

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	CHAPTER 11
	§	
ENCOMPASS SERVICES CORPORATION, <i>et al.</i>	§	Case No. 02-43582-H4-11
	§	
Debtors.	§	JOINTLY ADMINISTERED

**SECOND AND FINAL APPLICATION BY ANDREWS & KURTH L.L.P. AS
COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
FROM NOVEMBER 26, 2002 THROUGH JUNE 9, 2003**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
SEPTEMBER 24, 2003 AT 11:00 A.M. IN COURTROOM 403, 515 RUSK,
4TH FLOOR, HOUSTON, TEXAS. IF YOU OBJECT TO THE RELIEF
REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY
ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST
FILE YOUR RESPONSE WITHIN SIXTY (60) DAYS FROM THE DATE
YOU WERE SERVED WITH THIS PLEADING. YOU MUST GIVE A
COPY OF YOUR RESPONSE TO THE PERSON WHO SENT YOU THE
NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS
UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

COMES NOW Andrews & Kurth L.L.P. (the "Applicant") and hereby applies pursuant to this Second and Final Application (the "Final Application") under 11 U.S.C. §§ 327, 328, and 503, for final approval of its compensation for services in the total amount of \$1,147,291.35 and reimbursement of expenses in the total amount of \$68,206.95 incurred during Applicant's employment as counsel to the Official Committee of Unsecured Creditors (the "Committee") of Encompass Services Corporation *et al.* (the "Debtors"). This Final Application includes (i) fees in the amount of \$471,600.00 and expenses in the amount of \$19,637.49, which were previously approved and paid on an interim basis pursuant to Applicant's First Interim Application for the period from November 26, 2002 through February 28, 2003 (the "First Period"); (ii) the Conflict

Related Fees (as hereinafter defined) in the amount of \$19,983.15 which were incurred during the First Period but have not been previously approved; and iii) fees in the amount of \$649,146.20 and expenses in the amount of \$48,119.65 for the period from March 1, 2003 through June 9, 2003 (the “Second Period”). In addition, Applicant is requesting fees in the amount of \$6,562.00 and expenses in the amount of \$449.81 for services related to the preparation and submission of this Final Application after the Second Period.

RELEVANT BACKGROUND

1. On November 19, 2002, the Debtors filed voluntary petitions under Chapter 11 and commenced these cases.

2. The Committee was appointed on November 25, 2002 (Docket No. 179) and on November 26, 2003, the Committee retained Applicant as its counsel. Applicant agreed to a 10% reduction in fees for the first 120 days of its employment, as stated in the Statement of Andrews & Kurth L.L.P. and Affidavit of Hugh M. Ray Pursuant to Bankruptcy Rule 2014 and 2016(b) and Bankruptcy Code § 504, attached hereto as Exhibit “A.”

3. On January 8, 2003, the Court authorized the employment of Applicant as counsel for the Official Unsecured Creditors’ Committee of Encompass Services Corporation, *et al.*, effective as of November 26, 2002, pursuant to the order attached hereto as Exhibit “B.”

4. On or about December 18, 2002, the Administrative Order Pursuant to §§ 105(a) and 331 of the Bankruptcy Code Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (“Administrative Order”) was entered.

5. On or about May 28, 2003, the order confirming the Debtors’ Immaterially Modified Second Amended Joint Plan of Reorganization (the “Plan”) was entered. On June 9,

2003, the Plan became effective (the “Effective Date”). Pursuant to the Plan, Professional Fee Claims as defined in the Plan are to be submitted within 60 days after the Effective Date.

PRIOR FEE APPLICATION BY APPLICANT

6. On April 14, 2003, Applicant filed its First Interim Application seeking compensation for services in the amount of \$491,727.15 and reimbursement of expenses in the amount of \$19,637.49, for the First Period. A true copy of the First Interim Application (which includes detailed statements of the services rendered, time expended, and expenses incurred for the First Period as Exhibits “C-1”, “C-2”, and “C-3”) is attached hereto and incorporated herein by reference as Exhibit “C.”

7. On June 3, 2003, the Court signed the order allowing Applicant interim compensation for fees in the amount of \$471,600.00 and reimbursement of expenses in the amount of \$19,637.49 for the First Period (the “First Interim Order”). A true copy of the First Interim Order is attached hereto as Exhibit “D.” Applicant has been paid the amounts approved in the First Interim Order.

8. Pursuant to the First Interim Order, the Court also deferred ruling on the remaining fees sought in the First Interim Application in the amount of \$20,127.15 for services in connection with Applicant’s Bankruptcy Rule 2014 statement, conflict checking, and an informal objection to Applicant’s employment raised by a creditor in these cases (the “Conflict Related Fees”) until Applicant’s next fee application. Applicant is now seeking approval of the Conflict Related Fees as more particularly set forth below.

