

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	Chapter 11
	)	
HAYES LEMMERZ	)	Case No. 01-11490 (MFW)
INTERNATIONAL, INC., <u>et al.</u> ,	)	
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date: 9/15/03 at 9:30 a.m.
	)	Objection Deadline: 9/8/03 at 4:00 p.m.
	)	

**MOTION OF APOLLO MANAGEMENT V, L.P. FOR ALLOWANCE AND PAYMENT  
OF AN ADMINISTRATIVE EXPENSE UNDER SECTIONS 503(b)(3)(D) AND 503(b)(4)  
OF THE BANKRUPTCY CODE FOR COSTS AND EXPENSES IN MAKING A  
SUBSTANTIAL CONTRIBUTION IN THESE CHAPTER 11 CASES**

Apollo Management V, L.P. ("Apollo") hereby moves, pursuant to sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code, 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4), for the allowance and payment of an administrative claim in the amount of \$600,000 for the partial reimbursement of costs and expenses incurred in making a substantial contribution in the above-captioned chapter 11 cases. That substantial contribution is based on the efforts of Apollo that expedited and contributed materially to the achievement of a consensual plan of reorganization in these chapter 11 cases, and thereby materially enhanced the value available to all creditors. In support of this Motion (the "Motion"), Apollo respectfully alleges and shows as follows:

**BACKGROUND**

1. On December 5, 2001 (the "Petition Date"), Hayes Lemmerz International, Inc. ("HLI") and certain of its subsidiaries and affiliates (collectively, with HLI, the "Debtors") filed voluntary petitions for reorganization in this Court.
2. The United States Trustee appointed an official committee of unsecured creditors (the "Committee") on December 17, 2001.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 503(b)(3)D and 503 (b)(4) of the Bankruptcy Code.

5. The Debtors are a leading supplier of wheels, brakes and suspension components to the global automotive and commercial highway markets with a presence in 17 countries. The Debtors' operations are conducted through their world headquarters located in Northville, Michigan, and approximately 25 facilities in North America, 20 manufacturing facilities in Europe and five manufacturing facilities in South America, Asia and South Africa.

6. On December 16, 2002, the Debtors filed their proposed Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession [docket no. 1678] (the "Initial Plan") and their proposed Disclosure Statement With Respect to Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession [docket no. 1678].

7. On February 20, 2003, the Debtors filed the First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession [docket no. 2028] (the "First Amended Plan") and the Disclosure Statement With Respect to First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession [docket no. 2017] (the "First Amended Disclosure Statement").

8. On April 9, 2003, the Debtors filed their Modified First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors in Possession [docket no. 2167] (as further modified, the "Modified Plan") and Disclosure Supplement Regarding Modifications to First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession [docket no. 2166].

9. On May 12, 2003 (the "Confirmation Date"), this Court entered an order confirming the Modified Plan (the "Confirmation Order"). The Modified Plan became effective on June 3, 2003 (the "Effective Date").

10. Until the Effective Date, and at all times material to this Motion, funds managed by Apollo beneficially owned in excess of 40 percent (over \$120 million in face amount) of HLI's 11 7/8% Senior Notes due 2006 (the "Senior Notes"). Pursuant to the Modified Plan, that debt was converted into equity of the reorganized holding company for the Reorganized Debtors.<sup>1</sup>

### **RELIEF REQUESTED**

11. By this Motion, Apollo seeks the allowance and payment of an administrative claim for reimbursement of a portion of the costs and expenses which it incurred in making a substantial contribution in these chapter 11 cases.

12. The Debtors themselves have acknowledged the value and importance of this contribution. Specifically, prior to Apollo's intercession and direct involvement in plan negotiations among the Debtors, the Agent for the Debtors' Prepetition Lenders (the "Agent") and the Committee, it appeared that plan negotiations "were reaching an impasse and litigation between the Creditors' Committee and the Prepetition Lenders was going to be commenced despite the catastrophic impact it would have on the Debtors' businesses." Declaration of Kenneth Hiltz, Chief Restructuring Officer of Hayes Lemmerz International, Inc. in Support of Modified First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and its Affiliated Debtors and Debtors in Possession [docket no. 2288] (the "Hiltz Declaration") at

¶ 66. At that point, Apollo intervened and helped avoid this "catastrophic" impact:

Apollo voluntarily joined the negotiation process on behalf of itself and the Senior Noteholders as a group. Apollo was able to bring a fresh perspective to the negotiations and identified several factual points and legal theories that had yet to be raised by any of the

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the Modified Plan.

parties in the negotiations and which served to re-energize the negotiations. Frankly, I believe the addition of Apollo to the negotiations represented a turning point in these cases. Ultimately, with Apollo in the mix, the parties were able to forge the settlement that was embodied in the First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession, dated February 20, 2003 (the "Initial Plan") and which the Debtors commenced soliciting on or about February 25, 2003 after obtaining Court approval of the disclosure statement with respect thereto dated as of even date therewith.

