

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

IN RE:  
IMPERIAL DISTRIBUTING, INC., et. al.  
Debtors

CHAPTER 11  
Case No. 01-00140 (SLR)  
(Jointly Administered)

**FIRST AND FINAL APPLICATION OF DRESDNER KLEINWORT WASSERSTEIN,  
INC. AS FINANCIAL ADVISOR FOR THE DEBTORS, FOR ALLOWANCE OF  
COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR  
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED  
FROM JANUARY 16, 2001 THROUGH AUGUST 7, 2001**

Name of Applicant: Dresdner Kleinwort Wasserstein, Inc.

Authorized to Provide  
Professional Services to: Debtors and Debtors in Possession

Date of Retention: January 16, 2001

Period for which compensation  
and reimbursement are sought: January 16, 2001 through August 7, 2001

Amount of compensation sought: \$4,000,000.00

Amount of expense reimbursement sought  
as actual, reasonable, and necessary: \$36,542.05

This is the first and final application.

If this is not the first application filed, disclose the following for each prior application:

<u>Date Filed</u>	<u>Period Covered</u>	<u>Requested Compensation</u>	<u>Requested Expenses</u>	<u>Approved Compensation</u>	<u>Approved Expenses</u>
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REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED  
FROM JANUARY 16, 2001 THROUGH AUGUST 7, 2001**

Dresdner Kleinwort Wasserstein, Inc. (“DrKW”), formerly known as Wasserstein Perella & Co., Inc., financial advisor for Imperial Sugar Company, et. al. (the “Debtors”), for this first and final application (the “Application”) for allowance of compensation for services rendered by DrKW for the period commencing January 16, 2001, through and including August 7, 2001 (the “Compensation Period”), and reimbursement of actual and necessary expenses incurred during the Compensation Period pursuant to section 328(a) and 330 of title 11 of the United States Code 11 U.S.C. §§101 et seq. (the “Bankruptcy Code”) respectfully represents as follows:

**BACKGROUND**

1. On January 16, 2001 (the “Commencement Date”), the Debtors commenced their case under chapter 11 of the Bankruptcy Code.
2. By Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code Authorizing Debtors and Debtors in Possession to Employ and Retain Dresdner Kleinwort Wasserstein, Inc. as Financial Advisors to the Debtors dated March 19, 2001 (the “DrKW Retention Order”; annexed to the Application as Exhibit A), the United

States District Court for the District of Delaware (the “Court”) authorized the Debtors to employ DrKW nunc pro tunc to January 16, 2001 as its financial advisor and investment banker pursuant to the terms of that certain Engagement Letter dated as of June 26, 2000 as modified prior to DrKW’s retention pursuant to an agreement with the Debtors’ key creditor groups set forth in the third decretal paragraph of the DrKW Retention Order (the “Engagement Letter”; annexed to the Application as Exhibit B).

3. On August 7, 2001 the Court entered an Order Confirming Plan of Reorganization for Imperial Distributing, Inc., Et. Al. under chapter 11 of the Bankruptcy Code (the “Confirmation Order”).

**SUMMARY OF PROFESSIONAL COMPENSATION  
AND REIMBURSEMENT OF EXPENSE REQUESTED**

4. By this Application, in accordance with the DrKW Retention Order, DrKW respectfully requests a final allowance of \$4,036,542.05 for the Compensation Period, representing (a) \$4,000,000.00 as compensation for professional services rendered during the Compensation Period in respect of its Restructuring Transaction Fee as provided in the DrKW Retention Order, and (b) \$36,542.05 as reimbursement for actual and necessary expenses that DrKW incurred during the Compensation Period. As set forth in its retention papers, this flat fee arrangement was negotiated between the Debtors and representatives of the various creditor classes prior to the Commencement Date and approved by the Court pursuant to section 328(a) of the Bankruptcy Code.

5. During the Compensation Period, DrKW has received no payment and no promises of payment from any sources for services rendered or to be rendered in any capacity whatsoever in connection with the matters covered by this Application. There is

no agreement or understanding between DrKW and any other person for the sharing of compensation to be received for services rendered in these cases.

6. Annexed hereto as Exhibit C is a schedule setting forth all DrKW professionals who have performed services in these chapter 11 cases during the Compensation Period, the capacities in which each individual is employed by DrKW and the aggregate number of hours expended in this matter. In addition, Exhibit D contains DrKW's time records for all professionals who performed services for the Debtors during the Compensation Period.

7. Annexed hereto as Exhibit E is a schedule setting forth the actual and necessary expenses that DrKW incurred during the Compensation Period in connection with the performance of professional services as financial advisor for the Debtors, and for which DrKW seeks reimbursement.

