

**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)

Hearing Date: May 24, 2002, 9:30 a.m. EDT
Objection Deadline: May 20, 2002, 4:00 p.m. EDT

**FIRST AND FINAL REQUEST OF THE AD HOC COMMITTEE OF
8 7/8% NOTEHOLDERS AND ITS PROFESSIONALS,
HENNIGAN, BENNETT & DORMAN AND DUANE MORRIS LLP,
PURSUANT TO 11 U.S.C. § 503(b), FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSES INCURRED
FROM MARCH 1, 2001 THROUGH APRIL 30, 2002**

Name of Applicants: Ad Hoc Committee of 8 7/8% Noteholders
Hennigan, Bennett & Dorman
Duane Morris LLP

Authorized to Provide Professional Services to: Ad Hoc Committee of 8 7/8% Noteholders

Date of Retention: March 8, 2001

Period for which compensation and reimbursement is sought: March 1, 2001 through April 30, 2002

Amount of Compensation sought as actual, reasonable and necessary: \$1,064,452.50

Amount of Expense Reimbursement sought as actual, reasonable and necessary: \$146,235.96

This is an: ___ interim ___ X final application

The total time expended for fee application preparation is approximately 20 hours and the corresponding compensation requested is approximately \$7,500.00.

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I. INTRODUCTION

Pursuant to 11 U.S.C. §§ 503(b)(3)(4) and Rule 2016 of the Federal Rules of Bankruptcy Procedure, the Ad Hoc Committee of 8 7/8% Noteholders (the "Ad Hoc Committee"), along with its professionals, the law firms of Hennigan, Bennett & Dorman ("HBD") and Duane Morris LLP ("Duane Morris"), hereby request that this Court enter an order approving payment of administrative expenses in the aggregate amount of \$1,210,688.46, for fees and expenses incurred by HBD and Duane Morris in co-representing the Ad Hoc Committee during the period March 1, 2001 through April 30, 2002 (the "Fee Period").¹

The Ad Hoc Committee and its professionals made a substantial contribution in this bankruptcy case to unsecured creditors and to the estate. The primary beneficiaries of the efforts of the Ad Hoc Committee were the holders of 8 7/8% Notes in Class 4C of the Debtors' Third

¹ HBD and Duane Morris may have incurred additional expenses in March and April 2002 which have not yet been processed, as well as fees and expenses in May 2002 in preparation of this Request. HBD and Duane Morris will file a supplemental request in advance of the hearing.

Amended Joint Plan of Reorganization (the “Plan”), who will receive an additional distribution of \$15 million under the terms of the Plan that this Court recently confirmed. That additional distribution increased their estimated recovery under the Debtors’ plan of reorganization from 10.0% under the earlier proposed Second Amended Plan of Reorganization, to 16.3% under the Plan confirmed by this Court. In addition, the global settlement under the Plan that directly resulted from the efforts of the Ad Hoc Committee also provided significant benefit to other unsecured creditors and to the estate generally. Under the settlement incorporated into the Plan, the Creditors’ Committee were able to negotiate on behalf of general unsecured creditors an additional distribution of \$2 million, increasing their recovery from 10.0% to 11.2%. Together with the supplemental distribution to Class 4C Creditors, the aggregate distribution to unsecured creditors under the Plan increased by \$17 million. Of that amount, \$9.35 million was contributed by the secured creditors. The remaining \$7.65 million was contributed by the purchaser of the Debtor’s assets, Berkshire Hathaway, Inc. (“Berkshire”), through an adjustment in the purchase price, thereby enriching the estate for the benefit of all parties in interest.

Under the terms of the Debtors’ Plan, any fees and expenses of HBD and Duane Morris that are approved by this Court under section 503(b)(4) will, as a practical matter, be borne exclusively by the holders of 8 7/8% Notes in Class 4C. This is because, under the terms of the Plan, the supplemental distribution of \$15 million to the Class 4C creditors will be reduced by the amount of any administrative expenses of the Ad Hoc Committee and its professionals allowed by this Court. See Plan, §§ 1.47, 5.65. The net effect is that the creditors that received the most direct and substantial benefit from the efforts of the Ad Hoc Committee and its professionals – the holders of the 8 7/8% Notes – will share pro rata the cost of any reasonable fees and expenses of the Ad Hoc Committee’s professionals that this Court allows under section 503(b). Such a result is equitable given that all of the holders of 8 7/8% Notes – not just the members of the Ad Hoc Committee (who collectively hold about two-thirds of the 8 7/8% Notes) – share equally in the supplemental distribution. Significantly, under the terms of the Plan, the Debtors, the Bank Steering Committee and the Noteholders Steering Committee have all agreed

to support, and the Creditors' Committee has agreed not to oppose, an application under section 503(b) for payment of reasonable fees and expenses of the Ad Hoc Committee's members and professionals. Plan, at § 3.1.1.