Id. at ¶ 67 (emphasis added).

13. The expenses for which Apollo seeks to be reimbursed represent only a portion of the fees and expenses of the professions that were employed by Apollo in connection with its participation in these chapter 11 cases. Those professionals included: (i) Morgan, Lewis & Bockius LLP ("MLB"), which acted as corporate counsel to Apollo in connection with these chapter 11 cases and advised Apollo on other issues related thereto; (ii) Stutman, Treister & Glatt Professional Corporation ("ST&G"), which acted as Apollo's special bankruptcy and reorganization counsel in connection with these cases; (iii) Richards Layton & Finger, P.A. ("RLF"), which acted as Apollo's Delaware co-counsel in connection with these chapter 11 cases; and (iv) PricewaterhouseCoopers ("PWC"), which acted as Apollo's accountants in connection with these cases. Each of these firms assisted Apollo in making its contribution in these cases.

14. MLB was responsible for reviewing, and advising Apollo regarding, corporate matters relating to these chapter 11 cases and a plan, as well as certain other non-bankruptcy matters. MLB reviewed the Debtors' financial and corporate structure and history and their debt structure; reviewed certain pending litigation and claims; addressed issues of corporate law relating to the plan; and reviewed and assisted in the revision of various documents that were part of the plan, including corporate and structural documents such as the certificate of incorporation, bylaws, warrant agreements, the term sheet for the long-term incentive plan, and the like. Until Apollo engaged ST&G as its special bankruptcy and reorganization counsel, and for a period of time thereafter, MLB also had primary responsibility

for monitoring and reviewing developments in these chapter 11 cases on behalf of Apollo and keeping Apollo apprised of developments in these cases.

15. Attached hereto as Exhibit "A" and incorporated herein by this reference, are copies of time records received by Apollo from MLB which set forth the services performed by MLB in greater detail. As set forth in Exhibit "A," the total fees charged and estimated reimbursable costs of MLB for services rendered to Apollo in connection with these cases from January 1, 2002 through the Confirmation Date (May 12, 2003) was \$237,637.34.

16. ST&G assisted Apollo in reviewing various bankruptcy-related issues, including intercreditor issues; participated extensively in plan negotiations and in the plan process on behalf of Apollo, including intercreditor issues; had primary responsibility for preparing the term sheets described later in this Motion; and participate in the review and revision of the plans that were filed in this case. Additionally, responsibility for monitoring developments in these chapter 11 cases on behalf of Apollo and keeping Apollo apprised of such developments was ultimately transferred to ST&G.

17. Attached hereto as Exhibit "B" and incorporated herein by this reference, are the records of ST&G which set forth in detail the services rendered by ST&G to Apollo in connection with these cases and the reimbursable expenses of ST&G in connection with these cases. As set forth in Exhibit "B," the total amount of the fees and expenses charged by ST&G to Apollo for services rendered to Apollo in connection with these cases through the Confirmation Date (May 12, 2003) was \$357,539.97.

18. RLF served as Apollo's Delaware co-counsel and was responsible for matters requiring the assistance of local counsel and matters of local practice and procedure, as well as appearing at various hearings on Apollo's behalf and providing advice on matters of Delaware corporate law.

19. Attached hereto as Exhibit "C" and incorporated herein by this reference are copies of the records of RLF received by Apollo which set forth in detail the services rendered by RLF to Apollo and the reimbursable expenses of RLF in connection with these

cases. As set forth in Exhibit "C," the total amount of the fees and expenses charged by RLF for services rendered to Apollo in connection with these cases through the Confirmation Date (May 12, 2003) was \$19,292.31.

20. PWC was responsible for assisting Apollo in areas of financial and tax due diligence that were material to Apollo's participation in the plan process. PWC's services included analysis and advice regarding matters such as tax issues (including, among others, the tax impact of various structures and tax issues under the plans that were filed) and the Debtors' employee benefit and pension plans and related costs and tax consequences.

