

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	:	CHAPTER 11
	:	
ENCOMPASS SERVICES CORPORATION, <u>et al.</u>	:	Case No. 02-43582-H4-11
	:	
Reorganized Debtors.	:	JOINTLY ADMINISTERED

**ORDER APPROVING FINAL APPLICATION OF APEX PARTNERS, LLC AS
FINANCIAL ADVISORS FOR DEBTORS FOR ALLOWANCE OF
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED
FROM NOVEMBER 22, 2002 THROUGH JUNE 9, 2003**

[This instrument pertains to Docket No. 2913]

Upon consideration of the application (the "Application") of Apex Partners, LLC ("Apex") for an order approving the final application of Apex as financial advisors for Encompass Services Corporation and its direct and indirect subsidiaries for allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses incurred from November 22, 2002 through June 9, 2003; and the Court being satisfied that the relief requested in the Application is in the best interests of Encompass Services Corporation and Encompass Services Holding Corp. (collectively, the "Debtors") and their estates; and it appearing that due notice of this Application has been given and that no other or further notice be given and sufficient cause appearing therefor, it is


ORDERED that the Application is granted; and it is further

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ORDERED that Apex is entitled to a final allowance of \$81,177.62 for the period from November 22, 2003 through June 9, 2003 (the "Compensation Period"), representing \$80,000.00 as compensation for professional services rendered during the Compensation Period and \$1,177.62 as reimbursement for actual and necessary expenses Apex incurred during the Compensation Period; and it is further

ORDERED that the Debtors are authorized to pay Apex such sums, to the extent that such amounts have not previously been paid.

DATED: 10/29, 2003
Houston, Texas



HONORABLE WILLIAM R. GREENDYKE,
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	:	CHAPTER 11
ENCOMPASS SERVICES CORPORATION,	:	Case No. 02-43582-H4-11
<u>et al.</u>	:	
	:	
Reorganized Debtors.	:	JOINTLY ADMINISTERED

**DECLARATION OF BARRY HARBOUR
IN SUPPORT OF THE FINAL APPLICATION OF APEX PARTNERS, LLC
AS FINANCIAL ADVISORS FOR DEBTORS FOR ALLOWANCE OF
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED
FROM NOVEMBER 22, 2002 THROUGH JUNE 9, 2003**

Barry Harbour, hereby declares pursuant to section 1746 of title 28 of the United States Code:

1. I am a member of Apex Partners, LLC (“Apex”) an investment bank with an office located at 7420 NW 5th Street, Suite #112, Fort Lauderdale, Florida 33317. I make this declaration (the “Declaration”) on behalf of Apex in support of the final application of Apex Partners, LLC as financial advisors for Encompass Services Corporation, et al. (the “Reorganized Debtors”) for allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses incurred from November 22, 2002 through June 9, 2003 (the “Compensation Period”) in these chapter 11 cases, dated August 8, 2003 (Docket No. 2913) (the “Final Application”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. Apex is a recognized boutique investment banking/financial advisory firm with two (2) principal offices and satellite offices throughout the eastern United States. The firm

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provides business valuation and merger and acquisition advisory services to clients in the lower middle market. The firm has substantial experience in the facility services industry.

3. On January 22, 2003, the Bankruptcy Court approved the Reorganized Debtors' retention of Apex as their financial advisors, effective November 22, 2002. A copy of the Final Order pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code Authorizing the Employment and Retention of Apex Partners, LLC as the Debtors' Financial Advisors and Investment Bankers (Docket No. 876) ("Retention Order") is attached to the Final Application as Exhibit A. The Affidavit of Barry Harbour in Support of the Debtors' Application for Order Pursuant to 11 U.S.C. §§ 328(a), 329 and 504 and Fed. R. Bankr. P. 2014(a) and 2016(b) Authorizing Employment of Apex Partners, LLC as Financial Advisors and Investment Bankers is attached to the Final Application as Exhibit B.

