

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: : **Chapter 11**
: **Jointly Administered**
LTV STEEL COMPANY, INC., : **Case No. 00-43866**
a New Jersey corporation, et al., : **Successor to**
: **Judge William T. Bodoh**
Debtors. :

**APPLICATION OF KAYE SCHOLER LLP FOR FINAL
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR THE PERIOD DECEMBER 29, 2000 THROUGH MARCH 18, 2004**

Name of applicant: Kaye Scholer LLP

Authorized to provide professional services to: The above-captioned debtors and debtors in possession

Date of retention: December 29, 2000 as Ordinary Course Counsel and July 16, 2001, *nunc pro tunc* to April 1, 2001 as Special Counsel

Period for which final allowance of compensation and reimbursement is sought: December 29, 2000 through March 18, 2004

Amount of compensation requested: \$229,984.02

Amount of expense reimbursement requested: \$ 13,871.37

This is an: interim final application

A summary of the billing rate for each professional and paraprofessional who billed time during the period for which compensation and reimbursement is sought and the total hours and amount billed for each such person is attached to this Application as Exhibit C and incorporated herein by reference.

Attorneys' blended hourly rate during the compensation period: \$428.26.

Blended hourly rate - all categories: \$292.47.

Fees Previously Requested: \$143,058.53¹.

Fees Previously Awarded: \$114,907.03 .

Expenses Previously Requested: \$ 9,514.81.

Expenses Previously Awarded: \$8,981.89.

¹ This amount does not include fees previously paid by the Debtors to Kaye Scholer as Ordinary Course Counsel.

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Debtors.	:	Judge William T. Bodoh

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FOR THE PERIOD DECEMBER 29, 2000 THROUGH MARCH 18, 2004**

Kaye Scholer LLP (“Kaye Scholer”), special counsel to the above-captioned debtors and debtors in possession (collectively, the “Debtors”), by this application (the “Application”), respectfully moves this Court, pursuant to sections 331 and 503(b) of chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), as complemented by Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the allowance of final compensation for professional services rendered in the amount of \$229,984.02 (representing approximately 786 hours in the aggregate), and reimbursement of the actual, reasonable and necessary out-of-pocket expenses incurred in the amount of \$13,871.37 during the thirty-nine (39) month period beginning December 29, 2000, through and including March 18, 2004 (the “Retention Period”). In support of this Application, Kaye Scholer respectfully represents as follows:

BACKGROUND

General Background

1. On December 29, 2000 (the “Petition Date”), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). By an order entered on the Petition Date, the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. The Debtors other than the Copperweld Debtors (as defined below) are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On January 10, 2001, the United States Trustee for the Northern District of Ohio (the “U.S. Trustee”) appointed a statutory committee of unsecured creditors in these chapter 11 cases (the “Creditors’ Committee”), pursuant to section 1102 of the Bankruptcy Code. On January 19, 2001, the U.S. Trustee appointed a statutory committee of unsecured noteholders in these chapter 11 cases, pursuant to section 1102 of the Bankruptcy Code (the “Noteholders’ Committee”). On February 27, 2003, the United States Trustee appointed an amended statutory committee of administrative creditors (the “Administrative Committee”) in the LTV Steel Company, Inc. case. On March 27, 2003, the United States Trustee filed its Notice of Disbandment of the Unsecured Creditors Committee. On July 12, 2001, the U.S. Trustee appointed the Official Committee of Equity Security Holders (collectively with the Creditors’ Committee, Administrative Committee and the Noteholders’ Committee, the “Committees”).

4. As of the Petition Date, the Debtors operated through two primary business segments: (a) the integrated steel business segment, which engaged in the manufacture

and sale of a diversified line of carbon flat-rolled steel products consisting of hot-rolled and cold-rolled sheet and galvanized products (the “Integrated Steel Business”); and (b) the metal fabrication business segment, which engaged in, among other things, (i) the manufacture and sale of mechanical and structural tubular products, (ii) pipe and conduit, (iii) the production of bimetallic wire (the “Metal Fabrication Business”), and (iv) the production of automotive components. By various Orders entered throughout these cases, the Court authorized the Debtors to sell certain of their assets.

5. On November 17, 2003, the Court entered an order confirming the “Second Amended Joint Plan of Reorganization of Copperweld Corporation and Certain of Its Debtor Affiliates,” as modified (the “Copperweld Plan”). On December 17, 2003, the Copperweld Plan became effective in accordance with its terms, and Copperweld Corporation and its affiliates that were proponents of the Copperweld Plan (collectively, the “Copperweld Debtors”) emerged from chapter 11.

