

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: Nov. 26, 2002
HEARING TIME: 10:00 a.m.

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In re : Chapter 11
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GUILFORD MILLS, INC., et al., : Case No. 02-40667 (BRL)
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: (Jointly Administered)
Debtors. :
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**FIRST AND FINAL APPLICATION OF THELEN REID & PRIEST LLP
FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS
COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
THE PERIOD MARCH 26, 2002 THROUGH SEPTEMBER 30, 2002**

**TO THE HONORABLE BURTON R. LIFLAND,
UNITED STATES BANKRUPTCY JUDGE:**

Thelen Reid & Priest LLP ("TR&P"), as attorneys for the Official Committee of Unsecured Creditors (the "Committee") of debtors Guilford Mills, Inc, et al. (collectively, the "Debtors"), hereby applies to the Court pursuant to 11 U.S.C. §§ 328(a) and 330 and Bankruptcy Rule 2016(a), for final allowance of compensation for professional services rendered and reimbursement of necessary expenses incurred by TR&P during the period from March 26, 2002 through and including September 30, 2002 (the "Application"). In support of the Application, TR&P respectfully represents as follows:

1. TR&P submits this Application for allowance and payment of professional and paraprofessional compensation in the total amount of \$201,518.50 and reimbursement of expenses in the

total amount of \$9,065.20 for the period from March 26, 2002 through and including September 30, 2002 (the "Application Period"). In support of this Application, and as described below, TR&P submits chronological and detailed records of all of its time charges and a summary of disbursement charges (attached as Exhibit A, Exhibit B and Exhibit C) for which TR&P seeks allowance and payment. This Application is TR&P's first and final application for compensation and reimbursement of expenses.

BACKGROUND

2. On March 13, 2002 (the "Petition Date"), the Debtors filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtors have remained as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtors are worldwide producers and sellers of wrap knit, circular knit, flat-woven and woven velour fabrics. The Debtors also cut and sew laces and fabrics into home fashion products.

4. On March 26, 2002, the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code. The Committee was composed of the following members: (i) BASF Corporation; (ii) UNIFI, INC.; (iii) CP&L;

(iv) M. Dohmen USA, Inc.; (v) Akra Teijin; (vi) Foamex International, Inc.; and (vii) Ostrow International Ltd.

5. On March 26, 2002, the Committee selected and retained TR&P as its counsel. Thereafter, the Court approved the retention of TR&P as counsel to the Committee, effective as of March 26, 2002.

6. TR&P is a law firm that maintains its New York office at 40 West 57th Street, New York, New York 10019, and has offices in San Francisco, Los Angeles and San Jose, California, Washington, D.C. and Morristown, New Jersey. It has approximately 425 lawyers, organized into various departments and practice groups, including: commercial litigation, corporate, utility and energy, financial services, real estate, tax, trust and estates, labor, employee benefits and bankruptcy.

THE APPLICATION

7. This Application seeks final allowance and payment of fees for services rendered by TR&P as counsel to the Committee, as well as reimbursement of actual, necessary expenses incurred by TR&P in that capacity, during the Application Period. TR&P has not been paid, and has not received, any retainer, advance or other amount from any source on account of the representation of the Committee in this case except as authorized by the Court pursuant to the interim

compensation procedures approved by the Court¹. In addition, TR&P has no agreement or understanding with any other entity concerning the fixing, payment or division of the requested compensation and expenses.

8. During the Application Period, attorneys and others associated with TR&P expended 532.30 hours in representing the Committee in this case. The names, hourly billing rates, and total hours and fees charged for each of the TR&P professionals and paraprofessionals who performed services for the Committee during the Application Period are summarized on Exhibit A.

9. The Committee elected to retain TR&P with knowledge of the fact that the firm would apply to this Court to be paid for the services it rendered at its normal hourly rates. The rates charged by TR&P are consistent with the rates typically charged by other medium size and large New York law firms which maintain significant bankruptcy practices. In addition, at the time the Committee selected TR&P as counsel, the members of the Committee did not know what the percentage recovery to unsecured creditors in this case would likely be, and consequently, were aware that the administrative expenses of

¹ Pursuant to the interim compensation procedures approved by the Court, TR&P has been paid fees in the amount of \$161,216.00 and expenses in the amount of \$9,065.20, leaving a balance owed for fees of \$40,302.50. Expenses have been paid in full.

this chapter 11 case — such as the fees of its own counsel — could dilute the recovery of unsecured creditors.

10. TR&P's attached detailed time records, contained in Exhibit C, include: (a) the date of each service rendered; (b) the total time devoted by the person to the services on the date; (c) a detailed description of each service rendered; (d) the amount of time spent on the services, broken down in detail by the specific tasks performed and the time devoted to the tasks; and (e) the identity of the person who rendered this service. The value of TR&P's time for services performed during the reporting period has also been organized and subdivided among the separate submatters required by the guidelines promulgated by the Office of the United States Trustee.