CONFLICT RELATED FEES

9. Subsequent to the hearing on the First Interim Application, Applicant reviewed this Court's Memorandum of Decision issued on May 14, 2003, in *In re: Sterling Chemical Holdings, Inc., et al.*; Case No. 01-37805-H4-11. Applicant then reviewed the underlying time entries for the Conflict Related Fees and determined that with the exception of \$144.00 of fees incurred in creating internal firm screening procedures and withdrawal from firm representation of an administrator of an Encompass 401(k) plan,¹ all such fees are properly allowable as professional fees in these cases, because such fees were not necessary for state law ethics issues, but were necessary for Applicant to comply with Bankruptcy Rule 2014 and to obtain Court approval of its employment. All state law ethics issues (except for the screening procedures and withdrawal) were addressed prior to the commencement of Applicant's representation of the Committee on November 26, 2003, and thus, Applicant is not seeking compensation for time spent on state law ethics issues.

10. In accordance with the Administrative Order, Applicant has already been paid 80% of the Conflict Related Fees pending allowance or disallowance of such amounts. Pursuant to this Final Application, Applicant is not seeking the \$144.00 in fees spent establishing the screening procedures and withdrawing from representation of the plan administrator, but is seeking approval of the remaining Conflict Related Fees in the amount of \$19,983.15.

¹ As more particularly set forth in paragraph 9 of Exhibit "A" hereto, the screening procedures were implemented to screen Mr. Randolph Bryant, of counsel at Applicant, because prior to joining Applicant, he had at one time been employed as general counsel to a predecessor of Encompass Services Corporation, Group Maintenance America Corp., and subsequently of Encompass Services Corporation and certain of its subsidiaries. Applicant learned of this affiliation when Mr. Bryant responded to a firm wide inquiry meant to inquire regarding connections relevant to the "disinterested" standard under the Code. Mr. Umari spent .80 hours in connection with these matters and the withdrawal of representation of the plan administrator, for a total fee, after applying the 10% discount, of \$144.00.

**COMPENSATION AND REIMBURSEMENT OF
EXPENSES SOUGHT BY APPLICANT**

11. Pursuant to this Final Application, Applicant seeks final allowance of the fees and expenses previously approved pursuant to the First Interim Order, the Conflict Related Fees, and its fees and expenses for the Second Period pursuant to section 503(b)(2) of the Bankruptcy Code.

12. Applicant requests compensation on an hourly basis for its services rendered, with professional fees ranging from \$65 - \$550 per hour, depending on the experience level of the attorney or legal assistant and the nature of the work performed. The rates sought are the same rates Applicant charges its clients for similar services in cases other than under Title 11 and are similar to the customary compensation rates charged by comparably skilled practitioners in Title 11 cases.

**SUMMARY OF APPLICANT'S SERVICES
AND EXPENSES DURING THE SECOND PERIOD²**

13. Detailed statements of the services rendered, time expended, and expenses incurred for the Second Period are attached hereto and incorporated herein by reference, as follows:

<u>Exhibit Number</u>	<u>Period Covered By Statement</u>
"E-1"	March 2003
"E-2"	April 2003
"E-3"	May 2003
"E-4"	June, 2003 (through June 9, 2003)

² As stated above, the Applicant's services and expenses during the First Period were described in the First Interim Application, which is attached hereto and incorporated herein by reference as Exhibit "C."

14. Applicant has not previously filed an interim application for the Second Period but certain payments have been received by Applicant in accordance with the Administrative Order. Specifically, Applicant has submitted monthly fee statements and when no objections to the statements were made, received interim payments of 80% of its undisputed fees and 90% of its expenses.³ The monthly fee statements and the payments received by the Applicant are summarized, as follows:

Invoice Period	Total Fees (prior to discount)	Less 10%⁴ Adjustment	Fees Invoiced	Fees Paid	Expenses Sought	Expenses Paid
March, 2003	118,468.00	11,846.80	106,621.20	85,296.80	3,828.42	3,445.58
April, 2003			245,056.00	245,056.00	12,868.13	12,868.13
May, 2003			282,287.00	225,829.60	21,030.74	18,927.67
June, 2003			15,182.00		10,392.36	
Totals	118,468.00	11,846.80	649,146.20	556,182.40	48,119.65	35,241.38

15. Accordingly, for the \$649,146.20 in fees and \$48,119.65 in expenses sought herein for the Second Period, Applicant has received payments of \$556,182.40 for fees and \$35,241.38 for expenses, leaving a remaining balance of \$92,963.80 for fees and \$12,878.27 for reimbursement of expenses owing for the Second Period. Applicant requests final allowance of all amounts and seeks payment from the Debtors for the remaining balance owing for the Second Period as set forth herein.