6. On December 17, 2003, the Court entered an order confirming the “First Amended Joint Plan of Liquidation of VP Building, Inc., Its Subsidiary Debtors and Certain of Its Debtor Affiliates” (collectively, the “VP Debtors’ Plan”). The VP Debtors’ Plan has not yet become effective.

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

The Debtors’ First Bankruptcy Proceeding

8. This is the Debtors’ second bankruptcy filing, having previously filed voluntary petitions for reorganization under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy

Court”) on July 17, 1986 (the “First Bankruptcy Case”). On May 26, 1993, the New York Bankruptcy Court issued an Order confirming the LTV Second Modified Joint Plan of Reorganization, dated February 26, 1993, as modified (the “Plan”). On June 28, 1993 (the “Effective Date” of the Plan), the Debtors emerged from the First Bankruptcy Case.

9. Kaye Scholer was the Debtors’ bankruptcy co-counsel throughout the First Bankruptcy Case and continued to represent the Debtors after the Effective Date of the Plan in a wide variety of bankruptcy-related matters including, *inter alia*, (i) implementation and consummation of the Plan, (ii) enforcement of the Plan’s discharge and injunctive provisions, and (iii) addressing insurance related issues. Since confirmation of the Plan, the Debtors have been sued in at least 13 different courts throughout the country with respect to numerous environmental, asbestos, benzene and postal vehicle rollover claims that the Debtors believed were discharged under the Plan in the First Bankruptcy Case. Subsequent to the Effective Date, the Debtors were threatened with countless other similar lawsuits. Kaye Scholer represented the Debtors in many such matters.

Kaye Scholer’s Retention

10. Kaye Scholer was initially retained herein by the Debtors as Ordinary Course Counsel by Order of this Court, dated December 29, 2000 (the “Ordinary Course Retention Order”). Prior to April 2001, Kaye Scholer’s fees did not exceed the average monthly monetary cap imposed on Ordinary Course Counsel. However, for the month of April 2001, the level of compensation earned by Kaye Scholer on behalf of the Debtors exceeded the cap. As a result, on June 15, 2001, the Debtors filed their application (the “Retention Application”) seeking to retain and employ Kaye Scholer as special counsel pursuant to Section 327(e) of the Bankruptcy Code, *nunc pro tunc* as of April 1, 2001. On July 10, 2001, the Court entered an

order authorizing the retention of Kaye Scholer and, pursuant to an Amended Order entered on July 16, 2001 (the “Amended Retention Order”), the Court authorized the retention of Kaye Scholer as special counsel to the Debtors, *nunc pro tunc* as of April 1, 2001. A copy of the Amended Retention Order is annexed hereto as Exhibit “A” and incorporated herein by reference.

11. As described in the Retention Application, Kaye Scholer charges for its services in these cases in accordance with its ordinary and customary hourly rates in effect on the dates that services are rendered. These rates are identical to those charged by Kaye Scholer for similar services in other bankruptcy and nonbankruptcy matters.

RELIEF REQUESTED

Authority for Relief

12. Kaye Scholer makes this Application pursuant to: (i) Sections 330(a) and 331 of the Bankruptcy Code; (ii) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); (iii) the Administrative Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated January 31, 2001 (the “Interim Compensation Order”); (iv) certain applicable provisions of the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted by the Office of the U.S. Trustee (the “Guidelines”); and (v) General Order No. 93-1 of the United States Bankruptcy Court for the Northern District of Ohio (“Local Rule 93-1”). A copy of the Interim Compensation Order is annexed hereto as Exhibit “B” and incorporated herein by reference.

**Request for Final Allowance of
Compensation and Reimbursement of Expenses**

13. Kaye Scholer seeks an allowance in full of final compensation for services rendered during the Retention Period on behalf of the Debtors in the amount of \$229,984.02 and reimbursement for actual and necessary expenses incurred in connection therewith in the amount of \$13,871.37. The names and corresponding hourly rates for all of Kaye Scholer's attorneys, paraprofessionals and clerks who performed services on behalf of the Debtors are delineated in Exhibit "C" annexed hereto and incorporated herein by reference. Kaye Scholer charges its nonbankruptcy clients for similar services performed by all such professionals, paraprofessionals and clerks at the same rates as listed in Exhibit "C." Annexed hereto, made a part hereof and marked as Exhibit "D" is a summary listing of the time spent on these chapter 11 cases (including time spend while Kaye Scholer was an Ordinary Course Counsel), by billing category -- along with the related contemporaneous time entries -- by Kaye Scholer professionals and other personnel during the Retention Period. A summary and itemization of the actual and necessary expenses incurred by Kaye Scholer during the Retention Period is annexed hereto as Exhibit "E" and incorporated herein by reference.