The fees and expenses requested by the Ad Hoc Committee and its professionals total about \$1.21 million. These fees and expenses are reasonable, in light of the amount of time and effort expended, the complexity of the issues presented in this bankruptcy case, the amount of money at issue, and most importantly, the benefit to the holders of 8 7/8% Notes (as well as other unsecured creditors and the estate) that resulted from those efforts. A detailed summary of the fees and expenses incurred by HBD and Duane Morris are attached as Exhibits A-C.² The following chart summarizes the fees and expenses for professionals requested herein:

<u>Professional</u>	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
HBD	\$1,010,950.50	\$136,598.88	\$1,147,549.38
Duane Morris	\$ 53,502.00	\$ 9,637.08	\$ 63,139.08
TOTAL	\$1,064,452.50	\$146,235.96	\$1,210,688.46

Accordingly, the Ad Hoc Committee, HBD and Duane Morris request approval and payment as an administrative expense under section 503(b) of the Bankruptcy Code, of fees and expenses in the aggregate total of \$1,210,688.46. Such funds will be applied to the balance of the amount due to HBD and Duane Morris, with any excess proceeds to be reimbursed to the members of the Ad Hoc Committee on account of payments made to its professionals.

² Copies of the exhibits are not attached to service copies of this Request (other than those served on the Debtors, the Bank Steering Committee, the Noteholders Steering Committee, the Creditors' Committee, the 8 7/8% Notes Trustee and the Office of the United States Trustee), but are available by sending a written request to undersigned counsel for the Ad Hoc Committee.

In further support of this Request, HBD represents as follows:

II. FACTS

A. Background

1. On or about December 29, 1999 (the "Petition Date"), Fruit of the Loom, Inc. and certain of its affiliates (the "Debtors") filed for bankruptcy under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. In March/April 2001, two holders of 8 7/8% Notes, DDJ Capital Management, LLC ("DDJ") and Lehman Brothers, Inc. ("Lehman"), retained HBD to represent them in their capacity as holders of 8 7/8% Notes. Subsequently, HBD was also retained by Mariner Investments, Inc ("Mariner"). DDJ, Lehman and Mariner are members of the "Ad Hoc Committee." The Ad Hoc Committee also retained Duane Morris as Delaware co-counsel.

3. Under the original plan of reorganization filed by the Debtors in this bankruptcy case on March 15, 2001, unsecured creditors, which included the holders of 8 7/8% Notes, were to receive only one percent (1%) of the equity in the Reorganized Debtor, with ninety-nine percent (99%) of the equity to be distributed to the Secured Creditors. At the time that HBD was retained to represent the Ad Hoc Committee, both the Creditors' Committee and the members of the Ad Hoc Committee objected vigorously to the original plan. The Creditors Committee filed a motion to stay the hearing on the disclosure statement. Following a hearing on May 9, 2001, the Creditors' Committee withdrew its stay request without prejudice and this Court appointed Professor James White to serve as mediator among the various parties. That mediation occurred in June 2001. In advance of that mediation, counsel for the Ad Hoc Committee conducted an independent investigation of the potential claims against the Secured Creditors, and also prepared and submitted two mediation briefs in support of their position that unsecured creditors were entitled to a recovery under the plan far in excess of that proposed by the Debtors. Those mediation briefs reflected the Ad Hoc Committee's investigation of and conclusions with respect to the estate's potential claims against the holders of Secured Claims, and the view of the

Ad Hoc Committee's professionals that the plan as then proposed did not allocate sufficient value to unsecured creditors.

4. The mediation did not result in a global agreement among all of the parties. However, the Debtors, the Bank Steering Committee and the Noteholders Steering Committee did eventually reach an agreement with the Creditors' Committee concerning the outline of an amended plan of reorganization that would provide for an increased distribution to unsecured creditors, albeit a return far less than that sought by or acceptable to the Ad Hoc Committee.

