

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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	:	
In re:	:	Chapter 11
	:	
FIRST MERCHANTS ACCEPTANCE CORPORATION	:	
	:	
Debtor.	:	Case No. 97-1500 (JJF) (Jointly Administered)
	:	
	x	

**SECOND AND FINAL APPLICATION OF ERNST & YOUNG LLP AS
RESTRUCTURING CONSULTANTS / FINANCIAL ADVISORS /
BUSSINESS BROKERS TO THE DEBTORS, FOR ALLOWANCE OF
COMPENSATION FOR SERVICES RENDERED AND FOR
REIMBURSEMENT OF DISBURSEMENTS INCURRED FROM
JULY 23, 1997 THROUGH MARCH 16, 1998**

Name of Applicant: Ernst & Young LLP

Authorized to Provide
Professional Services to: First Merchants Acceptance Corporation⁽¹⁾

Date of Retention: Nunc-pro-tunc to July 23, 1997

Period for Which Compensation
and Reimbursement is Sought: July 23, 1997 through March 16, 1998

Amount of Compensation For Services Sought as Actual, Reasonable, and Necessary; (Second Fee Application)	\$ 502,678
(Final Fee Application)	\$1,440,706

Amount of Expenses Sought to Be Reimbursed as Actual, Reasonable and Necessary; (Second Fee Application)	\$ 19,440
(Final Fee Application)	\$ 69,686

Compensation Being Sought for Preparation of this Fee Application:	\$ 5,600
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\$1,446,306

794

Total Amount of Fees and Expenses Sought to Be Reimbursed as Actual, Reasonable and Necessary;
(Second Fee Application)
(Final Fee Application)

\$ 527,718
\$1,515,992 *total*

This is: an interim; X final application for an allowance of compensation and reimbursement of expenses incurred pursuant to 11 U.S.C. § 330.

The total time expended for the preparation of this Second and Final Application is approximately 40 hours and the corresponding compensation and expense reimbursement requested is \$5,600 and \$0 respectively. **The fees and expenses incurred in the preparation of this Second and Final Application are included in this application.**

- (1) Applicant submitted papers to this Court and was specifically authorized to provide services to First Merchants Acceptance Corporation ("FMAC"), which is the Parent Company of First Merchants Residential Credit Corporation ("FMRCC"). Applicant assisted FMAC market its stock in FMRCC.

**UNITED STATES BANKRUPTCY COURT
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FIRST MERCHANTS ACCEPTANCE CORPORATION	:	
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	:	Case No. 97-1500 (JJF)
	:	(Jointly administered)
Debtor.	:	
	x	

**SECOND AND FINAL APPLICATION OF ERNST & YOUNG LLP AS
RESTRUCTURING CONSULTANTS / FINANCIAL ADVISORS / BUSINESS
BROKERS TO THE DEBTORS, FOR ALLOWANCE OF COMPENSATION
FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF
DISBURSEMENTS INCURRED FROM
JULY 23, 1997 THROUGH MARCH 16, 1998**

TO THE HONORABLE JOSEPH J. FARNAN, JR.,
CHIEF UNITED STATES DISTRICT JUDGE:

Ernst & Young LLP (“Ernst & Young” or the “Applicant”), Restructuring Consultants, Financial Advisors, and Business Brokers for First Merchants Acceptance Corporation (“FMAC”), as and for its Second interim allowance for the period from November 1, 1997 through March 16, 1998 (“the Second Application Period”) and Final application for an allowance of compensation for services rendered by Ernst & Young during the period commencing July 23, 1997 and continuing through March 16, 1998 (“the Final Application Period”) and reimbursement of actual and necessary expenses incurred during such period, respectfully represents.

