

**ORIGINAL**

United States Courts  
Southern District of Texas  
FILED

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Michael N. Milby, Clerk

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

**SECOND AND FINAL APPLICATION OF CHANIN CAPITAL PARTNERS LLC,  
FINANCIAL ADVISOR FOR THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR ALLOWANCE OF  
COMPENSATION AND FOR THE REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD FROM  
NOVEMBER 26, 2002 THROUGH JUNE 9, 2003**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 29, 2003 AT 11 A.M. CST BEFORE THE HONORABLE WILLIAM R. GREENDYKE, IN COURTROOM 403, 515 RUSK STREET, HOUSTON, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PLEADING, 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 AND GIVE A COPY 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:

**INTRODUCTION**

By this Application, Chanin Capital Partners LLC ("Chanin") seeks (i) final allowance and award of compensation for the professional services rendered by Chanin as financial advisor for the Committee for the period from November 26, 2002 through June 9, 2003 (the "Compensation Period") in the amount of \$756,600.00; and (ii) reimbursement of actual and necessary expenses incurred by Chanin during the Compensation Period in connection with the rendition of such professional services in the amount of \$59,707.31.

## JURISDICTION

1. This 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)(2). The relief requested may be granted in accordance with the provisions of 11 U.S.C. §§ 330 and 331 and Local Bankruptcy Rule 2016(g).

## BACKGROUND

2. On November 19, 2002 (the "Petition Date"), Encompass Services Corporation, et al. (the "Debtors") filed a voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtors continue to maintain possession of their property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On or about November 25, 2002, the United States Trustee appointed the Official Committee of Unsecured Creditors. An organizational meeting was held on November 26, 2002 (the "Committee Formation Date") at which the Committee selected Chanin to serve as financial advisor to the Committee pursuant to section 1103 of the Bankruptcy Code. The Committee also determined to retain the law firm of Andrews & Kurth L.L.P. ("A&K") as their primary and general bankruptcy counsel in these cases. By application (the "Retention Application") dated December 26, 2002, the Committee sought Bankruptcy Court approval of Chanin's retention. The Retention Application had as an exhibit the Statement of Chanin Capital Partners and Affidavit of Brent C. Williams Pursuant to Bankruptcy Rules 2014 and 2016(b) and Bankruptcy Code § 504, a true and correct copy of which is attached hereto as **Exhibit A**. This Court approved the Retention Application by order (the "Retention Order") entered January 8,

2003 and thereby authorized the Committee's retention of Chanin. A copy of the Retention Order is attached to this Final Application as **Exhibit B**.

4. Pursuant to the Retention Order, Chanin is to be compensated for its services in accordance with the terms and conditions contained in the engagement letter dated November 26, 2002 (the "Engagement Letter"). Pursuant to the Engagement Letter, Chanin's financial advisory fee is \$117,000.00 in cash per month (the "Monthly Advisory Fee"). In addition to the monthly advisory fee, the Debtors shall reimburse Chanin monthly, upon request, for all reasonable out-of-pocket expenses incurred in connection with its engagement by the Committee, including, without limitation, reasonable travel expenses, computer and research charges, attorney fees (provided that such attorney fees shall not exceed \$25,000 without the Committee's prior consent, provided that no prior consent shall be required in connection with legal fees incurred by Chanin in connection with objections to Chanin's retention, or interim and final fee applications in a chapter 11 reorganization), messenger services and long-distance telephone calls incurred by Chanin in connection with the services to be provided to the Committee. On December 18, 2002, the Court entered the Administrative Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures For Interim Compensation and Reimbursement of Expenses of Professionals (the "Fee Order"). The Fee Order authorizes the Debtors to pay eighty percent (80%) of the fees and ninety percent (90%) of the disbursements identified in each monthly statement. The Fee Order further directs the filing of interim fee applications at approximately four month intervals.

5. In connection with the monthly invoicing of Chanin fees and expenses as provided for by the Fee Order, no objections were received to Chanin's fees and expenses.

**PRIOR FEE AND REIMBURSEMENT APPLICATIONS AND AWARDS**

6. Chanin filed its first application (the "First Application") for interim compensation and reimbursement on April 14, 2003 for the period of November 26, 2002 through February 28, 2003, in the amount of \$370,500.00 for compensation for services and \$29,503.38 for reimbursement of expenses. Chanin was awarded \$370,500.00 in compensation and \$0.00<sup>1</sup> for reimbursement of expenses by an Order dated May 17, 2003.

