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**SPECIAL COUNSEL FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION**

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

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In re	:	Chapter 11
CONTIFINANCIAL CORPORATION, <u>et al.</u> ,	:	Case No. 00 B 12184 (AJG)
	:	
Debtors.	:	(Jointly Administered)

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**FINAL APPLICATION OF VINSON & ELKINS L.L.P.
FOR ALLOWANCE OF FEES AND EXPENSES AS SPECIAL
COUNSEL TO CONTIFINANCIAL CORPORATION AND AFFILIATES**

Name of applicant:	<u>Vinson & Elkins L.L.P.</u>
Authorized to provide professional service to:	<u>ContiFinancial Corporation and the above-captioned Debtors</u>
Period for which compensation and expense reimbursement is sought:	<u>May 17, 2000 through December 19, 2000</u>
Amount of compensation sought as actual, reasonable and necessary:	<u>\$617,867.50</u>
Amount of expense reimbursement sought as actual, reasonable, and necessary:	<u>\$37,157.54</u>

This is a final fee application.

Note: Attached to this application as Exhibit "B" is a schedule demonstrating (i) the total professional and paraprofessional hours expended by the applicant, (ii) the name of each professional and paraprofessional, with his or her position with the firm, (iii) the year that the professional was licensed to practice, (iv) the hours worked by each professional and paraprofessional, and (v) the hourly rate for each professional and paraprofessional.

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**FINAL APPLICATION OF VINSON & ELKINS L.L.P.
FOR ALLOWANCE OF FEES AND EXPENSES AS SPECIAL
COUNSEL TO CONTIFINANCIAL CORPORATION AND AFFILIATES**

TO THE HONORABLE ARTHUR J. GONZALEZ, BANKRUPTCY JUDGE:

VINSON & ELKINS L.L.P. ("V&E" or the "Applicant"), Special Counsel to ContiFinancial Corporation ("CFN"), ContiMortgage Corporation ("CMC"), and the above-captioned debtors (CFN, CMC and together with the above-captioned debtors, collectively, the "Debtors" or "Conti"), files this Final Application For Allowance of Fees and Expenses as Special Counsel to ContiFinancial Corporation and Affiliates (the "Final Application"), and in support thereof would respectfully show the Court as follows:

STATEMENT OF JURISDICTION

1. This Court has jurisdiction to hear this Application pursuant to the provisions of 28 U.S.C. §§ 1334 and 157. This proceeding involves the administration of the estate and thus is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

STATEMENT OF FACTS

2. On May 17, 2000 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to the Court's Order signed on May 18, 2000, the Conti Chapter 11 cases are being jointly administered under Case No. 00-12184 (the "Conti Case"). Since the Petition Date, the Debtors have continued to operate their businesses and manage their property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. On or about May 30, 2000, the Debtors filed their Motion for an Order, Pursuant to Section 327(e) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, Authorizing the Employment and Retention of **Vinson & Elkins L.L.P.**, as of the Petition Date, as Special Counsel (the "Employment Motion"). In the Employment Motion, the Debtors sought to employ V&E as Special Counsel to represent the significant interests of Conti in the Chapter 11 case of Empire Funding Corporation ("Empire"), Case No. 00-11478, pending in the United States Bankruptcy Court for the Western District of Texas (the "Empire Case"), wherein Conti is one of the major creditors and parties in interest.

4. This Court approved the retention of V&E as Special Counsel to the Debtors on an interim basis by Order dated June 13, 2000 and on a final basis by Order dated July 18, 2000 (the "Final Retention Order"). A copy of the Final Retention Order is attached hereto as **Exhibit "A."**

5. On December 19, 2000, the Court signed its Order Confirming Third Amended Joint Plan of Reorganization of ContiFinancial Corporation and Affiliates

under Chapter 11 of the Bankruptcy Code (the "Confirmation Order"). Pursuant to the Confirmation Order, applications for final allowances of compensation and reimbursement of expenses for services rendered before Conti's confirmation date are to be filed by February 2, 2001. This Final Application requests compensation for fees and reimbursement of expenses incurred by V&E as Special Counsel to the Debtors for the period May 17, 2000 through December 19, 2000 (the "Period").

