TOGUT, SEGAL & SEGAL LLP
Bankruptcy Counsel for the
Reorganized Debtors
One Penn Plaza - Suite 3335
New York, New York 10119
(212) 594-5000
Albert Togut (AT-9759)
Frank A. Oswald (FAO-1223)
Howard P. Magaliff (HPM-2189)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: 11/26/02
Hearing Time: 10:00 a.m.

In re:	Chapter 11
	Case No. 02-40667 (BRL)
GUILFORD MILLS, INC., *et al.*,	
	(Jointly Administered)
Debtors.	

APPLICATION OF TOGUT, SEGAL & SEGAL LLP, AS BANKRUPTCY COUNSEL FOR THE DEBTORS, FOR ALLOWANCE OF FINAL COMPENSATION FOR PRE-EFFECTIVE DATE SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES

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

Togut, Segal & Segal LLP ("TS&S"), as bankruptcy counsel for Guilford Mills, Inc. ("Guilford") and its subsidiaries,[1] the reorganized debtors (the "Debtors"), respectfully makes this application (the "Application") for (i) allowance of compensation for professional services rendered for the period March 13, 2002 (the "Filing Date") through September 30, 2002, the date that the order confirming the Debtors' Amended Joint Plan of reorganization became final, and for reimbursement of expenses in connection with those services, (ii) payment of fees representing the 20%

[1] The Subsidiaries are Hofmann Laces, Ltd., Gold Mills, Inc. Gold Mills Farms, Inc., Mexican Industries of North Carolina, Inc., Guilford Mills (Michigan), Inc., GMI Computer Sales, Inc., GFD Services, Inc., GFD Fabrics, Inc., Raschel Fashion Interknitting, Ltd., Curtains and Fabrics, Inc., Twin Rivers Textile Printing and Finishing, Advisory Research Services, Inc. and Guilford Airmont, Inc.

holdback from TS&S' fees each month pursuant to the terms of the Administrative Fee Order entered in the case, and (ii) final allowance of all fees and expenses previously paid to the firm.

I. INTRODUCTION

1. After several months of difficult negotiations with the Secured Lenders over the pivotal elements of a consensual restructuring of their operations around their core automotive and technical fabrics businesses, the Debtors filed their chapter 11 petitions on March 13, 2002 to implement in a chapter 11 plan the agreement in principle reached. Without having reached an agreement with the Secured Lenders, no reorganization would have been possible since the Secured Lenders had liens against substantially all of the Debtors' assets for amounts greater than the assets' value and without their consent there could be no distributions to any creditors other than them. The Debtors believed that unless trade creditors were paid in full, the businesses would have failed; the Secured Lenders' consent allowed for such payments. A fast chapter 11 case was also critical to the Debtors' success: it would provide the confidence needed by the Debtors' customers, vendors and employees to support the Debtors' reorganization. As quickly as possible, the Debtors negotiated, drafted, filed and sought confirmation of the Plan, within the exclusivity period provided under § 1121 of the Bankruptcy Code. The Plan provided that all unsecured creditors would be paid up to 100% of their claims, present and former employees would retain all of their rights and benefits under their benefit plans, including deferred compensation and pension plans, the prepetition secured debt would be reduced by approximately $88 million and current shareholders would receive 10% of the new common stock in the reorganized company. The Confirmation Order was entered exactly six months and one week after the Filing Date. Distributions to creditors with allowed claims have begun, and the Plan has already

been substantially consummated. Thus, the Debtors' goal of confirming a chapter 11 plan and exiting bankruptcy expeditiously was completely achieved. TS&S is extremely proud of the results obtained.

2. It is significant that except for a single objection to the Disclosure Statement, there were no contested matters and no hearings required to resolve disputes between the Debtors and any party in interest in this case. One of the TS&S "trademarks" is the consensual resolution of issues, which is achieved by always maintaining an open line of communication and collaborating with other professionals in the case to achieve consensus. Litigating the resolution of issues is always more expensive than achieving consensus. The fees in this case would have been far greater had TS&S not succeeded in gaining parties' agreement to what could have been highly contentious issues, particularly regarding the treatment of employees' claims and contracts under the Plan. The cooperative efforts of all of the professionals served the interests of the Debtors and their creditors, notwithstanding enormous and constant pressures to keep management and employees from leaving for other jobs, maintain the supplier and customer base, and close on the sale of assets. Neither the Secured Lenders nor the Committee ever had to seek relief against the Debtors in this Court, and TS&S takes great pride in that. The Debtors have confirmed their Plan without objection, and distributions are underway.

II. FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT

3. This Application is made pursuant to § 330 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for allowance of final compensation for services rendered to the Debtors in the amount of $1,370,515.50, and for reimbursement

of expenses in the amount of $52,495.13, for the period March 13, 2002 (the "Filing Date") through September 30, 2002.[2]

4. TS&S attorneys and paraprofessionals worked a total of 4,017 hours for which compensation is sought. To expedite the Debtors' cases as much as possible, TS&S gave the work required its highest priority, with many of its professionals and paraprofessionals frequently working late nights and weekends. A schedule setting forth the number of hours expended by the partners, associates and paraprofessionals, their respective hourly rates and the year in which each attorney was admitted to practice is attached as Exhibit "1". A schedule specifying the type of expenses for which TS&S is seeking reimbursement and the total amount for each category is attached as Exhibit "2". To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the case, but are not processed until after the date of the Application, TS&S reserves the right to invoice the Debtors for those expenses in the future.

5. TS&S maintains computerized records of the daily time slips completed by all attorneys and paraprofessionals in the firm. Preceding the time entries is a chart listing the names, billing rates and time spent by each of the attorneys and paraprofessionals rendering services on behalf of the Debtors. In support of this Application, copies of these computerized records, together with a computer-generated detailed itemization of the expenses incurred, have been furnished to the Court, the Debtors, the United States Trustee, counsel for the Secured Lenders and counsel for the official statutory committee appointed in these jointly administered cases. Consistent

[2] The Confirmation Order was entered on September 20, 2002 and became a final order ten days later. Since TS&S generally maintains its time records and bills on a monthly basis, this Application covers the period through September 30.

with General Order M-182, copies of the time and disbursement records will also be furnished to any party in interest who requests them.

6. This is TS&S' first and only application for fees in this case. TS&S has not sought, and this Court has not previously allowed, any compensation or reimbursement of expenses for professional services rendered by TS&S. Other than the payments described in the next paragraph made in accordance with the terms of the administrative order establishing procedures for monthly compensation and reimbursement of expenses of professionals dated April 3, 2002 (the "Administrative Fee Order"), TS&S has not received payment of any additional compensation or reimbursement of expenses in this case.

7. Pursuant to the terms of the Administrative Fee Order, TS&S submitted seven monthly invoices during the case: (i) for the period from March 13 through March 31, 2002 in the amounts of $213,448.50 for fees and $6,744.30 for expenses; (ii) for the period April 1 through April 30, 2002 in the amounts of $237,297.50 for fees and $7,703.24 for expenses; (iii) for the period May 1 through May 31, 2002 in the amounts of $217,666.50 for fees and $9,355.48 for expenses; (iv) for the period June 1 through June 30, 2002 in the amounts of $196,775 for fees and $3,970.56 for expenses; (v) for the period July 1 through July 31, 2002 in the amounts of $187,435 for fees and $11,787.89 for expenses; (vi) for the period August 1 through August 31, 2002 in the amount of $137,162 for fees and $4,537.53 for expenses; and (vii) for the period September 1 through September 30, 2002 in the amounts of $181,780 for fees and $8,396.13 for expenses.

8. Pursuant to the terms of the Administrative Fee Order, each month, TS&S served a copy of its invoice, supported by detailed time and disbursement records and a summary of services performed, upon the Debtors, counsel for the United States

Trustee, counsel for the Secured Lenders and counsel for the Committee. No party has objected to any of the firm's fees during the case. In accordance with the Administrative Fee Order, TS&S has received payment of 80% of its fees for the period March 13 through September 30, 2002 and all of its expenses. Accordingly, TS&S seeks approval of all fees in the case, including an award of the 20% of fees not previously paid plus reimbursement of its actual and necessary disbursements.[3]

9. As confirmed by the Certification of Frank A. Oswald, a member of TS&S, attached hereto as Exhibit "3", all of the services were rendered for and on behalf of the Debtors in connection with these chapter 11 cases.

