Hearing Date and Time: Monday, March 24, 2003 at 9:45 am (EST)
Objection Deadline: Friday, March 21, 2003 at 4:00 pm (EST)

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(MANHATTAN DIVISION)

In re:	:	**Chapter 11 Case Nos. 02-40187 (REG)**
	:	**through 02-40241 (REG)**
GLOBAL CROSSING LTD., et al.	:	
	:	**Jointly Administered No. 02-40188 (REG)**
Debtors.	:	
	:	

MOTION OF FTI CONSULTING INC. FOR ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. §§ 503(b)(3) AND (4)

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

FTI Consulting, Inc. ("FTI"), pursuant to 11 U.S.C. §§ 503(b)(3) and (4) and the Court's Order Pursuant to Section 503(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Fixing Final Date for Filing Requests for Payment of Certain Administrative Expenses in the Debtors' Chapter 11 Cases and Approving the Notice Thereof dated December 13, 2002 [Docket

No. 2517], hereby submits its Motion For Allowance and Payment of an Administrative Expense Claim and respectfully represents as follows:

PRELIMINARY STATEMENT

On or about January 27, 2003, the Court entered an Order Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code for Authorization to Employ and Retain Foley & Lardner as Special Counsel and for a Limited Purpose Nunc Pro Tunc to February 7, 2002 (the "Retention Order"), wherein the Court approved the retention of Foley & Lardner as special counsel to the Debtors (defined herein), "for the sole purpose of allowing Foley & Lardner to receive compensation and reimbursement of expenses for past legal services provided to the Debtors." See Retention Order, p.2 (emphasis in original). At the request of the Debtors in February of 2002, FTI was retained by Foley & Lardner to act as financial advisors. FTI proceeded to perform substantial and valuable services for the benefit of the Debtors. FTI provided the same quality of services as Foley & Lardner, which services have been approved by the Court in the Retention Order. The work product and materials produced by Foley & Lardner for the Debtors' estates could not have been produced without the efforts of FTI. It would be inequitable to allow the retention and compensation of Foley & Lardner for its services, without also recognizing the substantial contribution made by FTI and allowing FTI to receive compensation and reimbursement of expenses for its past financial services provided to the Debtors.

BACKGROUND

History of the Bankruptcy Case

1. On January 28, 2002 (the "Commencement Date"), Global Crossing Ltd. ("GCL") and certain of its debtor subsidiaries each commenced a case in the United States Bankruptcy Court for the Southern District of New York under the Bankruptcy Code (such

entities, together with their affiliates that commenced cases on April 24, 2002, August 4, 2002, and August 30, 2002, are hereinafter referred to as the "Debtors"). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee has been appointed in these cases. On February 7, 2002, the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee"). On November 21, 2002, the Court entered an order directing the appointment of an examiner (the "Examiner") to review certain financial and accounting records of the Debtors. On November 25, 2002, the U.S. Trustee appointed Martin E. Cooperman as the Examiner.

3. Each of the Debtors incorporated in Bermuda (collectively, the "Bermuda Group") has commenced a coordinated proceeding in the Supreme Court of Bermuda. The Supreme Court of Bermuda has issued an order appointing certain principals of KPMG International as Joint Provisional Liquidators (the "JPLs") of the Bermuda Group. The Supreme Court of Bermuda has directed the JPLs to oversee the continuation of Global Crossing under the control of its Board of Directors and under the supervision of the Supreme Court of Bermuda and this Court in effectuating a plan of reorganization under the Bankruptcy Code.

4. On September 16, 2002, the Debtors filed their Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (as such plan may be amended from time to time, the "Plan") and the Disclosure Statement with respect to the Plan (as such disclosure statement has been amended from time to time, the "Disclosure Statement"). On October 21, 2002, the Court entered an order approving the Disclosure Statement.

5. Commencing on December 4, 2002, hearings were held in respect of confirmation of the Plan. On December 26, 2002, the Court entered an order confirming the Plan.

Retention of Foley & Lardner and FTI by the Debtors

6. As previously stated, the Debtors specifically requested the services of Foley & Lardner and FTI[1] on their behalf. The Debtors themselves acknowledge this request and detail the history of the retention in the Application of the Debtors Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code for Authorization to Retain and Employ Foley & Lardner as Special Counsel and for a Limited Purpose Nunc Pro Tunc to February 7, 2002 (the "Retention Application").