4. Since the Commencement Date and in accordance with the Court's December 18, 2002 order (Docket #389), Apex submitted monthly statements to the Reorganized Debtors requesting 80% of its fees and 90% of expense disbursements for each month. On April 14, 2003 Apex submitted the Interim Application of Apex Partners, LLC as Financial Advisor for Debtors for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from November 22, 2003 Through February 28, 2003 (the "Interim Application") (Docket # 2109) requesting interim allowance of \$60,699.25 for the interim period of November 22, 2002 through February 28, 2003, comprising \$60,000 as compensation for professional services rendered and \$699.25 as reimbursement for actual and necessary expenses Apex incurred during this interim period. The Court entered an order approving the Interim Application in full on May 7, 2003 (Docket # 2326).

5. As of the date hereof, Apex has received payment of \$76,925.62 for fees and expenses incurred from the Commencement Date through June 9, 2003. Other than these payments, Apex has received no payment and no promises of payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with the matters covered by this Application.

6. There is no agreement or understanding between Apex and any other person for the sharing of compensation to be received for services rendered in this case.

7. The Final Application, in accordance with section 330 of the Bankruptcy Code, requests final allowance of \$81,177.62 for the Compensation Period, representing \$80,000.00 as compensation for professional services rendered during the Compensation Period and \$1,177.62 as reimbursement for actual and necessary expenses Apex incurred during the Compensation Period.

8. Apex's charges for professional services rendered in this case were billed in accordance with Apex's existing billing procedures. The rates Apex charged for the services rendered by its professionals in this chapter 11 case are the same rates Apex charges for professional services rendered in comparable nonbankruptcy-related matters and are reasonable based on the customary compensation charged by comparably skilled professionals in comparable nonbankruptcy cases in a competitive national investment banking and financial advisory services market.

9. As is customary in similar engagements, both in and outside of bankruptcy, Apex was to receive a Retainer Fee and a fee upon the successful consummation of a transaction. Taking into account the complex nature of this engagement and the imposed time constraints, the terms contained in the Retention Order are similar to the terms agreed to by Apex

and other financial advisory firms in similar restructuring engagements, both in and outside of bankruptcy.

10. Pursuant to Rule 2016(d)(3) of the Bankruptcy Local Rules, the Final Application contains a summary of certain of the significant professional services rendered by Apex during the Compensation Period, as well as the compensation sought for such services. These summaries are organized in accordance with Apex's Internal System of Project or Work Codes.

11. During the Compensation Period, Apex consulted with and advised the Reorganized Debtors on matters involving the divestiture of certain non-core operations. Apex rendered professional services in furtherance of these activities including, inter alia, (i) acting as intermediary and negotiator for the Reorganized Debtors, (ii) entertaining and screening all inquiries regarding potential transactions, (iii) securing confidentiality agreements on the Reorganized Debtors' behalf, (iv) structuring acceptable transaction terms, and (v) working with Reorganized Debtors' legal counsel to document the desired transactions in the most efficient and effective manner. Apex worked with the Reorganized Debtors on multiple matters during the Compensation Period, including, but not limited to, the divestiture or sale of certain assets related to (i) EET Florida's South Florida operations, (ii) Merritt Island Heat & Air operations, (iii) Sun Plumbing operations, and (iv) EET Salt Lake operations.

12. Apex's activities contributed to the administration of the Reorganized Debtors' estates and paved the way for the quick approval of the disclosure statement and confirmation of a plan of reorganization on May 28, 2003, less than seven months after the Petition Date.

13. I submit that the foregoing services were necessary to the administration of this chapter 11 case, were necessary and beneficial to the estates at the time at which such services were rendered, and were performed without unnecessary duplication of effort or expense. Furthermore, Apex's request for compensation for the foregoing services is reflective of a reasonable and appropriate amount of time expended in performing such services commensurate with the complexity, importance and nature of the problem, issue or task involved.

14. Pursuant to Rule 2016(a) of the Bankruptcy Local Rules, the Final Application includes a discussion of the factors considered in *American Benefit Life Ins. Co. v. Baddock (In re First Colonial Corp. of America)*, 544 F.2d 1291, 1298-99 (5th Cir.), cert. denied, 431 U.S. 904 (1977).

