substantive requirements for class certification under Bankruptcy Rule 7023. Accordingly, TS&S prepared an objection to both motions.

111. The Mumford plaintiffs withdrew the lift stay motion on the record of the hearing held on December 7, 2000. At the same hearing, the Court heard oral argument by TS&S and counsel for the Mumford plaintiffs on the class certification motion. The Court reserved decision on the class certification motion. By Decision and Order dated January 11, 2001, the Court denied the class certification motion, but extended the bar date to February 13, 2001 for certain Maryland homeowners to file proofs of claim.

(v) **McCormack**

112. During the Second Interim Period, Julian C. McCormack ("McCormack") moved for relief from the automatic stay to continue a pre-petition action pending in a Kentucky federal court against CMC, Crystal Mortgage Company, Inc. and Lenders, M.D (three of the CMC Debtors) to recover against insurance proceeds covering the claims in the action and to file a proof of claim for any portion of the



judgment not covered by insurance. The action seeks to hold the CMC, Crystal and Lenders (and others) liable for the fraudulent transfer by McCormack's sister of his one-half interest in property he and his sister inherited from their deceased father. The transfer of the property occurred as part of a mortgage refinancing involving certain of the CMC Debtors.

113. Prior to the return date of the lift stay motion, TS&S was advised that a global settlement had been reached among certain non-debtor parties to the federal court action. Under the settlement, the contribution by the CMC Debtors would be funded through proceeds of insurance. TS&S and McCormack's counsel agreed to adjourn the lift stay motion while the terms of the settlement were finalized. The negotiations resulted in the execution of a certain Settlement Agreement and Mutual Release among the parties to the litigation. The ability of CMC, Crystal and Lenders to enter into the Settlement Agreement was made specifically subject to bankruptcy court approval.

114. TS&S has prepared a motion for authority for CMC, Crystal and Lenders to enter into the Settlement Agreement and to compromise and settle certain of their claims in the action. In addition, the Settlement Agreement will permit the CMC Debtors to resolve litigation and settle various claims directly result therefrom. It is anticipated that a motion for approval of the Settlement Agreement will be filed with the Court in the near future.

115. As noted, wherever appropriate and possible, TS&S endeavored to resolve stay relief motions consensually. Where necessary, however, TS&S also undertook to vigorously oppose on behalf of the CMC Debtors the stay relief requested. In all instances, TS&S addressed such matters as efficiently as possible. TS&S believes

that its efforts in regard to the various stay motions helped preserve the integrity of the Chapter 11 cases and this Court as the centralized forum for addressing and resolving the claims asserted against the CMC Debtors.

(c) **Employee-Related Claims and Issues**

116. During the Second Interim Period, TS&S was also required to address certain employee-related claims and issues on behalf of the CMC Debtors.

117. Among other things, TS&S prepared a motion and other requisite pleadings to obtain Court approval for the CMC Debtors to settle and compromise the severance, bonus and related claims of various terminated servicing employees.

118. During the Second Interim Period, TS&S also prepared the motion and other requisite pleadings to obtain Court authorization for the CMC Debtors to reject the employment agreement of Keith Dyer.

4. **Administrative and Other Matters**

119. The foregoing discussion only highlights the more significant professional services rendered during the Second Interim Period. During the Second Interim Period, TS&S was also required to provide miscellaneous other services to the CMC Debtors.

120. TS&S, on behalf of the CMC Debtors, was in frequent communications with various third parties, including the Court, the United States Trustee, the Unofficial Committees and individual creditors and other parties-in-interest concerning the status, conduct and administration of these Chapter 11 cases.

121. TS&S has also had to review numerous pleadings and correspondence in these Chapter 11 cases, particularly documents generated by Dewey that directly implicated the interests of the CMC Debtors.

122. During the Second Interim Period, TS&S also prepared and filed its application seeking first interim allowance of compensation and reimbursement of expenses for services rendered on behalf of the CMC Debtors for the period May 17, 2000 through and including August 31, 2000. In that connection, TS&S prepared for and attended a hearing on October 26, 2000, at the conclusion of which the Court entered an Order approving the application in its entirety.

