

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: _____, 2004,
at.

----- X
In re: :
GENUITY INC., et al., :
Debtors. :
----- X

: Chapter 11
: Case Nos. 02-43558 (PCB)
: (Jointly Administered)

**SECOND AND FINAL APPLICATION OF LEBOEUF, LAMB, GREENE & MACRAE,
L.L.P. FOR ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR THE PERIOD FROM
MARCH 3, 2003 THROUGH NOVEMBER 30, 2003**

TO THE HONORABLE PRUDENCE CARTER BEATTY,
UNITED STATES BANKRUPTCY JUDGE:

LeBoeuf, Lamb, Greene & MacRae, L.L.P. ("LeBoeuf"), special counsel to the debtors herein (collectively, the "Debtors"), hereby makes this second and final application (the "Final Application") pursuant to sections 330 and 331 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 2016, for allowance of compensation for professional services rendered and reimbursement of actual and necessary expenses incurred in connection therewith for the period from March 3, 2003 through November 30, 2003 (the "Total Compensation Period"). Pursuant to this Final Application, LeBoeuf is seeking approval of fees and expenses incurred for the period August 1, 2003 through November 30, 2003 (the "Second Compensation Period"). In support of the Final Application, LeBoeuf respectfully represents as follows:

BACKGROUND

1. On November 27, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases were being jointly administered pursuant to an order signed on December 2, 2002. The Debtors

continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. An order (the "Confirmation Order") confirming the Debtors' Joint Consolidated Plan of Liquidation, As Modified (the "Plan") was entered on November 21, 2003. The Plan became effective as of December 2, 2003.

JURISDICTION

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

LEBOEUF'S RETENTION, PRIOR AWARD AND RECEIPT OF PAYMENT OF FEES AND DISBURSEMENTS

4. Prior to the Petition Date, LeBoeuf performed services for the Debtors in connection with disputes with various customer accounts. By order of this Court dated May 6, 2003, a copy of which is annexed hereto as Exhibit A, LeBoeuf was retained by the Debtors as special counsel *nunc pro tunc* to March 3, 2003, for the purpose of investigating certain accounts receivable and initiating adversary proceedings to recover such accounts receivable.

5. By Order dated October 22, 2003, this Court awarded LeBoeuf (i) a first interim allowance of compensation for professional services rendered during the period from March 3, 2003 through July 31, 2003, in the amount of \$82,850.50, and directed payment of such approved fees, and (ii) reimbursement of actual and necessary costs and expenses incurred by LeBoeuf in the amount of \$1,073.64, and directed payment of such approved expenses.

6. For the Second Compensation Period, LeBoeuf submitted monthly fee statements pursuant to the terms of this Court's order, dated January 7, 2003, establishing procedures for monthly compensation and reimbursement of expenses of professionals (the "Fee Order"). For the period from August 1, 2003 through August 31, 2003, LeBoeuf submitted a

monthly fee statement requesting that the Debtors pay \$15,620.00 (80% of \$19,525.00) in fees for services rendered and \$323.57 (100% of expenses) in incurred expenses, for a total payment in the amount of \$15,943.57, for which LeBoeuf has received payment¹. For the period September 1, 2003 through September 30, 2003, LeBoeuf submitted a monthly fee statement requesting that the Debtors pay \$47,307.20 (80% of \$59,134.00) in fees for services rendered and \$4,582.10 (100% of expenses) in incurred expenses, for a total payment in the amount of \$51,889.30, for which LeBoeuf has received payment². For the period October 1, 2003 through October 31, 2003, LeBoeuf submitted a monthly fee statement requesting that the Debtors pay \$36,681.60 (80% of \$45,852.00) in fees for services rendered and \$2,773.74 (100% of expenses) in incurred expenses, for a total payment in the amount of \$39,455.34, for which Le Boeuf has not been paid. For the period November 1, 2003 through November 30, 2003, LeBoeuf submitted a monthly fee statement requesting that the Debtors pay \$13,523.60 (80% of \$16,904.50) in fees for services rendered and \$3,306.22 (100% of expenses) in incurred expenses, for a total payment in the amount of \$16,829.82, for which LeBoeuf has not been paid.