6. During the Period, V&E has incurred a total of \$655,025.04 in fees and expenses as set forth below. In accordance with the Court's Order Pursuant to §§ 105(a) and 331 Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals dated June 21, 2000 (the "Monthly Compensation Order"), V&E has filed six monthly fee and expense statements (the "Statements")¹ and has been paid a portion² of its fees and 100% of its expenses with respect to each of the Statements. The following table sets forth the amount of fees and expenses incurred by V&E during the Period, the amount paid to V&E by the Debtors to date, and the amount outstanding:

¹ V&E has not filed a Statement for the period December 1-19, 2000, as this Final Application subsumes such a Statement. Any information that would have been provided in the December 1-19 Statement is provided herein. A detailed invoice for such period has been furnished to the Debtors.

² V&E has been paid 80% of the fees set forth in the May/June, July, and August Statements and 70% of the fees set forth in the September, October, and November Statements.

Month	Fees	Expenses	Total Fees & Expenses	Fees Paid		Expenses Paid	Fee Amount Outstanding
May/June 2000 ³	\$106,573.50	\$7,667.40	\$114,240.90	\$85,324.80	(80%)	\$7,667.40	\$21,248.70
July 2000	\$80,345.50	\$5,795.67	\$86,141.17	\$64,276.40	(80%)	\$5,795.67	\$16,069.10
Aug. 2000	\$103,210.50	\$2,958.02	\$106,168.52	\$82,568.40	(80%)	\$2,958.02	\$20,642.10
Sept. 2000	\$91,684.50	\$6,289.22	\$97,973.72	\$64,179.15	(70%)	\$6,289.22	\$27,505.35
Oct. 2000	\$114,491.50	\$5,104.25	\$119,595.75	\$80,144.05	(70%)	\$5,104.25	\$34,347.45
Nov. 2000	\$48,388.50	\$4,272.41	\$52,660.91	\$33,871.95	(70%)	\$4,272.41	\$14,516.55
Dec. 1-19, 2000	\$73,173.50	\$5,070.57	\$78,244.07	\$0.00		\$0.00	\$78,244.07
Totals:	\$617,867.50	\$37,157.54	\$655,025.04	\$410,364.75		\$32,086.97	\$212,573.32

7. V&E holds a retainer with a balance, as of the Petition Date and as of this date, in the amount of \$87,355.15.

The First Interim Application

8. On October 3, 2000, V&E filed its First Interim Application for Allowance of Fees and Expenses as Special Counsel to ContiFinancial Corporation and Affiliates for the Period May 17, 2000 through August 31, 2000 (the "First Interim Application"). In the First Interim Application, V&E requested that the Court allow it interim compensation in the amount of \$290,129.50 in fees and \$16,421.09 in expenses for services performed as Special Counsel to the Debtors from the period May 17, 2000 through August 31, 2000 (the "Interim Period").

9. In its Order Allowing Interim Compensation and Reimbursement of Expenses and Disbursements dated October 26, 2000 (the "Interim Compensation Order"), the Court approved the First Interim Application, awarding fees in the amount of

³ The May and June figures were combined in V&E's first Statement pursuant to the Monthly Compensation Order. The amount of fees set forth in V&E's May/June Statement, \$106,656.00, has been reduced to \$106,573.50.

\$232,103.60 and expenses in the amount of \$16,421.09. The Interim Compensation Order carried the withheld 20% of fees to the Final Fee Hearing.

10. Accordingly, in this Final Application, V&E seeks the allowance of all fees and expenses incurred by V&E during the Period, including final allowance of all fees and expenses incurred during the Interim Period.

SUMMARY OF SERVICES PERFORMED BY V&E

11. This Application covers the actual and necessary professional services rendered and expenses incurred by V&E during the Period⁴. All of V&E's services during the Period relate to V&E's representation of the Debtors as Special Counsel in the Empire Case.