5. The agreement between the Debtors, the Creditors' Committee, the Bank Steering Committee and the Noteholders Steering Committee contemplated a marketing process under which some or all of the common stock to be issued under the Debtors' plan would be sold to a third party. A number of third parties expressed interest in purchasing all or nearly all of the Debtors' stock or assets. On September 7, 2001, the Debtors and Secured Creditors selected Berkshire as the highest and best offer. Following a period of negotiation and documentation between the Debtors, the Noteholders Steering Committees, the Bank Steering Committee, the Creditors Committee and Berkshire (but not the Ad Hoc Committee), on November 2, 2001, the Debtors filed a motion seeking approval of certain bidding procedures in connection with the proposed sale of their assets to Berkshire, including an agreement to pay a \$30 million termination fee to Berkshire if the sale were not consummated. Although the sale was to occur pursuant to the terms of an amended plan of reorganization that was to be filed with the Court, the Debtors also requested, through that motion, the entry of a second order (the "Sale Order") containing findings of facts and conclusions of law with respect to the proposed sale to Berkshire.

6. The Ad Hoc Committee objected to the proposed Bidding Procedures Order, primarily on the basis that the \$30 million Termination Fee would have a coercive effect on creditors voting on the plan incorporating the proposed sale. The Ad Hoc Committee also objected because the proposed Termination Fee was excessive and not authorized under applicable Third Circuit law. Following a hearing on November 19, 2001, this Court denied

approval of the Bidding Procedures Order. The Debtors and Berkshire subsequently renegotiated the amount of the Termination Fee, reducing it from \$30 million to \$25 million in the event of an overbid at the auction and to \$22.5 million (with increases of \$1.25 million each month, up to a maximum of \$27.5 million) in the event that Berkshire was selected as the “Successful Bidder” at the auction but the plan of reorganization was either rejected by creditors or not confirmed by this Court. Moreover, the Secured Creditors agreed that they would bear exclusively any portion of the Termination Fee in excess of \$22.5 million. Accordingly, as a result of the objections of the Ad Hoc Committee to the bidding procedures, the exposure of the unsecured creditors to payment of the post-auction Termination Fee was reduced by 25% – from \$30 million to \$22.5 million.³ Following a hearing on December 5, 2002, this Court approved the reduced Termination Fee.

7. No bidders other than Berkshire appeared at the auction. Subsequently, the Debtors sought approval of the Sale Order that purported to confirm the results of the auction, but that in effect requested this Court to issue numerous findings of fact that, if made, would have improperly influenced the confirmation process. Prior to the hearing, the Ad Hoc Committee issued subpoenas and documents requests to the Debtors and Berkshire. At the hearing held on January 2, 2002, this Court indicated that it did not see any reason to make the findings requested by the Debtors. As a result, the Debtors agreed to eliminate all of the proposed findings of fact to which the Ad Hoc Committee had objected, thereby preserving for

³ Notwithstanding the reduction in the Termination Fee, the Ad Hoc Committee continued to assert that the Termination Fee, in the amount approved by this Court, remained coercive with respect to the creditors that would be voting on the contemplated plan. The Ad Hoc Committee filed an appeal of the Bidding Procedures Order, which the Ad Hoc Committee asserted was a final order. The Debtors, Berkshire and other parties took the position that the appeal was interlocutory and not final. In the meantime, the Ad Hoc Committee and other parties filed briefs with the district court on the merits of the dispute. At the conclusion of the briefing, the Ad Hoc Committee requested that the district court hear oral argument and decide the appeal on an expedited basis. That request was granted, and oral argument was held on March 7, 2002. The district court subsequently entered an order on March 12, 2002 in which it concluded that the Bidding Procedures Order was final as the Ad Hoc Committee contended, but at the same time affirmed this Court’s Bidding Procedures Order. However, just before that ruling was issued, the parties reached an agreement in principle. Consistent with the terms of the global settlement incorporating in the Plan, the appeal of the district court’s order affirming the Bidding Procedures Order has been dismissed with prejudice.

the confirmation hearing several issues of fact that could have otherwise been prematurely determined.