21. Attached hereto as Exhibit "D" and incorporated herein by this reference are the records of PWC received by Apollo which reflect services rendered by PWC to Apollo, and the fees and expenses incurred by Apollo, in connection with PWC's engagement by Apollo in connection with these cases. As set forth in Exhibit "D," the total amount of the fees and expenses which PWC charged to Apollo for services rendered to Apollo in connection with these cases through the Confirmation Date (May 12, 2003) was \$415,806.

22. As set forth in paragraphs 15-21, above, the aggregate professional fees and expenses incurred by Apollo in connection with these cases were in excess of \$1,030,275.62. Apollo believes that, based on its significant contribution to the achievement of a consensual plan that resulted in the preservation of millions of dollars of value for all creditors, Apollo is entitled to a very high portion of that amount. However, as a matter of compromise with the Debtors, Apollo has agreed to reduce its request to \$600,000 and, Apollo understands, the Debtors will support that request.

#### **BASIS FOR RELIEF**

##### **A. The Debt Structure and Creditor Constituencies That Had To Be Addressed By A Plan.**

23. At the time these chapter 11 cases were filed, the Debtors had five major types of indebtedness, as follows:

a. Bank Debt-Prepetition Credit Facility. The Prepetition Credit Facility consisted of borrowings under a credit agreement and ancillary documents. As of the Petition Date, approximately \$748.9 million of principal was outstanding under that facility, exclusive of the letters of credit. The Prepetition Credit Facility purported to be secured by substantially all of the Debtors' assets such that, if the lenders under that facility in fact held unavoidable liens on all of their purported collateral, the Prepetition Credit Facility would have been oversecured. However, there were significant issues with respect to the potential avoidability of a significant portion of the claimed liens securing the Prepetition Credit Facility. The most significant of those issues related to potential challenges to the liens claimed on the stock of Hayes Germany and Hayes Italy, non-debtor European subsidiaries whose stock is owned indirectly by HLI California and HLI Europe and directly by Fabricated Holdings. In addition, there were significant issues as to the allocation of value between the European subsidiaries and the domestic subsidiaries in the event that the lenders' claims to the stock of Hayes Germany and Hayes Italy were avoided. Absent a settlement, this issue would have erupted in litigation between the Agent and the Committee which could have been a significant determining factor in the allocation of value under the plan, but which could also have prolonged these cases for an extended period of time, and thereby had a seriously destabilizing effect on the Debtors' business.

b. Senior Notes. Prior to the Petition Date, HLI issued \$300 million in principal amount of its Senior Notes. Although not secured, the Senior Notes were not contractually subordinated to the Prepetition Credit Facility, and were entitled to the benefits of the contractual subordination provisions contained in the Subordinated Notes described below. As previously indicated, until the Effective Date of the Modified Plan, (when the Senior Notes were converted to stock of the reorganized holding company), funds managed by Apollo beneficially owned approximately 40 percent of the Senior Notes.

c. Subordinated Notes. Prior to the Petition Date, HLI had issued three series of Subordinated Notes in the aggregate principal amount of \$900 million (the "Subordinated Notes"). By their terms, the Subordinated Notes were contractually subordinated both to the Prepetition Credit Facility, and to the Senior Notes.

d. Other Secured Debt. In addition to the Prepetition Credit Facility, the Debtors had various types of assets -- specific secured debt which had to be dealt with under a plan.

e. Other Unsecured Debt. Collectively, the various Debtors also had what Apollo understood to be in excess of \$100 million in other unsecured claims, consisting of trade claims, potential contract rejection claims and the like.

24. The complexities resulting from the various types of claims against the Debtors were compounded by the fact that different creditors held claims against different Debtor entities. This led to significant issues of structural subordination. The holders of claims under the Prepetition Credit Facility, the Senior Notes and the Subordinated Notes had the benefit of guarantees on the part of multiple entities, including HLI Europe and HLI California which, collectively, owned all of the stock of Fabricated Holdings (the holding company that owned the stock of Hayes Germany and Hayes Italy). In contrast, virtually none of the Debtors' other creditors had claims against HLI Europe or HLI California.