**COMPENSATION AND REIMBURSEMENT REQUESTED  
BY SECOND AND FINAL APPLICATION**

7. By this Second and Final Application, Chanin requests that this Court authorize: (a) final allowance of compensation for professional services on behalf of the Committee in the amount of \$370,500.00 and the reimbursement of actual and necessary expenses Chanin incurred in connection with the rendition of such professional services for the Committee in the amount of \$27,181.73 during the period from November 26, 2002 through February 28, 2003 (the "First Application Period") and (b) final allowance of compensation for professional services on behalf of the Committee in the amount of \$386,100.00 and the reimbursement of actual and necessary expenses Chanin incurred in connection with the rendition of such professional services for the Committee in the amount of \$32,525.58 during the period of March 1, 2003 through June 9, 2003 (the "Second Application Period").

8. No agreement or understanding exists between Chanin and any other entity for the sharing of compensation to be received for services rendered in connection with this case.

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<sup>1</sup> The Court deferred a ruling on Chanin's request for expenses until detailed itemization of expenses is provided. The expense detail is being provided in this Application.

9. All financial services performed by Chanin were performed for and on behalf of the Committee and not on behalf of any other individual or entity. These services were rendered in discharge of Chanin's professional responsibilities as bankruptcy financial advisor to the Committee in this case. Chanin's services have been substantial, necessary and of significant benefit to the Committee. Chanin does not maintain, in the normal course of providing financial advisory services to its clients, detailed written records in the form prescribed by this Court. However, in this case, Chanin maintained written records of the time expended by Professionals in the rendition of their professional services to the Committee. Such time records were made contemporaneously with the rendition of services by the person rendering such services. Chanin's daily time records for the Second Application Period, listing the name of the financial advisor, the date on which the services were performed, and the amount of time in performing the services, are attached as **Exhibit C**.

10. Chanin also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with Chanin's rendition of services on behalf of the Committee. Attached hereto as **Exhibit D** is a detailed breakdown of expenses incurred during the Compensation Period, encompassing the First and Second Application Periods. Chanin has received payments and reimbursements from the Debtors, pursuant to the Fee Order, summarized as follows:

Period	Fees Invoiced	Fees Paid	Fees Withheld	Expenses Invoiced	Expenses Paid	Expenses Withheld
11/26/02- 12/31/02	136,500.00	136,500.00	0.00	19,731.19	18,735.47	995.72
01/01/03 - 01/31/03	117,000.00	117,000.00	0.00	6,580.26	7,034.32	(454.06)
02/01/03 - 02/28/03	117,000.00	117,000.00	0.00	870.28	783.25	87.03

Period	Fees Invoiced	Fees Paid	Fees Withheld	Expenses Invoiced	Expenses Paid	Expenses Withheld
03/01/03-03/31/03	117,000.00	93,600.00	23,400.00	8,177.53	9,035.32	(857.79)
04/01/03-04/30/03	117,000.00	93,600.00	23,400.00	11,969.30	11,930.80	38.50
05/01/03-05/31/03	117,000.00	93,600.00	23,400.00	11,887.56	12,137.68	(250.12)
06/01/03-06/09/03	35,100.00	0.00	35,100.00	491.19	0.00	491.19
TOTALS:	756,600.00	651,300.00	105,300.00	59,707.31	59,656.84	50.47

**SUMMARY OF SERVICES RENDERED BY CHANIN**

11. The daily time records attached hereto as **Exhibit C** provide a detailed description of the services rendered by Chanin during the Second Application Period. The time records for the First Application Period are contained in the First Application and are incorporated by reference herein. For the convenience of the Court, the following summary identifies the areas to which Chanin devoted substantive time and attention during the Second Application Period.

Due Diligence

12. Chanin has undertaken an extensive due diligence process to understand and assess the operational and financial position of the Debtors and its Residential Services Segment. This process included an in-depth review of the current and future divestiture schedules by the Debtors and their liquidity projections, Residential Services Segment's historical and projected financial information, its strategic business plan and restructuring initiatives. The due diligence process was ongoing and was conducted via numerous teleconferences, data review sessions and meetings with the Debtors and Debtors' financial advisors in Houston, Texas.

### Financial Analysis

13. Chanin has undertaken an extensive financial analysis to understand and assess the operational and financial position of the Debtors and the Residential Services Segment. This process included an in-depth analysis of significant amounts of schedules and projected financial information provided by the Debtors. Projects included an analysis of the Debtors' current cash balance and liquidity position and the Debtors proceeds from various asset sales and tax refunds.

14. Chanin performed various analyses of the Debtors' asset sales to assess the number of transactions which have occurred, the valuation multiples achieved from the sales and the merits of the transaction. These analyses were monitored along with a review of the Debtors' 13 week cash flow forecast, weekly variance analysis and narrative and the monthly DIP budget to assess the Company's liquidity situation.

15. Chanin also analyzed the Residential Services Segment's financial projections, and worked with the Debtors to understand the basis for such projections. Chanin performed an evaluation of the Residential Services Segment sale, its year-to-date operating results and strategic business plan. These analyses were monitored along with a review of bids submitted by Wellspring and other interested parties for the Residential Services Segment.

