

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

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

**COVER SHEET FOR SECOND AND FINAL FEE APPLICATION OF
BRACEWELL & PATTERSON, L.L.P., SPECIAL CORPORATE, LITIGATION
AND EMPLOYMENT COUNSEL FOR DEBTORS, FOR THE PERIOD
NOVEMBER 19, 2002 THROUGH JUNE 8, 2003 AND REQUEST FOR
APPLICATION OF RETAINER BALANCE**

Name of Applicant: Bracewell & Patterson, L.L.P.

Authorized to Provide
Professional Services to: Debtors

Date of Retention: January 22, 2003, effective as of November 19, 2002

Compensation Period:

Period for which compensation
and reimbursement are sought: November 19, 2002 through June 8, 2003

Amount of compensation sought
as actual, reasonable, and necessary: \$555,296.25

Amount of expense reimbursement
sought as actual, reasonable, and necessary: \$23,388.83

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

**SECOND AND FINAL FEE APPLICATION OF
BRACEWELL & PATTERSON, L.L.P., SPECIAL CORPORATE, LITIGATION
AND EMPLOYMENT COUNSEL FOR THE DEBTORS, FOR THE PERIOD
NOVEMBER 19, 2002 THROUGH JUNE 8, 2003 AND REQUEST FOR
APPLICATION OF RETAINER BALANCE**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 3, 2003 AT 11:00 A.M. IN COURTROOM 403, 515 RUSK AVENUE, 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 WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING, UNLESS YOU DID NOT RECEIVE THIS NOTICE IN TIME TO DO SO. IN THAT SITUATION, FILE YOUR RESPONSE AS SOON AS POSSIBLE. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, 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 WILLIAM R. GREENDYKE,
UNITED STATES BANKRUPTCY JUDGE:

Bracewell & Patterson, L.L.P. ("B&P"), Special Corporate, Litigation and Employment Counsel for the Debtors, files this Second and Final Fee Application for the Period November 19, 2002 Through June 8, 2003 (the "Final Application") pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule

2016 of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Local Rules”) and respectfully represents as follows:

Jurisdiction and Venue

1. The Court has jurisdiction to consider this Final Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Final Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On November 19, 2002 (the “Commencement Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These cases have been procedurally consolidated for administrative purposes only. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On November 25, 2002, the United States Trustee appointed a committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

4. As of the Commencement Date, Encompass Services Corporation (“Encompass”) and its direct and indirect subsidiaries (collectively, the “Company” or “Debtors”) the largest providers of facilities systems and solutions in the United States. With annual revenues in 2001 of approximately \$4 billion, the Company provides electrical and mechanical contracting to commercial, industrial and residential customers. As of the Commencement Date, the Company had approximately 25,000 employees and operated from approximately 200 locations throughout the United States. The Company’s headquarters are located in Houston, Texas.

5. The Company was formed on February 22, 2000 through the merger of Building One Services Corporation (“Building One”) and Group Maintenance America Corp. (“GroupMAC”). GroupMAC and Building One were each formed two years prior to the merger in an effort to consolidate businesses in a fragmented industry. As a result of the merger, the Company is able to provide electrical and mechanical contracting, either alone or in combination with another service, in more locations than either constituent company could have performed on its own.

6. As of the Commencement Date, the Company operated in three primary business segments, namely, the Commercial/Industrial Services Group, the Residential Services Group and the Cleaning Services Group. The Commercial/Industrial Services Group designs, installs, maintains and repairs electrical, heating, ventilating, air conditioning (“HVAC”), plumbing, network infrastructure, lighting, power, security, sound and related systems to a variety of commercial customers, including manufacturing, processing and industrial facilities, chemical plants, data room servers, correctional facilities, hospitals, universities, hotels, retail stores and sports facilities. The Commercial/Industrial Services Group accounted for approximately 80% of the Company’s revenues prior to the Commencement Date.

7. The Residential Services Group installs and maintains HVAC and plumbing in residences and small commercial buildings. The Residential Services Group markets its services to local, regional, and national homebuilders. The Cleaning Services Group provided cleaning and maintenance management services to 8,000 locations nationwide, including, retail chain stores, supermarket chains, office buildings, industrial

plants, banks and airports. The Company has recently divested its Cleaning Services Group as well as several non-core and/or under- or non-performing subsidiaries.