III. BACKGROUND

10. On the Filing Date, to implement the agreement in principle reached with their Secured Lenders, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Throughout the case, the Debtors continued to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. On March 26, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

11. The Debtors, building upon innovative and proprietary products and technology gained in over 50 years of experience in the textile industry, grew into a leading worldwide producer and seller of certain types of knitted and woven fabrics for the automotive and apparel industries, as well as other specialty products. As of the Filing Date, the Debtors employed approximately 3,000 people in their corporate offices and other facilities throughout the United States.

[3] TS&S received a $650,000 prepetition retainer from Guilford, of which $426,354.03 remained available on the Filing Date. Unpaid fees and expenses that are awarded by the Court shall be applied against the balance of the retainer, and any unused amount will be first applied to post-confirmation fees and expenses, with any surplus returned to the Debtors.

12. The Debtors historically operated in four segments – automotive, apparel, home fashion and specialty fabrics. Guilford is the dominant producer of automotive headliner fabric in the United States and Europe, with an approximate 75% domestic market share and holds numerous patents and advanced proprietary equipment and technology. The automotive and apparel segments of the business generate more than 75% of the Debtors' revenues.

13. The Asian financial crisis that began in 1997 precipitated a steady erosion of Guilford's textile business, in part due to the influx of low-priced goods and a sharp decline in Asian currency. The Debtors instituted a top-to-bottom strategic realignment of their businesses in an attempt to shed unprofitable components and build upon their core strengths.

14. In the spring of 2001, Guilford began preliminary negotiations with the Secured Lenders to consensually restructure roughly $275 million of secured debt that the company could no longer service. Guilford had to de-leverage its balance sheet and decrease its debt capacity to a level that was appropriate for a company of its size and earnings.

15. Negotiations intensified in the fall. Guilford turned to several well-known and experienced professional firms to assist in the restructuring efforts. Rothschild, Inc. ("Rothschild"), an investment-banking firm, was hired to value the businesses and develop strategies for raising capital and restructuring equity. Nightingale & Associates, LLC ("Nightingale") was retained as financial advisors to help identify and market non-core assets. The company also hired TS&S as restructuring and bankruptcy counsel for advice about completing the restructuring through a chapter 11 filing if that proved to be the most advantageous method. These

firms worked closely with Guilford's management and its other advisors, including Weil, Gotshal & Manges, LLP ("WGM"), Guilford's longtime outside general counsel.

16. On March 5, 2002, Guilford announced that it had reached an agreement in principle with the Secured Lenders to restructure the company's senior indebtedness and capital structure. Under the agreement in principle, Guilford intended to reorganize around its core automotive and technical businesses through a series of transactions whereby the company would sell non-core assets, pay down its debt and restructure its capital arrangement and business to reflect an appropriate debt capacity level, by focusing on its core automotive and specialty textile businesses.

17. On July 11, 2002, the Debtors filed their joint plan of reorganization (as subsequently amended, the "Plan") and related disclosure statement (as subsequently amended, the "Disclosure Statement"). By Order dated August 15, 2002, the Court approved the Disclosure Statement as containing "adequate information" consistent with Bankruptcy Code § 1125. On August 16, 2002, the Debtors filed an amended joint plan and companion amended joint disclosure statement.

18. All impaired classes that voted accepted the Debtors' Plan, which was confirmed by Order dated September 20, 2002 (the "Confirmation Order"). The Effective Date has occurred. Pursuant to Section 7.2(d) of the Plan, on the Effective Date the chapter 11 cases of all Debtors other than Guilford were deemed fully administered, and a final decree has been sought in each of those cases. Guilford's case will remain open until the two creditor trusts established on the Effective Date terminate and objections to disputed claims are resolved.

IV. RETENTION OF TS&S

19. TS&S was initially engaged in August of 2001 to advise the Debtors on a possible out-of-court restructuring with the Secured Lenders. During the next seven months, TS&S worked closely with the Debtors, their other professionals and the Secured Lenders to fashion a restructuring term sheet acceptable to the Secured Lenders that met the Debtors' objectives of smaller operations focused on their core strengths, and a sustainable debt burden, while recognizing that the Secured Lenders' claims exceeded the enterprise value of the Debtors' business.

20. Throughout the months leading up to the filing, TS&S attorneys did everything they could to prepare the Debtors in making the transition from traditional operations to chapter 11. TS&S advised the Debtors on a variety of pressing issues including sales of non-core assets, automatic stay implications, financing operations during the case, the effects of chapter 11 on contracts and determining how to protect employees and their benefits. All of the prepetition services performed by TS&S laid the groundwork for the Debtors' uniquely uneventful passage through chapter 11.

21. By orders dated March 14 and April 10, 2002, the Debtors were authorized to retain TS&S on an interim and final basis, respectively (the "Retention Orders"). Copies of the Retention Orders are attached as Exhibit "4."

22. TS&S is a highly specialized "boutique". For more than 20 years, the firm's practice has been limited, almost exclusively, to insolvency and bankruptcy matters pending in this Court. TS&S has considerable experience in representing chapter 11 debtors, and has acted in a professional capacity in hundreds of cases representing the interests of debtors, creditors' committees, secured creditors, and trustees.

23. Some of the chapter 11 debtors TS&S currently represents or has represented include: (i) Enron Corp. and certain of its related entities, where TS&S is co-general bankruptcy counsel; (ii) Ames Department Stores, Inc., one of the largest regional discount retailers in the United States (TS&S is co-counsel); (iii) the operating subsidiaries of Loews Cineplex Entertainment Corporation, which involved the restructuring of the second largest movie theatre exhibitors in the U.S. with over $1.5 billion of debt (TS&S is co-counsel); (iv) Daewoo International (America) Corp., an international trading company; (v) ContiMortgage Corporation and certain of its affiliates, which were engaged in the consumer finance business and which filed chapter 11 cases to restructure more than $1 billion of debt; (vi) OnSite Access, Inc. and certain of its subsidiaries, which provided voice and data communication services to tenants in commercial buildings located throughout the United States and which filed chapter 11 cases to restructure more than $100 million in debt; (vii) Rockefeller Center, which involved the restructuring of more than $1.3 billion of debt, and 12 historic land-marked buildings in the heart of Manhattan; and (viii) the Olympia & York World Financial Center, which concerned the restructuring of more than $1 billion of debt.

24. TS&S' experience in representing committees is also extensive. By way of example, TS&S represents or has represented the official creditors' committee in (i) Jacom Corp., a $1 billion equipment finance leasing enterprise; (ii) Golden Books, the nearly century-old publisher of children's books; and (iii) Pharmacy Fund Inc., a $200 million accounts receivable factoring company specializing in receivables owed to pharmacies nationwide. TS&S represented the official employees' committee in the first Ames Department Stores chapter 11 case in which a plan was confirmed involving a restructuring of more than $1 billion; the firm's engagement, pursuant to Court order,

was to represent the interests of all of Ames' more than 56,000 employees. The Ames Employees' Committee was the first of its type ever appointed in New York.

25. TS&S was counsel for the creditors' committee in Finley, Kumble, *et al.*, which concerned the liquidation of the then fourth largest law firm in the United States having assets of more than $75 million. A chapter 11 plan has been confirmed and Albert Togut, the senior member of TS&S, is just concluding his service as the trustee of the liquidating trust established under the Finley Kumble plan. TS&S similarly served as counsel to the creditors' committee in the law firm liquidation case of Bower & Gardner, and is presently counsel to Mr. Togut as the chapter 11 plan administrator. Likewise, TS&S served as counsel to the creditors' committee in the chapter 11 law firm liquidation case of Shea & Gould, and is now counsel to Mr. Togut as the chapter 11 plan administrator in that case.