7. As set forth in the Retention Application:

a. "On or about August 6, 2001, Roy Olofson ("Olofson"), a former officer of one of the Debtors, sent a letter to the Debtors raising questions about certain accounting improprieties. Olofson subsequently sent draft complaints to the Debtors and threatened to file suit based on the alleged accounting improprieties (the "Olofson Allegations")." Retention Application, ¶ 10.

b. "On February 11, 2002, GCL's board of directors (the "Board of Directors") passed a resolution creating a Special Committee on Accounting Matters of the Board of Directors of Global Crossing Ltd. (the "Special Committee") to undertake a comprehensive investigation of the Olofson Allegations and other accounting matters (the "Investigation") and to recommend to the Board of Directors an appropriate response to the Olofson Allegations. The resolution authorized the Special Committee to retain counsel." Retention Application, ¶ 11.

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[1] FTI is a multi-disciplined consulting firm with practices in the areas of financial restructuring, litigation consulting and engineering and scientific investigation. FTI serves businesses, lenders, investors, insurers and their legal counsel in adverse circumstances, such as class action lawsuits, financial restructurings, bankruptcy proceedings and accident investigations. FTI has organized its business into three (3) divisions. The Financial Consulting division provides expert testimony, cost benefit analysis, damage assessment, market competition analysis and business valuations. The Applied Sciences division offers forensic engineering and scientific investigation services. The Litigation Consulting division advises clients in all phases of litigation, including discovery, jury selection, trial preparation and the actual trial.

c. "The Special Committee consists of three directors charged with conducting the Investigation. On February 11, 2002, the Board of Directors appointed Mark Attanasio, Geoffrey Kent, and William Cohen to the Special Committee. According to the Hagerman Affidavit, on February 7, 2002, Mr. Attanasio informed Samuel Winer of Foley & Lardner that he wished to retain Foley & Lardner on behalf of the incipient Special Committee. Foley & Lardner immediately began working with the Debtors and its other professionals to conduct the Investigation." Retention Application, ¶ 12.

8. Mr. Attanasio had also informed Samuel Winer of Foley & Lardner that he wished to retain FTI on behalf of the incipient Special Committee. At approximately the same time, Foley & Lardner retained FTI to act as financial advisors to Foley & Lardner.[2] Just as Foley & Lardner did, FTI immediately began working with the Debtors and its other professionals to commence the Investigation.

9. As alleged by the Debtors themselves, "[d]ue to the extreme notoriety of the Olofson Allegations and the adverse impact on the Debtors' business caused by the daily media coverage, Foley & Lardner began providing services before the Debtors sought their retention. The Debtors needed Foley & Lardner immediately to assist the Special Committee to, among other things: (i) preserve evidence at facilities in New Jersey, New York, California and Ireland; (ii) resolve accounting issues to facilitate the reorganization or sale of the Debtors' assets in the best interests of creditors; (iii) allow completion of the Debtors' year 2001 audit; (iv) demonstrate to the United States Securities and Exchange Commission ("SEC") that the Debtors were taking the appropriate steps to independently investigate the Olofson Allegations and would take the appropriate corrective measures; (v) respond to the requests and inquiries of multiple interested parties and their counsel; and (vi) begin an immediate and comprehensive

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[2] FTI was retained by Foley & Lardner in order to preserve the confidentiality of documents protected by the attorney-client privilege and work product doctrine. It was always agreed that the Debtors would be ultimately responsible for payment of FTI's fees and expenses.

investigation of the Debtors' accounting matters. The Debtors believed that the work of the Special Committee was crucial to the Debtors' estates." Retention Application, ¶ 13.

10. On February 18, 2002, representatives of Foley & Lardner met in Washington, D.C. with attorneys from Debevoise & Plimpton ("D&P"), another law firm retained by the Debtors as special counsel, to develop a joint plan of action to conduct the Investigation. By February 20, 2002, Foley & Lardner had teams of lawyers in Madison, New Jersey and Beverly Hills, California, working with D&P to identify and preserve evidence. These efforts continued in both locations through March 1, 2002, with FTI assisting Foley & Lardner in their work.