16. Attached as Exhibit “F” is a summary of the attorneys and paralegals who performed services during the Second Period for the Committee, and the total amounts requested for each individual for the Second Period.

³ However, Applicant did receive payment of 100% of the fees and expenses for the April, 2003 invoice as reflected herein. Applicant had only requested payment of the April 2003 invoice in accordance with the Administrative Order and believes that the Debtors inadvertently paid the invoice in full.

⁴ The 10% discount was applicable only to fees incurred for the first 120 days of Applicant’s representation and thus, ended on or about March 26, 2003. However, for ease of accounting, Applicant gave the Debtors and Committee the benefit of the 10% discount through March 31, 2003.

17. Attached as Exhibit “G” is a summary of actual expenses incurred by Applicant on behalf of the Committee for the Second Period; Exhibits “E-1” through E-4” include additional detail regarding these expenses. The expense charges are intended to cover Applicant’s actual out-of-pocket costs, which are not incorporated into the Applicant’s hourly billing rates. The expenses were necessary, reasonable, and justified under the circumstances to serve the needs of the Committee.

SUMMARY OF PROJECTS/ACTIVITIES
DURING THE SECOND PERIOD

18. Every time entry for all work performed on this case during the Second Period, including a designation of the attorney or paralegal who performed the work, is contained chronologically in Exhibits “E-1” through “E-4.” The following is a summary, by project, of the services rendered, which is more completely detailed in Exhibits “E-1” through “E-4.”

Asset Disposition (144603)

19. This project category includes all of Applicant’s services during the Second Period related to the disposition of Debtors’ assets. Specifically, Applicant’s services included representing the Committee in all aspects of Debtors’ numerous asset sales, including the sale of Debtors’ residential businesses under the Plan. Applicant worked closely with the Committee’s financial advisor, Chanin Capital Partners LLC (“Chanin”), to analyze the impact of the asset sales on unsecured creditors. On behalf of the Committee, Applicant analyzed and provided comments and/or objections to proposed Asset Purchase Agreements, reviewed bids from potential purchasers, communicated with potential purchasers, attended auctions, analyzed and provided comments and, where appropriate, objections to proposed sale orders, and reviewed the objections to sales filed by other parties. Applicant also participated in post-closing matters including collection adjustments and settlements thereto, application of proceeds, and break-up

fee issues. Applicant's services were actual, necessary, and beneficial because it was necessary for the Committee to ensure that the sales proceeded in a fashion that was in the best interests of the estates.

20. This project includes 158.30 hours and requested fees in the amount of \$60,144.25 for the Second Period. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144603	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	11.30	8.60	5.50	0.30	25.70	\$14,135.00
Jim Donnell	495	0.50	12.30	1.20		14.00	\$6,930.00
Douglas J. Dillon	440		8.60	5.40		14.00	\$6,160.00
Paul Moak	435			0.30		0.30	\$130.50
Jennifer Gore	350	36.20	31.10	17.70	0.40	85.40	\$29,890.00
Allison R. Comment	270		9.20			9.20	\$2,484.00
Basil A. Umari	240		7.20	2.50		9.70	\$2,328.00
Subtotal		48.00	77.00	32.60	0.70	158.30	\$62,057.50
Less 10% Discount through March 31, 2003							(\$1,913.25)
Total							\$60,144.25

Assumption/Rejection of Leases (144604)

21. This project category includes all of Applicant's services to the Committee during the Second Period related to Debtors' assumption and rejection of executory contracts and unexpired leases. Specifically, Applicant's services included analyzing, on behalf of the Committee, Debtors' motions to assume and reject certain executory contracts and unexpired leases, as well as motions filed by others seeking to compel assumption or rejection. Applicant also attended court hearings regarding the foregoing on behalf of the Committee. Applicant's

services were actual, necessary, and beneficial because the Debtors’ decision to assume or reject executory contracts and unexpired leases affects the size of claims against the Debtors’ estates and thus the funds available to satisfy the claims of unsecured creditors.

22. This project includes 11.50 hours and requested fees in the amount of \$4,891.60. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144604	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	3.40	2.60			6.00	\$3,300.00
Jennifer Gore	350	3.80	1.60			5.40	\$1,890.00
Basil Umari	240	0.10				0.10	\$24.00
Subtotal		7.30	4.20	0.00	0.00	11.50	\$5,214.00
Less 10% Discount through March 31, 2003							(\$322.40)
Total							\$4,891.60

Avoidance Action Analysis (144605)

23. This project category includes all of Applicant’s services during the Second Period related to the analysis of potential avoidance causes of actions available to the Debtors and that could be brought by the Committee. Specifically, Applicant’s services included its continued analysis of the Pre-Petition Secured Lender’s (“Pre-Petition Lenders”) lien filings to ensure the liens were valid and properly perfected. In addition, Applicant analyzed potential avoidance actions and other claims against the Pre-Petition Lenders. Further, Applicant continued drafting a complaint with respect to the various avoidance actions and other claims that the Committee contemplated asserting against the Pre-Petition Lenders on or before its

June 30, 2003 deadline. Applicant's services were actual, necessary, and beneficial because the lien position of the Pre-Petition Lenders needed to be evaluated, unencumbered assets needed to be identified, and the litigation had the potential to be an important source of recovery for unsecured creditors.