**B. Apollo's Central Participation In The Plan Process**

25. Initially, and in order to participate meaningfully in the plan process in these cases, Apollo engaged in extensive due diligence and analysis with respect to the Debtors' business, operations and related financial matters; the potential impact of certain types of claims; the Debtors' history, corporate structure and debt structure; potential intercreditor issues; and other issues that could bear on the formulation of a plan in these cases. For example, in order for Apollo to play a meaningful role in the plan process, it had to be in a position to assess and understand the Debtors' projections; key elements of those projections relating to the Debtors' retirement and pension plans; the nature of the Debtors' businesses; and the economically



significant tax consequences of various plan approaches. From a corporate and bankruptcy standpoint, it was important to understand the Debtors' corporate structure, the significant issues relating to the potential avoidability of a portion of the liens of the Prepetition Lenders, and structural issues relating to the rights of the Debtors' creditors vis-a-vis one another. This "groundwork" was indispensable to Apollo's ability to play what ultimately proved to be a key and constructive role in the plan process.

26. Apollo's substantial contribution to the plan process has been summarized thusly by Kenneth Hiltz, the Debtors' Chief Restructuring Officer:

Beginning in October 2002 and continuing through early this year, the Debtors engaged in extensive plan negotiations with their creditor constituencies. Initially such negotiations involved only the Prepetition Agent, on behalf of the Prepetition Lenders, and the Creditors' Committee on behalf of all unsecured creditors. Although the parties made considerable progress during such negotiations, they were unable to resolve the complicated issues between the Prepetition Lenders and the Creditors Committee. Ultimately, it appeared that negotiations were reaching an impasse and litigation between the Creditors' Committee and the Prepetition Lenders was going to be commenced despite the catastrophic impact it would have on the Debtors' businesses.

At this point, Apollo voluntarily joined the negotiation process on behalf of itself and the Senior Noteholders as a group. Apollo was able to bring a fresh perspective to the negotiations and identified several factual points and legal theories that had yet to be raised by any of the parties in the negotiations and which served to re-energize the negotiations. Frankly, I believe the addition of Apollo to the negotiations represented a turning point in these cases. Ultimately, with Apollo in the mix, the parties were able to forge the settlement that was embodied in the First Amended Joint Plan of Reorganization of Hayes Lemmerz International, Inc. and Its Affiliated Debtors and Debtors In Possession, dated February 20, 2003 (the "Initial Plan") and which the Debtors commenced soliciting on or about February 25, 2003 after obtaining Court approval of the disclosure statement with respect thereto dated as of even date therewith.

Hiltz Declaration at ¶¶ 66-67.

27. To elaborate somewhat, following extensive legal and financial review and analysis, and after considering various approaches, in November, 2002, Apollo transmitted to the Debtor a proposed "Term Sheet for a Chapter 11 Plan of Reorganization for Hayes

Lemmerz International, Inc. ("Hayes") and Its Affiliated Entities which are the Debtors In Administratively Consolidated Chapter 11 Cases ("Debtors")" (the "Initial Term Sheet"). The Debtors shared the Initial Term Sheet with the Agent and the Committee. However, the Debtors did not appear to be supportive of certain elements of the Initial Term Sheet, and Apollo did not proceed with the Initial Term Sheet. Instead, as set forth below, the Debtors proceeded to file a plan which did not embody a settlement of the lien-avoidance issues and left distributions subject to the outcome of future litigation or settlement. Nevertheless, Apollo's efforts in preparing the Initial Term Sheet enabled it to submit a revised Term Sheet (discussed below) two months later that established the framework for additional negotiations that led to a consensual plan.

28. On December 16, 2002, the Debtors filed the Initial Plan. The Initial Plan highlighted the impasse in the plan negotiations among the Debtors, the Agent for the Prepetition Lenders, and the Creditors Committee. The Initial Plan did not include a specific allocation of value among the Prepetition Lenders and the principal classes of unsecured creditors. Instead, the Initial Plan provided, in substance, for a distribution of value to be determined later based on the outcome either of litigation or of settlement of the avoidance and valuation issue that divided the Agent and the Creditors Committee. Although the Initial Plan was an important step in moving the plan process forward, it could not, by its very nature, be a consensual plan or avoid litigation that could have had what the Debtors' Chief Restructuring Officer characterized as a "catastrophic" impact on the Debtors' business.

29. Meanwhile, in an effort to break the impasse, Apollo pursued direct negotiations with the Agent and the Committee. To that end, Apollo arranged for a meeting in New York in early January in which it presented a plan proposal to the Agent, along with supporting financial analyses and data, and engaged in an exchange of views with the Agent and its professionals.