8. Between July 1, 2000 and January 15, 2001, DrKW, pursuant to the Engagement Letter, received payments from the Debtors totaling \$1,130,675.49, of which \$1,050,000.00 was from monthly retainer payments of \$150,000.00 per month and \$80,675.49 for reasonable out-of-pocket expenses. These payments were earned by DrKW prior to the Debtors' filing for chapter 11 protection.

9. To the best of the undersigned's knowledge, this Application complies with sections 328(a) and 330 of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, the Guidelines adopted by the Executive Office for the United States Trustees for Reviewing Applications for Compensation and Reimbursement of Expenses, and the DrKW Retention Order.

## **SCOPE OF SERVICES RENDERED**

10. In June 2000, well in advance of the Commencement Date, the Debtors engaged DrKW to assist in their review of their businesses' financial strength, strategic positioning and capital structure, and to explore various recapitalization and restructuring alternatives. As part of this process, DrKW conducted significant business due diligence that included review of the Debtors' records and financial statements, interviews with senior and operating management, review of certain operational analyses prepared by the Debtors' management and review of various industry studies and reports produced by the U.S. government and other external sources. Based on this due diligence effort, DrKW prepared preliminary analyses of the financial obstacles facing the Debtors and the strategic and restructuring alternatives available to them. These analyses were presented to Imperial Sugar Company's Board of Directors (the "Board") on July 28, 2000. After reviewing DrKW's preliminary analyses, the Board met with DrKW again on August 31, 2000 to fully review the Debtors' recapitalization, restructuring and strategic alternatives.

11. Based in part on the advice of DrKW, the Board decided to pursue a full exploration of various recapitalization alternatives. The formulation of available financing and strategic alternatives, as authorized by the Board, involved a series of discussions between DrKW, the Debtors' secured lenders (the "Secured Lenders") and the representatives of a prepetition informal committee of holders of the Debtors' Subordinated Notes (whom the Debtors believe comprised holders of the majority of the outstanding Subordinated Notes; the "Ad Hoc Committee"). Various potential recapitalization structures were discussed with the Secured Lenders and Houlihan Lokey Howard & Zukin Capital LLC (the financial advisors to the Ad Hoc Committee).

12. DrKW, the Debtors' management and counsel, the Secured Lenders and their advisors, and the Ad Hoc Committee and its advisors, exchanged numerous recapitalization and restructuring proposals throughout the second half of 2000 and the beginning of 2001. DrKW analyzed all such proposals in light of capital market conditions, the Debtors' debt capacity and maximizing value to all constituents. DrKW advised the management and the Board through numerous conference calls and presentations regarding the feasibility and possible execution of all such deal structures with the goal of preserving and maximizing value of the Debtors' estate. DrKW and the Debtors' management team negotiated such proposals simultaneously with both the Secured Lenders and the Ad Hoc Committee.

13. During the months preceding the Commencement Date, DrKW was able to devise and negotiate a plan for the comprehensive restructuring of the Debtors' balance sheet, pursuant to which over \$300 million of subordinated debt would be converted into new equity of the restructured entities (the "Reorganized Debtors"), and \$350 million of senior debt would be re-negotiated to provide exit financing for the Debtors. DrKW worked closely with the Ad Hoc Committee's advisors and the Secured Lenders in drafting termsheets which would capture the material economic terms of the proposed restructuring and ultimately provide the basis of the Debtors' proposed Plan of Reorganization (the "Plan").

14. Over the course of its prepetition engagement to the Debtors, DrKW also explored the concept of injecting fresh capital into the company as part of an overall restructuring package to best enable the Debtors to weather the current volatile and adverse industry conditions.

15. DrKW, with support of the Debtors' Board, also attempted to formulate opportunities that would provide a recovery for the Debtors' prepetition common shareholders ("Old Equity") under the Debtors' restructuring plan. DrKW explored possibilities with the Ad Hoc Committee whereby, notwithstanding the proposed conversion of a portion or all of the Debtors' Subordinated Notes to new common stock of the Reorganized Debtors, Old Equity was to retain some value. In spite of resistance by the Ad Hoc Committee to yield value to the holders of the Debtors' prepetition common stock, DrKW was successful in negotiating a recovery for Old Equity as part of the final recapitalization plan, in the form of new common stock and seven-year warrants to purchase the new common stock of the Reorganized Debtors.