#### **THE COMPENSATION REQUESTED**

123. There are numerous factors to be considered by the Court in determining allowances of compensation. See, e.g., In re First Colonial Corp. of America, 544 F.2d 1291 (5th Cir.), cert. denied, 431 U.S. 904 (1977); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991). See also In re Nine Associates, Inc., 76 B.R. 943 (S.D.N.Y. 1987); In re Cuisine Magazine, Inc., 61 B.R. 210 (Bankr. S.D.N.Y. 1986).

124. The perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to section 330 of the Bankruptcy Code:

[B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that

light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

124 Cong. Rec. H11,092 (daily ed. Sept. 28, 1978) (emphasis added). See also In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991); In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Service Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885 (Bankr. N.D. Ohio 1985).

125. The philosophy underlying the adoption of section 330 of the Bankruptcy Code is equally applicable to interim compensation. The Bankruptcy Code provides that the same considerations apply to making interim awards of compensation under section 331 as to final allowances under section 330. See In re Public Service Co. of New Hampshire, 93 B.R. at 826; In re International Horizons, Inc., 10 B.R. 895 (Bankr. N.D. Ga. 1981). Section 331 of the Bankruptcy Code provides:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the Court may allow and disburse to such applicant such compensation or reimbursement.

11 U.S.C. § 331.

126. In awarding compensation pursuant to sections 330 and 331 of the Bankruptcy Code to professional persons employed under sections 327 or 1103 of the Bankruptcy Code, the Court must take into account, among other factors, the cost of comparable non-bankruptcy services. Section 330 of the Bankruptcy Code provides, in pertinent part, for payment of:

- a. reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and
2. reimbursement for actual, necessary expenses.

11 U.S.C. §330(a). The legislative history of this section aptly explained the need to provide for compensation comparable to other non-bankruptcy legal services:

The effect of [section 330] is to overrule . . . cases that require fees to be determined based on notions of conservation of the estate and economy of administration. If [those] cases were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 329-30 (1977). See also 124 Cong. Rec. H11,091-92 (daily ed. Sept. 28, 1978); S17,408 (daily ed. Oct. 6, 1978).

127. Moreover, as the court in In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991), stated:

With due recognition of the historical position of Bankruptcy Courts in compensation matters, we recognize that creditors have agreed to pay rates for retained counsel of their choice because of the needs of the particular case. One could posit other situations or cases where a presumption of prior informed judgment might not be as strong. Here, however, we have a multi-debtor, multi-committee case involving sophisticated creditors who have determined that the rates charged and tasks undertaken by attorneys are appropriate. We should not, and will not, second guess the determination of those parties, who are directed by Congress, under the Bankruptcy Code, to shape and resolve the case, and who are in fact bearing the cost. To do so, of course, would be to continue what Congress specifically intended to stop in 1978: Courts, instead of markets, setting rates, with the inevitable consequence that all the legal specialists required by the debtor or official committees would demur to participate.

Drexel, 133 B.R. at 20-21.

128. The professional services rendered by TS&S have required an expenditure of substantial time and effort. During the period May 17, 2000 through and including the Second Interim Period, in excess of 1,529 recorded hours have been expended by TS&S's professionals and paraprofessionals in the rendition of the required professional services and for which TS&S seeks compensation.

129. Time and labor devoted, however, is only one of many pertinent factors to be considered in awarding attorney compensation. The number of hours expended must be considered in light of (i) the amount involved and the results achieved to date; (ii) the novelty and difficulty of the questions presented; (iii) the skill

requisite to perform properly the legal services; (iv) the preclusion of other employment on behalf of other clients; (v) the customary fee charged to a private client for the services rendered; (vi) awards in similar cases; (vii) time constraints required by the exigencies of the case, including the frequency and amount of time required to be devoted other than during regular business hours; (viii) the experience, reputation and ability of the attorneys rendering services; and (ix) the nature and length of the professional relationship with the client (the "Johnson Factors"). See Johnson v. Georgia Highway Express, 488 F.2d at 717-19 (enumerating factors to be considered in awarding attorneys' fees in equal employment opportunities cases under Title VII); In re First Colonial Corp. of America, 544 F.2d at 1294 (applying the Johnson Factors in bankruptcy cases).