24. This project includes 29.50 hours and requested fees in the amount of \$9,275.85. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144605	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Jim Donnell	495	0.70				0.70	\$346.50
Doug Dillon	440	14.40				14.40	\$6,336.00
Jennifer Gore	350	1.90				1.90	\$665.00
Sharon Ward	335	3.00				3.00	\$1,005.00
Basil Umari	240	4.30				4.30	\$1,032.00
Shahreen Rafique	180	4.50				4.50	\$810.00
Bonnie J. Reynolds	160	0.70				0.70	\$112.00
Subtotal		29.50	0.00	0.00	0.00	29.50	\$10,306.50
Less 10% Discount through March 31, 2003							(\$1,030.65)
Total							\$9,275.85

Case Administration (144606)

25. This project category includes all of Applicant's services during the Second Period related to the general administration of the case, including reviewing docket entries and miscellaneous pleadings, monitoring hearing settings and agendas, reviewing Debtors' operating reports, schedules, and statements of financial affairs, preparing for and attending omnibus hearing settings, responding to creditor inquiries, communicating with the United States Trustee's office regarding Committee membership, and performing other Committee

administrative matters. Applicant's services were actual, necessary, and beneficial, because the Committee had to monitor the Debtors' filings and reports and respond to creditor inquiries.

26. This project includes 123.60 total hours and total requested fees in the amount of \$28,379.20. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144606	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	9.10	1.40			10.50	\$5,775.00
Jim Donnell	495		3.00	1.40	0.80	5.20	\$2,574.00
Jennifer Gore	350	9.80	12.20	4.50	3.20	29.70	\$10,395.00
Basil Umari	240	0.10	1.60	2.90		4.60	\$1,104.00
Eileen Leahy	135			5.50		5.50	\$742.50
Carol McClain	130	16.80	18.90	22.10	10.30	68.10	\$8,853.00
Subtotal		35.80	37.10	36.40	14.30	123.60	\$29,443.50
Less 10% Discount through March 31, 2003							(\$1,064.30)
Total							\$28,379.20

Fee/Employment Applications (144607)

27. This project category includes all of Applicant's services during the Second Period related to fee/employment applications, including services related to Applicant's monthly fee statements under the Administrative Order, preparation of Applicant's First Interim Fee Application, assistance to Chanin in preparation of its First Interim Fee Application, retention of special counsel for the purpose of prosecuting potential avoidance actions against the Bank Group, and preparation of this Final Application. Applicant's services were actual, necessary,

and beneficial because it was necessary for the Committee to employ and retain professionals in this case and for such professionals to submit statements and applications to be paid.

28. This project includes 77.30 hours and requested fees in the amount of \$17,876.20. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144607	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550		0.70	0.30		1.00	\$550.00
Jim Donnell	495			0.40		0.40	\$198.00
Paul Moak	435				0.60	0.60	\$261.00
Jennifer Gore	350	1.40	9.20	5.60	4.70	20.90	\$7,315.00
Basil Umari	240	5.00	19.90	7.10	3.50	35.50	\$8,520.00
Nancy Ediger	70	17.40	1.50			18.90	\$1,323.00
Subtotal		23.80	31.30	13.40	8.80	77.30	\$18,167.00
Less 10% Discount through March 31, 2003							(\$290.80)
Total							\$17,876.20

29. Of the total amount sought in this project category, \$14,618.50 is for services that occurred during the Second Period related to the preparation of Applicant's First Interim Application and the preparation of this Final Application.⁵ In addition to these amounts, Applicant is seeking \$5,812.00 in fees and \$89.81 in expenses for services that occurred after the Second Period for the preparation of this Final Application and an estimated amount of \$750.00 in fees for services in connection with the hearing on this Final Application and an estimated

⁵ During the First Period, Applicant incurred fees of \$3,579.30 in preparation of monthly invoices which were later used in preparing the First Application.

amount of \$360.00 in expenses in serving the notice of the Final Application.⁶ The total amount sought by Applicant for services related to preparing the First Interim Application and this Final Application is \$24,759.80, which represents approximately 2.16% of the total fees for which Applicant seeks approval in this Final Application.