11. All services rendered by TR&P personnel for the Committee during the Application Period were performed in connection with the representation of the Committee in this chapter 11 case.

12. TR&P also seeks reimbursement of expenses incurred in connection with its representation of the Committee during the period covered by this Application. A summary of all disbursements covered by this Application, divided by category and amount, is attached as Exhibit C. All disbursements made and expenses incurred by TR&P in connection with its

representation of the Committee in this matter have been placed into a single billing category.

SERVICES RENDERED

13. During the Application Period, TR&P performed a wide variety of bankruptcy and related services for the Committee. A brief summary of the significant services performed by TR&P during the Application Period is provided below. As more fully set forth in TR&P's detailed time records attached hereto, TR&P reviewed all motions and applications filed in this case that were served on TR&P during the Application Period and frequently communicated with the Debtors, the Committee and other parties in interest regarding pending matters. In addition, TR&P attended significant hearings or conferences before the Court to represent the Committee's interests in this case.

First Day Applications

14. Immediately upon its retention, TR&P reviewed the numerous first day pleadings filed in this case as well as the orders entered with respect thereto.

15. The Debtors also obtained an extension of time to file their schedules of assets and liabilities and statements of financial affairs. The schedules were subsequently filed and thereafter reviewed by TR&P.

Financing

16. At the outset of its engagement, TR&P focused on the Debtors' motion to obtain post-petition financing. In this regard, TR&P reviewed the relevant pleadings and the interim order that had been entered. Thereafter, TR&P informally raised issues concerning the proposed final financing order which were adequately addressed through revisions to the final order.

17. Prior to TR&P's engagement, an order had been entered authorizing the Debtors to enter into a post-petition factoring agreement with The CIT Group/Commercial Services, Inc. ("CIT"). TR&P reviewed this order along with the related pleadings. When a final order regarding CIT was proposed, TR&P raised issues on behalf of the Committee that were addressed in a revised final order.

18. Given that the financing orders entered in the case set a deadline for the Committee to challenge the pre-petition liens and security interests of the Debtors' pre-petition lenders and CIT, TR&P conducted an investigation on these issues. In connection therewith, TR&P prepared several letter agreements extending the Committee's time to bring any such challenges.

Asset Disposition

19. During the Application Period, the Debtors filed several applications to approve asset sales. TR&P reviewed and

commented upon drafts of the asset sale pleadings and related bidding procedures. Thereafter, TR&P attended the sale hearings.

Plan and Disclosure Statement

20. During the Application Period, TR&P reviewed the Debtors' Plan and Disclosure Statement, provided comments to the Debtors with respect thereto, and raised issues of concern to the Committee. In connection with the Plan, TR&P (i) researched issues relating to confirmation of the Plan, (ii) reviewed the objection filed to the Disclosure Statement by the "Saunders" plaintiffs, (iii) attended the hearing to approve the Disclosure Statement and the hearing to confirm the Plan, (iv) attended to a request for production of documents served on the Committee by the "Saunders" plaintiffs, (v) reviewed the order approving the Disclosure Statement and setting procedures for voting on the Plan, and (vi) reviewed the proposed confirmation order and drafted language to address the Committee's concerns.

Retention Applications and Fee Statements

21. During the Application Period, TR&P prepared its retention application, which necessitated a detailed conflicts check and analysis. In addition, TR&P attended to the retention application for the Committee's retention of Deloitte and Touche LLP, the Committee's financial advisor.

22. In addition, TR&P reviewed retention applications and, with respect to retention of Rothschild, filed an

objection. TR&P also reviewed the affidavits filed by ordinary course professionals.

23. TR&P prepared its monthly fee statements and reviewed the monthly fee statements circulated by the other professionals in the cases.

Claims

24. During the Application Period, TR&P reviewed and commented upon the Debtors' draft application to set a bar date. Thereafter, TR&P monitored the claims filed in the cases.

Other Matters

25. During the Application Period, TR&P reviewed (and commented upon where appropriate) numerous other pleadings filed in this case.

26. As noted, throughout the Application Period, TR&P frequently communicated with the members of the Committee and other parties in interest through conference calls and e-mails. In addition, early in the case, TR&P, along with the Committee members, met with the Debtors and their professionals regarding the status and progress of the case. TR&P also fielded calls from other parties in interest regarding various issues in the case.

PROPRIETY OF COMPENSATION SOUGHT

27. The Bankruptcy Court is authorized, pursuant to Section 330 of the Bankruptcy Code, to award fees for services

rendered and expenses incurred by attorneys and other professional persons representing debtors or official committees. These awards to professionals may be made on an interim basis pursuant to Section 331 of the Bankruptcy Code.