30. Following that meeting, and on or about January 21, 2003, Apollo's counsel submitted to the Committee and the Agent for the Prepetition Lenders a revised proposed "Term Sheet for a Chapter 11 Plan of Reorganization for Hayes Lemmerz

International, Inc. ('Hayes') and Its Affiliated Entities Which Are The Debtors In Administratively Consolidated Chapter 11 Cases ('Debtors')" (the "Revised Term Sheet"). The Revised Term Sheet was accompanied by a letter which set forth the legal and factual analysis that, in Apollo's view, supported the Revised Term Sheet. The structure and concepts set forth in the Revised Term Sheet served as the basis for negotiations among the Debtors, Apollo, the Agent and the Committee which ultimately led to an agreement among them and the filing of the First Amended Plan one month later. The distributive scheme of the First Amended Plan followed the structure of the Term Sheet, although some of the numbers and allocations were changed. Thus, the submission of Apollo's Revised Term Sheet triggered a process that led to the filing of an amended plan that reflected an agreement on the part of the Debtors, the Agent, Apollo, and the Committee within about one month. The prior work that Apollo and its professionals had performed in connection with the Initial Term Sheet submitted two months earlier enabled Apollo to present the Revised Term Sheet and expedite the process in January 2003.

31. After the First Amended Plan was filed, but prior to the hearing on the First Amended Disclosure Statement, certain holders of claims under the Prepetition Credit Facility indicated their disagreement with the First Amended Plan and objected to the proposed First Amended Disclosure Statement. Although the First Amended Disclosure Statement was approved over their objection, it became clear that further negotiations would be necessary in order to achieve a truly consensual plan with the Prepetition Lender group. Accordingly, Apollo participated in extensive and intense negotiations with the Debtors, the Agent, the Committee and the group of "dissident" Prepetition Lenders in an effort to achieve consensus on a plan and avoid either "cramdown" litigation, or costly and protracted avoidance litigation between the Prepetition Lenders and the Creditors Committee. These efforts were ultimately successful and led to the filing and ultimate confirmation of the Modified Plan.

32. Thus, at every important juncture, Apollo played a central role in achieving a consensual plan: first, by submitting the Revised Term Sheet in January, 2002 that

helped break the impasse and precipitated and formed the basis for the negotiations that led to agreement on the First Amended Plan, and then by participating actively in the additional negotiations with the "dissident" Prepetition Lenders which led to the filing of the Modified Plan.

33. Apollo's contribution to the achievement of a consensual plan provided value to all constituencies -- not just Apollo -- because of the material and adverse effect that a continued impasse and failure to achieve a consensual plan would have had on the Debtors and their businesses. The achievement of a consensual plan served to stem the ongoing, substantial cost of the chapter 11 process and to avoid the substantial additional cost of the potential lien avoidance litigation (in which the estates would have been obligated to pay counsel for the Committee and to reimburse the Agent for the cost of the Agent's counsel). Moreover, and wholly apart from the administrative cost of prolonging these chapter 11 cases, this is one of those cases where value would have been lost if the Debtors remained mired in chapter 11 and did not confirm a plan, because of the material and adverse impact that the Debtors' continued presence in chapter 11 would have had on their ability to continue to obtain contracts.

34. As the Debtors' Chief Restructuring Officer, Kenneth Hiltz, pointed out, the failure to achieve a consensual plan, and the commencement of litigation between the Agent and the Committee, would have had a "catastrophic impact" on the Debtors' businesses. (Hiltz Declaration at ¶ 66.) As the Debtors explained in their First Amended Disclosure Statement:

The Debtors believe that relationships with their customers would be maintained if the Chapter 11 Cases proceed as proposed in the Plan and discussed herein. However, if there is a further protracted chapter 11 process, the Debtors believe their relationships with their customers likely would be adversely impacted and the Debtors' operations likely would be materially affected.

First Amended Disclosure Statement at 118 (emphasis added).

35. In their meetings with Apollo and representatives of other creditor constituencies, the Debtors consistently harped on the theme that business and value would be lost if they remained in chapter 11. Thus, recalling that the value of the Debtors' businesses is, in

large measure, a multiple of the Debtors' EBITDA, it is clear that Apollo's material contribution to the achievement of a consensual plan also represented a material contribution to preserving value that would have been lost if the impasse in these cases was not broken, the chapter 11 process was prolonged, and the Debtors' warnings of significant lost business came true.