26. Mr. Togut has written and lectured on many topics under the former Bankruptcy Act and Bankruptcy Code, and has been interviewed for newspaper articles and financial news radio and television programs. For several years, Mr. Togut chaired the Plan Process Task Force of the Chapter 11 Business Bankruptcy Committee of the American Bar Association Section of Business Law, and is now serving on the Bankruptcy Committee of the Association of the Bar of the City of New York. He is a Fellow of the American College of Bankruptcy.

27. Frank A. Oswald, a member of TS&S, has been with TS&S since 1986. Mr. Oswald received his J.D. from New York Law School, where he was an editor of the Journal of International and Comparative Law. He interned with Chief Bankruptcy Judge Conrad B. Duberstein of the Eastern District of New York and the Honorable Cecilia H. Goetz, also a bankruptcy judge in that Court. Mr. Oswald was a research assistant to Professor Karen Gross of New York Law School.

28. Howard P. Magaliff, a senior associate at TS&S, joined the firm in October 2001. Mr. Magaliff has served as debtors' counsel for companies in the automotive, real estate, oil and lumber, health insurance and retail industries, and has also represented trustees and creditors. Prior to joining private practice, Mr. Magaliff was associate general counsel for a large regional bank on Long Island. He is a 1984 graduate of Boston University School of Law.

29. Each of the attorneys employed by TS&S has concentrated in the practice of bankruptcy law since their graduation from law school. Certain of TS&S' attorneys have clerked for bankruptcy judges, and all of them are members in good standing of the bar.

30. The paraprofessionals employed by TS&S are all college graduates. Paraprofessionals are billed based upon their experience; recent graduates are billed at lower hourly rates than those with a year or more experience.

31. TS&S submits that the work encompassed by this Application for which compensation is sought was performed efficiently and at the lowest cost to the estate. The use of senior attorneys, where appropriate, has enabled TS&S to bill fewer hours than would ever have been possible if more junior people had been asked to perform the same professional services.

32. All of the work summarized in this Application was performed in such a manner as to insure minimal duplication of services to keep the administration expenses to this estate to a minimum.

V. SERVICES RENDERED BY TS&S DURING THE CASE

33. The following is a summary description of some of the more notable and significant services rendered by TS&S during the case. All of the professional

services rendered by the firm are set forth in our computerized time records, and the Court is respectfully referred to those records for the details of all of the work performed.

34. TS&S has rendered extensive professional services on behalf of the Debtors and their estates, often during late nights and on weekends. Whenever possible, potential disputes were resolved without contested hearings before the Court. In fact, the only disputed issue brought to the Court in the entire case was the objection to the Disclosure Statement filed by the Sanders Claimants which, to the extent not preserved for confirmation, was overruled.

35. Beyond the considerable services in the Debtors' transition to debtors in possession, TS&S handled all bankruptcy related matters in the case including: (i) obtaining an immediate bar date for creditors to file proofs of prepetition claims before the Debtors had filed their schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules"); (ii) obtaining approvals to sell multiple assets from discontinued operations through private sales, competitive bidding and auctions prior to confirmation of the Plan and creation of the Discontinued Operations Trust; (iii) negotiating and filing a plan and related disclosure statement that provided, *inter alia*, for the payment of up to 100% of unsecured claims and the non-impairment of all employee-related claims and the assumption of all pension and employee benefit plans, within the exclusivity period; and (iv) coordinating and supervising the effort to compile, complete and file the Debtors' Schedules.

A. Chapter 11 Petitions, First-Day Orders and Commencement of Cases Generally

36. TS&S prepared and filed 14 separate chapter 11 petitions commencing these cases on the Debtors' behalf. In that connection, TS&S was required to engage in an intense due diligence process, which included the review and analysis of

voluminous historical, business, financial and corporate documentation and data concerning the Debtors. TS&S professionals were required to confer with representatives of the Debtors, and participated in various meetings and conferences with these representatives both in North Carolina and New York.

37. In addition to the chapter 11 petitions and related exhibits, TS&S prepared and presented to the Court at a hearing on March 14 various applications and related pleadings for "first day" orders including:

- authorizing the Debtors to maintain existing bank accounts and business forms;
- authorizing an extension of the Debtors' time to file schedules of assets and liabilities and its statement of financial affairs;
- authorizing the Debtors to pay pre-petition payroll and related employee benefits; and
- authorizing the Debtors to retain TS&S as its bankruptcy counsel.

All of the "first day" orders were signed by the Court, which greatly facilitated Guilford's almost seamless transition to chapter 11 so that operations could continue in the ordinary course.

38. After the commencement of the chapter 11 cases, TS&S assisted the Debtors in fielding and responding to numerous inquiries from third parties. TS&S participated in extensive correspondence, telephone conferences and/or meetings with the Debtors' personnel, outside professional advisors, creditors, the United States Trustee, and the Court concerning, among other things, the financial condition and business affairs of the Debtors, and the administration of the chapter 11 cases.

39. Shortly after the Filing Date, TS&S assisted the Debtors in preparing for the organizational meeting of creditors conducted by the United States Trustee and, along with the Debtors, attended and participated in that meeting.

40. Immediately following the appointment of the Committee and its selection of Thelen, Reid & Priest, LLP as its counsel, TS&S met with the Committee and its professionals and took steps to initiate and maintain an ongoing dialogue with the Committee's counsel. The Committee also retained Deloitte & Touche, LLP as its financial advisors.

B. Financing the Debtors' Operations/the DIP Facilities

(1) The DIP Facility

41. TS&S devoted significant time at the beginning of the case assisting the Debtors with negotiating and documenting debtor in possession financing (the "DIP Facility") on an expedited basis. Obtaining debtor in possession financing was critical to the Debtors' ability to meet their cash needs and instill confidence in the Debtors' suppliers, customers and employees that the Debtors could continue to operate during the chapter 11 cases. It was especially important that the DIP Facility be obtained, because the Debtors chose at the beginning of the case not to ask the Court for authority to pay critical vendors, believing instead that having sufficient cash available on a going-forward basis to pay their suppliers, coupled with the expectation that all suppliers would be paid in full under the Plan, would be sufficient.

42. Having determined that a chapter 11 filing would be in the best interests of their estates, the Debtors entered into discussions with Wachovia and their other prepetition secured lenders for post-petition loans. Ultimately, the Debtors were able to secure a commitment from Wachovia as the agent and lead DIP Lender for a $30 million debtor in possession loan, which offered the Debtors appropriate levels of borrowing to continue operations in the ordinary course, as debtors in possession. To provide the DIP Lenders with adequate protection for the postpetition loans, the Debtors agreed, pursuant to §§ 364(c)(1), (c)(2) and (c)(3), to grant the lenders a superpriority

claim and liens in, and security interests upon, substantially all of the Debtors' property and assets and the proceeds thereof. The DIP loan was guaranteed by the Subsidiaries.

43. In connection with the proposed financing, TS&S was required to review the Debtors' prepetition and proposed postpetition loan documents, and communicate with the Debtors' representatives, as well as representatives of the Secured Lenders. As in other matters pertaining to its representation of the Debtors TS&S coordinated its efforts with WGM, general corporate counsel to the Debtors, to avoid duplication of effort. WGM has represented the Debtors for years, including in connection with the prepetition secured lending. Hence, WGM took the lead in reviewing the DIP financing documents and negotiating the specific business terms of the loan, while TS&S oversaw the bankruptcy side of the transaction, including reviewing the documents for specific bankruptcy-related terms and provisions, particularly those set forth in the interim and final borrowing orders.

44. TS&S worked with WGM and the Debtors' financial and legal personnel to complete the negotiation, drafting and execution of the DIP Facility loan agreements, security agreements and ancillary documents. TS&S had the responsibility for obtaining Court approval of the DIP Facility. TS&S drafted and filed the necessary pleadings to obtain approval of the DIP Facility on both an interim and final basis. TS&S appeared before this Court on March 14 and presented the Debtors' motion to approve the DIP Facility on an interim basis. The Court granted the motion and an interim order was entered.