Fees/Employment Objections (144608)

30. This project category includes all of Applicant's services during the Second Period related to the employment of professionals employed in the case other than Applicant and Chanin. Specifically, Applicant analyzed interim fee applications filed by other professionals in the case and attended court hearings thereto. In addition, Applicant analyzed the objection to the employment of special counsel to the Committee. Finally, Applicant reviewed the monthly invoices submitted by other professionals to ensure compliance with the Administrative Order. Applicant's services were actual, necessary, and beneficial because the Committee had to monitor the Debtors' retention of professionals and resulting administrative costs to ensure that they were necessary and appropriate.

31. This project includes 14.90 hours and requested fees in the amount of \$5,278.20. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

⁶ The \$360.00 is an estimate of the photocopying and mailing costs of the Notice of the Final Application based on the costs incurred in connection with photocopying and mailing the Notice of Applicant's First Interim Application.

144608	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	0.20	3.10			3.30	\$1,815.00
Jennifer Gore	350		2.00	1.70	1.80	5.50	\$1,925.00
Allison R. Comment	270		3.40			3.40	\$918.00
Basil Umari	240	0.70		1.70	0.30	2.70	\$648.00
Subtotal		0.90	8.50	3.40	2.10	14.90	\$5,306.00
Less 10% Discount through March 31, 2003							(\$27.80)
Total							\$5,278.20

Financing (144609)

32. This project category includes all of Applicant's services during the Second Period related to the Debtors' use of cash collateral and debtor-in-possession financing. Specifically, with the aid of the Committee's financial advisor Chanin, Applicant monitored Debtors' use of cash collateral and debtor-in-possession financing to ensure compliance with orders entered by the Court thereto earlier in the case. Applicant also analyzed the potential to appeal the financing orders. Applicant's services were actual, necessary, and beneficial because the Committee had to ensure that the Debtors' financing orders were appropriate and limited and that the Committee's rights to bring surcharge and other causes of actions were preserved.

33. This project includes 12.20 total hours and total requested fees in the amount of \$5,595.00. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144609	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh Ray	550			1.00		1.00	\$550.00
Jim Donnell	495		8.00			8.00	\$3,960.00
Jennifer Gore	350	1.00	0.30	1.70	0.20	3.20	\$1,120.00
Subtotal		1.00	8.30	2.70	0.20	12.20	\$5,630.00
Less 10% Discount through March 31, 2003							(\$35.00)
Total							\$5,595.00

Plan and Disclosure Statement (144610)

34. This project category includes all of Applicant's services during the Second Period related to confirmation of Debtors' Plan. Specifically, with the aid of the Committee's financial advisor Chanin, Applicant analyzed Debtors' proposed disclosure statement in order to ensure compliance with relevant Code provisions. Debtors prepared a comprehensive objection to Debtors' proposed disclosure statement and negotiated with Debtors and others for inclusion of relevant provisions to ensure that the disclosure statement ultimately provided adequate information. Applicant also analyzed Debtors' proposed plan of reorganization, with the help of Chanin, and prepared a letter on behalf of the Committee to be included in the solicitation packages distributed by the Debtors urging classes of unsecured creditors to vote to reject the plan. All three classes of unsecured creditors ultimately voted to reject the Plan. Applicant also prepared and filed a comprehensive objection to confirmation and engaged in extensive discovery prior to the confirmation hearing, including the review of documents and the depositions of several of the Debtors' officers, directors, and financial advisors. Applicant also filed a motion to estimate the Bank Groups' proof of claim for confirmation purposes, and monitored the voting, including reviewing the ballots received by the Debtors. While litigating confirmation issues, Applicant engaged in settlement discussions with the Debtors and the Bank

Group. These discussions continued through the confirmation hearing itself and culminated in a settlement whereby the Bank Group agreed to treat the approximately \$119.8 million tax refund received by the Debtors as an unencumbered asset (on certain conditions), and allow a payment of \$2.5 million to the subordinated Noteholders on the Effective Date. Applicant's services were actual, necessary, and beneficial because the Committee had to evaluate and negotiate the Debtors' Plan for the benefit of the unsecured creditors, and successfully did so.