VOLUNTARY FEE AND DISBURSEMENT REDUCTIONS

7. During the first compensation period (the "First Compensation Period") from March 3, 2003 through July 31, 2003, LeBoeuf incurred \$1,028.00 in other time charges in connection with its representation of the Debtors during the First Compensation Period for which it did not seek compensation. This time includes work that was felt to be minimally productive and other time charges for which LeBoeuf determined it would not seek compensation. The

¹ Pursuant to the Fee Order, LeBoeuf previously requested payment in the amount of \$15,943.57 with respect to payment of 80% of fees and 100% of expenses for the month of August 2003, but actually received payment in the amount of \$15,966.59. Accordingly, LeBoeuf has reduced its request for final payment of the 20% of fees held back in the Second Compensation Period for the month of August 2003 by the amount of \$23.02. LeBoeuf requests payment in the amount of \$3,881.98 for fees incurred in August 2003 that were not previously paid.

² Pursuant to the Fee Order, LeBoeuf previously requested payment in the amount of \$51,889.30 with respect to payment of 80% of fees and 100% of expenses for the month of September 2003, but actually received payment in the amount of \$52,183.30. Accordingly, LeBoeuf has reduced its request for final payment of the 20% of fees held back in the Second Compensation Period for the month of September 2003 by the amount of \$294.00. LeBoeuf requests payment in the amount of \$11,532.80 for fees incurred in September 2003 that were not previously paid.

amount noted above does not include all of these types of items since in many cases LeBoeuf determined not to bill for certain activities in the first place or billed only a portion of the time actually spent on the task.

RELIEF REQUESTED

8. By this Final Application, LeBoeuf seeks: (a) final allowance of (i) compensation for professional services rendered by LeBoeuf as attorneys for the Debtors during the Second Compensation Period, in the amount of \$141,415.50 representing 433.6 hours of professional services; and (ii) reimbursement of actual and necessary costs and expenses incurred by LeBoeuf during the Second Compensation Period in the amount of \$10,985.63, (b) payment of (i) amounts previously held back and not paid pursuant to the Fee Order during the Second Compensation Period in the amounts of \$3,881.98 for August 2003 fees and \$11,532.80 for September 2003 fees; and (ii) payment of fees and reimbursement of expenses incurred during the Second Compensation Period in the sums of \$48,625.74 for October 2003 and \$20,210.72 for November 2003, to the extent they have not already been paid pursuant to the Fee Order, (c) final allowance of the fees held back during the Total Compensation Period, and (d) final allowance of all amounts awarded and paid to LeBoeuf.

9. Annexed hereto as Exhibit B is a schedule that lists the partners, counsel, associates and paraprofessionals who performed services on behalf of the Debtors during the Second Compensation Period, the hours of services performed by each such person, the rate charged by LeBoeuf for the services of each such person, the total value of the services performed by each person and the total value of the services performed by LeBoeuf during the Second Compensation Period.

10. Summaries of the actual, out-of-pocket costs and expenses incurred by LeBoeuf in connection with its representation of the Debtors are annexed hereto as Exhibit C.

These costs and expenses have been incurred in accordance with LeBoeuf's customary practice of charging clients for those out-of-pocket disbursement charges and expenses clearly related to and required by particular matters, rather than including such charges as part of LeBoeuf's hourly rates.

11. More detailed itemization of the services performed, time spent and expenses incurred in connection with LeBoeuf's representation of the Debtors during the Second Compensation Period is provided in the time and disbursement records annexed hereto as Exhibit D. Such records are made contemporaneously with the rendition of services by the person rendering such services and in the ordinary course of LeBoeuf's billing practices.

12. All services performed and expenses incurred by LeBoeuf for which compensation or reimbursement is requested herein were performed or incurred for and on behalf of the Debtors, and, except as noted herein, were not for any other person or entity.

**SUMMARY DESCRIPTION OF SERVICES PERFORMED
DURING THE TOTAL COMPENSATION PERIOD**

13. Throughout these cases, LeBoeuf represented the Debtors for the purposes of collecting upon outstanding accounts receivable due from numerous parties. Prior to commencing adversary proceedings against these various parties, LeBoeuf drafted a template complaint to be used in presenting final demands and ultimately for initiating adversary proceedings against such parties. Through the use of the template complaint, LeBoeuf obtained significant recovery on many of the Debtors' outstanding accounts. LeBoeuf recovered substantial amounts on behalf of the Debtors through these demands.

14. Before initiating adversary proceedings against the various parties with outstanding accounts receivable balances, LeBoeuf researched issues relevant to filing complaints. These research issues included, but were not limited to, determining whether such

actions could be commenced as core proceedings and examining Eleventh amendment issues in determining whether to commence an adversary proceeding against a state governmental entity.