I. Relief Requested

By this Second and Final application, Ernst & Young requests an initial allowance of \$527,718, representing (a) \$502,678 as compensation for services Ernst & Young rendered during the Second Application Period, (b) \$5,600 for preparation of this Second and Final Fee Application, and (c) \$19,440 as reimbursement of actual and necessary expenses (in submitting the invoices totaling this amount of expenses, Ernst & Young did not bill \$35,000 of expenses which it normally would bill to its clients) which Ernst & Young incurred during the Second Application Period. Of these amounts, Ernst & Young has previously submitted monthly billing statements to the Debtors, and the United States Trustee in accordance with the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated July 14, 1997 (the "Administrative Order"), requesting payment of fees in the aggregate amount of \$402,142, representing 80% of Ernst & Young's total fees earned during the Second Application Period (exclusive of the \$5,600 related to the preparation of this application), plus \$19,440 representing 100% of Ernst & Young's expenses incurred during the Application Period, for a total of \$421,582. Ernst & Young's November, December, January, and February invoices have been paid by the Debtors in accordance with the formula described above and Ernst & Young is currently awaiting payment on its March 1998 invoice.¹

Since this is also a final application, Ernst & Young seeks the Court's confirmation of all prior amounts paid (or to be paid) to Ernst & Young pursuant to the Administrative Order (\$1,222,251), as well as allowance of the remaining 20% of fees (\$288,141) which have been

¹ On April 21, 1998, Ernst & Young submitted its March 1998 invoice, on which it expects to receive payment shortly.

held back pursuant to the Administrative Order, and (\$5,600) for the preparation of this Second and Final Fee Application. The total of all of the aforementioned amounts is \$1,515,992, representing the total compensation being sought by Ernst & Young LLP in this matter. E&Y also seeks the Court's authorization for the Debtors to pay the remaining twenty percent (20%) of fees which have been held back pursuant to the Administrative Order entered by this Court on July 14, 1997. The 20% holdback amount from July 23, 1997 through March 16, 1998 totals \$288,141, in addition to \$5,600 related to the preparation of this Fee Application.

Ernst & Young has included summary schedules of the hours and fees incurred prior to this Second Application Period by project code description and professional in Exhibit G. Ernst & Young has not included the detailed time diaries for this period so as not to burden the Court with unnecessary detail. The detailed time diaries for the period prior to the Second Application Period were provided in our First Application filed with the Court and can be provided again upon request of this Court or any other interested party.

Following is a table outlining the hours, fees, and expenses incurred, as well as the holdback pursuant to the Administrative Order, amounts paid, and amounts owned between the First Application and the Second and Final Application:

<u>Description</u>	<u>Hours</u>	<u>Fees</u>	<u>Expenses</u>	<u>Holdback</u>	<u>Amount Paid(1)</u>	<u>Amount Owed</u>
First Interim Fee App.	3,451.0	\$938,028	\$50,246	\$187,606	\$800,668	\$187,606
Second & Final Fee App.	1,645.8	502,678	19,440	100,535	421,582	100,535
Sub-Totals	5,096.8	1,440,706	69,686	288,141	1,222,250	288,141
Preparation of Second & Final Fee App.	40.0	5,600	0	0	0	5,600
Totals	5,136.8	\$1,446,306	\$69,686	\$288,141	\$1,222,250	\$293,741

(1) Reflects payment of Ernst & Young's March 1998 invoice which applicant expects to receive shortly. (Exhibit B contains detail by professional and project code category of the services provided 7/23/97 - 3/16/98)

Since the Applicant has previously provided this Court with a full and complete description of services provided during the First Application Period, emphasis in this document is placed on the services were provided in the Second Application Period.

Ernst & Young's services during the Second Application Period focused on the following major projects:

1. Preparing cash flow forecasts and operating projections depicting the Debtors' post-petition and post-confirmation, respectively, operations,

2. Negotiation and preparation of the Chapter 11 Plan Disclosure Statement
3. Preparation of the Chapter 11 Plan Liquidity Analysis,
4. Analyzing the potential future cash flows from the Debtors' Owned Loans and Securitization Residual Interests,
5. Preservation of the Debtors \$50 million net operating losses;
6. Analyzing competing Chapter 11 Plan proposals, and
7. Preparing financial analyses in support of the Debtors' Chapter 11 plan.