16. Based in part on DrKW's advice, the Debtors proposed to the Ad Hoc Committee and Secured Lenders that the Debtors' deleveraging and recapitalization plan would need to be effectuated through a chapter 11 case. Via the three-way negotiations between the Debtors and their creditor groups, it was agreed that the Debtors should file for bankruptcy protection in January 2001. In addition, it was agreed that the Secured Lenders would provide the necessary post-petition financing to the Debtors in the form of a debtor in possession (or DIP) loan. DrKW guided the Debtors in negotiations with the Secured Lenders regarding the terms of the DIP facility.

17. On January 16, 2001, the Debtors commenced their chapter 11 cases in this Court to effectuate their pre-negotiated restructuring plan. Although the framework of the Debtors' restructuring had been negotiated prior to the Commencement Date, DrKW worked aggressively during the Compensation Period to ensure that the terms of the Debtors' restructuring, as they were agreed to by the Secured Lenders, the Ad Hoc

Committee and the Debtors prior to the Commencement Date, were upheld by all parties. DrKW also worked with the above constituents and the Debtors' counsel to ensure that such terms were appropriately captured and depicted in the Debtors' Disclosure Statement and Plan.

18. Throughout the Compensation Period, the Debtors and their advisors engaged in a regular dialogue with the advisors for the Official Committee of Unsecured Creditors (the "Creditors Committee") and the Secured Lenders to discuss new developments in several areas of the case, including: the Debtors' latest operating and financial results, the Debtors' business and industry conditions, the formulation of the Debtors' new business plan and financial projections, the status of the Debtors' chapter 11 cases and Court hearings, the status of the Debtors' various asset sales and its negotiations with buyers, new business projects and initiatives being developed by the Debtors, and DrKW's enterprise valuation.

19. In addition, various key elements of the Debtors' restructuring and pro forma capital structure, which could not be finalized prior to the Commencement Date, were discussed and often vigorously negotiated during the Compensation Period by DrKW and the Debtors' creditor groups. These included, but were not limited to: specific covenants and availability restrictions contained in the Debtors' exit financing credit agreement, the appropriate pricing mechanisms for the various options and warrants to be distributed under the Plan, and the treatment of Old Equity under the Plan. Under the guidance of DrKW and the Debtors' legal counsel, the Debtors were able to engineer a consensual and satisfactory resolution of all of these issues.



20. During the Compensation Period, the enterprise valuation of the Debtors, as performed by DrKW, and the stated treatment of the pre-petition common shareholders under the Debtors' proposed Plan, were disputed and challenged by a committee that was formed to represent the prepetition shareholders (the "Equity Committee"). DrKW advised the Debtors with respect to their evaluation of the Equity Committee's enterprise valuation analysis and valuation methodologies used and submitted by the Equity Committee's financial advisors. In addition, DrKW prepared detailed materials to be used for any potential testimony by Kenneth Buckfire (a Managing Director and Co-Head of DrKW's Financial Restructuring practice) as necessitated by the Court to help resolve the issue of the Debtors' enterprise value.

21. The successful confirmation of the Debtors' Plan, and its overwhelming acceptance by all voting creditor and equity classes, reflect the simultaneous negotiations which DrKW and the Debtors' counsel had undertaken with the Secured Lenders, the Ad Hoc Committee, the Creditors Committee and the Equity Committee throughout its engagement to the Debtors. DrKW's role was instrumental in structuring and consummating a plan that maximized value and was reasonably acceptable to all parties involved.

22. As the foregoing demonstrates, DrKW fielded an experienced team with extensive restructuring expertise and rendered a wide range of investment banking and strategic advisory services to the Debtors prior to and during the Compensation Period. The services rendered by DrKW enabled the Debtors to preserve and maximize value for all creditors and shareholders by ensuring that the Debtors were able to propose a Plan which was successfully confirmed, leading to the Debtors' emergence as a viable entity

with healthy business prospects. DrKW's services produced a successful restructuring process amidst extremely volatile and adverse industry conditions affecting the Debtors' operating companies as well as a significant capital markets credit crunch. As summarized above, during its year-long engagement to the Debtors, DrKW rendered the following services:

### **Negotiations and Advice**

- Frequent discussions with members of the senior management team regarding all aspects of the Debtors' restructuring and chapter 11 cases.
- Meeting with the Board multiple times, both in person and via teleconference calls, to discuss strategic alternatives, restructuring processes and the bankruptcy processes.
- Assisting the Debtors in virtually all negotiations with the Ad Hoc Committee, Creditors Committee and Secured Lenders.
- Assisting the Debtors in designing the equity securities to be issued in connection with their Plan.
- Assisting the Debtors' management in negotiating with the Equity Committee and its legal and financial advisors.
- Contacting and initiating discussions with new potential senior lenders and equity investors.