Monthly Statements and Prior Payments to Kaye Scholer

1. Professional Fees Incurred While an Ordinary Course Counsel

14. As Kaye Scholer was originally retained by the Debtors as Ordinary Course Counsel, it was entitled to be paid, without the prior review or approval of the Court, all of its fees and expenses pursuant to the terms of the Ordinary Course Retention Order. In connection therewith, Kaye Scholer submitted invoices to the Debtors for professional services

rendered and expenses incurred for the period commencing December 29, 2001 through and including March 31, 2001 as follows:

- a. For December 29, 2000 through January 31, 2001 -- fees of \$24,145.10 and expenses of \$435.87 (the "January Statement");
- b. For February 1, 2001 through February 28, 2001 -- fees of \$32,158.35 and expenses of \$1,794.71 (the "February Statement"); and
- c. For March 1, 2001 through March 31, 2001 -- fees of \$12,719.64 and expenses of \$504.56 (the "March Statement").

15. Pursuant to the Ordinary Course Retention Order, the Debtors paid Kaye Scholer the amounts requested in the January Statement, the February Statement and the March Statement in the ordinary course of their business.

2. *The First Interim Period*

16. In addition, pursuant to the Interim Compensation Order, all professionals retained in these chapter 11 cases are authorized to submit a statement of fees and expenses (a "Monthly Statement") to the Debtors for payment on a monthly basis. The Debtors were directed to pay 80% of the fees requested in a professional's Monthly Statement and 100% of the expenses incurred, unless one of the Notice Parties (as such term is defined in the Interim Compensation Order) objected to the Monthly Statement within 15 days after service of the Monthly Statement. The remaining 20% of the professional fees requested in the Monthly Statement (or such greater amount of fees and expenses subject to an objection) are held back until a hearing on allowance of such fees, at which time they become payable to the extent allowed by the Court.

17. Previously, Kaye Scholer submitted the following Monthly Statements to the Debtors with respect to fees earned and expenses incurred during the First Interim Period (*i.e.*, April 1, 2001 through and including August 31, 2001):

a. For April 1, 2001 through April 30, 2001 -- fees of \$82,179.76 and expenses of \$6,063.50 (the “April Statement”);

b. For May 1, 2001 through May 31, 2001 -- fees of \$3,432.85 and expenses of \$791.34 (the “May Statement”);

c. For June 1, 2001 through June 30, 2001 -- fees of \$3,904.11 and expenses of \$337.44 (the “June Statement”);

d. For July 1, 2001 through July 31, 2001 -- fees of \$3,530.46 and expenses of \$443.34 (the “July Statement”); and

e. For August 1, 2001 through August 31, 2001 -- fees of \$630.20 and expenses of \$14.52 (the “August Statement”).

18. In total, Kaye Scholer has submitted Monthly Statements during the First Interim Period for fees in the amount of \$93,677.38 and expenses in the amount of \$7,650.14. None of the Notice Parties objected to Kaye Scholer’s Monthly Statements for the First Interim Period and, accordingly, Kaye Scholer received payments totaling \$82,592.04, which was applied in satisfaction of 80% of Kaye Scholer’s fees and 100% of Kaye Scholer’s expenses incurred during the First Interim Period.

19. In connection with fees and expenses incurred during the First Interim Period, Kaye Scholer prepared and filed its *First Application of Kaye Scholer LLP for Interim Allowance of Compensation and Reimbursement of Expenses for the Period April 1, 2001 Through August 31, 2001* on October 15, 2001 (the “First Fee Application”), requesting an

interim allowance of compensation in the amount of \$93,677.38 and reimbursement of expenses in the amount of \$7,650.14. The Office of the United States Trustee (the “United States Trustee”) and Abtrex Industries Inc. (“Abtrex”) each filed an objection to the First Fee Application (collectively, the “Objections”). Kaye Scholer filed a response to the Objections on December 12, 2001. Thereafter, Abtrex withdrew its objection. On April 23, 2002, the Court held a hearing on Kaye Scholer’s First Fee Application, and reserved opinion with respect to the issues raised by the United States Trustee, namely whether Kaye Scholer should be compensated for (i) certain fees incurred in preparing fee applications; (ii) certain fees incurred in preparing Kaye Scholer’s retention application; and (iii) word processing charges. Pursuant to an Order dated August 21, 2002 (the “August 21 Order”), the Court allowed, on an interim basis, the full amount of Kaye Scholer’s fees and expenses as requested in the First Fee Application.

