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**Hearing Date and Time:**  
 January 9, 2003 at 10:00 a.m.

**Objection Date and Time:**  
 January 3, 2003 at 5:00 p.m.

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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 In re: : Chapter 11  
 :  
 FLAG TELECOM HOLDINGS LIMITED, : Case Nos. 02-11732 (ALG)  
 FLAG LIMITED, : through 02-11736 (ALG)  
 FLAG PACIFIC USA LIMITED, : and 02-11975 (ALG) through  
 FLAG ATLANTIC HOLDINGS LIMITED, : 02-11979 (ALG)  
 FLAG ATLANTIC LIMITED, :  
 FLAG TELECOM GROUP SERVICES LIMITED, : (Jointly Administered)  
 FLAG TELECOM LIMITED, :  
 FLAG TELECOM USA LTD., :  
 FLAG ASIA LIMITED, and :  
 FLAG ATLANTIC USA LIMITED, :  
 :  
 DEBTORS. :  
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**APPLICATION BY PPM AMERICA, INC. FOR ALLOWANCE AND  
 PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS PURSUANT  
 TO SECTION 503(b)(3) OF THE BANKRUPTCY CODE**

Pursuant to section 503(b)(3) of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”), PPM America, Inc. (“PPM”) submits this application (the “Application”) requesting allowance and payment of administrative expense claims in the total amount of \$137,420.20 for services performed on behalf of the creditors of the estates of FLAG Telecom Holdings Limited, *et al.* (collectively, the “Debtors”) by Grant & Eisenhofer P.A. (“Grant & Eisenhofer”) and Penn Consulting Group, P.C. (“Penn Consulting” and, together with Grant & Eisenhofer, the “Professionals”), who were retained by PPM during the pendency of these chapter 11 cases. Specifically, PPM seeks compensation for (i) fees of \$25,166.50 and expenses

of \$7,231.30 incurred by Grant & Eisenhofer and (ii) fees of \$104,113.00 and expenses of \$909.00 incurred by Penn Consulting in connection with their investigation of the existence, viability and preservation of potential derivative action claims of the Debtors' estates against (i) the Debtors' current and former directors and officers and (ii) certain third parties (collectively, the "Derivative Claims"). In support of the Application, PPM respectfully represents as follows:

### **BACKGROUND**

1. On April 12, 2002 (the "Petition Date"), FLAG Telecom Holdings Limited ("FTHL"), FLAG Limited, FLAG Pacific USA Limited, FLAG Atlantic Holdings Limited, and FLAG Atlantic Limited filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On April 23, 2002, FLAG Telecom Group Services Limited, FLAG Telecom Limited, FLAG Telecom USA Ltd., FLAG Asia Limited and FLAG Atlantic USA Limited filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors operated their business and managed their properties as debtors in possession. By order of the Court, the Debtors' chapter 11 cases were jointly administered for procedural purposes only.

3. On May 3, 2002 (the "Committee Formation Date"), pursuant to section 1102 of the Bankruptcy Code, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in these chapter 11 cases. The Committee consisted of seven members.<sup>1</sup>

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<sup>1</sup> The Committee was comprised of the following entities: Alcatel Submarine Networks; Lucent Technologies, Inc.; HSBC Bank USA; The Bank of New York; Cerberus Capital Management, L.P.; Elliott Management Corp.; Varde Partners, Inc.; PPM America Inc.; and Pacific Investment Management Company, LLC, a.k.a. PIMCO.

4. On or about June 6, 2002, PPM, a member of the Committee, employed Grant & Eisenhofer to investigate and analyze the existence, viability and preservation of possible Derivative Claims. Pursuant to the retention agreement between PPM and Grant & Eisenhofer, Grant & Eisenhofer would be compensated on an hourly basis and would receive reimbursement for all expenses incurred in connection with its engagement. Grant & Eisenhofer employed Penn Consulting, a firm that specializes in forensic accounting, to assist it in investigating the Debtors' financial statements and accounting practices. During the pendency of these cases, the Professionals investigated and analyzed possible Derivative Claims including, among other things, breach of fiduciary duty, misrepresentations in public financial statements and fraudulent conveyances. The Professionals also analyzed potential strategies to preserve the Derivative Claims for the benefits of all creditors pursuant to a litigation trust (the "Litigation Trust").

5. By order dated September 26, 2002, this Court confirmed the Third Amended and Restated Joint Plan of Reorganization of Debtors Under Chapter 11 of the Bankruptcy Code (as amended, supplemented, or otherwise modified, the "Plan"). The Plan became effective on October 9, 2002. The Plan provides for all Derivative Claims to be placed in the Litigation Trust and any proceeds from the Derivative Claims to be distributed to all creditors receiving stock in reorganized FLAG.