8. On December 28, 2001, the Debtors filed their First Amended Joint Plan of Reorganization, along with an accompanying disclosure statement. That plan incorporated the terms of the asset purchase agreement between the Debtors and Berkshire (the “Berkshire Agreement”), as well as the terms of the agreement between the Debtors, the Creditors’ Committee, the Bank Steering Committee, and the Noteholders Steering Committee concerning the terms of a plan. The Ad Hoc Committee devoted substantial time and effort to review, analyze and prepare objections to the disclosure statement. Those objections resulted in numerous changes to the disclosure statement that provided creditors voting on the plan with more adequate information.⁴ More importantly, through that process, the Ad Hoc Committee and its professionals were able to determine that the plan, as proposed by the Debtors, failed to allocate sufficient value to unsecured creditors, and that the plan proposed at that time was in fact not confirmable.

9. Following the approval and circulation of the disclosure statement and Second Amended Plan dated February 4, 2002, the Ad Hoc Committee issued discovery requests to the Debtors and to several parties involved in the bankruptcy case. Counsel for the Ad Hoc Committee reviewed thousands of pages of documents produced by the Debtors and other third parties, and also responded to document requests issued by the Debtors. Counsel for the Ad Hoc Committee also issued several deposition notices and prepared to take depositions, in anticipation of filing an objection to confirmation of the Plan.

10. In early March, the cumulation of the ongoing efforts of the Ad Hoc Committee – including the discovery obtained from the Debtors and other parties in anticipation of the confirmation hearing, the success of the Ad Hoc Committee in limiting both the Termination Fee

⁴ The Ad Hoc Committee also objected to a motion filed by the Debtors seeking approval of various plan confirmation procedures. That objection again resulted in several changes that were either agreed to by the Debtors or imposed by this Court.

and the scope of the findings under the Sale Order confirming the auction results, the willingness of the district court to hear the appeal of the Bidding Procedures Order on an expedited basis, and the prospect of substantial discovery that would have consumed time and money – prompted the Debtors, the Noteholders Steering Committee, the Bank Steering Committee and the Creditors Committee to engage in meaningful settlement discussions with the Ad Hoc Committee. Those discussions resulted in a global agreement, the terms of which were incorporated into the Third Amended Plan of Reorganization filed March 19, 2002. Under the terms of the Plan, general unsecured creditors in former class 4A were divided into two separate new classes: Class 4C, consisting of holders of 8 7/8% Notes, and Class 4A, consisting of the remaining creditors of former Class 4A. The Plan provides for holders of Class 4C claims to receive, in addition to the distribution previously provided under the earlier plan, a pro rata share of a supplemental payment in the amount of \$15 million. That \$15 million Class 4C supplemental payment is subject to reduction by the amount of administrative expenses that this Court allows to the members and professionals of the Ad Hoc Committee under section 503(b) of the Bankruptcy Code. Thus, if the \$1,210,688.46 in fees and expenses requested herein were approved in their entirety, then the amount of the Class 4C Supplemental Payment to be distributed directly to holders of Class 4C Claims will be reduced from \$15 million to \$13,789,311.54 – still a great deal higher than the recovery proposed under previous versions of the plan.

11. As part of the global agreement that was reached among the parties, the Creditors' Committee was able to negotiate for unsecured creditors in new Class 4A (which does not include holders of 8 7/8% Notes) to receive and share pro rata in a separate supplemental payment in the amount of \$2 million.

12. The \$17 million used to fund the Class 4A Supplemental Payment and Class 4C Supplemental Payment are to be paid from the following sources: \$9.35 million of the amount will come from a reduced distribution to holders of Class 2 claims (the Secured Creditors), and

\$7.65 million of the amount is to be contributed by Berkshire, through an adjustment in the purchase price under the terms of the Berkshire Agreement.

13. The timing of the global settlement, which occurred before the commencement of depositions, also resulted in a substantial savings of administrative expenses that otherwise would have been incurred by all parties in connection with discovery and a confirmation hearing. Instead, the Debtors filed the *Third Amended Plan of Reorganization* with the approval of all major constituents and, following a hearing on March 22, 2002, received approval of a supplemental disclosure statement that set forth the modifications to the Plan reflecting the settlement. The Plan as revised received the overwhelming support of all voting classes of creditors, and at the conclusion of the confirmation hearing on April 19, 2002, this Court entered its confirmation order. The Effective Date of the Plan occurred on April 30, 2002, thus bringing the chapter 11 bankruptcy case to a successful conclusion.