11. Even the Debtors admit the extensive and emergent nature of the services provided to the Special Committee. "Foley & Lardner's services to the Debtors included, without limitation, collecting, preserving, and reviewing voluminous documents and other evidence relevant to the Investigation, interviewing current and former employees, officers, and directors of the Debtors, interviewing other witnesses, and communicating with the SEC and other governmental authorities." Retention Application, ¶ 14.

12. On February 26, 2002, February 27, 2002, and March 18, 2002, respectively, Mr. Attanasio, Mr. Kent, and Secretary Cohen resigned from the Special Committee. As noted by the Debtors in the Retention Application, "[d]espite these resignations, Foley & Lardner continued its work to, among other things, avoid the material, adverse negative consequences to the Debtors' estates and their creditors that would have resulted from the postponement of the ongoing investigation. Given the national media attention directed at the Debtors during the first few weeks of these chapter 11 cases, it was of the utmost importance for the Debtors to resolve any allegations of accounting improprieties as quickly and efficiently as

possible, so as not to interfere with the Debtors' efforts to reorganize." Retention Application, ¶ 15.

13. Following the resignation of the three original members of the Special Committee, GCL's Board of Directors appointed Alice Kane, Jeremiah Lambert, and Myron Ullman III as the new independent members to the Special Committee. The new members of the Special Committee decided to retain Coudert Brothers as its primary counsel. Foley & Lardner's involvement in these chapter 11 cases stopped shortly thereafter. See Retention Application, ¶ 16.

The Services Which FTI Rendered to the Debtors

14. All of the factual allegations made by the Debtors in the Retention Application apply with equal force to FTI. FTI was, at all times, working directly with and alongside Foley & Lardner with respect to the Investigation.

15. Throughout February and March of 2002, representatives of FTI performed significant services at the request of Foley & Lardner for the benefit of the Special Committee, including, without limitation, (i) assisting attorneys at Foley & Lardner in connection with their meeting with the staff of the SEC regarding the SEC's investigation of the Debtors and coordinating such investigation with the efforts of the Special Committee and D&P; (ii) interviewing several of the Debtors' key employees holding information relevant to the Investigation; (iii) interfacing with attorneys from Foley & Lardner to coordinate the production of documents related to the Investigation; (iv) reviewing relevant documents for accounting issues; (v) creating a comprehensive database of documents relevant to the Investigation; and (vi) creating a sixty-one (61) page Power Point presentation for delivery to the Special

Committee regarding the preliminary analysis of accounting and disclosure issues related to the Investigation.

16. Many of the services that FTI provided to the Debtors in February and March were time sensitive. For example, FTI conducted a series of interviews during the period from February 26 through March 8. These interviews included:

a. 3/5/02 Sandy Kale
b. 3/5/02 Dan Kohrs
c. 3/5/02 Mool Singi
d. 3/5/02 Rich Mondello
e. 3/5/02 Robert Yaremko
f. 3/6/02 Lisa Seymour
g. 3/6/02 Joe Clayton
h. 3/6/02 Howard Seymour
i. 3/6/02 Joey Wong
j. 3/6/02 Al DiGabriele
k. 3/7/02 Joseph Perrone
l. 3/7/02 Kirk Rossi

The employment of most of the foregoing interviewees was scheduled to terminate shortly and thus, it was critical to speak with those employees before they departed. Due to these exigencies, FTI was willing to perform services for the Special Committee, at the specific request of the Debtors, before FTI's retention was officially approved by the Bankruptcy Court.

17. As previously stated herein and in the Retention Application, by mid-March 2002, Mr. Attanasio, Mr. Kent and Mr. Cohen had all resigned from the Special Committee. On March 25, 2002, representatives of Foley & Lardner discussed these resignations with the Debtors' counsel, Weil Gotshal & Manges ("WG&M"), and WG&M advised Foley & Lardner and FTI to cease all work on behalf of the Special Committee pending the appointment of new committee members. At this critical juncture, FTI was in the process of completing an interim report for the benefit of the Special Committee. While FTI ceased its work as of March 25, 2002, Foley and Lardner continued to provide some additional services.

These services included providing the Debtors with memoranda and summaries which embodied the work product of both Foley & Lardner and FTI for delivery to the new Special Committee and its counsel, Coudert Brothers.