6. PPM also retained Anderson Kill & Olick, P.C. ("Anderson Kill") during these chapter 11 cases, and Anderson Kill's retention as special conflicts counsel to the Committee was approved on September 26, 2002. On December 4, 2002, Anderson Kill received approval, pending entry of a final order, of (i) \$129,072.50 in fees and \$1,509.97 in expenses relating to work performed during the period from its retention date of July 29, 2002 until the Effective Date and (ii) approval of fees of \$109,187.50 and expenses of \$1,793.92 for work performed

from June 7, 2002 through July 28, 2002 pursuant to section 503(b)(3)(D) of the Bankruptcy Code. Anderson Kill's application for final reimbursement of fees and expenses and, on behalf of PPM, for substantial contribution to these cases, states that Anderson Kill was retained to advise PPM, as to, among things: "(i) the existence and merits, if any of potential claims arising out of various intercompany relationships and claims between and among Limited, Holdco and FLAG Atlantic; (ii) potential claims of the Limited, Holdco and FLAG Atlantic estates with regard to their respective directors, officers and shareholders; and (iii) the positions which the creditors of Limited should take in the then ongoing negotiations with the creditors of Holdco and FLAG Atlantic with regard to the term sheet." Anderson Kill Final Fee Application, ¶14 [Docket No. 527].

7. As of December 6, 2002, the Litigation Trust has not retained counsel to pursue the Derivative Claims. On information and belief, PPM believes that Grant & Eisenhofer will be retained by the Litigation Trust to prosecute the Derivative Claims and that Grant & Eisenhofer will be paid on a contingency fee basis for its services.

### **JURISDICTION**

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

9. By this Application, PPM requests an order of the Court allowing PPM administrative expense claims in the total amount of \$137,420.20 for services performed on

behalf of the creditors of the Debtors' estates by the Professionals, who were retained by PPM during the pendency of these chapter 11 cases.

### **APPLICABLE AUTHORITY**

10. Section 503(b)(3) of the Bankruptcy Code authorizes the Court, after notice and a hearing, to allow as administrative expenses, expenses incurred by a creditor in making a substantial contribution in a chapter 11 case. 11 U.S.C. §503(b)(3).

11. Relevant case law states that, to qualify for treatment as an administrative expense under Section 503(b), an applicant must establish by a preponderance of the evidence that the services it rendered for which it seeks compensation provided a substantial benefit to the estate. Lebron v. Mechem Financial, Inc., 27 F.3d 937 (3<sup>rd</sup> Cir. 1994); In re U.S. Lines, Inc., 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989), aff'd, 1991 WL 67464 (S.D.N.Y. 1991); see In re Jack Winter Apparel, Inc., 119 B.R. 629, 622 (E.D. Wis. 1990); In re McLean Industries, Inc., 88 B.R. 36, 38 (Bankr. S.D.N.Y. 1988); In re Hanson Industries, Inc., 90 B.R. 405, 409 (Bankr. D. Minn. 1988); In D.W.G.K. Restaurants, Inc., 89 B.R. 684, 689 (Bankr. S.D. Cal. 1988).

12. Although the Bankruptcy Code does not define the term “substantial contribution,” courts have found that an applicant satisfies the substantial contribution test when it has provided “actual and demonstrable benefit to the debtor’s estate, its creditors, and to the extent relevant, the debtor’s shareholders.” Lebron, 27 F.3d at 937; U.S. Lines, 103 B.R. at 429; see In re Richton International Corp., 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981) (“[s]ervices which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization”).

13. Factors that courts have considered in determining whether an applicant has made a substantial contribution in a chapter 11 case include whether the services (a) were provided to

benefit the estate itself or all the parties in the bankruptcy case, (b) conferred a direct, significant, and demonstrably positive benefit upon the estate, and (c) were duplicative of services performed by others. See In re FRG, Inc., 124 B.R. 653, 658 (Bankr. E.D. Pa. 1991); In re Buttes Gas & Oil Co., 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989).

14. The expenses that PPM incurred on behalf of the interests of unsecured creditors during the pendency of these chapter 11 cases satisfy these factors. The work performed on PPM's behalf by the Professionals conferred a direct benefit on the Debtors' estates and all their creditors for at least three reasons. First, these services directly contributed to the confirmation of the Plan because the Committee, in making its determination as to whether it would support the Plan, required information relating to the identity, viability and potential value of the Derivative Claims in order to properly determine whether the economic terms of the Plan were in the best interests of the Debtors' estates and all of their creditors. Without a determination that Derivative Claims, which could potentially raise the recoveries of all creditors, existed, it was possible that the Plan would not have been approved by the required percentage of creditors and claims. Second, the information relating to the Derivative Claims, provided by the Professionals on PPM's behalf, was important in aiding creditors in their negotiations with the Debtors over the inclusion and scope of releases and waivers in the Plan. Third, the information relating to the Derivative Claims that PPM received as a result of the Professionals' work was helpful to creditors, the Committee and its professionals in designing the Litigation Trust in order to preserve the Derivative Claims for the Debtors' estates and their creditors. For these reasons, the work incurred on PPM's behalf by the Professionals during the pendency of the Debtors' chapter 11 cases protected the interests of unsecured creditors, facilitated negotiations among the

parties and, therefore, conferred a direct, significant and demonstrably positive benefit upon the Debtors' estates, their creditors and their reorganization.