**ARGUMENT**

36. Bankruptcy Code section 503(b) provides in pertinent part that:

After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including --

\* \* \*

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by --

\* \* \*

(D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11 of this title . . .

\* \* \*

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

11 U.S.C. § 503(b). Bankruptcy Code sections 503(b)(3)(D) and 503(b)(4) grant administrative expense priority to the actual, necessary expenses incurred by a creditor, including reasonable compensation for professional services rendered by such creditor's attorneys or accountants, in making a "substantial contribution" to a case under chapter 11.

**A. Apollo Has Made a "Substantial Contribution" to These Cases.**

37. The Bankruptcy Code does not define the term "substantial contribution." However, in determining whether an entity has made a "substantial contribution" within the meaning of Bankruptcy Code section 503(b)(3)(D), courts in the Third Circuit consider "whether the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor's estate and the creditors." Lebron v. Mechem Fin. Inc., 27 F.3d 937, 944 (3d Cir. 1994). The relevant factors include:

- a. whether the services benefited the bankruptcy estate or all parties in the case;
- b. whether the services had a direct, significant and demonstrable effect on the bankruptcy estate; and
- c. whether the services were duplicative of services performed by other parties in the case.

See In re Lloyd Secs., Inc., 183 B.R. 386, 394 (E.D. Pa. 1995), aff'd 75 F.3d 853 (3d Cir. 1996); In re FRG, Inc., 124 B.R. 653, 658 (Bankr. E.D. Pa. 1991). As a general matter, "services which substantially contribute to a case are those which foster and enhance . . . the progress of reorganization." See Lebron, 27 F.3d at 944 (quoting In re Consol. Bancshares, Inc., 785 F.2d 1259, 1253 (5th Cir. 1986)).

38. A creditor's motive in taking actions that benefit the estate has little relevance in the determination of whether such creditor has made a "substantial contribution." See, e.g., Lebron, 27 F.3d at 944 ("Most activities of an interested party that contribute to the estate will also, of course, benefit that party to some degree, and the existence of self-interest cannot in and of itself preclude reimbursement."); In re DP Partners, Ltd. P'ship., 106 F.3d 667, 673 (5th Cir. 1997) ("nothing in the Bankruptcy Code requires a self-deprecating, altruistic intent as a prerequisite to recovery of fees and expenses under section 503"). Instead, the focus should be on the nature and extent of such creditor's contributions. Accordingly, the fact that Apollo may have been acting in its own self-interest does not preclude its claim for substantial contribution under Bankruptcy Code section 503(b)(3)(D).

39. As described in greater detail in paragraphs 23 through 35 above, Apollo (a creditor) was instrumental to the ultimate confirmation of the Modified Plan. Specifically:

a. By joining in the negotiation process, Apollo "reenergized" plan negotiations among the Debtors, the Committee and the Agent after it "appeared that negotiations were reaching an impasse," which, according to the Debtors' Chief Restructuring Officer, "represented a turning point in these cases." (Hiltz Declaration at ¶¶ 66-67).

b. Apollo prepared an Initial Term Sheet and a Revised Term Sheet; the latter served as the basis for the negotiations among the Debtors, the Committee, the Agent and Apollo that ultimately resulted in the filing of the First Amended Plan.

c. After certain holders of claims under the Prepetition Credit Facility indicated their disagreement with the First Amended Plan and objected to the First Amended Disclosure Statement, Apollo participated in extensive negotiations with the Debtors, the Committee, the Agent and the "dissident" Prepetition Lenders, which led to the filing and ultimate confirmation of the Modified Plan.

40. Apollo's contributions clearly enhanced -- perhaps saved -- the "progress of reorganization" in these cases. Prior to Apollo's involvement, the negotiations between the Debtors, the Committee and the Agent were reaching an impasse and the Committee and the Agent were threatening litigation. Apollo's involvement, which represented a "turning point in these cases," Hiltz Declaration at ¶ 67, reenergized the negotiations, as Apollo introduced "factual points and legal theories that had yet to be raised by any of the parties in the negotiations," *id.* Thus, Apollo's efforts were instrumental to the ultimate confirmation of the Modified Plan.