Applicant believes that it is worthwhile to note that although the Debtors' Chapter 11 cases began in July and September 1997, that by the beginning of the Second Application Period the Debtors were on the verge of filing their joint Chapter 11 plan. Because of the speed with which the Debtors' Chapter 11 cases progressed, virtually all of the Applicant's restructuring consulting and financial advisory services which would typically occur over a one-year (or greater) period, were compressed into a less than seven month period.

As a result, the Applicant's fee request during the Second Application Period, should be viewed in the context of the rapid progress through Chapter 11 which was achieved by the Debtors during the Second Application Period. The Debtors' Chapter 11 plan was approved in early March 1998, with an effective date of March 16, 1998. Recoveries to the Unsecured Creditor's (as well as other creditor classes) were maximized by virtue of the rapid pace which this case moved through the Chapter 11 process.

The Applicant submits this Application pursuant to sections 328, 330, 331 and 503(b) of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy

Rules”), and the Guidelines adopted by the Executive Office for the United States Trustees, the Administrative Order, Order No. 32.

No understanding exists between the Applicant and any other person for a sharing of the compensation sought by this Second and Final Application.

The following exhibits are annexed to this Second and Final Application:

- Exhibit A: Verification of David S. Miller;
- Exhibit B: Summary by Professional and Project Code Category of the Services Rendered by Professionals and Paraprofessionals for the Period 7/23/97 - 3/16/98;
- Exhibit C: Summary of Professional and Paraprofessional Time and Fees;
- Exhibit D: Summary of Professional and Paraprofessional Time and Fees by Project Code Category for the period 11/01/97 through 3/16/98;
- Exhibit E: Detailed Description by Project Code Category of the Services Rendered by Professionals and Paraprofessionals for the period 11/01/97 through 03/16/98;
- Exhibit F: Summary and Breakdown of Requested Reimbursement of Expenses and Disbursements for the period 11/01/97 through 03/16/98; and
- Exhibit G: Summary and Breakdown of Main Projects Accomplished, Fees and Hours Sorted by Project Code Descriptions, Fees and Hours Sorted by Professional, and Expenses Sorted by Type and Professional During the First Interim Application Period (July 23, 1997 - Oct 31, 1997).

The Applicant expended a total of 1,645.8 hours during the period covered by this Second Application Period in rendering necessary and beneficial restructuring and financial advisory services to the Debtors, and has prepared Exhibit E above based on contemporaneous daily time records maintained by the Applicant’s professionals and paraprofessionals who rendered services in this case.

Ernst & Young has at all times sought to minimize fees to the estate so as to protect the interests of all creditors. Applicant has used, where possible, analysis and information prepared by the Debtors in the preparation of reports to the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), and other parties in interest, and has only addressed material issues which have arisen in the case at the request of the Debtors' management, the Debtors' Board of Directors, and/or the Debtors' Counsel. Applicant has avoided duplication of services provided and sought, where possible, to use lower rate professionals to perform the services required for the Debtors. All of the Applicant's services have been performed at the direction of the Debtors' management, the Debtors' Board of Directors, Counsel to the Debtors, or in response to requests by the Unsecured Creditors Committee.

The Applicant has only applied for reimbursement of actual and necessary out-of-pocket disbursements in accordance with section 330(a) (2) of the Bankruptcy Code, the Bankruptcy Rules and the Guidelines. The expenses listed on Exhibit F were actual and necessary expenses incurred by the Applicant in connection with its service to the Debtors. The Applicant would typically bill all such expenses to its non-bankruptcy clients. In addition, the Applicant would typically bill its non-bankruptcy clients for other costs and expenses (including postage, supplies, and other essential expenses and services), reimbursement of which will not be sought in this case (which amount as previously noted totaled approximately \$35,000).

II. RETENTION OF APPLICANT

First Merchants Acceptance Corporation and First Merchants Residential Credit Corporation, commenced their cases on July 11, 1997 and September 9, 1997, respectively, (the "Petition Dates") by filing petitions for relief under Chapter 11 of Title 11 of the United States

Code (the "Bankruptcy Code"). Since the Petition Dates, the Debtors have been authorized to continue to operate their business and to manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 cases.