8. Excluding its unsecured trade obligations, the Company has prepetition obligations in the approximate amount of \$1.237 billion. That indebtedness includes secured credit facility obligations in the approximate amount of \$589 million, unsecured bonds and note obligations in the face amount of \$339 million, and accrued and unpaid mandatorily redeemable convertible preferred stock dividends in the approximate amount of \$309 million. The Company also has significant trade obligations.

9. On May 28, 2003 this Court entered the Order Confirming Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (Docket No. 2570). On June 10, 2003, the Debtors filed the Notice of Occurrence of Effective Date of the Immaterially Modified Second Amended Joint Plan of Reorganization of Encompass Services Corporation and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code (Docket No. 2665) which states the Effective Date as June 9, 2003. Pursuant to the Debtors' confirmed plan, the deadline for filing applications for final compensation is August 8, 2003.

Background of Retention and Interim Compensation

10. On December 19, 2002, the Debtors filed its Application for Order Pursuant to §§ 327(c), 328(a) and 504 of the Bankruptcy Code Authorizing the Employment of Bracewell & Patterson, L.L.P. as Special Corporate, Litigation and Employment Counsel for the Debtors (Docket No. 394). On January 22, 2003, this Court entered the Order Authorizing the Employment of Bracewell & Patterson, L.L.P. as Special Corporate, Litigation and Employment Counsel for the Debtors effective as of the

Commencement Date (Docket No. 858), a copy of which is attached as Exhibit "A". Attached as Exhibit "B" is the Affidavit of William A. (Trey) Wood, III made pursuant to Bankruptcy Rules 2014 and 2016.

11. B&P previously filed, on April 14, 2003, its Amended First Interim Fee Application (the "First Fee Application") in this matter, which covered the period of November 19, 2002 through February 28, 2003. The professional fees and expenses sought for approval in the First Fee Application were \$428,870.25 and \$16,384.40 respectively. The First Fee Application was approved on May 7, 2003, with no holdback of fees or expenses of any kind. The order approving the First Fee Application provided for the payment by the Debtors of prior holdbacks under the interim fee procedures and authorized payment of \$47,951.73.

Compensation Requested

12. This is B&P's second and final application for allowance of its fees and expenses and seeking compensation in this case. All professional services for which B&P requests for final allowance in this Final Application were performed for the period between November 19, 2002 and June 8, 2003 for and on behalf of the Debtors. Section 330 of the Bankruptcy Code allows a court to award a professional a) "reasonable compensation for actual, necessary services" rendered by a professional and by any paraprofessional employed by any such person, based on "the nature, the extent, and the value of such services" and taking into account factors such as the "time spent on such services" and whether the services were necessary and beneficial to the estate, and b) "reimbursement for actual, necessary expenses." 11 U.S.C. § 330. Section 331 of the

Bankruptcy Code allows a Debtor's attorney to apply to the Bankruptcy Court periodically for interim compensation.

13. B&P makes this Final Application, pursuant to Bankruptcy Code Sections 330 and 331, for final approval of the following amounts for professional services rendered and for reimbursement of out-of-pocket expenses actually and necessarily incurred by B&P in the representation of the Debtors during the period November 19, 2002 through June 8, 2003 (the "Application Period"):

| | | |
|----------|----|------------|
| Fees: | \$ | 555,296.25 |
| Expenses | \$ | 23,388.83 |
| TOTAL | \$ | 578,685.08 |

14. During the Application Period, B&P expended an aggregate total of 2,243.85 hours for professional services rendered on behalf of the Debtors. Attached hereto as Exhibit "C", is a summary of the Debtor entity or project undertaken and assigned matter number. A summary of the professional fees broken down by partners, associates and legal assistants for all matters billed is attached as Exhibit "D". The total fees requested represent the use of a "lodestar" computation using B&P's normal hourly billing charges in effect for the Application Period. For the Application Period, the average billing rate is \$247.47 which compares favorably to the rates authorized in similar cases and under Fifth Circuit precedent.