Description of Services

12. As detailed on **Exhibit "B,"** attached hereto and incorporated herein by reference, during the Period, V&E professionals spent 1,865.7 hours aggregating \$617,867.50 at standard rates for services rendered as Special Counsel to the Debtors. The names of V&E's attorneys and paraprofessionals who performed services for and on behalf of the Debtors during the Period, their positions with V&E and their respective hourly billing rates are listed on **Exhibit "B."** **Exhibit "C"** attached hereto and incorporated herein by reference, includes a description of the services performed by V&E as Special Counsel during the Period. **Exhibit "C"** contains detailed daily descriptions of services performed with certain sensitive or confidential portions redacted, identifies who performed the services, and specifies the amount of time spent completing the task.

13. Throughout the Empire Case, V&E has been very actively involved as Special Counsel for Conti and has been called upon to provide advice and to act on numerous matters related to the Empire Case. Conti's significant debt and creditor

⁴ One time entry, reflecting a half-hour of work performed immediately prior to the filing of the Debtors' bankruptcy petitions, was thereafter entered into V&E's billing database. Accordingly, the fee attributable to this entry is included in the total expressed herein.

position in the Empire Case is and has been contested by Empire and its principal. The Empire Case has been particularly adversarial and litigious.

a. General Representation as Special Counsel. During the Period, V&E has provided general bankruptcy services to Conti through its representation of the Debtors as Special Counsel in the Empire Case. The Empire Case is very much on a “fast track” with Empire having already implemented and completed a § 363 sale of most of its assets. V&E has assisted and advised Conti regarding a variety of issues arising in the Empire Case and considered all of same on a daily basis with Tom Blum and periodically with Frank Baier and Alan Fishman of Conti and Jane Vris and Denis Cronin of Cronin & Vris, LLP.

b. Cash Collateral Negotiations. ContiTrade Services L.L.C. asserts an ownership interest, or alternatively, a security interest, in most of Empire’s assets, including the proceeds of its asset sales. Therefore, during the Period, V&E has assisted and advised Conti regarding Empire’s use of Conti’s cash collateral, objected to Empire’s use of said cash collateral, negotiated (along with Cronin & Vris LLP) the terms of numerous cash collateral orders, and prepared for and represented Conti at multiple cash collateral hearings. Empire and its principal have contested Conti’s claim and therefore as well the entitlement of Conti to cash collateral protection.

c. Determination of Conti’s Claims against Empire. During the Period, V&E has analyzed and investigated Conti’s rights against Empire arising under various complex pre-petition arrangements, including Conti’s claims to an ownership interest or security interest in most of the assets held by Empire. On October 31, 2000, V&E prepared and filed a proof of claim in the Empire Case on behalf of ContiFinancial Corp., ContiTrade Services L.L.C., ContiTrade Services Corp., and California Lending Group, Inc. V&E has also evaluated Empire’s defenses to Conti’s claims as well as Empire’s alleged affirmative claims against Conti as alleged in various pleadings filed by Empire and in its proofs of claim filed in the Conti Case.

d. Litigation in the Empire Case. During the Period, V&E assisted and advised the Debtors regarding potential litigation to be filed against Empire and conducted factual investigations and witness interviews in preparation for litigation. On behalf of Conti, V&E prepared and filed a Complaint to Determine Amount of Debt, Validity, Priority, and Extent of Liens, Interest in Property and for Declaratory Judgment on July 19, 2000, initiating Adversary Proceeding No. 00-1106, styled ContiTrade Services L.L.C. v. Empire Funding Corp., in the United States Bankruptcy Court for the Western District of Texas (the “Adversary Proceeding”). In prosecution of the Adversary Proceeding, V&E has prepared informal discovery and participated in settlement conferences. V&E has assisted and advised Conti regarding Empire’s Motion to Dismiss, or Alternatively, to Abate the Adversary Proceeding, analyzed the factual and legal allegations set forth therein and prepared and filed a response thereto.

