

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re ) Chapter 11  
)  
INTEGRATED HEALTH SERVICES, INC., et al., ) Case No. 00 - 389 (MFW)  
)  
Debtors. ) Jointly Administered

**APPLICATION OF KAYE SCHOLER LLP  
AS COUNSEL TO THE DEBTORS AND DEBTORS-IN-POSSESSION  
FOR FINAL ALLOWANCE OF COMPENSATION  
AND REIMBURSEMENT OF EXPENSES FOR THE  
PERIOD FEBRUARY 2, 2000 THROUGH MAY 12, 2003<sup>1</sup>**

**SUMMARY SHEET – PART I**

Name of Applicant:	KAYE SCHOLER LLP
Authorized to Provide Professional Services to:	Debtors
Date of Retention:	February 2, 2000
Period for which Compensation and reimbursement is sought:	February 2, 2000 – May 12, 2003
Amount of compensation sought as actual, reasonable and necessary:	\$18,451,753.73
Amount of reimbursement sought as actual, reasonable and necessary:	\$812,246.08
This is an ___ interim	<u> x </u> final application

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<sup>1</sup> This Final Fee Application (defined *infra*) includes a request for final allowance of fees and expenses for services rendered on behalf of the Rotech Debtors (defined *infra*) as well as the IHS Debtors (defined *infra*).

The time expended for the preparation of this application is approximately 0 hours.<sup>2</sup> If this is not the first application filed, disclose the following for each prior application:

DATE FILED	PERIOD COVERED	REQUESTED FEES/EXPENSES	APPROVED FEES/EXPENSES
3/25/00	02/02-02/29/00	\$483,069.03 Fees \$19,635.82 Expenses	Approved <sup>3</sup> \$449,472.48 Fees \$19,319.57 Expenses
4/26/00	03/01-03/31/00	\$497,264.77 Fees \$21,904.03 Expenses	Approved
5/31/00	04/01-04/30/00	\$434,022.09 Fees \$13,498.24 Expenses	Approved
7/6/00	05/01-05/31/00	\$482,315.62 Fees \$21,633.43 Expenses	Approved <sup>4</sup> \$472,808.47 Fees \$21,633 Expenses
8/1/00	06/01-06/30/00	\$426,820.90 Fees \$25,803.43 Expenses	Approved
8/28/00	07/01-07/31/00	\$401,768.97 Fees \$24,096.76 Expenses	Approved <sup>5</sup> \$419,951.20 Fees \$25,803.43 Fees
9/28/00	08/01-08/31/00	\$454,174.40 Fees \$31,227.15 Expenses	Approved
10/24/00	09/01-09/30/00	\$252,083.50 Fees \$14,333.47 Expenses	Approved
11/22/00	10/01-10/31/00	\$309,264.84 Fees \$19,006.54 Expenses	Approved
12/28/00	11/01-11/30/00	\$334,600.15 Fees \$8,418.15 Expenses	Approved

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<sup>2</sup> Allowance for compensation for such time accrued after February 13, 2002 and May 12, 2003 is not subject to Bankruptcy Court approval in accordance with the Rotech Confirmation Order (defined *infra*) and IHS Confirmation Order (defined *infra*), respectively.

<sup>3</sup> An objection to this fee application was filed by the United States Trustee (the "Objection"). Pursuant to a Certification of Counsel dated August 8, 2000 [Docket No. 2185], the approved amount was reduced by agreement of the parties and the issues raised by the Objection were deferred to a later date.

<sup>4</sup> See footnote 3.

<sup>5</sup> See footnote 3.

1/25/01	12/01-12/31/00	\$226,840.85 Fees \$8,180.95 Expenses	Approved
2/26/01	1/1/01-1/31/01	\$221,566.10 Fees \$8,958.12 Expenses	Approved
3/26/01	2/1/01-2/28/01	\$296,020.70 Fees \$13,191.61 Expenses	Approved
4/25/01	3/1/01-3/31/01	\$399,202.10 Fees \$15,757.78 Expenses	Approved
6/1/01	4/1/01-4/30/01	\$360,856.10 Fees \$11,475.24 Expenses	Approved
6/28/01	5/1/01-5/31/01	\$408,075.20 Fees \$8,829.12 Expenses	Approved
7/25/01	6/1/01-6/30/01	\$465,686.10 Fees \$11,503.67 Expenses	Approved
8/28/01	7/1/01-7/31/01	\$444,269.06 Fees \$27,504.06 Expenses	Approved
9/26/01	8/1/01-8/31/01	\$516,316.80 Fees \$ 9,907.26 Expenses	Approved
10/26/01	9/1/01-9/30/01	\$342,564.35 Fees \$12,127.17 Expenses	Approved
11/27/01	10/1/01-10/31/01	\$449,651.40 Fees \$16,606.12 Expenses	Approved
12/31/01	11/1/01-11/30/01	\$564,841.10 Fees \$63,704.04 Expenses	Approved <sup>6</sup> \$562,313.60 Fees \$63,704.04 Expenses
1/31/02	12/1/02-12/31/02	\$459,548.85 Fees \$15,610.35 Expenses	Approved
2/27/02	1/1/02-1/31/02	\$599,207.85 Fees \$13,767.04 Expenses	Approved
4/26/02	2/1/02-2/28/02	\$627,052.45 Fees \$18,132.73 Expenses	Approved

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<sup>6</sup> The November 2001 invoice was voluntarily adjusted to reduce for non-working travel time which was billed at the full hourly rate in the amount of \$2,527.50.