B. Summary of Services Rendered

14. Attached hereto as Exhibit A-1 is a detailed statement reflecting fees incurred for services rendered by HBD during the Fee Period, which total \$1,010,950.50.⁵ A chart summarizing the hours worked by each attorney, paraprofessional and financial consultant at HBD, as well as their respective hourly rates, is attached as Exhibit A-2, and a biographical description of the primary professionals involved in the bankruptcy case is attached as Exhibit A-3. Attorneys, paraprofessionals and financial consultants at HBD expended a total of 3,097.60 hours in connection with this matter during the Fee Period for which HBD seeks reimbursement. The nature of the work performed by these persons is fully set forth in the detailed fee statements in Exhibit A-1. The rates charged by HBD are consistent with the normal hourly rates charged by those firms to debtors and creditors. The blended rate of the fees for the Fee Period was \$326.37.

⁵ Certain entries are redacted based on attorney-client privilege or work product doctrine.

15. Attached hereto as Exhibit A-4 is a summary of expenses incurred by HBD and Duane Morris during the Fee Period, which total \$146,235.96. The expenses are itemized separately in the attached fee statements, and generally include but are not limited to computerized legal research; couriers; meals; postage; reproduction costs; telecopy charges; telephone charges; travel and transportation expenses. For the Fee Period, HBD's in-house rate for duplication is \$.10 per page, its rate for outgoing telecopy transmissions is \$1.00 per page and there is no charge for incoming telecopy transmissions. Airplane travel was by business class or, where business class was unavailable, by first class or coach. The expenses incurred and paid by HBD and for which HBD seeks reimbursement include the following: (1) fees in the amount of \$10,945.44 charged by Charles River Associates, who served as outside consulting experts with respect to valuation issues; and (2) fees incurred by Calder & Maples, a Cayman Islands law firm, in the amount of \$3,821.73, for services related to the pending Cayman Islands proceeding of Fruit of the Loom, Ltd. The expenses of Duane Morris are set forth on a separate line item.

16. Attached as Exhibit B-1 is a detailed statement reflecting fees and expenses incurred for services rendered by Duane Morris during the fee period. These fees total \$53,502.00 and expenses were \$9,637.08.

17. Attached as Exhibit C is a chart summarizing, by category of work, the hours and dollar amount of services performed by HBD and Duane Morris during the Fee Period. The services provided by HBD are further summarized below. (Duane Morris' services are set forth in a separate category below).

18. Case Administration (0010): This category primarily includes fees incurred to administer and organize documents, pleadings and information relating to the bankruptcy case, and to monitor activity in the case. During the Fee Period, HBD spent 117.1 hours, for a total of \$19,646.00, with respect to the category.

19. Meetings of and Communications with Creditors and Debtors (0020): This category includes, but is not limited to, correspondence and telephone conferences with counsel

for the Debtors, creditors and other parties regarding various issues arising in the case. During the Fee Period, HBD expended a total of 2.1 hours, for an amount of \$777.50, in connection with this category.

20. General Business Operations (0030): This category includes miscellaneous time reviewing monthly operating reports and other services. HBD expended 6.1 hours, at a cost of \$2,330.50.

21. Fee/Employment Applications (0040): This category includes but is not limited to, preparing and filing a Rule 2019 Statement as well as the instant Request. During the Fee Period, HBD expended a total of 15.1 hours, or \$4,440.00, on this category.

22. Claims Objections (0070): This category includes miscellaneous time reviewing a pending claim objection. HBD expended only 3.8 hours, at a cost of \$846.00, with respect to this category.

23. Asset Analysis and Recovery (0080): This category also includes miscellaneous time relating to a review of events that had occurred in the bankruptcy case, for purposes of preparing an objection to confirmation of the plan. This category involved only 2.7 hours, at a cost of \$405.00.

24. Asset Disposition (0090): This category includes fees incurred in analyzing, and objecting to, the Bidding Procedures Order, the Sale Order, and the Berkshire Agreement. These efforts resulted in a significant reduction of the Termination Fee, as well as substantial modifications to the Sale Order confirming Berkshire as the Successful Bidder. These services contributed to the draft objection to the plan that was obviated by the global settlement achieved among the parties. HBD devoted 195.7 hours, at a cost of \$72,640.50, to this category.