e. Litigation in the Conti Case. On December 1, 2000, Empire filed a motion for relief from the automatic stay in the Conti Case (“Empire’s Motion for Relief”) in order to pursue its alleged claims and counterclaims against Conti in the Adversary Proceeding. V&E has assisted and advised Conti regarding responding to such motion, and, on December 18, 2000, filed an objection and response to Empire’s Motion to Lift Stay. On December 15, 2000, V&E assisted the Debtors in filing their Motion for Order under Sections 105(a) and 502(c) of the Bankruptcy Code Estimating Certain Claims for the Purposes of Establishing an Appropriate Reserve and for Distributions to Holders of Such Claims (the “Estimation Motion”), in which, *inter alia*, the Debtors requested the estimation of each of the claims of Empire and its parent, Empire Funding Holding Corporation, at zero.

f. Negotiations regarding Empire’s Prospective Asset Sale and Assignment of Executory Contracts. During the Period, V&E assisted and advised Conti regarding two separate sales of a substantial portion of Empire’s assets, analyzed Empire’s motion to sell property of the Empire estate and related bidding procedures, negotiated

with Empire's counsel and counsel for creditor constituencies regarding the terms of the proposed sale procedures and related motion and order, responded to the sale motion, and represented Conti at the bidding procedures hearing. All of such activity was performed in the context of Empire objecting to Conti's claim and denying Conti's right to special protections in the sales process. V&E prepared for and attended various meetings, negotiations, hearings, and bid presentations with respect to the auction sale and the sale procedures, evaluated bids, and analyzed the proposed Asset Purchase Agreement between Empire and Ocwen Federal Bank FSB (the "Empire Asset Purchase Agreement"). V&E also filed a limited objection to the asset sale and a supplemental objection to the sale motion in order to protect the Debtors' cash collateral interests in the sale proceeds. Concurrently with the sale, Empire sought to assume and assign several executory contracts to which at least one of the Debtors is a party. Accordingly, V&E analyzed Conti's position with respect to these executory contracts and prepared and filed cure claim statements with respect to same.

In addition, since Empire was required to obtain the consent of certain third parties to effect the transfer of servicing rights pursuant to the Empire Asset Purchase Agreement, V&E attended numerous meetings and negotiations related to obtaining consent from these third parties. V&E actively participated with Conti representatives in the negotiation of the terms of highly-contested consent and settlement agreements between Empire and the third parties to help ensure that Empire realized the highest possible net dollars to the Empire estate through the sale and transfer of its servicing rights and other assets.

g. Negotiations with Creditors and Empire. V&E has negotiated with counsel for Paine Webber Real Estate Securities, Inc. and the Official Committee of Unsecured Creditors in the Empire Case regarding potential resolution of the Empire Case and the possibility of a creditors' plan of liquidation. V&E has considered and analyzed Empire's

proposed Chapter 11 Plan of Reorganization and Disclosure Statement filed December 15, 2000.

Status of the Case

14. V&E requests that the Court waive any requirement to provide information in this Application related to the status of Conti's case, including whether all quarterly fees have been paid to the United States Trustee, whether all monthly operating reports have been filed, the amount of cash on hand or on deposit, the amount and nature of accrued or unpaid administrative expenses, and the amount of unencumbered funds in the estate, a description of each of which is required by the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 (the "U.S. Trustee Guidelines"). Cause exists for waiving this requirement because V&E is serving Conti solely as Special Counsel in the Empire Case.

Hourly Fee/Expense Summary

15. V&E seeks compensation for the services rendered during the Period and reimbursement of the expenses incurred in performing such services. During the Period, V&E has expended 1,865.7 hours performing legal services on behalf of Conti in the Empire Case. At V&E's standard rates for matters of this type, V&E's fees during the Period total \$617,867.50. The average billing rate for the period is approximately \$331/hour. Most of the time has been incurred by partners since the nature of the Empire Case, including the contests to and disputes respecting Conti's claims, has required a higher level of experience and expertise than a normal administration. During the Period, V&E has incurred expenses of \$37,157.54 in performing its services as Special Counsel to the Debtors.⁵

⁵ Several out-of-pocket expenses were incurred immediately prior to the filing of the Debtors' bankruptcy petitions, but were subsequently registered in V&E's billing database. Accordingly, these expenses are also reflected in the total expressed herein.