16. Chanin's analysis of various financial projections, tax refund and asset sale schedules and summaries received from the Debtors' included participation on several conference calls and meetings with the Debtors' professionals in Houston, Texas, to better understand the key assumptions underlying these analyses. Chanin also provided updates to Andrew & Kurth and the Committee regarding these issues during the Second Application Period.

### Plan of Reorganization

17. Chanin reviewed the Debtors' Plan of Reorganization and Disclosure Statement and subsequent amendments and had discussed with Andrews and Kurth, the Bank Group's professionals and the Debtors' professionals regarding various issues with the Plan of Reorganization and Disclosure Statement.

18. The process was ongoing and was conducted during the Second Application Period via numerous teleconferences, information requests from the Debtors and meetings with Andrews and Kurth, the Bank Group and their professionals and the Debtors and their professionals in Houston, Texas.

19. Chanin assisted Andrews and Kurth in drafting various financial schedules and analyses and made various preparations in anticipation of a possible testimony by Brent Williams regarding the Debtors' Plan of Reorganization. Chanin also assisted Andrews and Kurth in investigating the Debtors' corporate history for any corporate malfeasance, including the review of past brokerage research reports on the Debtors, evaluating the Debtors financial position at the time of its merger in February 2000 and the following year and analyzing the Debtors' insider stock transactions at various time periods from 1998 to 2000.

20. After numerous teleconferences, meetings with the Bank Group and their professionals, the Debtors and their professionals and Andrew and Kurth, a settlement was negotiated between the various parties. Chanin had also provided several updates to the Committee members regarding these discussions.

21. Through these activities and correspondence, Chanin has assisted the Committee in fulfilling its statutory duties to make informed decisions regarding the various issues which have arisen in these cases, to monitor closely the Debtors' management of these



proceedings, and to reach independent conclusions on the merits of specific matters, as well as regarding the prospects of reorganization.

#### Fee Application Preparation

22. During the Second Application Period, Chanin compiled time and expense descriptions of the services it provided, and performed other tasks in order to comply with the Administrative Order. Chanin made every effort to minimize the amount of time and fees incurred for these activities.

#### Other Tasks

23. In addition to the assignments and tasks set forth above, at the request of the Committee, Chanin (i) provided the Committee with other appropriate general restructuring advice, (ii) reviewed and analyzed certain other financial information (as requested by the Committee), and (iii) provided other financial analysis as requested by the Committee. All of Chanin's activities were conducted with the goal of producing efficient and effective services to the Debtors' estate.

#### **CHANIN'S REQUEST FOR INTERIM COMPENSATION**

24. Section 331 of the Bankruptcy Code governs the allowance of interim requests for compensation:

[A]ny professional person employed under Section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

25. The terms of Chanin's retention were previously approved pursuant to Section 328(a) of the Bankruptcy Code.

**REVIEW BY THE COMMITTEE**

25. Chanin hereby certifies that the Committee chairman has been provided with a copy of this Second and Final Application. In addition, the Committee members have been apprised of the amounts of compensation and reimbursement sought by Chanin. The Committee had no objection to the amounts requested.

**NOTICE OF SECOND AND FINAL APPLICATION**

26. Chanin has served a copy of this Second and Final Application upon the Debtor, Counsel for the Debtor, and the U.S. Trustee. In addition, Chanin is serving a notice of this Second and Final Application on those parties identified on the most recent service list.

**PRAYER FOR RELIEF**

WHEREFORE, Chanin and the Committee respectfully request the following relief:

1. That the Court approve Chanin's fees in the amount of \$756,600.00 and authorize reimbursement of expenses in the amount of \$59,707.31 for the period November 26, 2002 through June 9, 2003;
2. That the Court authorize and direct payment of all previously unpaid fees and expenses sought by Chanin in this Second and Final Application;
3. That the Court approve fees and expenses incurred by Chanin as set forth herein in the aggregate amount of \$816,307.31; and
4. That the Court grants Chanin and the Committee such other and further relief as

this Court deems just and proper.

Respectfully submitted this 6<sup>th</sup> day of August, 2003.

CHANIN CAPITAL PARTNERS, LLC

By: 

Brent Williams

Senior Vice President

330 Madison Avenue

New York, NY 10017

(212) 758-2629

Financial Advisor to the Official  
Committee of Unsecured Creditors

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Second and Final Application of Chanin Capital Partners LLC as Financial Advisor to the Official Committee of Unsecured Creditors for Compensation and Reimbursement of Expenses for the Period From November 26, 2002 through June 9, 2003 has been served and by United States Mail, postage prepaid to each of the following parties on this the 8<sup>th</sup> day of August 2003:

**Debtors:**

Encompass Services Corporation  
3 Greenway Plaza, Suite 1900  
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(Attn: Todd A. Matherne)

**Counsel for the Debtors:**

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**Office of the United States Trustee:**

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**Counsel for Agent for the Prepetition and Postpetition Lenders:**

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