18. After the new members of the Special Committee determined to retain Coudert Brothers as their primary counsel, at the request of the Debtors, FTI did meet with Coudert Brothers to share information which both Foley & Lardner and FTI had obtained. FTI met with Jeremiah Lambert and Coudert Brothers to answer any questions.

19. Foley & Lardner has also fully shared the results of its work and the work of FTI with the new Special Committee and with Coudert Brothers. Foley & Lardner has delivered to the new Special Committee and/or Coudert Brothers the following information, which was developed by both FTI and Foley & Lardner:

a. all of the memoranda of the interviews;

b. summaries of the contemporaneous capacity purchases and sales that are the subject of the questions about the Debtor's historical accounting;

c. suggested additional areas and topics for investigation and interviews;

d. a sixty-one (61) page Power Point presentation which FTI prepared and which reflected the work of Foley & Lardner and FTI on behalf of the prior Special Committee;

e. a compilation of key internal documents and other materials that will assist the new Special Committee and Coudert Brothers with their continuing investigation;

f. a chart of key personnel involved in each of the contemporaneous transactions;

g. over seven hundred (700) boxes of documents that Foley & Lardner and FTI received and reviewed as part of the evidence gathering process, together with CD-ROMs and other electronic data;

h. legal source material that they had gathered; and

i. other information delivered to Coudert Brothers in a meeting on May 7, 2002 and in subsequent discussions.

20. FTI delivered significant value to the Debtors and the Special Committee in connection with the Investigation, including, but not limited to:

a. preserving evidence and enabling the Special Committee to validate independently the thoroughness of the evidence gathering process;

b. commencing the Investigation before important witnesses left their employment with the Debtors and creating a written record of the interviews of those employees;

c. addressing the pressing nature of the Investigation during a time when multiple constituencies (including (i) the United States Congress, which had launched an investigation; (ii) Arthur Andersen LLP, which was claiming that the Investigation needed to be completed before an audit could be concluded; (iii) the SEC, which was gauging its own investigation on the Special Committee's Investigation; and (iv) others interested in resolving the accounting issues so that the Debtors could reorganize) were in agreement with the Debtors' management, Board of Directors, and counsel that it was necessary to proceed with the Investigation as quickly as possible; and

d. responding to the complaints of Mr. Olofson and his counsel that the Debtors were not resolving the accounting questions he had raised.

Attached hereto and incorporated herein as Exhibit "A" is a copy of a detailed statement of FTI's services.

FTI's Attempts To Have The Debtors Retain FTI And
The Debtors' Ultimate Retention Of Foley And Lardner

21. Commencing in early March, 2002, FTI sought to have the Debtors retain FTI as a financial advisor pursuant to 11 U.S.C. § 327. Despite repeated efforts, which included providing Debtors' counsel with draft retention papers, FTI was unsuccessful.

22. Foley & Lardner likewise was unsuccessful in its attempts to have the Debtors retain Foley & Lardner until January 17, 2003, when the Debtors filed the Retention Application. Per the terms of the Retention Order, the Court awarded Foley & Lardner "fifty percent (50%) of their fees and one hundred percent (100%) of their disbursements in these chapter 11 cases, which equal $238,293.75 and $71,735.00 respectively."

23. Significantly, in support of the Retention Application, the Debtors filed the Affidavit of Stephen A. Best, which states at paragraphs four and five:

> 4. As a result of the information provided to Coudert Brothers by Foley & Lardner, the cost of the investigation that would otherwise be incurred has been substantially reduced. In addition, we will be able to complete the investigation quicker as a result of the head start that we have received from Foley & Lardner's efforts.
>
> 5. I have been asked by Weil Gotshal & Manges, counsel to the Debtor, to provide an estimate of how much Coudert Brothers' services and expenses would have cost during February and March 2002, if we had been retained by the Special Committee during that period and had been called upon to perform those services that were reasonably required during those months. In my estimation, the cost of our services would have been approximately the same amount as Foley & Lardner charged during its service to the Special Committee, namely $550,000, excluding the services of expert witnesses. (emphasis added)

24. The fees and expenses for which FTI seeks recovery total $182,994.41. The total amount awarded to Foley & Lardner by this Court was $238,293.75. Collectively,

these two amounts total $421,288.16 -- significantly less than the $550,000 in projected fees which Coudert Brothers estimated it would have incurred "excluding the services of expert witnesses."