15. LeBoeuf performed a preliminary investigation on recovery of accounts receivable from Cable & Wireless, Inc., and subsequently initiated an adversary proceeding on behalf of Debtor Genuity Telecom, Inc. against Cable & Wireless, Inc. and Cable & Wireless USA, Inc. (collectively, "Cable & Wireless") (Adversary No. 03-04157). LeBoeuf communicated with the American Arbitration Association and gained a stay of pending arbitration proceedings regarding the Cable & Wireless accounts receivable. LeBoeuf researched and communicated with counsel for Cable & Wireless regarding the arbitrability of the dispute and prepared the Debtors' opposition to Cable & Wireless' Motion to Compel Arbitration And Stay Plaintiff's Adversary Proceeding (the "Cable & Wireless Motion to Compel"). LeBoeuf attended a pre-trial conference for this adversary proceeding and a hearing on the Cable & Wireless Motion to Compel. Subsequently, LeBoeuf received and reviewed an answer filed by Cable & Wireless and prepared the Debtors' answer with affirmative defenses to their counterclaims. This action was recently stayed by a voluntary petition under Chapter 11 of the Bankruptcy Code filed by Cable & Wireless in the District of Delaware.

16. LeBoeuf also performed a preliminary investigation on recovery of accounts receivable from Universal Access, Inc. ("Universal"), and subsequently initiated an adversary proceeding on behalf of Debtor Genuity Telecom, Inc. against Universal (Adversary No. 03-06928). LeBoeuf reviewed Universal's answer, as well as their own motion to compel arbitration (the "Universal Motion to Compel"). LeBoeuf researched issues in preparation of a response to the Universal Motion to Compel. LeBoeuf obtained an extension of the Debtors'

time to respond to the Universal Motion to Compel, while engaging in settlement discussions with Universal.

17. LeBoeuf performed a preliminary investigation of and drafted a complaint against America Online, Inc. (“AOL”) to recover accounts receivable. An adversary proceeding was ultimately initiated by Debtor Genuity Solutions, Inc. against AOL and is currently before this Court (Adversary No. 03-04132). Due to a conflict of interest discovered by LeBoeuf prior to the filing of the complaint, Ropes & Gray, the Debtors’ lead counsel, took over representation of Genuity Solutions, Inc. in the adversary proceeding against AOL.

18. In total, LeBoeuf commenced twelve adversary proceedings against the various parties with outstanding accounts receivable balances owed to the Debtors. At the time of this Final Application, LeBoeuf has engaged in settlement discussions in several of these adversary proceedings and is in the process of obtaining default judgments in two of these adversary proceedings. A more detailed description of all of LeBoeuf’s services performed on behalf of the Debtors is provided in the time and disbursement records annexed hereto as Exhibit D.

LEBOEUF’S BILLING PRACTICES IN THESE CHAPTER 11 CASES

19. LeBoeuf respectfully submits that the services rendered and expenses incurred for the Second Compensation Period for which LeBoeuf seeks compensation and reimbursement and for the Total Compensation Period for which LeBoeuf seeks final allowance of compensation and reimbursement of expenses clearly satisfy the following standards of reasonableness set forth in *In re First Colonial Corporation of America*, 544 F.2d 1291 (5th Cir.), *reh'g denied*, 547 F.2d 573, *cert. denied*, 431 U.S. 904 (1977):

- (a) Time and labor required: LeBoeuf expended 433.60 hours of professional time on behalf of the Debtors during the Second Compensation Period. The services

required by the Debtors during this case imposed significant time demands upon LeBoeuf's attorneys and sometimes necessitated work beyond normal business hours.

- (b) Novelty and difficulty of questions and matters resolved: These cases and the legal issues presented therein have required a high level of professional skill and expertise from professionals within LeBoeuf's corporate, litigation and insolvency groups.
- (c) The reputation and skill of the attorneys providing the services: LeBoeuf has drawn upon the skill of many of its most experienced attorneys in the applicable areas of expertise in rendering its services to the Debtors during the Second Compensation Period, which it determined to be the most effective and cost efficient for the Debtors' estates.
- (d) Preclusion of other employment: Given the size of LeBoeuf, LeBoeuf's representation of the Debtors has not precluded employment by other clients. These cases have, however, required significant time commitments from a number of LeBoeuf attorneys.
- (e) Fees charged and fees awarded in similar cases: The fees sought by LeBoeuf in this Final Application are commensurate with fees awarded to LeBoeuf in other comparable representations and the fees charged by comparable law firms.
- (f) Time limitations: These cases have required LeBoeuf to perform a wide variety of services and address numerous difficult issues on behalf of the Debtors, often under significant time constraints.