3. **The Second Interim Period**

20. Kaye Scholer submitted the following Monthly Statements to the Debtors with respect to fees earned and expenses incurred during the Second Interim Period (*i.e.*, September 1, 2001 through December 31, 2001):

- a. For September 1, 2001 through September 30, 2001 -- fees of \$6,077.70 and expenses of \$110.56 (the “September Statement”);
- b. For October 1, 2001 through October 31, 2001 -- fees of \$7,436.45 and expenses of \$679.86 (the “October Statement”);
- c. For November 1, 2001 through November 30, 2001 -- fees of \$2,285.70 and expenses of \$270.72 (the “November Statement”); and
- d. For December 1, 2001 through December 31, 2001 -- fees of \$5,429.80 and expenses of \$270.57 (the “December Statement”).

21. In total, Kaye Scholer submitted Monthly Statements during the Second Interim Period for fees in the amount of \$21,229.65 and expenses in the amount of \$1,331.71. None of the Notice Parties objected to Kaye Scholer's Monthly Statements for the Second Interim Period.

22. During the Second Interim Period, Kaye Scholer received one payment from the Debtors. On November 13, 2001 Kaye Scholer received a payment of \$4,972.72, which was applied in satisfaction of 80% of Kaye Scholer's fees and 100% of Kaye Scholer's expenses as set forth in the September Statement.

23. No portion of the payment referenced in paragraph 22, *supra*, has been shared by Kaye Scholer with any other party, nor is this or any other payments subject to a sharing agreement between Kaye Scholer and any third party.

24. During the Second Interim Period, Kaye Scholer was advised that, pursuant to the implementation of the Asset Protection Plan proposed by the Debtors and approved by the Court, professional fees and expenses were bifurcated as of November 20, 2001. Accordingly, Kaye Scholer's fee and expenses incurred during the Second Interim Period were bifurcated as follows: (i) for the period September 1, 2001 through and including November 19, 2001, \$15,497.45 in fees and \$1,036.19 in expenses, and (ii) for the period November 20, 2001 through and including December 31, 2001, \$5,732.20 in fees and \$295.52 in expenses.²

² Kaye Scholer was entitled to a *pro rata* share of the carve-out under the DIP credit facility with respect to its fees and expenses for the period covering September 1, 2001 through and including November 19, 2001.

25. Except as described in paragraph 22 above, Kaye Scholer did not receive any payments or promises of payment during the Second Interim Period from any source for services rendered or to be rendered in connection with these chapter 11 cases.

26. In connection with fees and expenses incurred during the Second Interim Period, Kaye Scholer filed its *Second Application of Kaye Scholer LLP for Interim Allowance of Compensation and Reimbursement of Expenses for the Period September 1, 2001 Through December 31, 2001* on February 14, 2002 (the “Second Fee Application”) seeking an interim allowance of compensation in the amount of \$21,229.65 and reimbursement of expenses in the amount of \$1,331.75. The United States Trustee filed an objection to the Second Fee Application, questioning whether Kaye Scholer should be compensated for (i) certain fees incurred in preparation of the First Fee Application, (ii) compensation in relation to responding to fee application objections and (iii) word processing charges. A hearing on the Second Fee Application was held on April 23, 2002. Pursuant to the August 21 Order, Kaye Scholer was granted, on an interim basis, the amount of fees and expenses sought in the Second Fee Application.

4. The Third Interim Period

27. Kaye Scholer submitted the following Monthly Statements to the Debtors with respect to fees earned and expenses incurred during the Third Interim Period (*i.e.*, January 1, 2002 through and including April 30, 2002):

- a. For January 1, 2002 through January 31, 2002 -- fees of \$ 3,636.85 and expenses of \$53.77 (the “January 2002 Statement”);
- b. For February 1, 2002 through February 28, 2002 -- fees of \$3,547.40 and expenses of \$274 (the “February 2002 Statement”);

c. For March 1, 2002 through March 31, 2002 -- fees of \$ 628.10 and expenses of \$ 96.63 (the "March 2002 Statement");

d. For April 1, 2002 through April 30, 2002 -- fees of \$20,429.15 and expenses of \$198.56 (the "April 2002 Statement").