35. This project includes 1048.00 total hours and total requested fees in the amount of \$384,483.15. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144610	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	15.90	20.20	41.80		77.90	\$42,845.00
Jim Donnell	495	7.20	102.40	60.00	0.50	170.10	\$84,199.50
Robin Russell	495	0.30				0.30	\$148.50
Douglas J. Dillon	440	1.20	0.30	6.00		7.50	\$3,300.00
Paul D. Moak	435		43.70	107.70		151.40	\$65,859.00
Omar S. Saleh	350		19.90	122.10		142.00	\$49,700.00
Jennifer Gore	350	32.10	79.40	107.50	0.60	219.60	\$76,860.00
Ardie Baer	290			9.80		9.80	\$2,842.00
Allison R. Comment	270	44.20	24.50	14.30		83.00	\$22,410.00
Basil A. Umari	240	25.90	13.20	50.10		89.20	\$21,408.00
Karen Whitt	235			6.10		6.10	\$1,433.50
Chasless Yancy-Hunter	210	2.00	53.80	7.40		63.20	\$13,272.00
Shahreen Rafique	180	26.60				26.60	\$4,788.00
Eileen Leahy	135			1.30		1.30	\$175.50
Subtotal		155.40	357.40	534.10	1.10	1048.00	\$389,241.00
Less 10% Discount through March 31, 2003							(\$4,757.85)
Total							\$384,483.15

Meeting of Creditors (144611)

36. This project category includes all of Applicant’s services during the Second Period related to the section 341 meeting of creditors. Applicant prepared for and attended the meeting of creditors. Applicant’s services were actual, necessary, and beneficial because it was necessary for Applicant to represent the Committee at the meeting of creditors.

37. This project includes 2.50 hours and requested fees in the amount of \$829.50. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144611	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Jennifer Gore	350	1.30	1.20			2.50	\$875.00
Subtotal		1.30	1.20	0.00	0.00	2.50	\$875.00
Less 10% Discount through March 31, 2003							(\$45.50)
Total							\$829.50

Meetings and Communications with Creditors’ Committee (144612)

38. This project category includes all of Applicant’s services during the Second Period in communicating with the Committee and keeping the Committee abreast of developments in the case, including Committee meetings and status reports. Applicant’s services were actual, necessary, and beneficial because it was necessary for Applicant to communicate with and advise the Committee.

39. This project includes 31.30 total hours, and total requested fees in the amount of \$14,451.00. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144612	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh Ray	550	2.30	1.70	4.60	1.40	10.00	\$5,500.00
Jim Donnell	495		5.30	6.10	0.40	11.80	\$5,841.00
Paul Moak	435			0.40		0.40	\$174.00
Jennifer Gore	350	3.50	1.80	2.70	0.10	8.10	\$2,835.00
Omar Saleh	350			1.00		1.00	\$350.00
Subtotal		5.80	8.80	14.80	1.90	31.30	\$14,700.00
Less 10% Discount through March 31, 2003							(\$249.00)
Total							\$14,451.00

Other Contested Matters (144615)

40. This project category includes all of Applicant's services related to contested matters not covered by another project category. These matters included preparation and filing of a motion to authorize the Committee to bring 506(c) surcharge claims on behalf of the Debtors and a motion for the appointment of a chapter 11 trustee. In regard to the trustee motion, Applicant defended the deposition of Brent Williams and responded to Debtors' attempts to depose individual Committee members. Applicant's services were actual, necessary, and beneficial because the Committee's efforts with regard to both motions were important steps in safeguarding the potential for recovery for unsecured creditors.

41. This project includes 134.50 hours requested fees in the amount of \$54,594.60. A summary of the attorneys or paralegals who performed services and for whom reimbursement is

requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144615	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550		14.70	4.30	1.40	20.40	\$11,220.00
Jim Donnell	495		1.00	40.40		41.40	\$20,493.00
Paul D. Moak	435		7.60	4.20		11.80	\$5,133.00
Jennifer Gore	350		14.80	15.90	0.60	31.30	\$10,955.00
Omar S. Saleh	350		0.80			0.80	\$280.00
Basil A. Umari	240		17.60	6.30		23.90	\$5,736.00
Shahreen Rafique	180	4.30				4.30	\$774.00
Eileen Leahy	135		0.60			0.60	\$81.00
Subtotal		4.30	57.10	71.10	2.00	134.50	\$54,672.00
Less 10% Discount through March 31, 2003							(\$77.40)
Total							\$54,594.60

Relief From Stay Proceedings (144616)

42. This project category includes all of Applicant's services during the Second Period related to motions filed seeking relief from the automatic stay. Specifically, Applicant's services included reviewing motions for relief from the automatic stay to make sure they did not threaten to deplete estate assets or trigger a default under the DIP financing agreement, reviewing and conferring with Debtors' counsel regarding objections and stipulations, and attending court hearings regarding the lift stay motions and objections thereto. Applicant's services were actual, necessary, and beneficial, because the automatic stay protects Debtors' estates and the resources available to satisfy unsecured creditors. Thus, the Committee has an important interest in making sure that the stay was not improperly lifted.