5/1/02	3/1/02-3/31/02	\$566,508.05 Fees \$18,177.27 Expenses	Approved
5/30/02	4/1/02-4/30/02	\$700,296.45 Fees \$56,822.30 Expenses	Approved
6/27/02	5/1/02-5/31/02	\$412,652.90 Fees \$21,514.86 Expenses	Approved
7/30/02	6/1/02-6/30/02	\$362,946.50 Fees \$6,806.57 Expenses	Approved
8/27/02	7/1/02-7/31/02	\$331,839.15 Fees \$14,325.19 Expenses	Approved
9/27/02	8/1/02-8/31/02	\$222,637.90 Fees \$11,147.87 Expenses	Approved
10/25/02	9/1/02-9/30/02	\$350,238.75 Fees \$13,585.04 Expenses	Approved
11/25/02	10/1/02-10/31/02	\$314,522.85 Fees \$13,516.03 Expenses	Approved
1/28/03	11/1/02-11/30/02	\$419,065.95 Fees \$11,201.14 Expenses	Approved
2/3/03	12/1/02-12/31/02	\$532,837.35 Fees \$14,930.07 Expenses	Approved
3/5/03	1/1/03-1/31/03	\$769,224.10 Fees \$36,092.74 Expenses	Approved
4/7/03	2/1/03-2/28/03	\$842,662.85 Fees \$53,579.52 Expenses	Approved
4/27/03	3/1/03-3/31/03	\$782,370.60 Fees \$42,337.08 Expenses	Approved
5/23/03	4/1/03-4/30/03	\$1,015,278.15 Fees \$36,216.31 Expenses	80% Fees Paid <sup>7</sup> 100% Expenses Paid

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<sup>7</sup> A hearing to approve the 20% holdback was held on October 14, 2003. The April 2003 invoice was adjusted to reduce for non-working travel time which was billed at the full hourly rate in the amount of \$1,682.50. Approval of the holdback is pending.

6/16/03

5/1/03-5/12/03

\$375,850.50 Fees  
\$7,181.81 Expenses

80% Fees Paid<sup>8</sup>  
100% Expenses Paid

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<sup>8</sup> A hearing to approve the 20% holdback was held on October 14, 2003. The May 1-12, 2003 invoice was adjusted to reduce non-working travel time which was billed at the full hourly rate in the amount of \$848.50. Approval of the holdback is pending.

**SUMMARY SHEET – PART II**

**In re Integrated Health Services, Inc., et al.**

Summary of Time Recorded In Connection  
With The Rendition Of Services To The Debtors For The  
Period From February 2, 2000 through May 12, 2003

<u>NONLEGAL</u>	<u>HOURS</u>	<u>AMOUNT</u>
TOTAL ATTORNEY/ PARALEGAL TIME	51,529.55	\$18,112,079.33

<u>NONLEGAL</u>	<u>HOURS</u>	<u>AMOUNT</u>
WORD PROCESSING	7,548.32	\$339,674.40

<b><u>TOTALS</u></b>		<b>\$18,451,753.73</b>
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BLENDDED HOURLY RATE FOR PROFESSIONALS AND PARA-PROFESSIONALS:		<b>\$358.08</b>
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EXPENSE REIMBURSEMENTS REQUESTED:		<b>\$812,246.08</b>
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**COMPENSATION (FEES) BY PROJECT CATEGORY**

<b>Project Category (Examples)</b>	<b>Total Hours</b>	<b>Total Fees</b>
Asset Analysis and Recovery	21.52	\$3,039.95
Asset Disposition	4,690.46	\$1,467,071.15
Business Operations	1.50	\$757.50
Case Administration	18,479.32	\$5,084,613.93
Claims Administration and Objections	2,047.72	\$680,970.55
Employee Benefits/Pensions	1,158.01	\$359,920.75
Fee/Employment Applications	1,602.26	\$342,539.04
Financing	1,815.85	\$717,816.50
Lease Agreements and Other Executory Contracts	3,397.65	\$951,221.61
General Litigation	11,227.37	\$3,410,678.65
Meetings Of Creditors	552.86	\$282,210.20
Plan and Disclosure Statement	12,072.51	\$4,538,275.50
Relief from Stay Proceedings	1,121.59	\$311,399.30
Dept. of Justice Issues	34.25	\$13,568.70
Preference Recovery and Insider Actions	861.67	\$290,197.90