28. During the Third Interim Period, Kaye Scholer received the following payments:

Date	Amount	Comments/Description
02/19/02	\$ 4,881.28	Comprised of \$241.92 representing 80% of \$302.40 covering fees for the period November 20 2001 through November 30, 2001 and \$24.95 representing 100% of expenses for such period; \$4,343.89 representing 80% of \$5,429.80 billed for the period December 1, 2001 through December 31, 2001, plus \$270.57 representing 100% of expenses billed for such period.
03/04/02	\$17,643.64	Represents Kaye Scholer's pro-rata (approx. 92%) share of unpaid invoices prior to November 20, 2001 under carve-out provision of DIP Financing Facility which applies to (i) unobjected to portion of Kaye Scholer's First Interim Application --\$9,182.20; (ii) October 2001 fees and expenses - \$6,629.02; and (iii) November 1, 2001 through November 19, 2001 fees and expenses -- \$1,832.41.
03/25/02	\$ 2,963.25	Representing 80% of \$3,636.85 in fees and 100% of \$53.77 in expenses billed for January, 2002.
04/02/02	\$ 3,039.92	Representing 80% of \$3,457.40 in fees and 100% of \$274 in expenses billed for February, 2002.
05/17/02	\$ 599.11	Representing 80% of \$628.10 in fees and 100% of \$96.63 in expenses billed for March, 2002.
05/28/02	\$16,541.88	Representing 80% of \$20,429.15 in fees and 100% of \$198.56 in expenses billed for April, 2002.

29. In total, Kaye Scholer submitted Monthly Statements during the Third Interim Period for fees in the amount of \$28,151.50 and expenses in the amount of \$622.96.

None of the Notice Parties objected to Kaye Scholer's Monthly Statements for the Third Interim Period.

30. In connection with fees and expenses incurred during the Third Interim Period, Kaye Scholer filed its *Third Application of Kaye Scholer LLP for Interim Allowance of Compensation and Reimbursement of Expenses for the Period January 1, 2002 Through April 30, 2002* on June 13, 2002 (the "Third Fee Application") seeking an interim allowance of compensation in the amount of \$28,151.50 and reimbursement of expenses in the amount of \$622.96. The United States Trustee filed an objection to the Third Fee Application, questioning whether Kaye Scholer should be compensated for (i) certain fees incurred in preparing the Second Fee Application and (ii) word processing charges. Pursuant to a Stipulation and Order, so-ordered by the Court on October 22, 2002, Kaye Scholer and the United States Trustee agreed that the Third Fee Application could be granted over the United States Trustee's objection but that its objection to the Third Fee Application (concerning fees associated with preparing fee applications and word processing charges) would be preserved until the hearing on the final fee application.

5. **The Post-Third Interim Period**

31. As the amount of fees and expenses incurred by Kaye Scholer subsequent to April, 2002 were not significant, in an effort to conserve estate resources by not seeking fees and expenses on a monthly basis or preparing needless additional interim fee applications, Kaye Scholer has not (except on one occasion³) submitted monthly invoices to the Debtors for any month after April, 2002 and has not submitted interim fee applications for any period after the

³ An invoice was sent to the Debtors in November, 2001 for fees and expenses incurred from October 1, 2001 through October 31, 2001; however, Kaye Scholer did not receive any payments on account of this invoice.

Third Interim Period. The amount of fees and expenses incurred from May 1, 2002 through March 18, 2004 (the "Post-Third Interim Period") total \$17,812.40 and \$1,531.42, respectively. Kaye Scholer has not received any payments on account of fees and expenses incurred during the Post-Third Interim Period.

Description of Services Rendered by Kaye Scholer

32. As described in Exhibit "D" annexed hereto, Kaye Scholer's professionals and paraprofessionals billed their time during the Retention Period to distinct project billing categories. Below is a summary of the primary activities performed by Kaye Scholer during the Retention Period in each of those billing categories. Although this summary is intended to highlight areas of particular importance in these cases, a complete description of all such activities is found in the contemporaneous, daily time records annexed hereto as Exhibit "D."

1. *Litigation Against The City of Buffalo and The City of Buffalo Urban Renewal Agency (375.25 hours; \$143,874.00)*⁴

33. As stated in the First Fee Application, prior to the Petition Date, and on September 2, 1999, Kaye Scholer, on behalf of LTV Steel Company Inc. ("LTV Steel"), one of the Debtors herein, commenced an adversary proceeding against The City of Buffalo, New York (the "City") and the City of Buffalo Urban Renewal Agency ("BURA") (the "Buffalo Adversary Proceeding"). The Buffalo Adversary Proceeding asserted causes of action seeking, *inter alia*, a declaratory judgment that (i) certain claims of the City and BURA against LTV Steel have been discharged pursuant to the Plan, the Confirmation Order and Section 1141(d) of the Bankruptcy Code and (ii) the City and BURA are enjoined pursuant to the permanent injunctions extant under the Plan, the Confirmation Order and Section 524 of the Bankruptcy Code, from

⁴ The number of hours and amount of fees incurred for each project category set forth in the parenthetical does not include charges for word processing.

continuing the prosecution of such claims against LTV Steel. LTV Steel was initially compelled to commence the Buffalo Adversary Proceeding because, in early 1999, representatives of the City contacted LTV Steel and asserted that LTV Steel was financially responsible for hazardous waste materials allegedly left behind on certain property in Buffalo, New York. Prior to the Petition Date, the City and BURA moved to withdraw the reference of the Buffalo Adversary Proceeding (the “Withdrawal Motion”) to the United States District Court for the Southern District of New York (the “New York District Court”). Following a hearing before the New York District Court, the parties stipulated to a briefing schedule.