45. Upon entry of the interim financing order, TS&S oversaw service of the motion to approve the DIP Facility on a final basis, which was considered at a hearing on April 10, 2002. Prior to the final hearing, TS&S participated in numerous conferences to address questions and issues raised by the Committee, the United States

Trustee and other parties in interest. Ultimately, all issues were adequately addressed and no objections were filed to the final DIP loan. TS&S attended the final hearing to obtain Court approval of the DIP Facility and a final order was entered.

(2) CIT Factoring Agreement

46. Prepetition, Guilford had an arrangement with The CIT Group / Commercial Lending, Inc. ("CIT") pursuant to which the Debtors factored approximately 50% of their domestic outstanding trade receivables (the "CIT Arrangement"). CIT was granted a first priority security interest in certain collateral relating to the factored receivables. The Secured Lenders had a lien on the accounts until they were factored by CIT, at which time the lien was deemed released.

47. The Debtors desired to continue to factor receivables with CIT postpetition, which was a critical component of the Debtors' cash flow requirements. The Debtors and CIT agreed to continue the arrangement postpetition on substantially the same terms and conditions and without constricting the advance rate or availability. To memorialize the understanding, the Debtors, assisted by TS&S, and CIT negotiated a new factoring agreement. TS&S drafted a motion and proposed interim order authorizing the financing, and appeared at the hearing on March 14 at which the agreement was approved on an interim basis. Subsequently, TS&S drafted, filed and served a motion to approve the postpetition CIT factoring on a final basis, and the Court entered an order on April 30.

C. Transition to Debtor in Possession Status

48. TS&S rendered significant services to the Debtors in their transition to debtor in possession status. The firm's professionals engaged in extensive communications with representatives of the Debtors concerning the duties and responsibilities of a debtor in possession, and prepared written memoranda and

guidelines for this purpose. As an international company with related non-debtor businesses in other countries, the Debtors had numerous questions concerning their operations under chapter 11 and the effect this might have on their foreign operations and assets. TS&S professionals always attempted to respond to, and answer these, inquiries in a timely and meaningful fashion.

49. Early in the case, TS&S worked extensively with the Debtors' representatives to identify steps and measures that could be taken to facilitate the Debtors' transition to debtor in possession status and administration of the chapter 11 case generally. In that connection, TS&S prepared and filed various pleadings with the Court, including applications for orders:

- authorizing the Debtors to retain Nightingale & Associates, LLP as their financial advisors;
- authorizing the Debtors to retain Donlin, Recano & Company, Inc. as their claims and noticing agent;
- authorizing the Debtors to pay certain prepetition shipping, customs and related charges, and certain prepetition goods in transit;
- authorizing the Debtors to retain and compensate ordinary course professionals; and
- establishing procedures for the interim compensation of retained professionals by the Debtors' estate.

50. In each instance, TS&S worked closely with the Secured Lenders' counsel (and after being retained, the Committee's counsel) to explain the nature of and the reason for the relief being sought by the Debtors. The Court granted this relief without opposition, obviating the need for contested hearings and further expenses to the Debtors' estate.

51. The Debtors sought to retain Rothschild, Inc. as their investment bankers, and to perform going concern and equity valuations required for the Plan and Disclosure Statement, and for marketing the company to potential equity investors.

TS&S prepared and filed an application and proposed order to retain Rothschild (the "Rothschild Application") under § 328(a) of the Bankruptcy Code, with compensation to be fixed at the inception of the case based upon an agreed formula as was consistent with investment-banking relationships in the non-bankruptcy arena. The United States Trustee raised an informal objection to the Rothschild Application, asserting that neither the Court nor her office should be precluded from reviewing Rothschild's services and compensation under the normal reasonableness standards of Bankruptcy Code § 330(a).

52. TS&S negotiated extensively with the United States Trustee and Rothschild to reach an accommodation that would address the United States Trustee's concerns and be acceptable to Rothschild. Ultimately, an agreement was reached whereby the United States Trustee and the Court retained the ability to review Rothschild's services under the § 330(a) standards while all other parties in interest would be precluded from raising reasonableness objections at a final fee application. No party objected to the retention. TS&S drafted and circulated a revised order, which was submitted to the Court on notice to all creditors, and approved.

D. Schedules

53. On the Filing Date, TS&S submitted an application to extend the Debtors' time to file Schedules, as well as the lists of executory contracts and equity holders normally filed with the petition. The volume of information that needed to be culled, sorted and analyzed necessitated the request. The Court granted the extension by Order dated March 14.

54. After the Filing Date, TS&S actively assisted the Debtors and their then outside accountants in identifying, collecting, organizing and reviewing the financial and other data required to prepare the Schedules. Information had to be pulled from many sources. This process required a review of books, records and documents

relating not only to the 14 Debtors but to non-debtor foreign affiliates as well and many inter-entity transactions. As part of this process, many questions arose. One of the firm's attorneys traveled to Greensboro to meet with the Debtors' personnel and accountants to discuss the preparation of Schedules and review each and every item of information and component of the Schedules. TS&S assigned tasks to the Debtors' personnel and accountants to facilitate the collection of data and preparation of the Schedules.

55. Working closely with the Debtors and their accountants, TS&S completed the Schedules for all Debtors and timely filed them on July 1.

E. Expedited Claims Bar Date

56. The agreement in principle with the Secured Lenders provided for unsecured creditors to be paid 100% of their claims, up to $25.6 million. These creditors included all of the Debtors' trade and vendor creditors, counter-parties to contracts, landlords and other creditors predominantly associated with the day-to-day conduct of the Debtors' business. The Debtors believed that the total amount of unsecured claims was less than the $25.6 million cap contained in the prepetition agreement in principle, but until all of the allowed unsecured claims were known, the Debtors would not be able to formulate or present a plan of reorganization.

57. The Debtors were intent on filing their chapter 11 Plan and seeking confirmation as quickly as possible. To achieve a measure of certainty about their liabilities to be treated in the Plan, therefore, a claims bar date had to be obtained at the earliest possible time.

58. Since it would be 45 days before the Debtors could file their Schedules, TS&S suggested the unorthodox approach of asking the Court at the outset of the case to set a bar date prior to filing the Schedules. The Debtors compiled a list of all

known creditors, including secured creditors, taxing authorities, trade creditors, litigation claimants, counter-parties to contracts and leases, former employee claimants and other entities which conducted business with the Debtors during the 12 months before the commencement of the cases which might hold a purported claim against the Debtors. This list comprised roughly 5,000 persons. The Debtors believed that this list was substantially complete and presented an accurate picture of their liabilities for obtaining a claims bar date.

59. TS&S prepared an application requesting that the Court expedite the normal claims process by entering an early order setting a bar date. TS&S reviewed and incorporated the comments of the Secured Lenders' counsel and the Committee's counsel prior to filing the application with the Court. Following no objection by any party in interest, the Court entered an order on April 1, 2002, fixing May 7, 2002 as the bar date by which non-government entities must file a proof of claim. By subsequent order dated July 17, 2002, the Bankruptcy Court fixed August 29, 2002 as the last day by which any person asserting an administrative claim against the Debtors that accrued on or before July 31, 2002, was required to file proof of such claim. Following entry of these orders, Donlin Recano & Company, the Debtors' claims and noticing agent, served notice upon all creditors and parties in interest. These notices were also published in several newspapers and trade periodicals.

60. The fact that a bar date was obtained before Schedules were filed highlights TS&S' creativity at finding efficient and practical solutions to client needs. With an early bar date, fast-tracking of the entire case was made possible.

F. Asset Sales

61. As of the Filing Date, the Debtors held fee and / or leasehold interests in numerous pieces of real property located throughout the United States. A

substantial number of these properties were in Greensboro, North Carolina and its surrounding areas or in upstate New York or Pennsylvania. The real property was, by and large, utilized for manufacturing, warehousing and corporate or regional offices. The Debtors also leased certain sales offices and retail outlets around the country.

