

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

In re:) **Chapter 11**
)
FRUIT OF THE LOOM, INC., et al.,) **Case No. 99-4497 (PJW)**
)
Debtors.) **Jointly Administered**

Objection Deadline: May 13, 2002, at 4:00 p.m.
Hearing Date: Only if Objections are filed
(Negative Notice)

**FIRST AND FINAL APPLICATION OF BIRCH, STEWART, KOLASCH & BIRCH,
LLP, AS COUNSEL FOR FRUIT OF THE LOOM, UNDER 11 U.S.C. §§ 330 AND 331,
SEEKING PAYMENT OF COMPENSATION FOR SERVICES RENDERED
AND FOR REIMBURSEMENT OF EXPENSES**

Name of Applicant: **BIRCH, STEWART, KOLASCH & BIRCH, LLP**

Authorized to Provide Professional Services to: **Fruit of the Loom, Inc., et al.**

Date of Retention: **December 13, 2000**

Period for which Compensation and Reimbursement is sought: **September 30, 2000 through May 31, 2001**

Amount of Compensation sought as actual, reasonable and necessary: **\$149,193.50**

Amount of Expense Reimbursement sought as actual, reasonable and necessary: **\$16,255.61**

This is a: **First and Final Application**

The total time expended for the preparation of the Applicant's fee application is approximately 12 hours, and the corresponding compensation requested is approximately \$4,500.00.

Prior Applications:

<u>Application</u>	<u>Date Filed</u>	<u>Period Covered</u>	<u>Requested Fees/Expenses</u>	<u>Approved Fees and Expenses</u>
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N/A

EXPENSE SUMMARY

Expense Category	Service Provider (if applicable)	Total Expenses
Photocopying		\$353.45
Telephone		45.42
Facsimile (39 pages @ \$3.00/page)		117.00
Postage		10.00
Docket Entries		
Overtime		
Messenger Service		
Travel Expenses (Parking, Taxi)		12,566.74
Overnight Delivery	<i>Federal Express</i>	15.00
Legal Research	<i>Dun & Bradstreet</i>	
Outside Reproduction		146.00
Expert Witness Fees	<i>Dr. Knapton</i>	2,000.00
	<i>Mr. Frischorn</i>	1,000.00
Legal Research	<i>Lexis</i>	2.00
Legal Research	<i>Westlaw</i>	
TOTAL		\$16,255.61

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: :
: Chapter 11 Cases
FRUIT OF THE LOOM, INC., *et al.*, :
: No. 99-04497 (PJW)
Debtors. :
: Jointly Administered
-----X

**FIRST AND FINAL APPLICATION OF BIRCH, STEWART, KOLASCH
& BIRCH, LLP, AS COUNSEL FOR FRUIT OF THE LOOM, UNDER 11
U.S.C. §§ 330 AND 331, SEEKING PAYMENT OF COMPENSATION FOR
SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES**

Pursuant to the Revised Compensation Order (defined below), Birch, Stewart, Kolasch & Birch, LLP (“Birch Stewart”), counsel for Fruit of the Loom, Inc. and Union Underwear Company, Inc., d/b/a Fruit of the Loom in a case captioned Fruit of the Loom v. Sara Lee, No. 00 C 6328 that was pending in the Northern District of Illinois (“Sara Lee Litigation”), submits this first and final application (the “Final Application”) to the Court pursuant to 11 U.S.C. §§ 330 and 331, Rule 2016 of the Federal Rules of Bankruptcy Procedure, De.Bankr.LR 2016-2(d), of the Local Rules of Bankruptcy Procedure, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §§ 330, dated as of January 30, 1996 (the “U.S. Trustee Guidelines”), requesting entry of an order (i) allowing compensation of \$149,193.50, for actual, reasonable and necessary professional services rendered, and reimbursement of \$16,255.61 for actual, reasonable and necessary expenses incurred, during the period from September 30, 2000 to May 31, 2001 (the “Final Compensation Period”), for a total outstanding compensation of **\$104,500.00¹**, which is equal to the sum of such allowed compensation and expense reimbursement, less the amount previously paid (or expected to be paid prior to the hearing date on this fee application), (ii) authorizing Birch Stewart to apply the remaining \$100,000.00² from the Retainer to the outstanding legal fees incurred by the Birch, Stewart during the Final Compensation Period, and

¹ The payment requested in the amount of \$104,500.00 on account of the Final Compensation Period is the balance of the total fees and expenses requested hereunder of \$165,449.11, less the aggregate payment by Fruit of the Loom of \$60,949.11, paid to Birch, Stewart as a provider of essential services..

² Prior to the Petition Date, Birch, Stewart received a retainer (the “Retainer”) from Fruit of the Loom.

(iii) authorizing and directing Fruit of the Loom to pay Birch, Stewart the amount of \$4,500.00, which is equal to the sum of such allowed compensation and expense reimbursement, less the amount of the Retainer used to pay part of the outstanding balance from the Final Compensation Period, and represents as follows:

Introduction

1. **Chapter 11 Filing.** On December 29, 1999 (the "Petition Date"), Fruit of the Loom commenced reorganization cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"). Fruit of the Loom continues to operate its businesses and manage its property as debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. **Creditors' Committee.** On January 10, 2000, the United States Trustee (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors of Fruit of the Loom (the "Creditors' Committee") in Fruit of the Loom's Chapter 11 cases. No trustee or examiner has been appointed in these Chapter 11 cases.