15. Since the Petition Date, in accordance with the Court's December 18, 2002 order (Docket No. 389) authorizing monthly interim compensation, B&P has submitted monthly statements to the Debtors requesting 80% of its fees and 90% of expense disbursements for each month. In addition, Court-authorized distributions to

B&P of \$193,870.50 for fees and \$393.83 for expenses, which reflected 100% payment for certain fees and expenses incurred in connection with a number of property dispositions completed shortly before year end 2002, are included in the total sum received by B&P. Finally, B&P has received payment of prior holdbacks under the interim procedures for the period covered by the First Fee Application. In total, as of the date hereof, B&P has received payments and has retainer funds which total \$548,152.98, which funds may be applied against fees and expenses incurred during the Application Period. Other than these payments and existing retainer funds held as of filing, B&P 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.

16. There is no agreement or understanding between B&P and any other person or persons for the sharing of compensation to be received for services rendered in this case.

17. B&P submits that this Application complies with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the Guidelines adopted by the Executive Office for the United States Trustee (the "UST Guidelines").

Time Records

18. B&P maintains detailed records of time expended by its professionals in providing legal services to the Debtors and those records are attached as Exhibit "E". Pursuant to Rule 2016(d)(3) of the Bankruptcy Local Rules, fee applications must include a detailed description of each major task performed by the applicant. Exhibit "E"

provides a more detailed description of the services provided and includes summaries of the hours and fees for each project.

Summary of Services

19. During the time covered by this Final Application, B&P has primarily focused its efforts in asset disposition, providing the Debtors with dispositions of non-core and/or under- or non-performing subsidiaries (including numerous sales of assets/entities), corporate ordinary course of business advice and counsel, labor and employment services, and litigation support, all relating to the Debtors and these Chapter 11 cases. Additionally, legal advice and counsel relating to corporate business advice also included general contract review, compliance with securities reporting and intellectual property issues. Matters relating to Labor and Employment dealt with ERISA issues, wage and bonus treatment and employee benefit advice. Under the category of litigation services, B&P represented the Debtors in general and specific litigation including, but not limited to, existing litigation matters handled by B&P. Specifically, B&P rendered professional services reflected below:

Corporate Business

a. Intellectual Property – (Billing matters 96 through 105, 118, 121 through 123, 135, 167 and 7025). Total fees submitted: \$8,869.00; Total expenses: \$1,335.02. The firm performed work on filings in compliance with the US Patent and Trademark Office and tracking of acceptance of use through docket updates and additional required State Corporate filings.

b. General Business Retainer – (Billing matters 108 and 152). Total fees submitted: \$92,622.50; Total expenses: \$6,246.68. The firm performed work in the

analysis of investors' rights, proposed stock transfer and rights of transferees; research of fair market value determination; filings in compliance with SEC reporting and extensive research on reporting obligations with regard to corporations in bankruptcy proceedings; insurance claim review and research of buyer's responsibilities; State Corporate document filings; preparation of materials for corporate board meetings; general bankruptcy casework requiring review of proceedings and address other bankruptcy requirements; assistance in the defense of certain motions before the Bankruptcy Court; lease review and negotiations in motions requesting administrative claim status; defense of relief from stay motions filed on the Debtors' office equipment; and preparation and prosecution of B&P's First Fee Application before the Bankruptcy Court.

c. Asset Disposition – (Billing matters 156, 157, 159 through 160, 163 through 165, 168 through 169, 171 through 214). Total fees submitted: \$403,132.25; Total expenses: \$7,934.15. The firm's services included services performed in the extensive negotiation and subsequent closing of numerous sales transactions, including addressing issues such as concerns with the sale of receivables, employees' benefits, customer contacts, account reconciliation, transferability of licenses, potential future claims, and the assignment and transfer of lease agreements and cure costs thereof. The firm, in cooperation with this work, assisted with the preparation of all closing instruments, State UCC compliance reporting and transition agreements and provided counsel on the assessment of tax payments and employee withholding. B&P also provided assistance to the Debtors' bankruptcy counsel with the approval of various sales with the Bankruptcy Court.

Litigation

General Litigation – (Billing matters 92, 130, 140, 146, 148 through 150, 153, 166 and 170). Total fees submitted: \$25,570.00; Total expenses; \$6,206.67. The firm’s services included research and briefing of various issues and notice requirements on current litigation defense matters; research on determination of secured status and valuation of collateral in non-Bankruptcy Court proceedings and the appeal of attorneys fees granted. Additionally, B&P provided efforts concerning the notice of the stay and defense of a relief from stay motion, assistance with certain matters related to a preference claim in the Iridium bankruptcy proceeding and assistance to the Debtors on certain settlement payments.