## **Financial Analyses**

- Reviewing and analyzing the Debtors' historical and projected financial performance by subsidiary, liquidity requirements and various external reports.
- Developing detailed operating and financial models of the Debtors.
- Conducting comparable companies, comparable acquisitions and industry analyses on market multiples and operational performance.
- Performing comprehensive valuation analysis and updating such analyses at several junctures over the course of the engagement as needed.
- Conducting debt capacity, debt-equity, new money, and other restructuring analyses and frequently updating such analyses over the course of the engagement as needed.
- Developing numerous business plan and recapitalization scenarios revolving around management's forecasts and generating several valuation and restructuring analyses on these scenarios.
- Developing comparable financing analyses, has/gets analyses, sources and uses and rights discount analyses.
- Building Black-Scholes and other analyses to determine the value and appropriate pricing of options and warrants to be distributed under the Plan.
- Generating capital markets analyses on debt covenants, debt burden ratios and new money alternatives.

- Generating and refining pro forma capital structure, claimholder recoveries and pro forma ownership analyses.

### **Documents and Presentations**

- Creating and presenting various financial and restructuring alternatives books to the Board exploring various financial and business analyses and strategic alternatives.
- Assisting management in creating and presenting various analyses and presentations to the Creditors Committee and the Secured Lenders.

### **Chapter 11 Process**

- Preparing retention papers and reviewing other chapter 11 process-oriented materials including various motions and related documents.
- Assisting in the drafting of relevant sections of the Disclosure Statement and Plan concerning enterprise valuation, options and warrants pricing and pro forma financial projections.

23. DrKW submits that the foregoing services were necessary to the successful and prompt administration of this chapter 11 case, necessary and beneficial to the Debtors' estates at the time at which such services were rendered, and were performed without unnecessary duplication of effort or expense. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved. The professional services were performed expeditiously and efficiently.

24. DrKW advised and assisted the Debtors in every phase of their chapter 11 case. A core team of three DrKW professionals (specifically, Kenneth Buckfire, Managing Director and Co-Head of the Financial Restructuring Group, Qazi Fazal, Vice President, and Jonathan Green, Analyst) worked with the Debtors from the Commencement Date through the confirmation of the Plan. These professionals' backgrounds are described in Exhibit C.

25. DrKW's fees as provided by the Engagement Letter, and in accordance with investment banking practice, are not based upon an hourly fee schedule. Exhibit D nevertheless lists the hours spent by DrKW professionals during the Compensation Period. DrKW professionals also spent a significant number of hours rendering services to the Company prior to the Compensation Period which are not reflected in these time schedules. DrKW believes that it assisted the Debtors in their chapter 11 cases in an efficient and cost effective manner and that its request for final approval of charges and reimbursement of expenses should be approved as requested.

#### **ACTUAL AND NECESSARY EXPENSES**

26. Attached hereto as Exhibit E is a schedule of the actual and necessary expenses incurred by DrKW in connection with its representation of the Debtors during the Compensation Period as well as a summary of DrKW's policies regarding expenses charged to clients. As set forth on Exhibit E, DrKW seeks reimbursement of actual and necessary expenses incurred by DrKW during the Compensation Period in the aggregate amount of \$36,542.05.

**THE REQUESTED COMPENSATION SHOULD BE ALLOWED**

27. The Court authorized DrKW's retention under section 328(a) of the Bankruptcy Code. Consequently, DrKW is entitled to receive its negotiated-for and agreed upon compensation as provided in the DrKW Retention Order, unless, as provided in section 328(a), "such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." As set forth in the Application, DrKW's services provided a valuable service to the estates and facilitated successful confirmation and consummation of a plan of reorganization which deleveraged the Debtors and restored the Debtors to competitive health. Its fee for these services is well within the norm for transactions of this size and complexity. Therefore, DrKW's services clearly meet the standard of compensation under section 328(a) of the Bankruptcy Code (indeed, they also meet the standard of section 330 as well). DrKW respectfully submits that the professional services for which it seeks compensation and the expenditures for which it seeks reimbursement in this Application were necessary and beneficial to the Debtors' rehabilitation and reorganization effort. Such services and expenditures were similarly necessary to and in the best interests of the Debtors' estates and creditors.