By Order dated August 19, 1997 (the "Retention Order"), the Court authorized First Merchants Acceptance Corporation to retain the Applicant as their Restructuring Consultants and Financial Advisors *nunc pro tunc* to July 23, 1997 on an hourly rate basis. The Retention Order conditioned the Applicant's compensation on approval by this Court. First Merchants Acceptance Corporation sought to retain the Applicant in this case primarily on account of the Applicant's specific knowledge about the Chapter 11 reorganization process and Applicant's familiarity with the issues First Merchants Acceptance Corporation would face during the Chapter 11 as it contemplated a Chapter 11 plan.

III. DESCRIPTION OF SERVICES PROVIDED BY SERVICE AREA

Ernst & Young does not wish to burden this Court with an overly detailed or lengthy recitation of each and every matter with respect to which it has rendered services to the Debtors, which is detailed out at greater length in Exhibit E. A description of the principal services, provided by the Applicant at the request of the Debtors during this Second Application Period is set forth below by Service Area (Service Area refers to the various professional groups within Ernst & Young that provided services to the Debtors during the Second Application Period). A detailed description of services provided by Ernst & Young prior to the Second Application Period is attached as Exhibit G, for reference by readers of this application.

Restructuring and Reorganization Services:

Summary of Professional Hours and Fees:

<u>Professional</u>	<u>Level</u>	<u>Hours</u>	<u>Fees</u>
Schwab, P	Partner	4.1	\$1,845
Miller, D.	Partner	199.2	79,680
Phillips, F.	Senior Manager	440.9	145,497
Sweig, D.	Senior Manager	20.7	6,831
Brady, S.	Manager	625.5	187,650
Griffin, K.	Senior Consultant	107.4	23,356
Wolfe, A.	Senior Consultant	1.0	220
Sisnett, K.	Para-Professional	29.5	2,655
Lauterbach, R.	Para-Professional	71.9	6,471
		<u>1,500.2</u>	<u>\$ 454,205</u>

During the Second Application Period, Ernst & Young's Restructuring and Reorganization Services practice performed a wide range of reorganization and financial advisory services at the direction of and for the benefit of the Debtors' management, the Debtors' Board of Directors, and counsel to the Debtors. Reports and presentations were prepared to ensure that interested parties were kept apprised of the financial performance and condition of the Debtors. Specific services provided during the Second Application Period included:

- (a) Advising and assisting the Debtors' management in organizing resources and activities in order to effectively manage the Chapter 11 process;
- (b) Advising and assisting the Debtors' management in preparing cash flow projections which were required by the Debtors' DIP Lender and called for:
 - meeting with executive management, department heads and employees at various levels throughout the Debtors' organization to coordinate and develop the projections;
 - preparing and reviewing detailed financial information such as loan portfolio performance projections, operating expense assumptions, restructuring expense assumptions, and other relevant financial information; and
 - challenging management's assumptions and preparing alternative scenarios;
- (c) Assisting management in the development of a post-confirmation budget for the FMAC Estate:
 - identification and analysis of future costs to be incurred by the Estate;

- analysis of the plan feasibility and determination of the post-confirmation financing facility required;
 - communication of budget issues with the Unsecured Creditors Committee;
 - analysis of the timing of all cash inflows and outflows of the Estate;
- (d) Assisting the Debtors with their interactions with the DIP Lender/Senior Lender and the Committee and their authorized professionals by:
- reviewing and compiling financial and operational data and providing this information to the DIP/Senior Lender, the Committee, and their authorized professionals;
 - preparing reports/presentations for face-to-face meetings;
 - attending meetings and/or presenting information to the DIP Lender/Senior Lender and the Committee; and
 - assisting the Debtors in the gathering of information requested by the Committee and their authorized professionals during their due diligence review;
- (e) Assisting and advising the Debtors' with respect to issues relating to Financial Security Assurance, Inc. ("FSA") including:
- attending meetings and participating in calls with representatives of FSA;
 - developing presentations regarding servicing and collections activity; and
 - reviewing status of the Debtors' marketing efforts and plan proposals received to date;
- (f) Interfacing with representatives of the Committee with respect to:
- status of FMAC restructuring activities;
 - communication of financial and operational results;
 - status of marketing activities;
 - development and negotiation of Chapter 11 Plan strategies; and
 - preparation, attendance and participation in meetings and conference calls;
- (g) Assisting the Debtors' management in specific bankruptcy related matters such as:
- analyzing the financial implications of abandoning unfunded pre-petition dealer contracts;
 - performing analysis of lease obligations to determine potential lease rejection claims;
 - reviewing employee retention and severance programs; and