43. This project includes 18.90 hours requested fees in the amount of \$6,675.60. A summary of the attorneys or paralegals who performed services and for whom reimbursement is

requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144616	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	2.90	2.10			5.00	\$2,750.00
Jim Donnell	495			0.30		0.30	\$148.50
Jennifer Gore	350	1.60	1.90	2.80	1.00	7.30	\$2,555.00
Basil Umari	240	3.10	2.00	1.20		6.30	\$1,512.00
Subtotal		7.60	6.00	4.30	1.00	18.90	\$6,965.50
Less 10% Discount through March 31, 2003							(\$289.90)
Total							\$6,675.60

Claims Administration and Objections (144618)

44. This project category includes all of Applicant’s services during the Second Period related to the administration of claims. In particular, Applicant analyzed and, where appropriate, objected on behalf of the Committee to administrative expense claims filed by, among others, Penta, Plato Products, TC-Meridian, B-1 Acquisition Corp. (“B-1”), and Automotive Rentals, Inc. (“ARI”). With respect to B-1 (whose claim was ultimately settled), Applicant participated in discovery, including the deposition of one of Applicant’s attorneys, Basil Umari, along with other constituents who attended the auction, and settlement negotiations. In addition, Applicant analyzed proofs of claims filed by various parties, including the Debtors’ officers and directors, the Bank Group, the bonding companies, and large litigation claimants. Applicant also participated in the contested hearing regarding ARI’s request for an administrative claim at which hearing the Debtors and Committee succeeded in opposing ARI’s request. Applicant’s services were actual, necessary, and beneficial, because the Committee had

to evaluate claims against the estate that could have affected voting or the recovery to unsecured creditors as a whole.

45. This project includes 108.40 total hours and total requested fees in the amount of \$33,599.65. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual, with the 10% discount through March 31, 2003 reflected before calculation of the total amount sought for all individuals, is as follows:

144618	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
Hugh M. Ray	550	3.10	0.90	1.90		5.90	\$3,245.00
Jim Donnell	495		2.00	2.70		4.70	\$2,326.50
Gary C. Miller	475	8.50				8.50	\$4,037.50
Jennifer Gore	350	9.30	18.50	10.70	15.90	54.40	\$19,040.00
Ardie S. Baer	290		0.50			0.50	\$145.00
Basil Umari	240	7.80	0.50	5.10		13.40	\$3,216.00
Eileen Leahy	135		9.20	9.60		18.80	\$2,538.00
Nancy Ediger	70	2.20				2.20	\$154.00
Subtotal		30.90	31.60	30.00	15.90	108.40	\$34,702.00
Less 10% Discount through March 31, 2003							(\$1,102.35)
Total							\$33,599.65

Asset Analysis (144995)

46. This project category includes all of Applicant's services related to analysis of Debtors' asset available to satisfy claims. Specifically, Applicant's services included investigating potential assets, such as potential claims against the Debtors' officers and directors and other estate causes of action, and unencumbered assets available to Debtors' estates. Applicant's services were actual, necessary, and beneficial, because the Committee had to

investigate the Debtors' assets and potential causes of action that may have been available to satisfy the claims of unsecured creditors.

47. This project includes 62.50 hours and requested fees in the amount of \$23,072.40. A summary of the attorneys or paralegals who performed services and for whom reimbursement is requested, and the total amounts requested for each individual is, with the 10% discount reflected before calculation of the total amount sought for all individuals, as follows:

144995	Hourly Rate	March	April	May	June	Total Hours Billed	Total Compensation
T. R. Popplewell	525		0.90			0.90	\$472.50
Jim Donnell	495		4.10	3.20	0.30	7.60	\$3,762.00
Gary Miller	475	0.80		2.20		3.00	\$1,425.00
Lawrence B. Schreve	450		0.80	1.20		2.00	\$900.00
Douglas J. Dillon	440	12.90				12.90	\$5,676.00
Omar S. Saleh	350		17.20			17.20	\$6,020.00
Jennifer Gore	350	1.00	6.80	1.90		9.70	\$3,395.00
W. B. Freeman	240		7.00			7.00	\$1,680.00
Stewart H. Patton	180		1.90			1.90	\$342.00
Eileen Leahy	135		0.30			0.30	\$40.50
Subtotal		14.70	39.00	8.50	0.30	62.50	\$23,713.00
Less 10% Discount through March 31, 2003							(\$640.60)
Total							\$23,072.40

OTHER FACTORS RELEVANT TO APPLICATION

48. Pursuant to Rule 2016(a) of the Local Bankruptcy Rules, applications for compensation shall cover each element in Bankruptcy Rule 2016 and *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977). Applicant respectfully submits that the fees and expenses requested herein are allowable and reasonable after consideration of these elements, as follows.