25. FTI's fees and expenses are reasonable and reflect current market rates.

LEGAL ARGUMENT

26. Section 503(b)(3) of the Bankruptcy Code authorizes parties who have made a "substantial contribution" to a bankruptcy case to apply for payment of their fees and expenses as administration expense claims. See In re Lebron, 27 F.3d 937, 943 (3d Cir. 1994). Section 503(b)(3) of the Bankruptcy Code provides:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including— . . .
>
> > (3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by— . . .
> >
> > > (D) a creditor, an indenture trustee, an equity security holder, or 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) (emphasis added).

27. Because the Bankruptcy Code does not define what constitutes a substantial contribution, courts, in attempting to define the term, have noted, "[t]hus, '[i]n determining whether there has been a 'substantial contribution' pursuant to section 503(b)(3)(D), 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.'" Lebron, 27 F.3d at 944 (quoting In re Lister, 846 F.2d 55, 57 (10th Cir. 1988)); see also In re Buckhead America Corp., 161 B.R. 11, 15

(Bankr. D. Del. 1993) ("Although the Bankruptcy Code provides no definition for 'substantial contribution,' courts which have addressed the issue have held that a substantial contribution is one which provides 'tangible benefits to the bankruptcy estate and to other unsecured creditors.'") (quoting In re Jack Winter Apparel, Inc., 119 B.R. 629, 633 (E.D. Wisc. 1990)).

28. Furthermore, the services provided by the entity that substantially contributed must be "those which foster and enhance . . . the progress of reorganization." Lebron, 27 F.3d at 944 (internal quotations omitted). This is because, "[i]nherent in the term 'substantial' is the concept that the benefit received by the estate must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests. Creditors are presumed to be acting in their own interests until they satisfy the court that their efforts have transcended self-protection." Lebron, 27 F.3d at 944; see also Buckhead, 161 B.R. at 15 ("Incidental benefit to the estate or extensive participation in the case, without more, are not sufficient bases for section 503(b) status.").

29. In evaluating whether a party has met the burden of proving substantial contribution, several courts have adopted a three-pronged approach that incorporates the following factors:

1) whether the services were rendered solely to benefit the client or to benefit all parties in the case;

2) whether the services provided direct, significant and demonstrable benefit to the estate; and

3) whether the services were duplicative of services rendered by attorneys for the committee, the committees themselves, or the debtor and its attorneys.

Id. (citations omitted).

30. Once a party has demonstrated that it has made a substantial contribution to the case, as FTI has in the current case, the party is entitled to be paid by the bankruptcy estate

for the reasonable expenses of the professional services rendered on its behalf. See id. ("Read in conjunction, [sections 503(b)(3) and (b)(4)] provide for payment as an administrative expense of the reasonable and necessary attorney fees of a creditor whose participation in a chapter 11 reorganization makes a substantial contribution to the case.").

31. Section 503(b)(4) authorizes the award of legal and accounting fees (among other kinds of fees) to parties that have made a "substantial contribution" within the scope of § 503(b)(3). Section 503(b)(4) provides:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including— …
>
> > (4) reasonable compensation for professional services rendered by an attorney or accountant of an entity whose expense is allowable under paragraphs (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). See also In re Lebron, 27 F.3d at 943.

32. It is also important to note that while the language in § 503(b)(4) expressly mentions lawyers, and, therefore, is explicitly applicable to Foley & Lardner, the fact that § 503(b)(4) does not specifically mention financial advisors, such as FTI, does not exclude the allowance of FTI's fees and expenses under § 503(b). Section 503(b) provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . ." 11 U.S.C. § 503(b) (emphasis added). Section 503 must be read in conjunction with § 102 of the Bankruptcy Code, which governs the rules of construction, and provides that "'includes' and 'including' are not limiting." 11 U.S.C.

§ 102(3). Further, FTI acted in a role which supported Foley & Lardner and which enabled Foley & Lardner to provide the work product which the Debtors concede benefited their estates.