- advising Debtors with respect to opportunities to finance significant insurance policy premiums during the Chapter 11 case resulting in more efficient use of post-petition financing;
- (h) Attending court hearings and providing expert testimony with respect to certain restructuring issues;
- Sale of Owned Loan Portfolio;
 - Plan Confirmation Hearing;
- (i) Assisting Debtors and Debtors' counsel in preparing the proposed Chapter 11 Plan and Disclosure Statement by:
- developing exhibits to the Disclosure Statement including a hypothetical Chapter 7 liquidation analysis and projections of potential creditor recoveries under the proposed Chapter 11 Plan; and
 - attending court hearing regarding the timeline for the filing of the Chapter 11 Plan and Disclosure Statement to provide financial analysis supporting Debtors' requests;
- (j) Assisting Management with the development and analysis of strategic operational issues:
- analysis of transition issues with the Ugly Duckling Corporation for the transfer of loan servicing;
 - analysis of deficiency account balances; and
 - review of collection center activities.

Capital Markets Services:

<u>Professional</u>	<u>Level</u>	<u>Hours</u>	<u>Fees</u>
Auxier, D.L.	Partner	13.8	\$6,348
Hearne, S.	Staff Consultant	60.7	12,140
		<u>74.5</u>	<u>\$18,488</u>

At the request of FMAC management and counsel to the Debtors, Ernst & Young's Capital Markets practice was brought in to analyze the potential values and future cash flows with respect to the Owned Loans and the residual interests in the eight securitizations ("B Pieces"). Specific services provided during the Second Application Period included:

- (a) Reviewing the individual securitization agreements and projecting the future cash flow streams from the B Pieces;
- (b) Performing sensitivity analyses on the future cash flow streams from the B Pieces based on various annual loss rate and spread account reserve assumptions;
- (c) Presenting results of the value indication analyses and cash flow sensitivities to the FMAC Board of Directors;

Valuation Services:

<u>Professional</u>	<u>Level</u>	<u>Hours</u>	<u>Fees</u>
Napier, S.	Partner	2.0	\$970
Schuelein, C.	Senior Manager	2.0	720
Ascher, D.	Manager	13.6	3,400
Thollot, S.	Staff Consultant	3.5	525
		21.1	\$5,615

The results of the Valuation Services analyses were utilized in preparing the Disclosure Statement, in particular, analyzing the value of the UDC Warrants. Specific services provided during the Second Application Period included:

- (a) Developing appropriate valuation methodologies and models;
- (b) Performing value indication analyses of UDC Warrants;
- (c) Preparing reports addressing indications of value; and
- (d) Performing other valuation related projects.

Tax Services:

<u>Professional</u>	<u>Level</u>	<u>Hours</u>	<u>Fees</u>
Blank, J.	Partner	48.0	\$23,520
Solomon, E.	Partner	1.0	495
Williams, R.	Senior Manager	1.0	355
		50.0	\$24,370

At the request of the FMAC Board of Directors, Ernst & Young's Tax Advisory professionals assisted FMAC management in:

- (a) Evaluating the proposed treatment of FMAC's 1996 securitizations for tax purposes;
- (b) Identifying and analyzing the tax implications to the reorganized FMAC under the proposed Chapter 11 Plan; and
- (c) Net operating loss preservation strategies.