49. Time and Labor Required. During the Second Period, Applicant expended an aggregate of 1833.40 hours in the representation of the Committee at a blended rate of

approximately \$354.07 per hour, as more particularly set forth on Exhibits “E-1” through “E-4.” All of the services rendered were necessary to enable the Committee to perform its statutory duties.

50. Novelty and Difficulty of Issues Presented. While the majority of issues in this case were not novel, the case did present a number of complex bankruptcy and lending issues.

51. Skill Required to Perform the Legal Services. The services performed by Applicant involved complex bankruptcy and lending issues and required a solid foundation in corporate, lending, litigation, and bankruptcy law. Applicant believes that its skills and reputation in these areas are excellent.

52. Preclusion from Other Employment. Applicant was not precluded from other employment due to the acceptance of this case.

53. Customary Fees. As discussed above, each of the attorneys with the Applicant charged his or her customary standard billing rate to this file, as may have been adjusted on January 1, 2003. However, for the first 120 days,⁷ such fees were discounted by 10% based on an agreement negotiated with the Committee when Applicant was originally retained.

54. Fixed or Contingent Fee. The fee during this period of time was fixed as each attorney was performing services on an hourly basis; accordingly, the fee is not contingent upon the success or the results achieved, other than this Court’s review of the relative benefits of its efforts to the estate.

55. Time Limitations. The circumstances of this case have at times imposed significant time constraints on Applicant’s services or otherwise required Applicant to perform

⁷ As discussed in Footnote 4, Applicant applied the 10% discount through March 31, 2003, which is slightly longer than 120 days.

services on an expedited basis. Certain partners and associates with Applicant have committed almost all of their available time to providing services to the Committee.

56. Results Achieved. The Plan was confirmed on or about May 28, 2003 after the Debtors, the Prepetition Lenders, and Committee were able to negotiate a settlement that resulted in the \$119.8 million in tax refunds being treated as unencumbered assets and a cash payment of \$2.5 million to the subordinated noteholders on the Effective Date. The Applicant respectfully asserts that this result is excellent and in the best interests of the Committee and unsecured creditors.

57. Experience, Reputation and Ability of Attorneys. Applicant respectfully submits that its attorneys are experienced, capable and have a good reputation in the community. Applicant has extensive experience representing committees in bankruptcy cases throughout the country.

58. Undesirability of Case. This case was not undesirable.

59. Relationship with Client. The Applicant has no other relationship with the Committee, which came into existence only for the purposes of this case.

60. Awards in Similar Cases. Such awards vary depending upon the nature of the case, the expertise of the law firm and the expertise of the attorneys handling the matter. Based upon the facts and circumstances herein, and the awards in similar cases, Applicant believes that its request is similar to what would be sought by other law firms.

61. Bankruptcy Rule 2016. There is no agreement or understanding in existence between the Applicant and any other party for the sharing of compensation except as allowed under Bankruptcy Rule 2016. Pursuant to Bankruptcy Rule 2016, no payments have heretofore

been made by any party, or promised by any party to Applicant for the services rendered, except in accordance with the Administrative Order.

62. All services for which compensation is requested were performed on behalf of the Committee and not on behalf of the debtor, any creditor, or other person. All services performed and expenses incurred were reasonable and necessary, and Applicant took steps to ensure that none of its services were duplicative.

SUMMARY

63. Pursuant to this Final Application, Applicant seeks final approval of compensation in the total sum of \$1,147,291.35 and approval of the reimbursement of its expenses in the total sum of \$68,206.95. Applicant has already been paid, on an interim basis, \$1,043,884.12 for fees and \$54,878.87 for expenses. Applicant is requesting final allowance of all amounts, and for the Debtors to pay the unpaid balance of \$103,407.23 for fees and \$13,328.08 for reimbursement of expenses owing

PRAYER

WHEREFORE, Applicant respectfully prays that Applicant be allowed compensation for fees for the period from November 26, 2002 through June 9, 2003 in the sum of \$1,147,291.35; that Applicant be awarded the sum of \$68,206.95 as reimbursement for actual and necessary expenses for the period of November 26, 2002 through June 9, 2003; that after deduction of the fees and expenses that have already been paid to Applicant pursuant to the Administrative Order, the Court order the Debtors to pay the balance of compensation and reimbursement of expenses allowed herein to the Applicant, and for any and all further relief to which the Applicant is justly entitled.

Respectfully Submitted,

By: Jennifer M. Gore (ECF)

Hugh Ray

Attorney in Charge

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Interim Application by Andrews & Kurth L.L.P. as Counsel for the Committee for Compensation and Reimbursement of Expenses for the Period From November 26, 2002 through June 9, 2003 has been served by email where available by the clerk under the ECF Administrative Procedures, and by United States Mail, postage prepaid to each of the following parties on this the 24th day of July 2003:

Debtors:

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Office of the United States Trustee:

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