16. The legal services rendered and expenses incurred by V&E during the Period are detailed in **Exhibit "C"** attached hereto and incorporated herein for all purposes. **Exhibit "C"** sets forth in detail the description of the legal services rendered by V&E, the dates on which V&E's attorneys and paralegals rendered such legal services, the identity of those attorneys and/or paralegals who performed such legal services, the time spent by each attorney and/or paralegal in performance of legal services, a summary of expenses by major category, and an itemized list of expenses incurred.

17. V&E has neither shared nor agreed to share its compensation for services rendered in or in connection with this Case with any other person.

STANDARDS FOR ALLOWANCE OF FEES AND EXPENSES

18. Bankruptcy Code § 330 authorizes the Court to award professional persons employed pursuant to Bankruptcy Code § 327 reasonable compensation for the actual and necessary services rendered by such professional persons and any paraprofessional person employed by such persons. See 11 U.S.C. § 330(a)(1). Furthermore, the Court may also award reimbursement for the actual and necessary expenses incurred. Id.

19. Bankruptcy Code § 330(a)(3) provides that 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.

See 11 U.S.C. § 330(a)(3).

20. As more fully stated below, V&E submits that the elements governing awards of compensation pursuant to Bankruptcy Code § 330 justify the allowance of the fees and expenses sought herein.

A. The Time Spent by V&E during the Period

21. V&E has expended 1,865.7 hours in the representation of Conti as Special Counsel during the Period. **Exhibit "C"** details the nature and extent of legal services rendered by V&E for and on behalf of Conti. All of the time spent was necessary and appropriate for the representation of Conti in the Empire Case. V&E has provided services of high quality while at the same time striving to work as efficiently as possible. As mentioned above, most of the work that V&E has performed in this matter has been performed by partners since the nature of the Empire Case, including the contests to and disputes respecting Conti's claims, has required a higher level of experience and expertise than a normal administration.

B. V&E's Hourly Rate

22. The hourly rates charged for the services performed are the hourly rates regularly charged by V&E in other cases and are comparable to the usual and customary charges of other professionals, legal assistants, and paraprofessionals with similar degrees of skill and expertise. Each of V&E's attorneys who performed services for this estate possess a reputation for skill, quality, integrity and ability. V&E's

attorneys have represented numerous banks, trustees, debtors, creditors and official committees in some of the largest and most sophisticated bankruptcy cases. V&E's attorneys are in demand for representation in bankruptcy cases throughout Texas and many other states.

C. V&E's Services have been Necessary and Beneficial to the Debtors

23. The test for determining necessity is an objective one, "based upon what services a reasonable lawyer or legal firm would have performed in the same circumstances." In re Ames Dep't Stores, Inc., 76 F.3d 66, 72 (2nd Cir. 1996). A court should not apply this test through hindsight. In re Angelika Films 57th Inc., 227 B.R. 29, 42 (Bankr. S.D.N.Y. 1998); In re Keene Corp., 205 B.R. 690, 696 (Bankr. S.D.N.Y. 1997). Ultimately, "if the services of a debtor's attorney are reasonably likely to benefit the debtor's estate, they should be compensable." Angelika Films, 227 B.R. at 42 (quoting Ames Dep't Stores, 76 F.3d at 71-72).

24. The services provided by V&E in its representation of the Debtors as Special Counsel have been necessary and have been beneficial to the Conti estate. V&E has taken the necessary and appropriate actions in the Empire Case to protect Conti's interest in cash collateral and other assets held by Empire. Additionally, V&E has asserted Conti's claims against Empire and has sought to maximize Conti's recovery from, and minimize its alleged liability to, Empire's bankruptcy estate.

D. V&E's Services have been Performed within a Reasonable Amount of Time

25. V&E's services during the Period have been limited to representation of the Debtors as Special Counsel in the Empire Case. While unable to directly dictate the speed at which the Empire Case progresses, V&E has actively encouraged the resolution of the Empire Case in the most expedient and efficient manner possible.