62. As part of the Debtors' strategic restructuring plan, which was implemented prior to commencement of the chapter 11 cases, the Debtors identified the various owned or leased real property that would not be required in the proposed restructured operations. The Debtors consulted with Nightingale regarding a proposed marketing plan for these non-core real estate assets and for the sale of machinery, equipment and other furnishings and business equipment not needed in the restructured operations. Prior to the Filing Date, the Debtors, with the assistance of Nightingale, began to market the designated real property through local brokers and by other means.

63. To assist the Debtors in the marketing and sale of the machinery and equipment, the Debtors engaged Dovebid, Inc. ("Dovebid") as their exclusive auctioneer to sell the machinery and equipment under an agreed-upon auction program and with the consent of the Secured Lenders. The Debtors requested that Nightingale oversee the marketing and sales of the machinery and equipment that would not be subject to the Dovebid auction program.

64. Upon commencement of the cases, the Debtors decided to continue the engagements of Nightingale and Dovebid. TS&S prepared the necessary applications and related pleadings for authority to retain Nightingale and Dovebid pursuant to § 327 of the Bankruptcy Code. As part of the Dovebid retention, TS&S included the prepetition Dovebid auction program for machinery and equipment for Court approval. In that regard, TS&S consulted with Dovebid management regarding

the auction structure and requirements under the Bankruptcy Code for auctions and communicated with the United States Trustee concerning the bonding requirements for Dovebid under the Court's Local Rules. Dovebid's retention and the proposed auction program, as approved by the Court, provided for the orderly marketing and auction sale of substantially all of the non-core machinery and equipment that would not be part of any sale of real property.

65. As a result of the marketing, auction and sale programs, a substantial portion of the non-core assets of the Debtors were sold during the chapter 11 cases. These were assets that otherwise would have been transferred to the Discontinued Operations Trust upon confirmation of the Plan. In each instance, TS&S prepared the Debtors' application to the Court for approval of an asset sale and related bidding process when used, and arranged for publication notice of the proposed sales. TS&S also advised the Debtors that the proposed sales of assets should be subject to higher and better offers (the bidding process) to insure that the Debtors would be receiving the maximum possible recovery of value for their assets.

66. TS&S consulted with the Debtors, Nightingale and Dovebid, to coordinate finalizing the asset sale proposals and in many instances, directly negotiated purchase agreements with the prospective buyers. Issues arose sometimes about break-up fees and other aspects of a deal that required TS&S to negotiate with counsel for the Secured Lenders or the Committee as well as the purchasers. Through these efforts, the Debtors, with the assistance of TS&S, were able to obtain Court approval of, and close on the sale of non-core assets with a total recovered value for the benefit of the Secured Lenders in excess of $35 million.

67. The following is a brief summary of each of the asset sales approved by the Court and closed during the chapter 11 cases (or in the case of two sales, shortly after the Effective Date of the Plan):

- Karl Mayer Machinery & Equipment Sale. Approximately 400 knitting machines and related equipment located at the Cobleskill, New York and Pine Grove, Pennsylvania manufacturing facilities of the Debtors to Karl Mayer Textile Machinery, Ltd. for $11,350,000.

- Twin Rivers Textile Printing & Finishing Asset Sale. Leasehold interest in real property, machinery and equipment, office furniture fixtures and computer systems, and related personal property and inventory located in Schenectady, New York utilized in the Twin Rivers Textile Printing & Finishing operations to H. Greenblatt & Company for $1,350,000, plus certain prepaid expenses and deposits and carrying costs relating to the assets and operations.

- Unger Fabrik, LLC's Interest. Debtors' membership interests in Unger Fabrik, LLC and interest in an affiliated Mexican corporation, along with certain other rights and interests held by the Debtors relating to the business operations of Unger Fabrik to FB Capital, Inc. for $2,125,000.

- Greenberg Real Property. Certain commercial real property, located in Greensboro, North Carolina comprising 54.82 acres, and all improvements thereon, including manufacturing facilities, to Wendover Village, LLP for $11,500,000.

- Fishman Real Property. Commercial real property located on West Market Street in Greensboro, North Carolina, comprising approximately 19 acres, and improvements thereon, including manufacturing and office facilities of 560,390 square feet to Kim's Greensboro Real Estate, LLC for $1,265,000.

- IFD Property. Commercial real property located in Greensboro, North Carolina, comprising approximately 22 acres, and improvements thereupon, including manufacturing and office facilities of 164,000 square feet to George C. Page for $2,900,000.

- Herkimer, New York Property. Commercial real property located in Herkimer, New York, comprising approximately 21 acres, and improvements thereupon, including manufacturing and office space of 188,000 square feet to Herkimer Distribution, LLC for $5,150,000.

- Dovebid Machinery and Equipment Auction Sales. Other

machinery and equipment sold at auction for a total of approximately $4,235,000.

G. Plan and Disclosure Statement

68. Once the bar date and various other administrative orders were entered, TS&S turned its full attention to the plan of reorganization. The Debtors needed to confirm a chapter 11 plan as quickly as possible and to emerge from bankruptcy to hold its customers, suppliers and employees together.

69. TS&S began drafting a plan of reorganization that would implement the consensual restructuring. TS&S drafted an initial plan of reorganization and disclosure statement, and transmitted them to the Secured Lenders for comment. During June and July 2002, attorneys from TS&S attended numerous meetings and participated in numerous telephone conferences with counsel for the Secured Lenders to discuss, negotiate and finalize the terms of a consensual plan. The Debtors and Secured Lenders, sometimes with counsel alone and other times involving the principals and other professionals, had many meetings which contributed to the overall cooperative effort of the case. The Plan and its various components fell into place as these discussions progressed.

70. Apart from their desire to pay their trade creditors in full, the Debtors were acutely concerned about their present and former employees. The Debtors, with TS&S and their other professionals, negotiated extensively with the Secured Lenders to protect the benefits and retirement programs that the employees depended upon. TS&S pressed, on the Debtors' behalf, to maintain and preserve these benefits because the Debtors believed that their employees had unwaveringly supported them over many years as they grew, and stayed with them when the Debtors hit troubled times, and that it would be unfair to not provide for these loyal employees as part of the reorganization.

71. Part of the difficulty encountered with regard to employee claims was that the assets that had been set aside to fund retirement benefits and deferred compensation were held in a "Rabbi" trust, which, upon bankruptcy, became property of the Debtors' estate subject to the Secured Lenders' claims, leaving the employees as general unsecured creditors. The Secured Lenders, recognizing that they were undersecured by at least $50 million, were not simply going to consent to payments being made with their collateral and obligations being assumed by the Debtors. The Debtors needed to convince the Secured Lenders that the employee-related claims should not be impaired for the good of reorganized Guilford, which the Secured Lenders would 90% own under the Plan.

72. Eventually, the Debtors, with a lot of effort by their management and professionals, were successful in obtaining an agreement from the Secured Lenders to preserve all of the employee benefits as part of a plan of reorganization. Employee claims are not impaired under the Plan.

73. On July 11, 2002, 120 days after the Debtors filed their chapter 11 petitions, the Plan and Disclosure Statement were filed.

74. After filing the Plan and Disclosure Statement, TS&S drafted, filed and served an application to approve the Disclosure Statement and related service, notice and solicitation procedures.

75. One written objection and several informal objections to the approval of the Disclosure Statement were made. Two of the informal objections were by the United States Attorney and the United States Trustee over the scope of releases contained in the Plan. TS&S negotiated language with these parties to satisfy their concerns, and incorporated this language into the final Disclosure Statement and Plan. Other informal objections were resolved prior to the Disclosure Statement hearing.