130. The majority of the Johnson Factors are codified in section 330(a) of the Bankruptcy Code, and have been applied by various courts in making determinations that requested attorneys' fees constitute reasonable compensation. TS&S recognizes that it is well settled that the "lodestar method,"<sup>5</sup> as opposed to an application solely of the Johnson Factors, is the best means of determining attorney fees in bankruptcy cases.<sup>6</sup> The Supreme Court, however, has clearly articulated that the

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<sup>5</sup> Application of the "lodestar method" involves multiplying the number of hours reasonably expended on the case by the reasonable hourly rate of compensation for each attorney. Shaw v. Travelers Indemnity Co. (In re Grant Assocs.), 154 B.R. 836, 843 (S.D.N.Y. 1993). This method of calculating attorney fees is appropriate in light of section 330(a) of the Bankruptcy Code, which requires that attorney fees be "reasonable." 11 U.S.C. § 330(a) (1993). The lodestar method often serves as a starting point, permitting bankruptcy courts, in their own discretion, to consider other factors, such as the novelty and difficulty of the issues, the special skills of counsel, and the results obtained. In re Copeland, 154 B.R. 693, 698 (Bankr. W.D. Mich. 1993).

<sup>6</sup> See, e.g., Pennsylvania v. Delaware Valley Citizens Council For Clean Air, 483 U.S. 711 ("Delaware Valley II"), on remand, 826 F.2d 238 (3d Cir. 1987); Pennsylvania v. Delaware Valley Citizens Council For Clean Air, 478 U.S. 546 (1986) ("Delaware Valley I"); United States Football League v. National Football League, 887 F.2d 408, 413 (2d Cir. 1989), cert. denied, 493 U.S. 1071 (1990); Lindy Bros. Builders Inc. v. American Radiator and Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973), vacated

"lodestar method" is presumed to subsume the Johnson Factors, as does section 330(a) of the Bankruptcy Code. Delaware Valley I, 478 U.S. at 563; Cena's Fine Furniture, 109 B.R. at 581.

131. TS&S respectfully submits that application of the foregoing criteria more than justifies the compensation requested in this Application. TS&S has encountered novel and difficult legal problems during the course of these Chapter 11 cases, involving many areas of legal expertise in bankruptcy and litigation. The professional services rendered in these Chapter 11 cases have been performed by attorneys with broad expertise and high levels of skill in their practice areas or specialty. This highly professional and expert group of attorneys has ensured that the CMC Debtors' cases have progressed in an efficient manner.

132. During the Second Interim Period and throughout the course of these Chapter 11 cases, TS&S has been required to furnish extensive services which have often fully occupied the time of its attorneys, frequently to the preclusion of other firm matters and clients. If these were not cases under the Bankruptcy Code, TS&S would charge the CMC Debtors and expect to receive, on a current basis, an amount at least

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on other grounds, 540 F.2d 102 (3d Cir. 1976); In re Cena's Fine Furniture, Inc., 109 B.R. 575 (E.D.N.Y. 1990); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13, 21 (Bankr. S.D.N.Y. 1991).



equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally examined in bankruptcy cases, and based upon the factors to be considered in accordance with sections 330 and 331 of the Bankruptcy Code, the results that have been achieved during the Second Interim Period and the course of these Chapter 11 cases generally more than substantiate charges in that amount. The services that TS&S has rendered have produced benefits which have inured to the CMC Debtors, their estates and creditors.

133. The successful prosecution of these Chapter 11 cases justifies interim and final compensation at least in the amount requested. Thus, TS&S requests that 100% of such compensation be allowed. In view of the policy underlying section 330 and 331 of the Bankruptcy Code that attorneys in bankruptcy cases be compensated on a parity with attorneys practicing in other fields, it is respectfully submitted that interim and final compensation should be allowed as requested.

### **DISBURSEMENTS**

134. In the course of its representation of the CMC Debtors during the pendency of these Chapter 11 cases, TS&S necessarily incurred and paid substantial expenses in connection with the services rendered. As set forth in Exhibit "2" hereto, TS&S incurred \$12,430.19 in expenses in providing professional services during the Second Interim Period.

135. With respect to photocopying expenses, TS&S charges all of its clients \$.20 per page. With respect to facsimile expenses, TS&S excludes charges for incoming facsimile transmissions, and includes charges for long distance outgoing facsimiles at \$1.25 per page. These charges are intended to cover TS&S's direct operating

costs for photocopying and facsimile facilities, which costs are not incorporated into the TS&S hourly billing rates. Only clients who actually use photocopying, facsimile, and other office services of the types set forth in Exhibit "2" are separately charged for such service. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying, facsimile, and document production facilities and services. The amount of the standard photocopying and facsimile charge is intended to allow TS&S to cover the related expenses of its photocopying and telecopying service. A determination of the actual expenses per page for photocopying and telecopying, however, is dependent on both the volume of copies and the total expenses attributable to photocopying and telecopying on an annual basis.