Labor and Employment

Labor and Employment – (Billing matters 124, 138, 151, 167 and 9081). Total fees submitted: \$25,102.50; Total expenses; \$1,666.31. The firm’s services included extensive research on various states’ severance, wage and bonus law and applicable statutes and the stay of proceedings before the American Arbitration Association. B&P also performed research and analysis of tax issues of employee benefits plans, and the defense of the Debtors before the Texas Employment Commission.

20. B&P submits that the foregoing services were necessary to the administration of this consolidated 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. B&P’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.

First Colonial Factors

21. Pursuant to Bankruptcy Local Rule 2016(a), fee applications must include 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). Consideration of the factors listed in *First Colonial Corp.* indicates that the compensation requested by B&P for the services rendered during the Application Period is reasonable:

(a) Time and Labor Required: As set forth in detail on Exhibits "D" and "E", B&P spent 2,243.85 hours during the Application Period performing professional and paraprofessional services on behalf of the Debtors. B&P sought to avoid duplication of effort and utilized the talents of its paraprofessionals whenever possible. The detail of the specific time entries, found in Exhibit "E", reflect the reasonableness of the compensation being requested and all of the services identified were necessary to assist the Debtors in their consolidated Chapter 11 case.

(b) Novelty and Difficulty of the Questions: This case has involved a significant number of novel or complex issues, and the case is categorized as a "complex" case which involves significant obligations owed to creditors. The issues arising in this case have been typical for a large Chapter 11 business bankruptcy. B&P has carefully utilized its attorneys and legal assistants to perform services according to each person's expertise.

(c) Experience, Reputation and Ability of Attorneys: B&P is reputable, possesses ability adequate to perform the tasks outlined in this Application, and has worked on numerous bankruptcies similar in size to this case. The attorneys who

provided the bulk of the services in this case for the Application Period reflected herein possess specialized skills in bankruptcy, corporate, employment and labor work or other applicable skills to the tasks performed necessary to merit the award of the requested fees.

(d) Skill Required: Representation of the Debtors in their Chapter 11 case has required a specialized degree of skill and experience. B&P believes it has demonstrated the skills required to achieve results on behalf of the Debtors in this case. Additionally, substantial skills have been required in the form of negotiation ability, knowledge of Debtor's rights, and a detailed and thorough understanding of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

(e) Preclusion of Other Employment: Because of the time commitment involved in this case and deadlines imposed upon B&P, B&P's ability to take on other substantial engagements has been limited to some degree.

(f) Customary Fees: The fees requested are reasonable and are in line with those currently customarily awarded in similar bankruptcy cases in this jurisdiction to attorneys performing specialized services in a particular area in which they have expertise.

(g) Whether the Fee is Fixed or Contingent: B&P's fees requested in this Application have been calculated at normal hourly rates charged by B&P and are in line with those charged for similar work in this jurisdiction. The fees are contingent only

in that B&P has no assurance that funds will be available to pay the fees and expenses incurred.

(h) Time Limitations and Other Factors: B&P performed certain services on an expedited basis on the various deadlines of the Debtor and the Court. B&P has not engaged in any duplication of effort by its members in the services it performed.

(i) Undesirability of the Case: Representation of the Debtors in this case is not uniquely desirable or undesirable. However, the representation of any estate professional typically involves some risk of nonpayment which could result in the undesirability of such representation as against other types of representation in other matters.

(j) Results Obtained: The results obtained to date have been beneficial to the Debtors, the estate, and the creditors in that B&P, in representing the Debtors, has been able to negotiate and resolve most matters with the Debtors and third parties that might otherwise have involved, or have been tried, at a cost and time expense to the estate. The Debtors have also been able to realize a significant number of sales of assets/entities since the Commencement Date.

(k) Nature, Length and Professional Relationship with Client: For over four years, B&P has been engaged to advise the Debtors on general corporate, litigation and employment legal matters.

(1) Fees Awarded in Similar Cases: As more fully described above, B&P submits that its services to the Debtors fully warrant the fees requested herein under the twelve (12) factors identified by the Fifth Circuit and as are awarded in similar complex cases in the Southern District of Texas.