Chapter 11 Case Administration:

The Applicant incurred \$14,726 in fees representing 141.4 hours spent during the Second and Final Application Period in preparing monthly billing detail, invoices, and the Second and Final Fee Application (which includes \$9,126 of fees and 101.4 hours also included in the restructuring and reorganization services detail herein).

The Applicant usually charges its normal hourly rates for non-bankruptcy clients for time spent in preparing the bills. However, the Applicant, in preparing billing statements or fee applications in a bankruptcy case, compiles all the available information and drafts detail summaries of the work it has performed by individual. These tasks are not performed for non-bankruptcy clients, where either a short one paragraph description is provided together with a broad summary of time and expenses incurred, or fees are agreed upon prior to the commencement of work.

The blended hourly rate in preparing billing statements and, billing detail, during this Second and Final Application Period was \$104. Based on the foregoing, the Applicant respectfully submits that it should be entitled to the full amount charged for preparation of the billing statements, billing detail and fee applications.

IV. DESCRIPTION OF OUT-OF-POCKET EXPENSES

As with all major professional services firms, the Applicant's overhead expenses are substantial. A significant portion of the fees which the Court awards the Applicant will merely defray such significant overhead expenses already incurred and paid during the pendency of this case. The limited costs which the Applicant seeks reimbursement of are not in the nature of Applicant's overhead and were necessarily incurred as a result of this engagement. Such costs are not, therefore, implicit in the Applicant's hourly rates.

The \$ 19,440 of expenses for which the Applicant seeks reimbursement are those actual out-of-pocket expenses incurred by the Applicant in providing the restructuring consulting and financial advisory services. As noted previously, not included in the figure above is approximately \$ 35,000 of expenses which the Applicant would have billed to its client in a non-bankruptcy engagement. The Applicant has provided a summary and detail by individual of requested reimbursements of expenses and disbursements in Exhibit F of this Application (Applicant also maintains copies of receipts for all individual amounts in excess of \$75, copies of which are available for review upon request).

WHEREFORE, the Applicant respectfully requests the Court to enter an order (i) awarding the Applicant the sum of \$508,278 as interim compensation for services rendered, and \$ 19,440 as reimbursement for actual and necessary expenses incurred during the course of the Applicant's provision of restructuring consulting and financial advisory services to the Debtors during the Second Application Period; (ii) authorizing and directing the Debtors to pay the Applicant the sum of \$293,741 representing the total fees and costs sought by the Applicant herein \$1,515,992, less the amount previously paid (or to be paid) on a monthly basis pursuant to

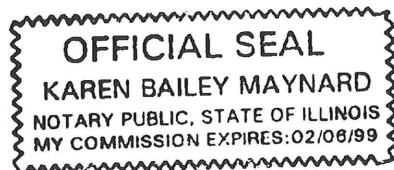
WHEREFORE, the Applicant respectfully requests the Court to enter an order (i) awarding the Applicant the sum of \$508,278 as interim compensation for services rendered, and \$ 19,440 as reimbursement for actual and necessary expenses incurred during the course of the Applicant's provision of restructuring consulting and financial advisory services to the Debtors during the Second Application Period; (ii) authorizing and directing the Debtors to pay the Applicant the sum of \$293,741 representing the total fees and costs sought by the Applicant herein \$1,515,992, less the amount previously paid (or to be paid) on a monthly basis pursuant to the Administrative Order \$1,222,251; (iii) awarding in final the total fees earned and expense incurred by Ernst & Young of \$1,446,306 and \$69,686, respectively, and (iv) granting such other and further relief as the Court deems appropriate.

Dated: Chicago, Illinois

April 28, 1998

Ernst & Young LLP
Restructuring Consultants and Financial
Advisors to the Debtors
233 S. Wacker Drive
Chicago, Illinois. 60606
(312) 879-3046

By: David S. Miller
David S. Miller
Partner



Subscribed and sworn to before me
this 28th day of April 1998.

Karen Bailey Maynard
Notary Public