33. In connection with this, Collier notes, "Section 503(b) states that the administrative expenses 'include' the six listed categories. Section 102(3) provides that the terms 'include' and 'including' are not to be construed as limitations. The result is that the six described categories cannot be considered an exhaustive list of all types of claims that are entitled to administrative priority treatment. The court may determine that additional types of claims are expenses that should be accorded administrative priority in a particular case." 4 Lawrence P. King, Collier on Bankruptcy ¶ 503.05 (15th ed. revised 2002). For instance, courts have noted that "[t]he structure of section 503(b) is inconsistent with a restrictive interpretation of its list of administrative expenses . . . the use of a form of the word 'include' is significant, and generally thought to imply that terms listed immediately afterwards are an inexhaustive list of examples, rather than a bounded set of applicable items." In re Mark Anthony Constr., Inc., 886 F.2d 1101, 1106 (9th Cir. 1989); see also In re Bergin Corp., 77 B.R. 210, 212 (Bankr. E.D. Wisc. 1987) ("The precise wording of § 503(b) is such that only illustrations of administrative expenses are set forth [and the] listing . . . is not exclusive.").

34. Additionally, courts have extended § 503(b) to permit payment of financial advisors, despite the fact that financial advisors are not explicitly listed within the section. See, e.g., In re AM International, Inc., 203 B.R. 898 (D. Del. 1996) (using § 503(b) to grant the debtor's unofficial committee of equity holders reimbursement of fees and expenses incurred by its financial advisor); United States of America v. Air Line Pilots Ass'n, Int'l (In re Trans World Airlines, Inc.), C.A. No. 92-678-SLR, 1993 WL 559245 (D. Del. June 22, 1993) (using § 503(b) to allow reimbursement of a creditor/labor union for fees incurred prepetition by

its financial advisor); In re Service Merchandise Co.., 256 B.R. 738 (Bankr. M.D. Tenn. 1999) (using § 503(b) to grant the debtor's unofficial committee of noteholders reimbursement of fees and expenses incurred by its financial advisor prior to the formation of an official committee). See also In re Burlington Motor Holdings, Inc., 217 B.R. 711, 716 (Bankr. D. Del. 1998) (stating that a financial advisor to the debtor, not retained under § 327(a), and not seeking contribution pursuant to § 330, "would have to file an application pursuant to 11 U.S.C. § 503(b) and prove substantial contribution"). Therefore, FTI is entitled to seek reimbursement for FTI's fees and expenses incurred under § 503(b).

35. FTI performed substantial and valuable services for the benefit of the Debtors, at the specific request of the Debtors. The Debtors supported the retention and compensation of Foley & Lardner. The Debtors have conceded that Foley & Lardner's services provided a concrete benefit to the Debtors' estates.

36. The work product generated by Foley & Lardner was made possible only through the efforts of FTI, as FTI supplied the raw material for the same. FTI provided the same quality of services as Foley & Lardner, which services have already been approved by the Court in the Retention Order. It would be wholly inequitable to allow the retention and compensation of Foley & Lardner for its services, without also recognizing the substantial contribution made by FTI and allowing FTI to receive compensation and reimbursement of expenses for its past financial services provided to the Debtors.

REQUEST FOR WAIVER OF MEMORANDUM OF LAW

37. FTI respectfully requests that, with respect to this Motion, the Court waive its requirement under Local Bankruptcy Rule 9013-1(b) that all motions filed with the Court be

accompanied by a memorandum of law. This Motion raises no novel or complex issues of law and, as such, FTI submits that a waiver of that requirement is appropriate.

NOTICE

38. A copy of this Motion has been served upon (a) the Office of the United States Trustee, (b) counsel to the Debtors, and (c) the individuals and entities who have specifically requested notice of the pleadings filed in this case. In light of the nature of the relief requested herein, FTI submits that no other or further notice is required.

NO PRIOR REQUEST

39. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, FTI respectfully requests that this Court enter an Order (i) granting the Motion; (ii) finding that the services of FTI made a substantial contribution to the bankruptcy estate of the Debtors; (iii) granting FTI an allowed administrative expense claim against the Debtors pursuant to 11 U.S.C. §§ 503(b)(3) and (4) in the amount of $182,994.41 - the full amount of FTI's fees and expenses; (iv) granting such other relief as is just and appropriate.

Respectfully submitted,

February 28, 2003
New York, New York

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