25. Plan/Disclosure Statement (0100): This category includes the time spent reviewing and analyzing the Debtors' disclosure statement; preparing and filing objections to the disclosure statement and to the motion for approval of balloting and other procedures; analyzing the plan of reorganization; issuing discovery requests relating to the plan confirmation; and reviewing documents produced by various parties. This category also includes global settlement

discussions with the other parties that resulted in the consensual plan; reviewing and commenting on the proposed consensual plan documents; and appearing at the supplemental disclosure statement hearing and the confirmation hearing. Finally, the category also includes two objections that were filed by the Ad Hoc Committee to the Debtors' request for extension of the exclusive period. HBD worked 425.9 hours, at a cost of \$155,012.50, for services falling within this category.

26. Litigation (0120): This category includes a variety of litigation issues, beginning with the investigation of the claims and defenses against the Secured Creditors in anticipation of last year's mediation, and continuing with the objections to the Bidding Procedures Order and the Sale Order, the disclosure statement, and the confirmation of the proposed plan. The category also includes the substantial documentary discovery that occurred during the course of the engagement – counsel for the Ad Hoc Committee received more than 60,000 pages of documents which were reviewed, analyzed, summarized and organized. HBD devoted 2,118.8 hours to this category, at a cost of \$677,400.00.

27. Appeal (0130): This category includes services performed in connection with the appeal of the Ad Hoc Committee to the Bidding Procedures Order. That appeal involved litigation not only with respect to the merits of the appeal, but also regarding the finality of the Bidding Procedures Order and whether the appeal should be expedited. During the Fee Period, HBD expended a total of 210.3 hours performed services related to Plan/Disclosure Statement. The amount of fees attributable to this matter is \$77,452.50.

28. Delaware Co-Counsel. This category includes the fees of Duane Morris, whose primary role in this bankruptcy case was to advise the Ad Hoc Committee on issues of Delaware local practice and represent the Ad Hoc Committee at various hearings. HBD and Duane Morris coordinated closely to ensure that the work performed by each of the law firms was not duplicative. Duane Morris incurred fees of \$53,502.00.

29. During the Fee Period, HBD and Duane Morris billed and seek reimbursement for a total of 3,298.5 hours, resulting in total fees of \$1,064,452.50. The amount of those fees reflect

a write-off by HBD of 517.3 hours, or \$122,338.00, which accounts for 10.3% of the total fees actually incurred by HBD and Duane Morris. The blended hourly rate for the two firms was \$322.70.

C. Rule 2016 Statement

30. HBD and Duane Morris together have to date received payments from the members of the Ad Hoc Committee in the amount of \$547,792.02 for compensation and reimbursement of expenses during the Fee Period covered by this Application. Other than from members of the Ad Hoc Committee, HBD and Duane Morris have received no payment and no promises of payment from any source for services rendered or to be rendered in any capacity whatsoever in the connection with these cases. There is no agreement or understanding between HBD, Duane Morris or any other person, other than members of the respective firms, for the sharing of compensation to be received for services rendered in these cases.

III. ARGUMENT

31. Section 503(b)(4) of the Bankruptcy Code provides:

After notice and a hearing, there shall be allowed administrative expenses . . . including:

- (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b)(4).

32. Section 503(b)(3)(D) of the Code provides in turn for allowance of administrative expenses incurred by “a creditor . . . or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a *substantial*

contribution in a case under chapter 9 or 11 of this title.” 11 U.S.C. § 503(b)(3)(D) (emphasis added).

33. Although “substantial contribution” is not defined in the Bankruptcy Code, the Third Circuit Court of Appeals addressed the meaning of substantial contribution in Lebron v. Mechem Financial Inc., 27 F.3d 937 (3d Cir. 1994). In Lebron, the Third Circuit held that the applicable test is whether “the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor’s estate and the creditors.” Id. at 944. Although the benefit must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interest, the mere existence of self-interest alone does not preclude reimbursement, since most activities of an interested party that contribute to the estate will also benefit that party to some degree. Id. at 547.

34. This Court, in determining whether a creditor or committee and its professionals have made a “substantial contribution” to a bankruptcy case, has held that a substantial contribution is one which provides “tangible benefits to the bankruptcy estate and to other unsecured creditors.” In the Matter of Buckhead Corp., 161 B.R. 11 (Bankr. D. Del. 1993). In determining whether a creditor or committee has met this burden, courts consider the following factors:

- (a) whether the services were rendered solely to benefit the client or to benefit all parties in the case;
- (b) whether the services provided direct, significant and demonstrable benefit to the estate; and,
- (c) whether the services were duplicative of services rendered by attorneys for the committee, the committees themselves, or the debtor and its attorneys.