V&E was required to act within the time limitations presented by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Federal Rules of Civil Procedure, and those limitations placed upon it by other counsel and the United States Bankruptcy Court for the Western District of Texas and this Court, to resolve the matters presented in the Empire Case and meet deadlines presented in Conti's Case in a timely manner.

E. V&E's Fees are Reasonable

26. As to the requirement of reasonableness under Section 330, bankruptcy courts in this District now utilize the lodestar method. In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 21-22 (Bankr. S.D.N.Y. 1991). While some courts have considered the twelve factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974),⁶ "[i]t is now settled that the lodestar method of fee calculation . . . is *the* method to be used to determine a reasonable attorney fee in all federal courts, including the bankruptcy courts." In re Cena's Fine Furniture, Inc., 109 B.R. 575, 581 (E.D.N.Y. 1990) (emphasis in original, internal citations omitted). The lodestar amount is presumed to subsume the twelve Johnson factors. Id. at 581.

27. The lodestar amount is calculated by "multiplying the number of hours reasonably expended by the hourly rate, with the strong presumption that the lodestar product is reasonable under § 330." Drexel Burnham, 133 B.R. at 22 (internal citations omitted). The Supreme Court has found that "the lodestar figure includes most, if not all, of the relevant factors constituting a 'reasonable' attorney's fee." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 563, 106 S.Ct. 3088,

⁶ The Johnson factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney because of acceptance of the case; (5) the customary fee; (6); whether the fee is fixed or contingent; (7) time limitations imposed by the client or other circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the

3097 (1986). Indeed, such factors as “the novelty and complexity of the issues,’ ‘ the special skill and experience of counsel,’ the ‘quality of representation,’ and the ‘results obtained’ from litigation are presumably fully reflected in the lodestar amount.” Cena’s Fine Furniture, 109 B.R. at 581 (quoting Blum v. Stenson, 465 U.S. 886, 898-900, 104 S.Ct. 1541, 1548-49 (1983)).

28. With respect to hourly rates, Congress intended that the court look to the market rate for comparable services in non-bankruptcy cases. Drexel Burnham, 133 B.R. at 22; see also 11 U.S.C. § 330(a)(3)(E). The reasonable hourly rates are prevailing rates for similar services by lawyers of reasonably comparable skill, experience and reputation in the relevant market. In re Masterwear Corp., 233 B.R. 266, 278 (Bankr. S.D.N.Y. 1999).

29. Under an analysis utilizing the lodestar method as set forth above and the standards customarily applied to fee awards under Bankruptcy Code § 330, V&E believes that the request for compensation and reimbursement of expenses in the amounts set forth herein is reasonable and proper, and that such request should be allowed in the amount requested.

i. The Time and Labor Required

30. As set forth in **Exhibits “B” and “C”** attached hereto, V&E has expended 1,865.7 hours in the representation of Conti as Special Counsel during the Period. V&E’s representation of Conti in the Empire Case has presented complex and novel legal issues, time intensive negotiations, and highly-contested litigation. Conti and Empire claim competing ownership interests in, among other things, servicing fees related to various mortgage loan securitizations. Empire vigorously disputes Conti’s

claims to an ownership interest and security interest and, in fact, alleges that Conti is merely an unsecured creditor in the Empire Case whose claim is subject to equitable subordination.

31. Conti's claims arise under various complex loan documents and pre-petition arrangements among several of the Debtors, Empire, Empire's parent company, and Empire's principal. Conti's claims to Empire's assets have required and resulted in extensive negotiations, preparation for and attendance at cash collateral hearings, and drafting and responding to pleadings regarding Empire's use of cash collateral and Empire's attempt to sell certain assets of the Empire estate free of Conti's claims and interests. In addition, V&E has engaged in litigation in both the Empire Case and Conti Case to protect Conti's interests and determine the rights between the parties.

32. V&E actively participated in the negotiation of the sale and transfer of a substantial portion of Empire's assets, including most of its loan servicing rights. The asset sale has resulted in gross proceeds to the Empire estate of approximately \$10 million. V&E has continually asserted Conti's interest in the sale proceeds as a result of its ownership interest or security interest in Empire's servicing rights and other assets sold. V&E continues to assert a cash collateral interest in the sale proceeds and has filed the Adversary Proceeding in order to achieve adjudication of the rights between Conti and Empire.