34. During the Retention Period, Kaye Scholer devoted a substantial amount of time drafting and finalizing a lengthy brief and affidavit, as well as preparing a voluminous compendium of Exhibits, in opposition to the Withdrawal Motion. As the City’s and BURA’s Withdrawal Motion was extensive and extremely fact-intensive (containing over 30 different exhibits), Kaye Scholer professionals (i) reviewed numerous documents and pleadings relevant to the Withdrawal Motion, (ii) conducted exhaustive research on a variety of legal issues, (iii) participated in frequent conference calls with Debtors’ in-house counsel, environmental counsel as well as counsel for LTV Steel’s co-plaintiff, Hanna Furnace Corporation (“Hanna”), and (iv) prepared a comprehensive brief and affidavit refuting the City’s and BURA’s arguments. LTV Steel’s brief and affidavit in opposition to the Withdrawal Motion were served and filed by Kaye Scholer on May 1, 2001.

35. In addition, Kaye Scholer professionals had numerous conference calls with the City’s and BURA’s counsel, as well as Hanna’s counsel and the Debtors regarding certain aspects of the case and the possibility of a global settlement of all claims. Kaye Scholer professionals also prepared for and attended a status conference before the New York District

Court. Although the parties attempted to settle the matter, it ultimately became apparent that an agreement could not be reached. Accordingly, as the Withdrawal Motion was fully briefed, the New York District Court took the matter under advisement.

36. Subsequently, the New York District Court rendered its Decision (the “Withdrawal Decision”) on the Withdrawal Motion and, based upon the unique facts and circumstances, the reference with respect to the BURA litigation was withdrawn and venue transferred to the United States District Court for the Western District of New York (the “Western District Court”). In connection therewith, Kaye Scholer reviewed and analyzed the Withdrawal Decision and discussed the impact of same with in-house counsel at LTV. For efficiency purposes, LTV and Kaye Scholer agreed that LTV’s interests in the BURA litigation would best be served if LTV were represented by their outside general counsel, Squire, Sanders & Dempsey (“SS&D”). Accordingly, during the Retention Period, Kaye Scholer worked on matters relating to the substitution of counsel in the BURA litigation, including (i) various telephone conversations with in-house counsel for LTV and with attorneys at SS&D and (ii) a thorough review of Kaye Scholer’s voluminous files and work-product with respect to the BURA litigation and an orderly transfer of same to SS&D.

2. *Litigation Against Chevron U.S.A. Inc. (29.75 hours; \$9,298.57)*

37. Prior to the Petition Date, Kaye Scholer represented LTV Steel and LTV Corporation (“LTV”) in another adversary proceeding commenced by Chevron U.S.A. Inc. (“Chevron”) (the “Chevron Adversary Proceeding”). The Chevron Adversary Proceeding was filed after Chevron brought a third-party action (the “Third-Party Action”) against LTV Steel and LTV in the United States District Court for the Northern District of New York in an environmental action originally commenced by Niagara Mohawk Power Company. However,

unlike the Buffalo Adversary Proceeding, after various discussions with Kaye Scholer, Chevron agreed that the automatic stay provisions of Section 362 of the Bankruptcy Code applied. During the Retention Period, Kaye Scholer professionals participated in negotiating and finalizing certain stipulations regarding the Chevron litigation, which eventually effectuated a dismissal of the Chevron Adversary Proceeding, the Third Party Action, as well as a motion to withdraw the reference filed by Chevron and pending as of the Petition Date.

2. Case Administration (242.02 hours; \$70,467.40)

38. During the Retention Period, Kaye Scholer spent time preparing pleadings relating to its retention as special counsel to the Debtors herein. Specifically, Kaye Scholer worked closely with the Debtors in drafting, revising, and finalizing an application seeking its retention as special counsel to the Debtors pursuant to Section 327(e) of the Bankruptcy Code. This process included numerous conference calls with the Debtors' in-house counsel regarding the form and substance of the pleadings, as well as the preparation and submission to the Court of an amended order of retention.