3. **Jurisdiction.** The Court has jurisdiction over this Final Application under 28 U.S.C. § 1334, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of Fruit of the Loom's Chapter 11 cases and this Final Application in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of the Bankruptcy Code and De.Bankr.LR 2016-2(d). This Final Application is made pursuant to the Order of this Court, under 11 U.S.C. §§ 105(a) and 331, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated as of December 30, 1999 (the "Compensation Order"), as amended by that certain Agreed Amended Administrative Compensation Order Establishing Revised Procedures for interim Compensation and Reimbursement of Expenses of Professionals, dated as of December 27, 2000 (the "Revised Compensation Order"). A copy of the Revised Compensation Order is attached hereto as Exhibit A.

Retention of Birch, Stewart and Billing History

4. Birch Stewart's retention as counsel for Fruit of the Loom was authorized pursuant to the Order (the "Retention Order"), under 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014 and 5002, Approving Retention and Employment of Birch, Stewart as counsel, entered by

this Court on December 13, 2000. The Retention Order authorized Birch Stewart to be compensated pursuant to the procedures set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, the U.S. Trustee Guidelines, and orders of this court, including the Compensation Order. Previously, Birch, Stewart, Kolasch & Birch, was listed among the providers of critical services for Fruit of the Loom.

5. This Final Application is Birch Stewart's first application for approval and allowance of compensation and reimbursement of expenses. Birch Stewart makes this Final Application for payment of compensation and reimbursement of expenses pursuant to §§ 330 and 331 of the Bankruptcy Code and the Revised Compensation Order.

6. No prior application has been made to this or any other court for the relief requested herein.

7. Birch Stewart has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

8. No promises have been received by Birch Stewart or any member thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code.

I. CASE STATUS

9. On July 11, 2001, this court approved the Confidential Settlement in the Sara Lee Litigation. By a stipulated motion for dismissal, on July 18, 2001, the United States District Court for the Northern District of Illinois dismissed the Sara Lee Litigation with prejudice pursuant to the parties' settlement agreement.

II. FINAL APPLICATION

10. By this Final Application, Birch Stewart is seeking (a) allowance of reasonable compensation for actual and necessary expenses incurred by Birch Stewart, and reimbursement of actual, reasonable and necessary expenses incurred by Birch Stewart in connection with the rendition of professional services during the Final Compensation Period and (b) payment from Fruit of the Loom of 100% of the compensation and 100% of the expense reimbursement requested hereunder.

11. Birch Stewart seeks allowance of the sum of \$149,193.50 for actual, reasonable and necessary legal services rendered on behalf of Fruit of the Loom by Birch Stewart during the

Final Compensation Period and for reimbursement of actual, reasonable and necessary expenses incurred in connection with the rendition of such services.

12. Birch Stewart rendered all services for which compensation is sought to Fruit of the Loom solely in connection with the Sara Lee Litigation, in furtherance of the duties and functions of Fruit of the Loom, and not on behalf of any creditor or other person.

13. Birch Stewart maintains written records of the time expended in the rendition of the professional services required by Fruit of the Loom. These records are maintained in the ordinary course of Birch Stewart's practice. For the convenience of the parties, prefixed hereto as part of the cover sheet is a billing summary for the Final Compensation Period, with copies of invoices from September 30, 2000 through May 31, 2001 showing attorney time, rates and disbursements. The compensation requested by Birch Stewart is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under Title 11.

III. SUMMARY OF PROFESSIONAL SERVICES RENDERED

14. The following summary is intended to highlight the services rendered by Birch Stewart on behalf of Fruit of the Loom, and it is not meant to be a detailed description of the work performed. Detailed descriptions of the day-to-day services provided by Birch Stewart and the time expended performing such services in each project billing category are fully set forth in the attached invoices.

15. In the Sara Lee Litigation, Fruit of the Loom sought a declaratory judgment that a Sara Lee patent was invalid, unenforceable and not infringed. Birch Stewart spent a considerable amount of time developing the invalidity claim, including, but not limited to, gathering evidence of relevant prior art. After negotiations began, Birch, Stewart worked with the general practice firm of Bell; Boyd & Lloyd of Chicago, Illinois, to prepare and to prosecute the litigation.

16. Birch Stewart also had to respond to two motions filed by Sara Lee. Sara Lee filed a motion to dismiss for lack of subject matter jurisdiction based on the Declaratory Judgment Act. Birch Stewart, in cooperation with associate counsel, successfully opposed that motion. Sara Lee also moved to consolidate its case against Fruit of the Loom with a case filed by another competitor, Russell Corporation. Birch Stewart prepared a draft opposition to the motion to consolidate. Finally, the Court ordered both parties to participate in a mediation

before a Magistrate Judge. Birch Stewart assisted in preparation of an extensive presentation for that mediation.