**NOTICE**

28. Pursuant to the Confirmation Order, notice of this Application has been provided to: (i) the Debtors, c/o Imperial Sugar Company, One Imperial Square, 8016 Highway 90-A, P.O. Box 9, Sugar Land, Texas 77487-0009 (Attn: Chief Financial Officer); (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor LLP, 11<sup>th</sup> Floor,

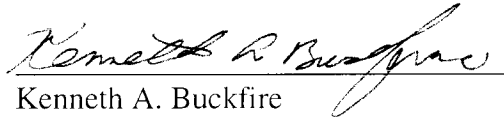
The Wilmington Trust Center, P.O. Box 391, Wilmington, Delaware 19899-0391 (Attn: James Patton, Esq.); Baker Botts LLP, 2001 Ross Avenue, Dallas, Texas 75201-2980 (Attn: Jack L. Kinzie, Esq.); (iii) counsel to the Official Committee of Unsecured Creditors, Akin Gump Strauss Hauer & Feld, 711 Louisiana St., #1900, Houston, TX 77002 (Attn: Margie Venus, Esq.); and (iv) the Office of the United States Trustee, 601 Walnut Street, Curtis Center, Suite 950 West, Philadelphia, Pennsylvania 19106 (Attn: Mark W. Kenney, Esq.).

**CONCLUSION**

WHEREFORE DrKW respectfully requests (i) final allowance of \$4,036,542.05 for the Compensation Period, representing \$4,000,000.00 as compensation for professional services rendered during the Compensation Period and \$36,542.05 as reimbursement for actual and necessary expenses DrKW incurred during the Compensation Period (the "Allowed Fees and Disbursements"); (ii) that the Court direct the Debtors to pay DrKW the outstanding amount of \$4,036,542.05 and (ii) for such order and further relief as is just.

Dated:                      New York, NY

October 9, 2001



Kenneth A. Buckfire  
Dresdner Kleinwort Wasserstein, Inc.  
1301 Avenue of the Americas  
New York, NY 10019



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

IN RE:	§	
	§	
IMPERIAL	§	CHAPTER 11
DISTRIBUTING, INC., ET. AL.	§	
	§	CASE NO. 01-140 (SLR)
	§	(Jointly Administered)
DEBTORS		

**STATEMENT OF KENNETH A. BUCKFIRE PURSUANT TO  
28 U.S.C. § 1746 AND FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 2016 IN SUPPORT OF FIRST AND FINAL  
APPLICATION OF DRESDNER KLEINWORT WASSERSTEIN, INC.  
FOR COMPENSATION AND REIMBURSEMENT  
OF EXPENSES AS DEBTORS' FINANCIAL ADVISOR**

1. I am a Managing Director of Dresdner Kleinwort Wasserstein, Inc. (“DrKW”), which maintains offices at 1301 Avenue of the Americas, 44<sup>th</sup> Floor, New York, New York 10019.

2. I submit this statement in support of the First and Final Application of Dresdner Kleinwort Wasserstein, Inc., as Financial Advisor to the Debtors for Compensation and Reimbursement of Out-of-Pocket Expenses (the “Application”), seeking approval of compensation and reimbursement of expenses in the amount of, \$4,036,542.05 which amount represents (i) \$4,000,000.00 for the Restructuring Transaction Fee earned pursuant to the Retention Order (as defined below), and \$36,542.05 for out-of-pocket expenses incurred since the January 16, 2001 petition date.

3. DrKW was retained as financial advisor to the Debtors in the above-captioned cases, under the terms of an engagement letter, as modified (the “Engagement Letter”) and pursuant to the Retention Order entered by this Court on March 19, 2001.

The Engagement Letter, Retention Order and the scope and nature of DrKW's services are fully and accurately described in the Application.

4. With the exception of \$1,130,675.49 paid to DrKW by the Debtors during the period before the commencement of their chapter 11 cases, for pre-bankruptcy services, DrKW has received no payments for services rendered or out-of-pocket expenses incurred in connection with the Debtors' chapter 11 cases.

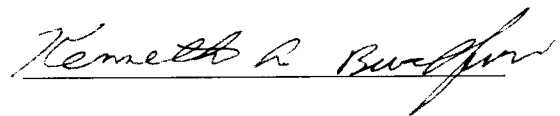
5. With the exception of the Application, DrKW has filed no other application for allowance of compensation and/or reimbursement of expenses in these chapter 11 cases.


6. No agreement or understanding exists between DrKW and any other person for sharing of compensation received or to be received for professional services rendered in or in connection with these cases, nor will any be made except as permitted under section 504(b)(1) of the Bankruptcy Code.

7. No division of commissions has been or shall be made by DrKW and no agreement prohibited by 18 U.S.C. § 155 has been or shall be made in connection with the above-captioned case by DrKW

8. I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 9, 2001



  
**KAREN A. CROCIATA**  
Notary Public, State of New York  
No. 01CR5040291  
Qualified in Suffolk County  
Certificate Filed in New York County  
Commission Expires 3/6/03