(12) awards in similar cases.

33. The experience and expertise of V&E's attorneys and other paraprofessionals have facilitated and expedited the results achieved through V&E's representation of Conti as Special Counsel in the Empire Case. The attorneys and legal assistants who performed services for Conti in the Empire Case specialize in the areas of bankruptcy and litigation, which have been the areas of expertise required by Conti thus far in the Empire Case.

ii. V&E's Hourly Rate

34. The respective hourly rates of the professionals and paraprofessionals who have performed services in V&E's representation of the Debtors are set forth in **Exhibit "B"** attached hereto. The hourly rates charged for the services performed by V&E are the hourly rates regularly charged by V&E in other cases and are comparable to the market rate of other professionals and paraprofessionals with similar degrees of skill, experience and reputation in Texas.

CONCLUSION

35. The fees for which V&E seeks compensation and reimbursement are not excessive but are commensurate with the compensation sought and awarded in similar cases in this district for similar services rendered and results obtained. As more fully described in **Exhibits "B"** and **"C,"** the fee requested by V&E is in the amount of \$617,867.50. After taking into consideration the time and labor spent thus far, the nature and extent of the representation, and the relative complexity of this proceeding, V&E believes the allowance prayed for herein is reasonable.

36. The expenses detailed in **Exhibit "C"** represent the amounts incurred by V&E during the Period in its representation of the Debtors. This amount is \$37,157.54. These expenses include reproduction costs, telecopy charges, messenger charges, Westlaw, PACER, and other electronic research, transcript duplication, postage, and mailing costs, all of which were necessarily incurred in the service of the estate.

37. For the foregoing reasons, V&E requests the Court to allow final compensation in the amount of \$655,025.04, representing: (a) compensation in the aggregate amount of \$617,867.50 for fees incurred during the Period, plus (b) reimbursement of necessary out-of-pocket expenses in the amount of \$37,157.54 incurred during the Period and order that the Debtors pay to V&E \$212,573.32, representing the amount of unpaid fees and expenses incurred by V&E during the Period as Special Counsel to the Debtors.

PRAYER

WHEREFORE, PREMISES CONSIDERED, V&E requests that this Court allow it compensation in the amount of \$617,867.50 in fees and \$37,157.54 in expenses for a total of \$655,025.04 and enter an order for payment of the balance of its outstanding fees and expenses in the amount of \$212,573.32. V&E requests such other and further relief as this Court deems just and proper.

Dated: Dallas, Texas
February 1, 2001

Respectfully submitted,

VINSON & ELKINS L.L.P.
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By: /s/ Daniel C. Stewart (DS-9293)
Daniel C. Stewart, SBT#19206500 (DS-9293)

**Attorneys for ContiFinancial Corp., et al,
Debtors and Debtors in Possession**

**CERTIFICATION PURSUANT TO THE GUIDELINES FOR
FEES AND DISBURSEMENTS FOR PROFESSIONALS IN
SOUTHERN DISTRICT OF NEW YORK BANKRUPTCY CASES**

I, Daniel C. Stewart, as the professional designated by Vinson & Elkins L.L.P. with responsibility for compliance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases set forth in the Court's Administrative Order of April 19, 1995 (the "Administrative Order"), and in compliance with paragraph B(1) of that Administrative Order, do certify that (a) I have read the Application; (b) to the best of my knowledge, information and belief formed after a reasonable inquiry, the fees and disbursements sought fall within these Amended Guidelines and the United States Trustee Guidelines except as specifically noted; and (c) the fees and disbursements sought are billed at rates in accordance with our practices and are no less favorable than those customarily charged by Vinson & Elkins L.L.P. and generally accepted by Vinson & Elkins L.L.P.'s clients.