- (g) Whether the fee is fixed or contingent: All fees sought by professionals under sections 330 and 331 of the Bankruptcy Code are contingent prior to their approval by the Bankruptcy Court.
- (h) The "undesirability" of the cases: Representation of the Debtors in these cases is not undesirable. As noted above, however, LeBoeuf's representation of the Debtors in these cases has required a significant commitment of time and effort by a number of LeBoeuf's attorneys.
- (i) The results obtained: LeBoeuf respectfully submits that considerable progress has been made in the matters outlined above, and that LeBoeuf's services on behalf of the Debtors, which have been rendered in both a competent and efficient manner, have contributed significantly to this progress. The template complaint that LeBoeuf prepared has been sent to the parties with whom the Debtors had outstanding accounts receivable, and has led to a number of very substantial settlements to date. LeBoeuf commenced adversary proceedings on behalf of the Debtors against those parties that did not agree to settle their accounts with the Debtors. As a result of the commencement of these proceedings, several parties have entered into settlement discussions to resolve their outstanding accounts receivable with the Debtors.
- (j) The Debtors' and LeBoeuf's professional relationship. LeBoeuf member Paul Gupta has provided a range of substantial legal services for the Debtor and for the Debtor's predecessor, GTE Internetworking. Over the years, these services have covered a wide range of legal matters, but the main focus thereof has generally been on litigation and corporate work. In no small part due to Mr. Gupta's

familiarity with the Debtor's business, LeBoeuf has been able to provide effective and cost efficient services to the Debtor based on the fact that it did not need to get "up to speed" on the Debtors business or many of the issues raised.

20. As set forth in the Certification of Peter A. Ivanick annexed hereto as Exhibit E, LeBoeuf believes that the Final Application is in compliance with the Administrative Order of the Honorable Burton R. Lifland setting the guidelines for fees and disbursements for professionals in bankruptcy cases in the Southern District of New York dated June 20, 1991, as amended on April 19, 1995 (the "Guidelines"), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, dated January 30, 1996. In accordance with the Guidelines, time expended by LeBoeuf has been itemized based on each task performed on a particular day.

21. Further, LeBoeuf has assigned the work performed in these cases to attorneys having the experience and specialization to perform the services required efficiently and properly. The partners, counsel and associates providing the services for which compensation is sought pursuant to this Final Application specialize in the fields of corporate, litigation and insolvency law. Moreover, LeBoeuf, as a general practice, seeks to use the services of law clerks and legal assistants supervised by attorneys whenever appropriate in order to limit costs and more efficiently utilize the services of attorneys. LeBoeuf has followed this practice with respect to the services rendered to the Debtors wherever possible.

22. Finally, in rendering services to and on behalf of the Debtors, LeBoeuf has taken every care to provide the legal services as efficiently as possible and to avoid duplication of services, both internally and in connection with other law firms providing services. In this regard, as much as possible, day-to-day legal work, including, but not limited to, drafting of

pleadings, memoranda, stipulations, agreements and correspondence has been performed by junior to senior level associates.

23. LeBoeuf has not shared or agreed to share compensation or reimbursement to be awarded in these cases with any other person.

24. No prior application has been made to this or any other Court for the relief requested herein for the Second Compensation Period and no request for final allowance has been made for the Total Compensation Period.

25. This application does not raise any novel issues of law. Accordingly, LeBoeuf respectfully requests that the Court dispense with the requirement of Local Bankruptcy rule 9013-1(b) of submitting a separate memorandum of law.

WHEREFORE, LeBoeuf respectfully requests an order:

- (i) approving the allowance of \$141,415.50 for compensation for professional services rendered by LeBoeuf during the Second Compensation Period;
- (ii) approving the reimbursement of LeBoeuf's actual, out-of-pocket expenses for the Second Compensation Period in the amount of \$10,985.63;
- (iii) authorizing and directing the Debtors to pay LeBoeuf's approved fees and approved expenses for the Second Compensation Period, less any amounts previously or hereafter paid for such fees and expenses under the terms of the Fee Order;
- (iv) approving, authorizing and directing the Debtors to pay the amounts held back during the Total Compensation Period;
- (v) deeming all interim fees and expenses previously awarded and all fees and expenses awarded pursuant to this Final Application, in the total amount of \$224,266.00 and \$12,059.27, respectively, as final; and

(vi) granting such other and further relief as this Court deems just and proper.