76. TS&S responded to the one written objection, filed by the Sanders Claimants (as defined below). This objection presented a legal theory that had been adopted in published decisions by courts in the First and Third Circuits but not in the Southern District of New York. Under the Plan, the Sanders Claimants were classified as Litigation Claimants in Class 5. Upon confirmation, members of Class 5 would be permitted to pursue their litigation against available insurance proceeds, but would not receive any direct payment from the Debtors. The Sanders Claimants argued that this treatment under the Plan violated the absolute priority rule found in § 1129(b)(2)(B) because Class 5 unsecured creditors were not receiving a distribution while the shareholders were receiving New Common Stock in reorganized Guilford. The Sanders Claimants also asserted that this treatment unfairly discriminated against them.

77. The legal theory supporting the entire reorganization and the Plan was that the undersecured Secured Lenders could allow the Debtors to use their collateral to pay certain claims but not others; in essence, the Secured Lenders were making part of their collateral available to some creditors but not others. Litigation claimants were creditors with whom the Secured Lenders did not want to share their collateral. The Secured Lenders relied on the First Circuit case of *Official Unsecured Creditors' Committee v. Stern* (*In re SPM Mfg. Corp.*), 984 F.2d 1305, 1313 (1st Cir. 1993) and the Delaware bankruptcy case of *In re Genesis Health Ventures, Inc.*, 266 B.R. 591 (Bankr. D. Del. 2001), *appeal dismissed* 280 B.R. 339 (D. Del. 2002), as well as unreported decisions from other Judges in this Court, for the proposition that an undersecured creditor, with liens on all of a debtor's assets, was free to share its collateral with any creditor of its choosing.

78. TS&S researched these issues thoroughly and discussed them in the response to the Sanders' Claimants' objections to the Disclosure Statement and in the

memorandum of law in support of confirmation. At the Disclosure Statement hearing, TS&S argued that substantially all of the points raised by the Sanders Claimants, including those concerning absolute priority, were really objections to confirmation of the Plan, and not issues of disclosure. To address the Sanders objection, the Debtors agreed to make certain additional changes to the Disclosure Statement. The Court, agreeing with TS&S' view, overruled the remaining objection and entered the order approving the Disclosure Statement and solicitation procedures.

79. Following the hearing, an Amended Plan of Reorganization and Amended Disclosure Statement were filed on August 16, 2002. After the Court entered the order approving the Disclosure Statement and solicitation procedures, TS&S worked with Donlin, Recano & Company to serve notice of approval of the Disclosure Statement, together with copies of the Disclosure Statement, Plan and a ballot on all known creditors and parties in interest. TS&S also worked closely with WGM and counsel for the Secured Lenders to prepare a Plan Supplement that contained various documents and other information related to the Plan and the Effective Date closing, which were filed prior to the confirmation hearing.

80. The Court scheduled a confirmation hearing for September 19. This comported with the Debtors' desire for the Plan to become effective by the close of their fiscal year at the end of September. During the intervening time, TS&S worked closely with Donlin, Recano & Company to address voting and related issues that arose. TS&S also prepared for the confirmation hearing, believing at the time that the Sanders Claimants would continue to press their objections. TS&S, therefore, expected a contested hearing and prepared for a "cram down" confirmation.

81. TS&S prepared a memorandum of law in support of confirmation. TS&S also drafted an affidavit for David Taylor, the Debtors' chief financial officer, to

support confirmation, and worked with professionals from Nightingale and Rothschild to prepare affidavits to address valuation and related issues. TS&S intended to proffer these affidavits in lieu of testimony at the confirmation hearing. To that end, TS&S filed the affidavits prior to the hearing and delivered copies to Chambers to afford the Court an opportunity to become fully familiar with the evidentiary issues. TS&S also drafted and circulated for comment to counsel for the Secured Lenders and the Committee proposed findings of fact, conclusions of law and an order confirming the Plan. TS&S participated in numerous calls and exchanged numerous e-mails and drafts of the confirmation order with counsel to produce an order that was acceptable to all parties.

82. TS&S attended the confirmation hearing on September 19. Having resolved the Sanders Claimants' objections (*see* discussion in Section I below), TS&S contemplated an uncontested hearing. TS&S proffered the testimony as set forth in the affidavits, which the Court accepted fully into evidence. It is believed that the affidavits greatly facilitated a smooth confirmation hearing. At the conclusion of the hearing, the Court found that the Debtors had established all of the statutory requirements to confirm a plan found in § 1129 of the Bankruptcy Code and ruled that it would confirm the Plan. TS&S finalized the confirmation order to incorporate some last-minute technical changes, and submitted it to Chambers on September 20. The Court entered confirmation order that day. TS&S thereafter worked with the Debtors' other professionals to prepare for and conclude all matters needed for the Plan to go effective, which occurred on October 1.

H. Leases and Executory Contracts

83. As of the Filing Date, the Debtors were parties to over 100 executory contracts and real property leases. These included leases for retail outlets and office space, royalty agreements, licensing agreements, employment-related agreements and

the more mundane leases for photocopiers, fax machines and the like. Many of these contracts would no longer be needed as non-core businesses were closed and other segments consolidated, but it would take time to liquidate assets and wind down affairs. Given the needs of the case, though, it was not possible for the Debtors to make final determinations regarding the assumption or rejection of all of their leases and contracts within the initial 60-day period provided by Bankruptcy Code § 365(a). Accordingly, on April 22 and again on July 12, TS&S filed motions to extend the time to assume or reject unexpired real property leases until, *inter alia,* the earlier date of a confirmed plan or October 15, 2002. The Court entered both orders.

84. Beyond simply needing to identify which leases and contracts would not be needed post-confirmation there was another pressing reason to identify those that would be rejected. Since lease and contract rejection damages were to be included within the $25.6 million cap for unsecured creditors, the need to quantify those rejection damages sooner, rather than later, took on heightened importance. Due to the importance of the task, two attorneys and one paralegal from TS&S traveled to North Carolina and spent two days at the Debtors' corporate headquarters reviewing and analyzing leases and contracts. The review served two purposes: the first and primary purpose was to make a legal determination of which contracts were executory and which were not; the secondary purpose was to begin the process of assisting the Debtors in identifying those leases and contracts that were associated with discontinued operations which would be rejected, and those that would need to be assumed for ongoing business purposes.

85. After the Debtors made an initial determination, TS&S prepared and filed a motion and a proposed order to reject a number of real property leases and several executory contracts. Several landlords raised objections. TS&S negotiated

agreements with these landlords to reject the leases and provide for administrative rent payments through the date of rejection. TS&S negotiated and participated in drafting stipulations with counsel for the landlords, which were presented to the Court and "so ordered."

86. There were several executory contracts that required TS&S' special attention. First, the Debtors had a trademark licensing agreement with Karen Neuberger, Ltd. ("KN") pursuant to which KN licensed the trademark brand "Karen Neuberger" to Guilford and under which Guilford was granted the exclusive right to use the Karen Neuberger trade brand in connection with the manufacture and production of high-end bedding products. Guilford had not made minimum royalty payments under the trademark licensing agreement. KN had located another licensee for the brand but needed to re-acquire the license from Guilford expeditiously in order for the license to have any value during the current style year. TS&S negotiated a stipulation with KN rejecting the trademark licensing agreement on an expedited basis, in return for which KN waived any administrative claim it had for minimum royalty payments and accepted an unsecured prepetition claim of 50% of the amount that it alleged the Debtors owed to it. This stipulation was "so ordered" by the Court.

87. The Debtors also had a prepetition contract to purchase goods from EDPA USA, Inc. ("EDPA"). To secure payment for the contract, Guilford gave EDPA a deposit of $658,935. EDPA shipped a portion of the goods prepetition, and asserted that, because of the deposit, it was a secured creditor for the balance of the goods purchased under the sales contract. TS&S negotiated a settlement with EDPA pursuant to which EDPA was permitted to set off and retain $178,257.88 of the deposit representing payment in full for prepetition deliveries and a payment in consideration for EDPA's agreement to cancel the balance of the contract and return $480,677.12 of the deposit to

Guilford. TS&S drafted a stipulation, which was signed by the parties, presented to the Court and "so ordered".