CONDITIONS UNDER WHICH SERVICES WERE PROVIDED

17. Birch Stewart attorneys were required to render services during the Final Compensation Period on a regular basis. At times, the Birch Stewart attorneys working on this case were required to devote substantial amounts of their time to these cases, to the exclusion of other clients. It is accordingly not possible to detail the many drafting sessions, conferences, telephone conversations, negotiating sessions, and other matters that occupied Birch Stewart on a daily basis.

EXPENSES

18. Birch Stewart has expended the sum of \$16,255.61 in actual, reasonable, and necessary expenses in connection with representing Fruit of the Loom and in its efforts to maintain Fruit of the Loom's estates during the Final Compensation Period. Birch Stewart maintains records of all actual and necessary expenses incurred in connection with the performance of professional services.

19. In connection with the reimbursement of actual, reasonable and necessary expenses, it is Birch Stewart's policy to charge its clients in all areas of practice for expenses, other than fixed and routine overhead expenses, incurred in connection with representing its clients. The expenses charged to Birch Stewart's clients include, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, photocopying charges, out-of-town travel expenses, local transportation expenses, expenses for working meals, computerized research, transcription costs, as well as non-ordinary overhead expenses particularly attributable to an individual client or cases such as secretarial and other overtime.

20. Birch Stewart charges Fruit of the Loom for these expenses at rates consistent with those charged to Birch Stewart's other clients, which rates are equal to the rates charged by Birch Stewart to its non-bankruptcy clients. In accordance with Section 330 of the Bankruptcy Code and with the U.S. Trustee Guidelines, Birch Stewart will seek reimbursement only for the actual cost of such expenses to Birch Stewart.

21. In providing or obtaining from third parties services which are reimbursable by clients, Birch Stewart does not include in such reimbursable amount any costs of investment,

equipment or capital outlay, except that the reimbursable cost of photocopying and faxes includes a factor of the cost of equipment.

22. Attorneys at Birch Stewart have not incurred expenses for luxury accommodations, deluxe meals or air travel in excess of coach fares. Throughout the Final Compensation Period, Birch Stewart has been keenly aware of cost considerations and has tried to minimize the expenses charged to Fruit of the Loom's estates.

RELEVANT LEGAL STANDARDS FOR AWARDING ATTORNEYS' FEES

23. The allowance of compensation for services rendered and reimbursement of expenses in bankruptcy cases is governed by section 330 of the Bankruptcy Code. With respect to the level of compensation, Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person: "reasonable compensation for actual, necessary services rendered." Section 330(a)(3)(A), in turn, provides that:

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issues or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3)(A). The congressional policy expressed in this statute is to provide for adequate compensation in order to continue to attract qualified and competent professionals to bankruptcy cases.

24. To award compensation and reimbursement of expenses under Section 330 of the Bankruptcy Code, the court must find that such requests are reasonable. Courts determine the reasonableness of a compensation application by considering the nature, extent, and value of the

services provided by the professional seeking compensation and the comparable cost of such services in a non-bankruptcy context. *Zolfo, Cooper & Co. v. Sunbeam-Oster Company*, 50 F.3d 253, 258 (3d Cir. 1994). When considering professional compensation requests, the Third Circuit applies the “market driven approach,” which focuses on the costs for comparable services in a non-bankruptcy context. *Zolfo Cooper*, 50 F.3d at 258; *see also Busy Beaver*, 19 F.3d at 850 (“Congress rather clearly intended to provide sufficient economic incentive to lure competent bankruptcy specialists to practice in the bankruptcy courts”)(citation and internal quotation marks omitted).

25. Birch Stewart respectfully submits that a consideration of the foregoing factors and standards should result in this Court’s allowance of the full compensation sought.

26. The professional services rendered by Birch Stewart have required a high degree of professional competence and expertise so that the numerous issues requiring evaluation and action could be addressed with skill and dispatch. It is respectfully submitted that the services rendered to Fruit of the Loom were performed efficiently, effectively, and economically, and the results obtained to date have benefited Fruit of the Loom and its estates.

Notice

27. No trustee or examiner has been appointed in these Chapter 11 cases. Pursuant to the Revised Compensation Order, a copy of this Final Application has been given to (a) the United States Trustee, (b) Fruit of the Loom, (c) counsel for the Creditors’ Committee, (d) counsel to Fruit of the Loom’s debtor-in-possession lenders, and (e) counsel for the lease agent under a purported synthetic lease, and notice of the filing of this Final Application has been given to all other parties that have requested receipt of notices in these cases. Birch Stewart submits that no further notice need be given.

WHEREFORE, Birch Stewart respectfully requests allowance of final compensation for professional services rendered in the amount of \$149,193.50, and reimbursement of the actual,


Fruit of the Loom in the amount of \$4,500.00 for fees and disbursements associated with preparation of this motion.

Dated: Falls Church, Virginia

~~January~~, 2002

March 22

BIRCH, STEWART, KOLASCH & BIRCH, LLP
Counsel for Fruit of the Loom, Inc., *et al.*, in the
Sara Lee Litigation

 3/27/2002

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