28. The Bankruptcy Court has broad discretion in deciding whether to allow compensation and in determining the amount of the compensation. Matter of Nine Assocs., Inc., 76 B.R. 943, 944 (Bankr. S.D.N.Y. 1987). Any award of interim compensation should be based upon the circumstances of the particular case. In re Nan Daly's Pub, Ltd., 67 B.R. 782 (Bankr. E.D.N.Y. 1986).

29. Section 330(a)(3) of the Bankruptcy Code enumerates factors to consider in reviewing the propriety of requests for fees. 11 U.S.C. § 330(a)(3). The factors are: (a) the time spent; (b) the rates charged; (c) whether the services were necessary to the administration of, or beneficial toward the completion of, the case; (d) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the issue or task presented; and (e) whether compensation is reasonable based on customary fees charged by comparably skilled practitioners in cases other than bankruptcy cases.

30. Courts within this Circuit have employed the "lodestar approach" for calculating judicial awards of

attorneys' fees, which was articulated by the United States Court of Appeals for the Second Circuit in New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136 (2d Cir. 1983). The lodestar method of determining reasonable attorneys' fees involves multiplying the hours spent on a case, based on attorney time records, by a reasonable hourly rate of compensation for each attorney based on prevailing market rates for private law firms performing services for non-governmental clients. In re McLean Industries, Inc., 88 B.R. 36 (Bankr. S.D.N.Y. 1988). Once calculated, this lodestar figure may be adjusted upward or downward to take into account the facts of the particular case. In re Baldwin United Corp., 79 B.R. 321 (Bankr. S.D. Ohio 1987). Factors regarding the difficulty, complexity and contingent nature of the case may thereafter be employed to arrive at a reasonable and just compensation in excess of the lodestar. Matter of Stable Mews Assocs., 49 B.R. 395 (Bankr. S.D.N.Y. 1985); In re Chriss, 38 B.R. 655 (Bankr. S.D.N.Y. 1984); In re Minton Group, Inc., 33 B.R. 38 (Bankr. S.D.N.Y. 1983).

31. The services rendered by TR&P to the Committee during the Application Period, as described in the Application and in TR&P's contemporaneously kept time records which are attached as Exhibit B (and summarized in Exhibit A), meet or exceed the standards set forth in section 330 of the Bankruptcy

Code and applied by bankruptcy courts in this Circuit for determining the propriety of professional fees sought from the estates. Moreover, the Court may appropriately use TR&P's customary rates as the basis for the determination of the lodestar amount. In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 21-22 (Bankr. S.D.N.Y. 1991).

NECESSARY EXPENSES INCURRED IN THESE CASES

32. Section 330(b) of the Bankruptcy Code allows the Court to reimburse TR&P for the "actual, necessary expenses" incurred in these cases. 11 U.S.C. § 330(b). In the course of its representation of the Committee during the Application Period, TR&P has incurred significant expenses. A detailed list of those expenses is included in Exhibit C.

33. TR&P has advanced all of the expenses sought herein before seeking reimbursement. TR&P includes in this Application only those items of expense that it normally charges its clients, in addition to its normal fees, which are not otherwise absorbed in TR&P's overhead.

34. Photocopying. Photocopying expenses incurred by TR&P at \$.15/copy totaled \$1,744.92.

35. Facsimile Transmission. TR&P seeks payment of out-going facsimile charges in the amount of \$196.25 at \$1 per page.

36. Telephone, courier and freight. TR&P seeks reimbursement of telephone charges in the amount of \$1,376.05, (including Committee conference calls), delivery charges totaling \$413.85 and messenger charges of \$9.00.

37. Transportation. TR&P incurred local transportation expenses in the amount of \$27.25.

38. Computerized Research. TR&P incurred computerized research expenses in the amount of \$2,611.87.

39. Other. TR&P incurred business meal expenses totaling \$515.15, document retrieval fees of \$360.00, court docket and service fees totaling \$59.36, real property search fees in the amount of \$1,734.00 and staff overtime expenses of \$17.50.

CONCLUSION

40. TR&P respectfully submits that TR&P's request for final compensation in the sum of \$201,518.50 constitutes a fair and reasonable request for the quality and nature of the services performed. TR&P further submits that its request for reimbursement of out-of-pocket expenses in the amount of \$9,065.20, is fair and reasonable and that such sums were necessarily expended by TR&P in the performance of its responsibilities.

WHEREFORE, for all of the foregoing reasons, pursuant to §§ 328(a) and 330 of the Bankruptcy Code, TR&P respectfully requests that this Court enter an order: (a) awarding TR&P a final allowance of compensation in the amount of \$201,518.50 and final reimbursement of out-of-pocket expenses in the amount \$9,065.20, (b) directing payment of the foregoing sums to the extent not previously paid, and (c) granting TR&P such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 29, 2002

THELEN REID & PRIEST LLP

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