39. Also during the Retention Period, Kaye Scholer spent time on matters relating to (i) the First Bankruptcy Case, including, without limitation, drafting, revising and finalizing case closing papers for remaining matters which were open in the Debtors' First Bankruptcy Case; (ii) preparing and finalizing its three fee applications and responses to certain objections filed by the United States Trustee and Abtrex; (iii) preparing for, traveling to, and attending the hearings before this Court regarding Kaye Scholer's interim fee applications; (iv) responding to various requests from the Debtors; and (v) preparing Kaye Scholer's monthly fee statements in accordance with the Interim Compensation Order.

Description of Expenses Incurred

40. Section 330 of the Bankruptcy Code authorizes “reimbursement for actual, necessary expenses” incurred by professionals employed in a chapter 11 case. 11 U.S.C. § 330(a)(1)(B). Accordingly, Kaye Scholer seeks reimbursement for actual and necessary expenses (the “Expenses”) incurred in rendering services to the Debtors during the Retention Period. As detailed in Exhibit “E” annexed hereto, the total amount of the Expenses is \$13,871.37. Kaye Scholer submits that the Expenses were reasonable and necessary in light of the services provided.

41. Kaye Scholer utilizes a “user fee” client billing system with respect to its Expenses. Under this system, Kaye Scholer allocates to a particular client, and charges that client, only for those expenses incurred concerning its representation of such client and directly attributable to that particular client. Those expenses include, but are not limited to, photocopying, Lexis, Westlaw, facsimile transfers, long distance telephone calls, travel expenses, meals, taxis, and parking.

42. All of the Expenses for which Kaye Scholer seeks an award for reimbursement in this Application are recorded pursuant to this “user fee” client billing system, and are of the type that Kaye Scholer would ordinarily recover from its non-bankruptcy clients. Kaye Scholer groups each item of expense incurred into different expense categories; within each category, at a minimum, the nature of each expense, the date incurred, and the amount are set forth.

43. Because client specific expenses, by definition, are attributable to a particular client and are not expenses that Kaye Scholer incurs daily without regard to a particular client, they are not overhead expenses. Accordingly, Kaye Scholer does not include in its hourly

billing rates the cost of such expenses. Kaye Scholer does not include charges for word processing time in its overhead for the purpose of setting billing rates.

44. Moreover:

- No amortization of the cost of any investment, equipment or capital outlay is included in the Expenses. In addition, for those items or services that Kaye Scholer justifiably purchased or contracted from a third party (such as outside copy services), Kaye Scholer seeks reimbursement only for the exact amount billed to Kaye Scholer by the third party vendor and paid by Kaye Scholer to the third party vendor.
- Photocopying by Kaye Scholer was charged at \$0.10 per page, in accordance with Local Rule 93-1. To the extent practical, Kaye Scholer utilized less expensive, outside copying services.
- In accordance with Local Rule 93-1, facsimile transmissions by Kaye Scholer were charged at actual cost for outgoing local transmissions and there is no charge for incoming facsimiles. Kaye Scholer does charge for actual long distance carrier charges for outgoing facsimiles.
- Kaye Scholer does charge the actual cost for all postage. Overnight delivery services and messenger services were used only when time pressures rendered it impracticable to use regular mail services. Messenger services are billed at the actual cost of such services.
- Kaye Scholer does charge the actual cost for telephone calls between its offices or for local or long distance calls. Long distance telephone charges and operator assisted conference calls are billed at actual cost.
- Kaye Scholer bills for the actual cost of staff overtime only when staff overtime services are used for the needs of its clients and not for Kaye Scholer's own convenience.

LEGAL ARGUMENT

Applicable Legal Standards

45. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, for the payment of:

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses 11 U.S.C. § 330(a)(1). To grant a request for compensation pursuant to section 330 of the Bankruptcy Code, a court must find that such request is reasonable.

46. In the Sixth Circuit, the standard used to determine the reasonableness of a compensation request is the “lodestar” method:

The Supreme Court has made it clear that the lodestar method of fee calculation is the method by which federal courts should determine reasonable attorney’s fees under federal statutes which provide for such fees.

In re Boddy, 950 F.2d 334, 337 (6th Cir. 1991); *see also In re EWI, Inc.*, 208 B.R. 885, 891 (Bankr. N.D. Ohio 1997) (citing *In re Mansfield Tire and Rubber Co.*, 65 B.R. 446, 455 (Bankr. N.D. Ohio (1986)) (“The Sixth Circuit has approved the lodestar method as the standard to be applied for allowance of professional fees.”); *In re Unicast, Inc.*, 214 B.R. 979, 990 (Bankr. N.D. Ohio 1997) (“[T]he lodestar method . . . should be employed in determining professional fees provided for under federal statutes, including the Bankruptcy Code.”). The lodestar amount is calculated by “multiplying the number of hours reasonably expended multiplied by a reasonable hourly rate.” *EWI*, 208 B.R. at 891.