22. The Application does not include fees or expenses for the preparation of this Application. B&P will seek additional compensation for preparing this Application from the liquidating estate pursuant to the terms of the Plan.

Actual and Necessary Expenses

23. Attached hereto as Exhibit "F" and incorporated herein by reference, is a summary of the actual and necessary expenses incurred by B&P in connection with its employment with the Debtors during the Application Period. As set forth on Exhibit "F", B&P seeks reimbursement of actual and necessary expenses incurred by B&P during the Application Period in the aggregate amount of \$23,388.83 and are in compliance with charges under the UST Guidelines.

Conclusion

Base on the foregoing, Bracewell & Patterson, L.L.P. respectfully requests this Court allow, on an interim basis, and authorize legal fees and reimbursable expenses incurred by B&P for the Application Period in the following amounts:

| | |
|-----------|--------------|
| Fees: | \$555,296.25 |
| Expenses: | 23,388.83 |
| TOTAL: | \$578,685.08 |

Respectfully submitted,

BRACEWELL & PATTERSON, L.L.P.

/s/ Mark W. Wege

Mark W. Wege
Texas Bar No. 21074225
Bracewell & Patterson, L.L.P.
711 Louisiana, Suite 2900
Houston, Texas 77002
(713) 223-2900 Telephone
(713) 221-1212 Facsimile

**SPECIAL CORPORATE, LITIGATION AND
EMPLOYMENT COUNSEL FOR THE
DEBTORS**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Second and Final Fee Application of Bracewell & Patterson, L.L.P., Special Corporate, Litigation and Employment Counsel for the Debtors, for the Period November 19, 2002 Through June 8, 2003 was served on this 8th day of August 2003, by U.S. first class mail, postage prepaid, or by electronic transmission by the Clerk, upon the Official Combined Service List (as of August 7, 2003) and the additional parties listed below:

Gray Muzzy
Encompass Services Corporation
3 Greenway Plaza, Suite 2000
Houston, TX 77046
Debtors

Alfredo Perez/Lydia Protopapas
Weil, Gotshal & Manges LLP
700 Louisiana, Suite 1600
Houston, Texas 77002
Bankruptcy Counsel for Debtors

Hector Duran, Jr.
Office of the United States Trustee
515 Rusk Street, 3rd Floor
Houston, TX 77002

Counsel for the Debtors' prepetition lenders and
Counsel for the Debtors' postpetition lenders:
R. Michael Farquhar
Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

Chairperson of and counsel to the Committee:
Philip Falcone - Co-chair
Harbert Management Corporation
555 Madison Avenue, 28th Floor
New York, NY 10022

John Pare - Chair
Hughes Supply, Inc.
20 North Orange Ave., Suite 200
Orlando, FL 32801

Hugh M. Ray/Jim Donnell
Andrews & Kurth L.L.P.
600 Travis Street, Suite 4200
Houston, TX 77002

/s/ Mark W. Wege
Mark W. Wege

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
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| | : | |
| Debtors. | : | JOINTLY ADMINISTERED |
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SUMMARY OF EXHIBITS

The following Exhibits are referred to in the Second and Final Fee Application of Bracewell & Patterson LLP, Special Counsel to the Debtor, for the Period November 19, 2002 through June 8, 2003.

| Description of Exhibit | Summary of Pertinent Parts |
|------------------------|--|
| Exhibit A | Order Authorizing the Employment of Bracewell & Patterson, LLP, as Special Corporate, Litigation and Employment Counsel for the Debtors Pursuant to 11 U.S.C. §§ 327(e), 328(a) and 504 of the Bankruptcy Code |
| Exhibit B | Affidavit and Disclosure of William A. (Trey) Wood, III on Behalf of Bracewell & Patterson, L.L.P. |
| Exhibit C | Debtor/Billing Number Identification |
| Exhibit D | Breakdown of Professionals' Rates and Fees Billed |
| Exhibit E | Detailed Billing Statements of Fees and Expenses from November 19, 2002 through June 8, 2003 |
| Exhibit F | Itemized Expenses |

A copy of the Exhibits are available by request to:

Toni M. Silva, Legal Assistant
Bracewell & Patterson, L.L.P.
711 Louisiana, Suite 2900
Houston, Texas 77002
713/223-2900 Telephone
713/221-1212 Telecopy