88. Foamex, LP ("Foamex") and the Debtors had a long-time business relationship, pursuant to which Foamex would purchase fabrics from the Debtors and the Debtors would purchase foam from Foamex to manufacture certain of their products. The Debtors alleged that as of the Filing Date, Foamex owed them $2,993,546.66, and that the Debtors owed Foamex $725,882.48. The Debtors and Foamex wished to effectuate setoffs to the extent of their mutual prepetition debts as permitted by § 553 of the Bankruptcy Code, while continuing to transact business with each other after the Filing Date in the ordinary course.

89. TS&S negotiated and drafted a stipulation with Foamex pursuant to which each party's prepetition account payable was set off against the other. In addition, Foamex would remit $2,032,600.04 representing the undisputed reconciled portion of the prepetition amount owed by Foamex to the Debtors. The stipulation was "so ordered" by the Bankruptcy Court with no objection by the Committee, the Secured Lenders or any other party in interest.

90. The Debtors' Plan provides that, as of the Effective Date, any lease or contract that had not been previously assumed, rejected or was the subject of a pending motion would be deemed automatically rejected. As part of the Plan process, the Debtors filed a schedule of leases and contracts to be assumed on the Effective Date. Although the Plan provided for assumption of these contracts and leases, TS&S nonetheless prepared a separate motion seeking authority to assume such contracts and leases pursuant to § 365(a) of the Bankruptcy Code, in order to afford counter-parties to those contracts and leases the opportunity to assert cure amounts, if any, and to contest the cure amounts set forth by the Debtors. TS&S attended the hearing on that motion,

and the Court has entered orders and stipulations providing for the assumption of all leases and contracts that the Debtors require for their operations post-confirmation.

I. Sanders Litigation

91. Ellen Greenberg Sanders, Michele Sultanik and Michael Greenberg (collectively, the "Sanders Claimants") are plaintiffs in a prepetition action against Guilford (the "Sanders Action") pending in the District Court. They seek damages against Guilford and certain of its present and former officers under both ERISA, 29 U.S.C. § 1001 *et seq.* and various state law theories of recovery. Guilford had retained litigation counsel to represent it in the District Court, but because the Sanders Action implicated the automatic stay and the underlying claims in that action constituted prepetition claims against the estate, TS&S became involved. TS&S filed notices of appearance with the District Court to appear as special bankruptcy counsel on behalf of Guilford, and attended a status conference before the Judge Chin to advise him of the bankruptcy case and the automatic stay.

92. Subsequent to the Filing Date, the Sanders Claimants filed a motion in the District Court to withdraw the reference of the chapter 11 case to permit the District Court to continue the litigation in the Sanders Action, and to lift the automatic stay for that purpose. TS&S researched the applicable law and prepared an objection to that motion. In particular, TS&S argued that because the Sanders Action was already pending in the District Court, the only matter to be addressed was relief from the automatic stay, which it was asserted should be brought before this Court. The District Court declined to adopt the Debtors' arguments and granted the motion. The District Court withdrew the reference for the limited purpose of lifting the automatic stay to continue the litigation, but at TS&S' urging stressed that the payment or treatment of any judgment that might be rendered would be dealt with in this Court pursuant to the

Plan. TS&S drafted the order providing for this limited relief, which the District Court entered.

93. TS&S actively negotiated with counsel for the Sanders Claimants, and the Secured Lenders, to reach a settlement of the Sanders Action that would also negate objections to confirmation. Throughout the month between the Disclosure Statement hearing and confirmation, TS&S drafted and circulated many drafts of a settlement stipulation, incorporating comments received and trying to foster a resolution. On the morning of confirmation, the parties reached an agreement. The terms of the settlement were placed on the record at the confirmation hearing with the parties' consent, and approved by this Court pursuant to Bankruptcy Rule 9019(a). Thus, no confirmation objections were ever filed by the Sanders Claimants. Subsequently, TS&S worked to finalize language in the stipulation that reflected the agreement that had been reached. Despite numerous e-mails, phone calls and re-drafts of the relevant language, the Sanders Claimants refused to add final clarifying language needed by the Debtors and the Secured Lenders. The Sanders Claimants, without authorization, submitted the non-final stipulation to the Court for consideration. TS&S drafted and filed an objection to the entry of that stipulation. The Secured Lenders also filed an objection, and a hearing on the matter is scheduled for November 7.

J. <u>Administrative Matters Addressed</u>

94. The foregoing discussion only summarizes and highlights the more significant professional services rendered during the case by TS&S on behalf of the Debtors in connection with their chapter 11 cases. TS&S was also required to provide miscellaneous other services to the Debtors, including, but not limited to:

- filing an application to establish procedures for deeming utilities adequately assured of payment;

- communicating with Debtors, the Debtors' other professional advisors, counsel for the Committee and the United States Trustee's Office concerning logistical and administrative matters;

- responding to inquiries from parties-in-interest as necessary; and

- reviewing numerous pleadings and correspondence.

VI. COMPENSATION REQUESTED

95. There are numerous factors to be considered by the Court in determining allowances of compensation. *See, e.g., In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir.), *cert. denied*, 431 U.S. 904 (1977); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974); *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. 13 (Bankr. S.D.N.Y. 1991). *See also In re Nine Associates, Inc.*, 76 B.R. 943 (S.D.N.Y. 1987); *In re Cuisine Magazine, Inc.*, 61 B.R. 210 (Bankr. S.D.N.Y. 1986).

96. The perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to § 330 of the Bankruptcy Code:

> [B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

124 Cong. Rec. H11,092 (daily ed. Sept. 28, 1978) (emphasis added). *See also In re McCombs*, 751 F.2d 286 (8th Cir. 1984); *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. 13 (Bankr. S.D.N.Y. 1991); *In re Carter*, 101 B.R. 170 (Bankr. D.S.D. 1989); *In re Public*

Service Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988); *In re White Motor Credit Corp.*, 50 B.R. 885 (Bankr. N.D. Ohio 1985).

97. In awarding compensation pursuant to § 330 of the Bankruptcy Code to professional persons employed under § 327, the Court must take into account, among other factors, the cost of comparable non-bankruptcy services. Section 330 of the Bankruptcy Code provides, in pertinent part, for payment of:

> a. reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional persons employed by such person; and
>
> b. reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1).

98. As the court in *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. 13 (Bankr. S.D.N.Y. 1991), stated:

> With due recognition of the historical position of Bankruptcy Courts in compensation matters, we recognize that creditors have agreed to pay rates for retained counsel of their choice because of the needs of the particular case. One could posit other situations or cases where a presumption of prior informed judgment might not be as strong. Here, however, we have a multi-debtor, multi-committee case involving sophisticated creditors who have determined that the rates charged and tasks undertaken by attorneys are appropriate. We should not, and will not, second guess the determination of those parties, who are directed by Congress, under the Bankruptcy Code, to shape and resolve the case, and who are in fact bearing the cost. To do so, of course, would be to continue what Congress specifically intended to stop in 1978: Courts, instead of markets, setting rates, with the inevitable consequence that all the legal specialists required by the debtor or official committees would demur to participate.

Drexel, 133 B.R. at 20-21.

99. The professional services rendered by TS&S have required expenditure of substantial time and effort. During the case, 4,017 recorded hours have been expended by TS&S' professionals and paraprofessionals in providing the required professional services for which TS&S seeks compensation.

100. Time and labor devoted, however, is only one of the many factors to be considered in awarding attorney compensation. The number of hours expended must be considered in light of (i) the amount involved and the results achieved to date; (ii) the novelty and difficulty of the questions presented; (iii) the skill requisite to perform properly the legal services; (iv) the preclusion of other employment on behalf of other clients; (v) the customary fee charged to a private client for the services rendered; (vi) awards in similar cases; (vii) time constraints required by the exigencies of the case, including the frequency and amount of time required to be devoted other than during regular business hours; (viii) the experience, reputation and ability of the attorneys rendering services; and (ix) the nature and length of the professional relationship with the client (the "Johnson Factors"). *See Johnson v. Georgia Highway Express*, 488 F.2d at 717-19 (enumerating factors to be considered in awarding attorneys' fees in equal employment opportunities cases under Title VII); *In re First Colonial Corp. of America*, 544 F.2d at 1294 (applying the Johnson Factors in bankruptcy cases).