41. Furthermore, Apollo's efforts allowed the Debtors to expedite their exit from chapter 11 and to avoid the commencement of litigation between the Committee and the Agent. The Debtors' continued presence in chapter 11 would have adversely impacted the Debtors' relationships with their customers and would have had a "catastrophic impact" on the

Debtors' businesses. Id.; Disclosure Statement at 118. Thus, by preserving the value of the Debtors' estates, Apollo's contributions resulted in a substantial benefit to all creditors in these cases.

**B. Apollo Is Entitled to Administrative Priority for the Fees and Expenses of its Professionals.**

42. Apollo, a creditor, has clearly made a "substantial contribution" in these cases. Thus, pursuant to Bankruptcy Code sections 503(b)(3)(D) and (b)(4), Apollo is entitled to an allowed administrative claim in the amount of no less than \$600,000<sup>2</sup> for its costs and expenses in these cases.

43. Based on the nature, extent, and value of the services provided by Apollo's professionals, the compensation for the services rendered by such professionals is reasonable. Such services included: (a) conducting the due diligence necessary for Apollo to make its substantial contribution to these cases;<sup>3</sup> (b) preparing the Initial Term Sheet and the Revised Term Sheet that served as the basis for the Modified Plan that was eventually confirmed; (c) participating in negotiations among the Debtors, the Committee and the Agent and formulating the "factual points and legal theories that had yet to be raised by any of the parties in the negotiations," Hiltz Declaration at ¶ 67; and (d) participating in successful negotiations with the Debtors, the Committee, the Agent and the "dissident" Prepetition Lenders.

44. Accordingly, pursuant to Bankruptcy Code section 503(b)(4), Apollo is entitled to an administrative priority expense for the fees and expenses of its professionals in these cases in the amount of no less than \$600,000. See 11 U.S.C. § 503(b)(4).

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<sup>2</sup> Apollo has incurred \$1,030,275.62 for services rendered and expenses incurred by MLB, STG, RLF and PWC, its attorneys and accountants in these cases. However, as a matter of compromise with the Debtors, Apollo has agreed to reduce its request for administrative priority to \$600,000.

<sup>3</sup> The reasonable compensation for due diligence rendered by professionals of an entity whose expense is allowable under Bankruptcy Code section 503(b)(3) is entitled to administrative priority under Bankruptcy Code section 503(d)(4). See, e.g., In re Alleghany Int'l, Inc., 117 B.R. 171, 176 (W.D. Pa. 1990) (allowing administrative claims for due diligence expenses incurred by issuer of commitment letter).



**NO PRIOR REQUEST FOR RELIEF**

45. No prior request for the relief sought herein has been made by Apollo. However, prior to being revised to conform with certain rulings of the Court at the confirmation hearing, the Modified Plan did provide for the allowance of "substantial contribution" claims to Apollo and certain other parties in interest, without the filing of any motion. However, an objection to that provision was sustained by the Court, and the provision was therefore deleted from the Modified Plan. The effect of that deletion was to require Apollo to file a Motion such as this one in order to obtain the allowance of a claim under section 503(b)(3)(D) or 503(b)(4) of the Bankruptcy Code.<sup>4</sup>

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<sup>4</sup> The Confirmation Order provides in pertinent part that:  
Any Person who requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (b)(4), and (b)(5) of the Bankruptcy Code must file an application with the Clerk of the Court before the thirtieth (30th) day after the Effective Date . . . ; provided, however, that any members of the Creditors' Committee, Apollo, and the Ad hoc Prepetition Lending Steering Committee shall have until the sixtieth (60th) day after the Effective Date [i.e., August 4, 2003] to file any such application.  
Confirmation Order at ¶ 24.

**CONCLUSION**

Wherefore, Apollo prays that this Court enter an order, pursuant to Bankruptcy Code sections 503(b)(3)(D) and (b)(4), providing for the award and payment of an administrative claim for \$600,000 for costs and expenses incurred by Apollo in making a substantial contribution in these cases, and granting such other and further relief as may be appropriate.

Dated: July 29, 2003  
Wilmington, Delaware



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Russell C. Silberglied (No. 3462)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
P.O. Box 551  
Wilmington, Delaware 19899  
Tel: (302) 651-7700  
Fax: (302) 651-7701

-- and --

Isaac M. Pachulski (No. 62337)  
STUTMAN, TREISTER & GLATT  
1901 Avenue of the Stars  
Twelfth Floor  
Los Angeles, California 90067  
Tel: (310) 228-5655  
Fax: (310) 228-5788

ATTORNEYS FOR APOLLO  
MANAGEMENT V, L.P.