47. As is its practice in other bankruptcy matters as well as nonbankruptcy matters, Kaye Scholer has utilized the lodestar method for calculating its compensation requested in this Application. Accordingly, Kaye Scholer’s lodestar calculation is reasonable under sections 330 and 331 of the Bankruptcy Code.

Kaye Scholer's Fees Are Reasonable

48. In accordance with the criteria enunciated for evaluating the fair and reasonable value of legal services, Kaye Scholer respectfully represents:

- (i) Time and Labor Required. Kaye Scholer represented the Debtors in the remaining adversary proceedings in the Debtors' First Bankruptcy Proceeding since their commencement until the matters were resolved or a substitution of counsel occurred. Kaye Scholer, at all relevant times, dealt with myriad issues that arose in connection with same. Meetings and teleconferences with representatives of the Debtors, as well as the review and drafting of documents and preparing for and attending hearings in Court and chambers conferences, were accorded the highest priority by Kaye Scholer.
- (ii) Skill Requisite to Perform Legal Services. Experience, Reputation, and Ability of Kaye Scholer. Kaye Scholer believes that its expertise in the area of corporate reorganization and bankruptcy, coupled with corporate, labor and litigation skills, has greatly contributed to the success and efficiency of its representation of the Debtors herein.
- (iii) The Customary Fee. Kaye Scholer respectfully submits that the fee sought herein is customary and based on the usual criteria in matters of this type, and is commensurate with fees Kaye Scholer has been awarded in other chapter 11 cases.
- (iv) Whether Fee is Fixed or Contingent. Pursuant to the statutory provisions of the Bankruptcy Code, all fees sought by professionals employed under section 327 of the Bankruptcy Code are contingent upon approval by this Court and are largely dependent upon the results achieved.
- (v) Nature and Length of Professional Relationship. Kaye Scholer was retained prior to the filing date of the First Bankruptcy Proceeding for the purpose of advising and counseling the Debtors. Since then, Kaye Scholer has counseled, advised and represented the Debtors at every level in their First Bankruptcy Proceeding, as well as in the adversary proceedings that were pending therein.

Kaye Scholer's Expenses Were Actual and Necessary

49. Section 330(a)(1)(B) of the Bankruptcy Code permits reimbursement for actual, necessary expenses. As noted above, Kaye Scholer already has (a) conducted a review to ensure that the Expenses comply with section 330(a)(1)(B), Local Rule 93-1, the Guidelines and other applicable requirements and (b) eliminated any expenses that it deemed “not necessary” or otherwise inappropriate. Accordingly, Kaye Scholer has properly requested reimbursement only of actual, necessary and appropriate Expenses.

No Sharing of Compensation

50. No agreement or understanding exists between Kaye Scholer or any third person for the sharing of compensation, except as permitted by section 504(b) of the Bankruptcy Code and Bankruptcy Rule 2016 with respect to sharing of compensation between and among partners in Kaye Scholer. All the services for which compensation is requested in this Application were rendered at the request of and solely on behalf of the Debtors.

Certification

51. In accordance with the Local Rule 93-1 and the Guidelines, the Certification of Edmund M. Emrich is attached hereto as Exhibit “F” and incorporated herein by reference.

NOTICE

52. No trustee or examiner has been appointed in these chapter 11 cases. Pursuant to the Case Management Order and the Interim Compensation Order, notice of this Motion has been given to (a) the Debtors and their counsel, (b) the United States Trustee, (c) counsel to the Committees, (d) counsel to the lenders under the DIP Facility and the Debtors' prepetition secured lenders, (e) each professional retained by an order of the Court seeking

payment of compensation or reimbursement of expenses in these cases and (f) the other parties on the General Service List established pursuant to the Case Management Order; provided, however, that only the Notice Parties (as such term is defined in the Interim Compensation Order) have been served with a copy of this Application with its exhibits. In light of the nature of the relief requested herein, Kaye Scholer submits that no further notice is required.

WHEREFORE, Kaye Scholer respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit "G": (i) granting final approval of all compensation for professional and paraprofessional services rendered during the Retention Period in the amount of \$229,984.02; (ii) authorizing reimbursement of the actual, reasonable and necessary out-of-pocket expenses incurred in the amount of \$13,871.37 during the Retention Period; (iii) authorizing and directing the Debtors to pay to Kaye Scholer all amounts requested herein that have not previously been paid pursuant to Kaye Scholer's Monthly Statements or prior Court Orders; and (iv) granting such other and further relief as the Court may deem proper.

Dated: March 19, 2004

KAYE SCHOLER LLP

By: /s/Edmund M. Emrich
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