101. The majority of the Johnson Factors are codified in § 330(a) of the Bankruptcy Code, and have been applied by various courts in making determinations that requested attorneys' fees constitute reasonable compensation. It is well settled that the "lodestar method,"[4] as opposed to an application solely of the Johnson Factors, is the

[4] Application of the "lodestar method" involves multiplying the number of hours reasonably expended on the case by the reasonable hourly rate of compensation for each attorney. *Shaw v Travelers Indemnity Co. (In re Grant Assocs.)*, 154 B.R. 836, 843 (S.D.N.Y. 1993). This method of calculating attorney fees is appropriate in light of § 330(a) of the Bankruptcy Code, which serves as a starting point, permitting bankruptcy courts, in their own discretion, to consider other factors, such as the novelty and difficulty of

(continued on next page)

best means of determining attorney fees in bankruptcy cases.[5] The Supreme Court, however, has clearly articulated that the "lodestar method" is presumed to subsume the Johnson Factors, as does § 330(a) of the Bankruptcy Code. *Delaware Valley I*, 478 U.S. at 563; *Cena's Fine Furniture*, 109 B.R. at 581.

102. TS&S respectfully submits that application of the foregoing criteria more than justifies the compensation requested in this Application. The professional services rendered in these chapter 11 cases have been performed by attorneys with broad expertise and high levels of skill in their practice areas or specialty.

103. During the case, TS&S has been required to furnish extensive services which have at times fully occupied the time of its attorneys, to the preclusion of other firm matters and clients. If this were not a case under the Bankruptcy Code, TS&S would charge the Debtors, and expect to receive on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally examined in bankruptcy cases, and based upon the factors to be considered in accordance with § 330 of the Bankruptcy Code, the results that have been achieved during the case more than substantiate charges in that amount. The services that TS&S has rendered have produced benefits that have inured to the Debtors, their estates and creditors.

104. In view of the foregoing, TS&S respectfully requests that it be allowed final compensation in the amount of $1,370,515.50 for services rendered in

---

the issues, the special skills of counsel, and their results obtained. *In re Copeland*, 154 B.R. 693, 698 (Bankr. W.D. Mich. 1993).

[5] *See e.g.*, *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*, 483 U.S. 711 ("*Delaware Valley II*"), on remand, 826 F.2d 238 (3rd Cir. 1987); *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 478 U.S. 546 (1986) ("*Delaware Valley I*"); *United States Football League v. National Football League*, 887 F.2d 408, 413 (2nd Cir. 1989), *cert. denied*, 493 U.S. 1071 (1990); *Lindy Bros. Builders Inc. v. American Radiator and Standard Sanitary Corp.*, 487 F.2d 161 (3rd Cir. 1973), *vacated on other grounds*, 540 F.2d 102 (3rd Cir. 1976); *In re Cena's Fine Furniture, Inc.*, 109 B.R. 575 (E.D.N.Y. 1990); *In re Drexel Burnham Lambert Group Inc.*, 133 B.R. 13, 21 (Bankr. S.D.N.Y. 1991).

connection with the Debtors' chapter 11 cases. During the period covered by this Application, TS&S' hourly billing rates for attorneys and paraprofessionals ranged from $80 to $625 per hour.

105. The prosecution of these chapter 11 cases to a confirmed Plan six months after filing and paying 100% to all creditors with allowed claims more than justifies full compensation in the amount requested. In view of the policy underlying § 330 of the Bankruptcy Code that attorneys in bankruptcy cases be compensated on parity with attorneys practicing in other fields, TS&S respectfully submits that final compensation should be allowed as requested.

VII. DISBURSEMENTS

106. As set forth in Exhibit "2", TS&S incurred $52,495.13 in expenses in providing professional services during the case.

107. For photocopying expenses, TS&S charges all of its clients $.20 per page. For facsimile expenses, TS&S excludes charges for incoming facsimile transmissions, and includes charges for long distance outgoing facsimiles at $1.25 per page (there are no local fax charges included in TS&S' disbursements). These charges are intended to cover TS&S' direct operating costs for photocopying and facsimile facilities, which costs are not incorporated into the TS&S hourly billing rates. Only clients who actually use photocopying, facsimile, and other office services of the types set forth in Exhibit "2" are separately charged for such service. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying, facsimile, and document production facilities and services. The amount of the standard photocopying and facsimile charge is intended to allow TS&S to cover the related expenses of its photocopying and telecopying service. A determination of the actual expenses per page for photocopying

and telecopying, however, is dependent on both the volume of copies and the total expenses attributable to photocopying and telecopying on an annual basis.

108. The time constraints frequently imposed by the circumstances of these cases has required TS&S' attorneys and other employees at times to devote substantial amounts of time during the evenings and on weekends to the performance of their duties on behalf of the Debtors.

109. Moreover, consistent with firm policy, attorneys and other employees of TS&S who worked late into the evenings were reimbursed for their reasonable meal costs and their cost for transportation home. TS&S' regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket disbursements incurred during the regular course of rendering services. In addition, due to the nature of the Debtors' chapter 11 cases, same day and overnight delivery of documents and other materials was at times required as a result of deadlines and/or emergencies necessitating the use of such express services. These disbursements are not included in TS&S' overhead for the purpose of setting billing rates. TS&S has made every effort to minimize its disbursements in these cases. The actual expenses incurred in providing professional services were absolutely necessary, reasonable and justified under the circumstances to serve the needs of the Debtors, their estates and creditors.

110. None of the travel-related expenses of TS&S attorneys included herein were for first-class airfare, luxury accommodations, or deluxe meals.

VII. CONCLUSION

111. The legal services summarized by this Application and rendered by TS&S to the Debtors were substantial, professional and beneficial to the Debtors' chapter

11 cases. They were reasonable and necessary to preserve and maximize of the Debtors' estates.

112. As noted above, the amounts sought by TS&S consist only of actual and reasonable billable time expended by attorneys and legal support staff and actual and necessary disbursements made by the firm. As demonstrated throughout this Application, the other factors typically considered in determining compensation – including complexity, results achieved, special expertise, magnitude of the matter, and professional standing – all weigh in favor of concluding that the amount of compensation requested by TS&S is necessary, fair, and reasonable.

113. In light of (a) the size and complexity of these chapter 11 cases, (b) the results achieved, (c) the significant contributions made and time devoted, often under severe time constraints to the preclusion of other matters, (d) awards of compensation in similar cases, and (e) other factors pertinent to the allowance of compensation, TS&S believes that the compensation sought herein is fair and reasonable and is warranted under the relevant provisions of the Bankruptcy Code.

114. All services for which compensation is sought were performed for and on behalf of the Debtors and their estates, and not on behalf of any other creditor or party in interest. TS&S is charging its standard hourly rate for professionals performing services. Other than payments made in connection with the Administrative Fee Order, no payments have been made or promised to TS&S for postpetition services rendered in connection with these cases. TS&S has not entered into any agreement, express or implied, with any other party in interest for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

WHEREFORE, TS&S respectfully requests that this Court enter an order (i) allowing TS&S compensation for professional services rendered for the period March

13, 2002 through and including September 30, 2002 in the amount of $1,370,515.50, representing actual billable time for services rendered by TS&S as bankruptcy counsel to the Debtors, (ii) for reimbursement of actual and necessary expenses incurred and recorded by TS&S for the period March 13, 2002 through and including September 30, 2002 in the amount of $52,495.13, (iii) directing payment of the foregoing amounts to the extent not already paid pursuant to the Administrative Fee Order, and (iv) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 29, 2002

GUILFORD MILLS, INC., *et al.*
Reorganized Debtors
By their Bankruptcy Counsel,
TOGUT, SEGAL & SEGAL LLP,
By:

/s/Frank A. Oswald
ALBERT TOGUT (AT-9759)
FRANK A. OSWALD (FAO-1223)
Members of the Firm
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000