Id. at 15. Moreover, this Court considered the corroboration of disinterested parties, as well as its own observations during the course of the bankruptcy case, in determining whether the efforts of a claimant resulted in a substantial contribution to the case. Id. at 16.

35. Applying the above standards of law, the members of the Ad Hoc Committee and its professionals have clearly provided a substantial contribution to this estate and its creditors. As a direct result of the active participation of the Ad Hoc Committee and its professionals, the Plan was amended to provide unsecured creditors with an additional distribution of \$17 million, of which \$15 million (less any fees allowed in this Request) is payable to holders of Class 4C 8 7/8% Notes and \$2 million is payable to general unsecured creditors (other than holders of 8 7/8% Notes). For holders of Class 4C claims – which is comprised in large part, but not exclusively, of the members of the Ad Hoc Committee – the net effect of this additional distribution of \$15 million is to increase their recovery from an estimated 10.0% to 16.3% of their claims. For general unsecured claims in Class 4A, their distribution, as negotiated by the Creditors' Committee, increased from 10.0% to 11.2%.

36. The positions advocated and arguments raised by the Ad Hoc Committee in this bankruptcy case, as well as the global settlement negotiated by the Ad Hoc Committee as reflected in the Plan, were intended to benefit not only the members of the Ad Hoc Committee but also other unsecured creditors – and not just holders of 8 7/8% Notes (about one-third of which are held by non-members of the Ad Hoc Committee), but other unsecured creditors as well. Throughout the period that the Ad Hoc Committee actively participated in this bankruptcy case, the Ad Hoc Committee asserted the following two positions: first, that the value to be realized from the reorganization of the Debtors exceeded the amount originally offered by Berkshire; and second, that unsecured creditors were not allocated their fair share of proceeds under the earlier versions of the plan, based upon the value of unencumbered assets. The Plan, as incorporating the global settlement and confirmed by this Court, addressed both of those concerns – it provided for an increased contribution of \$7.65 million by Berkshire (through an adjustment to the purchase price) which was to be distributed exclusively to unsecured creditors, and further provided for a reallocation of \$9.35 million from the Secured Parties to the unsecured creditors. Thus, all of the unsecured creditors in the case – primarily holders of 8 7/8% Notes,

but also general unsecured creditors as well – benefited from the efforts of the Ad Hoc Committee that directly resulted in the increased distribution under the Plan as confirmed.

37. The services provided by the Ad Hoc Committee were not duplicative of services provided by other committees or the debtors. As this Court has observed in this bankruptcy case, the other major parties in the case – the Debtors, the Creditors’ Committee, the Bank Steering Committee and the Noteholders Steering Committee – all endorsed the Second Amended Plan of Reorganization that provided for less consideration from Berkshire and a smaller recovery for unsecured creditors. Accordingly, only the Ad Hoc Committee was in a position to raise the objections to that plan that brought all of the parties to the negotiating table and ultimately resulted in the consensual Plan that this Court confirmed.

38. Finally, the substantial contribution provided by the Ad Hoc Committee and its creditors is, in this bankruptcy case, corroborated by all of the other major constituents. Under the terms of the Plan as confirmed by this Court, the Debtors, the Bank Steering Committee and the Noteholders Steering Committee have each agreed to support, and the Creditors’ Committee has agreed not to oppose, a request under section 503(b) for reimbursement of reasonable fees and expenses. Moreover, the Ad Hoc Committee believes that the Indenture Trustee for the 8 7/8% Notes – the holders of which (including but not limited to the members of the Ad Hoc Committee) will contribute pro rata to any fees and expenses awarded by this Court pursuant to this Request – will support the Request to the extent the Indenture Trustee agrees that the fees and expenses requested herein are reasonable.

IV. CONCLUSION

WHEREFORE, the members of the Ad Hoc Committee and its professionals request that this Court enter an order granting the Request, and allowing payment, pursuant to the terms of the Plan, of administrative expenses in the aggregate amount of \$1,210,688.46, as well as any supplemental amounts requested in advance of the hearing.

DATED: May 6, 2002

Respectfully submitted,

Michael R. Lastowski / By: Galun (416)

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8 7/8% Noteholders