15. The total time spent on PPM's behalf by Grant & Eisenhofer attorneys and paraprofessionals during the pendency of these chapter 11 cases is 77.15 hours. The total time spent by Penn Consulting accountants and professionals on PPM's behalf during the pendency of these chapter 11 cases is 307.25 hours. The work involved and, thus, the time expended, was carefully supervised by PPM in light of the experience and expertise required for a particular task and to avoid unnecessary duplication of services provided by other professionals in these chapter 11 cases. As shown by this Application and supporting documents, the Professionals spent their time economically and without unnecessary duplication of time. Copies of invoices including narratives detailing the work performed by the Professionals and a summary of expenses incurred are attached hereto as Exhibit "A".

16. On information and belief, (i) Grant & Eisenhofer will be retained as counsel by the Litigation Trust to prepare and litigate, if necessary, causes of actions relating to the Derivative Claims and (ii) Grant & Eisenhofer will be compensated on a contingency fee basis by the Litigation Trust. PPM submits that the services provided by the Professionals during the pendency of these chapter 11 cases were of a different nature than the services that Grant & Eisenhofer will provide to the Litigation Trust. The services rendered by the professionals during the pendency of these chapter 11 cases consisted of a broad analysis determining (a) whether viable Derivative Claims existed, (b) what the range of the Derivative Claims' values are for creditors of the Debtors' estates and (c) how best to preserve such Derivative Claims pursuant to the Litigation Trust. These services aided the confirmation of the Plan and

contributed to the maximization of the Debtors' assets for all creditors, and, thus, conferred a direct, significant, and demonstrably positive benefit upon the Debtors' estates.

17. PPM also submits that the work performed by the Professionals was not duplicative of the work performed by Anderson Kill. Anderson Kill's services during these chapter 11 cases largely consisted of representing PPM and the other creditors of FLAG Limited with respect to the intercompany relationships and claims amongst the principal FLAG entities and representing PPM and the other creditors of FLAG Limited in the negotiations with the other major creditor constituencies with respect to the term sheet (the "Term Sheet") that became the basis for the economic terms of the Plan. Anderson Kill also performed services relating to providing the requisite notice of possible Derivative Claims to the insurance carriers of the Debtors' directors and officers in order to preserve such insurance and to design provisions, which were incorporated into the Plan, implementing the Litigation Trust in a manner that would preserve the Derivative Claims. Grant & Eisenhofer is a litigation boutique with significant expertise in representing institutional investors in federal securities fraud and related litigation. PPM employed Grant & Eisenhofer who, with the assistance of Penn Consulting, focused its efforts on a specific analysis of the merits, viability and potential value of the Derivative Claims. The Professionals did not represent PPM or any other creditor with respect to the inter-creditor issues or the negotiations with respect to the Term Sheet. Although the Professionals provided assistance to Anderson Kill and other Committee professionals with respect to the formation of the Litigation Trust, this assistance was limited to providing information useful to the formation of the Litigation Trust relating to the Professional's specific analysis of the Derivative Claims. PPM submits that it carefully supervised the work performed by Anderson Kill and the



Professionals to assure that their efforts would be coordinated and there would be no duplication of services by the firms.

### **NOTICE**

18. Notice of this Application will be given to (i) counsel to the Debtors, (ii) the Office of the United States Trustee for the Southern District of New York, (iii) Akin Gump Strauss Hauer & Feld LLP, counsel for the Committee, (iv) the Joint Provisional Liquidator in the Bermuda proceedings, and (v) all person or entities that have served and filed notices of appearances in these chapter 11 cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. PPM submits that the notice provided is appropriate and no other notice need be given.

### **PRIOR APPLICATIONS AND WAIVER OF BRIEF**

19. No previous motion or application for the relief requested herein has been made to this Court or any other court.

20. As there are no novel issues of law raised by this Application, and the Application contains a brief description of relevant law, the Committee respectfully requests that this Court waive the requirement of Local Rule 9013-1(b) that a memorandum of law be filed.

WHEREFORE, the PPM respectfully requests that the Court enter an Order: (i) allowing PPM administrative expense claims in the total amount of \$137,420.20 (ii) granting such other and further relief as is just and proper.

Dated: December 9, 2002  
Wilmington, Delaware

**GRANT & EISENHOFER, P.A.**

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