Dated: December 22, 2003

LeBOEUF, LAMB, GREENE & MacRAE,
L.L.P.

By: /s/ Peter A. Ivanick

Peter A. Ivanick (PI-1702)

Mark R. Bernstein (MB-9102)

125 West 55th Street

New York, NY 10019-5389

Phone: (212) 424-8000

Facsimile: (212) 424-8500

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: _____, 2004,
at _____

----- X
In re: :
GENUITY INC., et al., :
Debtors. :
----- X

Chapter 11
Case Nos. 02-43558 (PCB)
(Jointly Administered)

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER A. IVANICK, being duly sworn, deposes and says:

1. I am a member of the law firm LeBoeuf, Lamb, Greene & MacRae, L.L.P. ("LeBoeuf"), which firm maintains offices for the practice of law at 125 West 55th Street, New York, New York 10019. LeBoeuf has acted as special counsel to and rendered professional services on behalf of the debtors herein (collectively, the "Debtors") in the above-referenced cases.

2. This affidavit is submitted pursuant to Federal Rule of Bankruptcy Procedure 2016 in connection with LeBoeuf's second and final application (the "Final Application") for (i) approval of compensation for services rendered to the Debtors for the period from August 1, 2003 through November 30, 2003 in the amount of \$141,415.50, and reimbursement of expenses incurred in connection therewith in the sum of \$10,985.63 and (ii) final allowance of compensation for services rendered to the Debtors for the period from March 3, 2003 through November 30, 2003 in the amount of \$224,266.00, and reimbursement of expenses incurred in connection therewith in the sum of \$12,059.27.

3. All of the services for which compensation is sought by LeBoeuf were performed for and on behalf of the Debtors and not on behalf of any other person.

4. No agreement or understanding exists between LeBoeuf and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with these cases.

/s/ Peter A. Ivanick.
Peter A. Ivanick

Sworn to before me this
22nd day of December, 2003

/s/ Mark R. Bernstein
Notary Public

EXHIBIT B

**SUMMARY OF HOURLY FEES BY PROFESSIONAL
FOR THE PERIOD AUGUST 1, 2003 THROUGH NOVEMBER 30, 2003**

Status	Attorney Name	Rate	Hours Billed	Value
Partner	Gupta, P.	600.00	65.00	39,000.00
	Ivanick, P.	625.00	4.60	2,875.00
Associate	Bernstein, M.	335.00	10.70	3,584.50
	Demayo, C.	345.00	73.00	25,185.00
	Ryder, H.	365.00	59.60	21,754.00
	Walsh, M.	425.00	43.30	18,402.50
	Weiss, A.	425.00	1.60	680.00
Summer Associate	Durning, P.	260.00	17.30	4,498.00
	Mascarenas, S	260.00	15.80	4,108.00
Paralegal	Kaval, C.	150.00	0.80	120.00
	Krasa-Berstell, D.	165.00	44.40	7,326.00
	Schwarzman, C.	155.00	15.40	2,387.00
	Shaw, R.	135.00	57.20	7,722.00
	Sprowal, R.	200.00	8.00	1,600.00
Managing Clerk	Calebrese, J.	145.00	1.00	145.00
	James, E.	130.00	1.00	130.00
	Rodriguez, R.	155.00	0.80	124.00
	Rubin, E.	135.00	9.80	1,323.00
	Williams, N.	105.00	4.30	451.50

TOTALS: 433.60 \$141,415.50

EXHIBIT C

**SUMMARY OF EXPENSES BY CATEGORY
FOR THE PERIOD AUGUST 1, 2003 THROUGH NOVEMBER 30, 2003**

Description	Amount Billed
Reproduction (\$0.20 per page)	1,143.20
Telephone	78.96
Local Transportation	436.86
Messenger Service	12.00
Air Express	232.31
Postage	76.81
Word Processing	163.00
Database Legal Services	111.44
Legal Research - LEXIS	5,426.52
Legal Research - Westlaw	1,653.68
Travel Out Of Town-Air Fare	267.85
Binding	33.00
Filing Fees	1,200.00
Miscellaneous Charges	150.00
	\$10,985.63

NYC 473783