I hereby certify that in compliance with paragraph B(2) of the Administrative Order, Mr. Frank Baier of the Debtors, counsel for the Debtors, counsel to official committees, counsel for the Office of the United States Trustee, and counsel to all post-petition lenders have been served with a statement of fees and expenses accrued during each month within approximately twenty days following such month in accordance with the Court's Monthly Compensation Order, except that, as provided for in the Monthly Compensation Order, V&E's first statement of fees and expenses included fees earned and expenses incurred in both May and June, 2000.

I hereby certify that in compliance with paragraph B(3) of the Administrative Order, Mr. Frank Baier of the Debtors and the chair of each official committee have been served with a copy of the Application in accordance with the attached Certificate of Service.

Signed this 1st day of February, 2001

/s/ Daniel C. Stewart (DS-9293)
Daniel C. Stewart, SBT#19206500 (DS-9293)

EXHIBIT "A"

Exhibit "A," the Court's Order authorizing the employment of V&E on a final basis (the "Final Retention Order") was not electronically filed with this Final Application. To view the Final Retention Order, please see Document #125 on this case's docket.

07/19/2000 [125](#) Order signed on 7/18/2000 authorizing the employment and retention on a final basis of Vinson & Elkins LLP as special counsel to the debtors (Related Docs # [47](#), [71](#) and [108](#)). (DePierola, Jacqueline) (Entered: 07/19/2000)

EXHIBIT "B"
FEEs INCURRED DURING THE PERIOD OF
MAY 17, 2000 THROUGH DECEMBER 19, 2000

<u>Initials</u>	<u>Attorney</u>	<u>Year Admitted to Texas Bar</u>	<u>Rate</u>	<u>Hours</u>	<u>Fees at Standard Rate</u>
Partners*:					
DCS	Daniel C. Stewart	1972	\$440	320.5	\$141,020.00
			\$470	84.4	\$39,668.00
JL	James J. Lee	1976	\$395	68.5	\$27,057.50
			\$400	669.0	\$267,600.00
PEH	Paul E. Heath	1987	\$310	54.8	\$16,988.00
			\$360	67.1	\$24,156.00
Associates:					
JEM	John E. Mitchell	1996	\$220	3.8	\$836.00
WJCO	William J. Cobb, III	1996	\$220	0.3	\$66.00
DJS	David J. Stephenson	1997	\$195	75.7	\$14,761.50
AKM	Alan K. Motes	1999	\$165	490.1	\$80,866.50
JWBU	Jeffrey W. Burnett	1999	\$165	24.4	\$4,026.00
Paraprofessionals:					
YSWI	Yana S. Wingate	N/A	\$120	6.1	\$732.00
SDH	Susan D. Hamilton	N/A	\$90	1.0	\$90.00

Total Hours: **1,865.7**

Total Fees Requested: **\$617,867.50**

Average Billing Rate: \$331.17

* The billing rate for Daniel C. Stewart increased from \$440 in May through September, 2000, to \$470 in October through December, 2000. The billing rate for James J. Lee increased from \$395 in May and June, 2000, to \$400 in July through December, 2000. The billing rate for Paul E. Heath increased from \$310 in May through July, 2000, to \$360 in October through December, 2000.

EXHIBIT "C"

Exhibit "C," which contains a description of the services rendered and disbursements incurred by V&E during the Period was served upon each of the parties indicated on the Service List; however, due to its voluminous nature, Exhibit "C" was not electronically filed with the Court. Exhibit "C" is made available at the offices of Vinson & Elkins, L.L.P. and any interested party may obtain a copy of Exhibit "C" by contacting:

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Application of Vinson & Elkins L.L.P. for Allowance of Fees and Expenses as Special Counsel to ContiFinancial Corporation and Affiliates was served in its entirety via Federal Express overnight to the parties listed below and without Exhibit "C"* via United States first class mail to the parties listed on the attached Service List, on this 1st day of February, 2001.

/s/ Alan K. Motes (AM-5523)
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* Due to its voluminous nature, Exhibit "C," has not been served on the parties on the attached Service List. However, a copy of Exhibit "C" is made available upon request at the offices of Vinson & Elkins L.L.P. To obtain a copy of Exhibit "C," please contact Alan K. Motes by email at amotes@velaw.com or by phone at (214) 220-7740.

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