15. I submit that consideration of the factors listed in *First Colonial Corp.* indicates that the compensation requested by Apex for the services rendered during the Compensation Period is reasonable:

- (a) Time and Labor Required: Apex was retained for four months during the Compensation Period performing professional services on behalf of the Debtor.
- (b) Novelty and Difficulty of the Questions: Although the majority of the issues in this case were not novel, this case presented a variety of transactional issues to resolve.
- (c) Skill Requisite to Perform the Service Properly: Bankruptcy is a specialized area of federal practice, requiring knowledge of the Bankruptcy Code and other related federal statutes. In order to address the range of issues presented, Apex was required to draw upon its skill and experience in bankruptcy and transactional matters.
- (d) Preclusion of Other Employment Due to the Acceptance of the Case: Although Apex's representation of the Reorganized Debtors consumed a significant portion of the time of several of the professionals who worked on the matter, Apex was not precluded from taking other employment as a result of these cases.

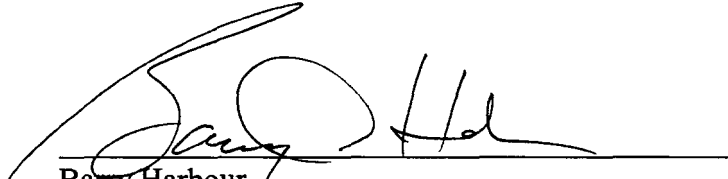
- (e) Customary Fee: Apex's customary fees, as of June 9, 2003, subject to change from time to time, were \$15,000 monthly as a retainer and \$5,000 due upon the closing of each transaction pursuant to a definitive written agreement between the parties. I represent that these fees are reasonable, fair and customary for the degree of skill and expertise required in this case.
- (f) Whether the Fee is Fixed or Contingent: Apex's fee was fixed. As stated above, Apex was to receive an agreed upon monthly retainer of \$15,000 and a success fee of \$5,000 contingent upon the closing of a transaction pursuant to a definitive written agreement. In addition, Apex was to be reimbursed for reasonable out-of-pocket expenses.
- (g) Time Limitations: Generally, in bankruptcy cases, there are numerous deadlines imposed for the filing of documents, reports, motions, or objections. Moreover, during the Compensation Period, Apex assisted the Reorganized Debtors in (i) gathering information relevant to the proceedings; (ii) preparing reports; and (iii) facilitating transactions. With respect to the filing of documents, reports, motions, or objections, Apex worked within the relevant time limitations with respect to each.
- (h) Amount Involved and Results Obtained: Apex worked with the Reorganized Debtors on a number of issues during the Compensation Period, including, but not limited to, the divestiture or sale of certain assets. Apex's activities contributed to the administration of the Reorganized Debtors' estates and paved the way for the quick approval of the disclosure statement and confirmation of a plan of reorganization on May 28, 2003, less than seven months after the Petition Date.
- (i) Experience, Reputation and Ability of Professionals: The Reorganized Debtors selected Apex as its Financial Advisor because of Apex's background, expertise, and past representation of the Reorganized Debtors with respect to the divestiture of various operating units.
- (j) Undesirability of the Case: Whenever a professional agrees to represent a debtor, there is an inherent risk that the firm's professionals' fees and expenses will not get paid. Due to this uncertainty, professionals frequently choose not to represent debtors.
- (k) Nature and Length of the Professional Relationship with the Client: Apex has provided services to the Reorganized Debtors since September 3, 2002. Apex has not represented the Reorganized Debtors in any other matters.
- (l) Awards in Similar Cases: Apex's requested fees and expenses are similar to fees and expenses paid in other chapter 11 bankruptcy cases of this nature, length of time, and complexity.

16. Attached to the Final Application is a detailed description of the actual and necessary expenses incurred by Apex in connection with its employment with the Reorganized Debtors during the Compensation Period. Apex seeks reimbursement of actual and necessary expenses incurred by Apex during the Compensation Period in the aggregate amount of \$1,177.62. Apex charges for expenses incurred at the provider's cost without markup. The basis for these rates is Apex's calculation of the actual cost of these expenses.

17. I submit that the Final Application complies with section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the guidelines adopted by the Executive Office for the United States Trustee.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 24, 2003


Barry Harbour
Managing Director