136. The time constraints frequently imposed by the circumstances of these cases have required TS&S's attorneys and other employees at times to devote substantial amounts of time during the evenings and on weekends to the performance of legal services on behalf of the CMC Debtors.

137. Moreover, consistent with firm policy, attorneys and other employees of TS&S who worked late into the evenings were reimbursed for their reasonable meal costs and their cost for transportation home. TS&S's regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of the rendition of services.

138. In addition, due to the exigent nature of the CMC Debtors' Chapter 11 cases, same day and overnight delivery of documents and other materials was required as a result of deadlines and/or emergencies necessitating the use of such express services. These disbursements are not included in TS&S's overhead for the

purpose of setting billing rates. TS&S has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were absolutely necessary, reasonable and justified under the circumstances to serve the needs of the CMC Debtors, their estates and creditors.

139. None of the travel related expenses of TS&S attorneys included herein were for first-class airfare, luxury accommodations, or deluxe meals.

### CONCLUSION

140. The legal services summarized by this Application and rendered by TS&S to the CMC Debtors throughout their Chapter 11 cases and during the Second Interim Period in particular were substantial, professional, and essential to the successful prosecution of these Chapter 11 cases. They were reasonable and necessary to the preservation and maximization of the CMC Debtors' estates.

141. As noted above, the amounts sought by TS&S for the Second Interim Period consist only of actual and reasonable billable time expended by attorneys and legal support staff (\$284,144.50) and actual and necessary disbursements made by Applicant (\$12,430.19). As demonstrated throughout this Application, the other factors typically considered in determining compensation -- including complexity, results achieved, special expertise, magnitude of the matter, and professional standing -- all militate toward the conclusion that the amount of compensation requested by TS&S is necessary, fair, and reasonable.

142. Additionally, TS&S seeks a final allowance of compensation earned for professional services rendered on behalf of the CMC Debtors during the period May 17, 2000 through and including the Second Interim Period in the aggregate amount

of \$531,017 plus final reimbursement of actual and necessary expenses incurred on behalf of the CMC Debtors during the same period in the amount of \$20,257.28.

143. In light of (a) the complexity of these Chapter 11 cases, (b) the results achieved, (c) the significant contributions made and time devoted, often under severe time constraints and to the preclusion of other matters, (d) awards of compensation in similar cases, and (e) other factors pertinent to the allowance of compensation, TS&S believes that the compensation sought herein is fair and reasonable and is authorized under the relevant provisions of the Bankruptcy Code.

144. All services for which compensation is sought were performed for and on behalf of the CMC Debtors and their estates, and not on behalf of any other creditor or party in interest. TS&S is charging its standard hourly rate for professionals performing services. Other than the Monthly Payments and sums previously awarded pursuant to the First Interim Fee Order, no payments have heretofore been made or promised to TS&S for services rendered, or to be rendered, in connection with these cases. Applicant has not entered into any agreement, express or implied, with any other party in interest for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

**WHEREFORE**, Applicant respectfully requests that this Court enter an order (a) awarding to Applicant (i) interim compensation for the period September 1, 2000 through and including December 19, 2000 in the amount of \$284,144.50 representing actual billable time for services rendered by TS&S as counsel to the CMC Debtors, and (ii) reimbursement of actual and necessary expenses incurred and recorded by TS&S for the period September 1, 2000 through and including December 19, 2000 in the amount of \$12,430.19, (b) granting (i) a final allowance of compensation for

professional services rendered by TS&S on behalf of the CMC Debtors during the period May 17, 2000 through and including the Second Interim Period in the aggregate amount of \$531,017, and (ii) a final reimbursement of actual and necessary expenses incurred by TS&S during the period May 17, 2000 through and including the Second Interim Period in the aggregate amount of \$20,257.28, (c) directing payment of the foregoing amounts to the extent not already paid, and (d) granting such other and further relief as this Court deems just and proper.

DATED: New York, New York  
February 2, 2001

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