## EXPENSE SUMMARY

<b>Expense Category (Examples)</b>	<b>Service Provider (if applicable)</b>	<b>Total Expenses</b>
Telephone		\$28,212.09
Duplicating		\$95,820.90
Pages Printed		\$22,682.60
Overtime Transportation		\$39,987.71
Legal Staff Working Meals		\$36,762.55
Hand Deliveries		\$3,225.47
Westlaw		\$241,662.97
Messengers/Courier		\$21,933.54
Lexis		\$70,142.75
Postage		\$1,166.02
Other Travel & Living Expenses		\$45,066.11
Out of Town Transportation		\$3,548.83
Velo Bind		\$1,831.75
Local Transportation		\$3,396.09
Reporters/ Transcripts Fees		\$34,714.32
Outside Duplicating		\$40,764.94
Other Time Sharing Systems		\$2,820.83
Out of Town Meals		\$2,246.88
Color Copier		\$4,715.50
Subpoena Fees		\$1,646.00
Service Dept. Overtime		\$3,694.50
Xerox 2510		\$1.25
Clerical Meals		\$50.00
Publications		\$32,062.25
Managing Attorney Expenses		\$8.25



<b>Expense Category (Examples)</b>	<b>Service Provider (if applicable)</b>	<b>Total Expenses</b>
Parking		\$192.00
Witness Fees		\$8,624.56
Plane Fares		\$26,087.96
Hotels		\$10,118.44
Car Rentals		\$783.27
Fees to Outside Counsel		\$152.75
Corp. Filings & Searches		\$22,366.59
Conference Meals		\$5,538.24
Miscellaneous		\$218.17

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**APPLICATION OF KAYE SCHOLER LLP AS COUNSEL  
TO THE DEBTORS AND DEBTORS-IN-POSSESSION  
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AND REIMBURSEMENT OF EXPENSES FOR THE  
PERIOD FEBRUARY 2, 2000 THROUGH MAY 12, 2003**

Pursuant to 11 U.S.C. §§ 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure and the Administrative Order (defined below), the law firm of Kaye Scholer LLP (“Kaye Scholer”), hereby applies for an order awarding it final, reasonable compensation for professional services rendered as counsel to the above-captioned Debtors in the amount of \$18,451,53.73 together with an award of final reimbursement for the actual, reasonable and necessary out-of-pocket expenses incurred in connection therewith in the amount of \$812,246.08 for the period of February 2, 2000 (the “Filing Date”) through and including May 12, 2003 (the “Total Fee Period”).<sup>9</sup> In support of this application (the “Final Fee Application”), Kaye Scholer respectfully represents as follows:

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<sup>9</sup> As more fully discussed below, this Final Fee Application (defined below) includes a request for final allowance of fees and expenses for services rendered on behalf of the Rotech Debtors (defined below) as well as the IHS Debtors (defined below).

## INTRODUCTION

### **A. Background Pertinent to the Final Fee Application**

1. Kaye Scholer is counsel for Integrated Health Services, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors-in-possession herein (collectively, the “Debtors”)<sup>10</sup> in these chapter 11 cases.

2. On the Filing Date, each of the 438 Debtors filed a voluntary petition for reorganization under chapter 11 of title 11 the United States Bankruptcy Code (the “Bankruptcy Code”). Since the Filing Date, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed herein. On February 15, 2000, the United States Trustee appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in these cases pursuant to § 1102 of the Bankruptcy Code. On January 4, 2002, pursuant to an Order of this Court dated December 26, 2001, the United States Trustee appointed an additional official committee of unsecured creditors (the “Premiere Group Creditors’ Committee” and collectively with the Creditors’ Committee, the “Committees”) for Premiere Associates, Inc. and its direct and indirect subsidiaries, which are Debtors in these cases. In addition to the Committees, the Unofficial Senior Lenders’ Working Group (hereinafter defined), an unofficial committee for holders of the Senior Lender Claims, has been actively involved in all aspects of the Debtors’ reorganization cases.

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<sup>10</sup> The Debtor entities associated with the Rotech business segment are referred to herein as the “Rotech Debtors” while the Debtor entities associated with the Symphony and Long Term Care business segments are referred to herein as the “IHS Debtors.”

4. By its *Order Authorizing Retention And Employment of Kaye, Scholer, Fierman, Hays & Handler, LLP as Attorneys For The Debtors And Debtors-In-Possession* (the “Kaye Scholer Retention Order”) [Docket No. 366] dated March 7, 2000, the Court authorized the Debtors to retain Kaye Scholer as counsel to the Debtors in these chapter 11 cases, effective as of the Filing Date.<sup>11</sup> Kaye Scholer has served the Debtors in that capacity since the Filing Date.

5. By its *Administrative Order Establishing Procedures for Interim Compensation And Reimbursement Of Expenses Of Professionals* dated February 2, 2000 (the “First Interim Compensation Order”) [Docket No. 18], the Court established a procedure for interim compensation and reimbursement of expenses for all professionals in these cases. In particular, the Court authorized the submission on negative notice of monthly interim fee applications by professionals employed under §§ 327, 328(a) or 1103 of the Bankruptcy Code (which includes professionals employed by the Debtors) and a procedure by which, in the absence of any objection to the interim fee application, the Debtors could pay 100% of the fees requested and 100% of the disbursements requested.

6. On or about February 22, 2001, this Court entered its *Order, Under 11 U.S.C. §§ 105(a) and 331, Establishing Revised Procedures For Interim Compensation and Reimbursement of Expenses for Professionals* (the “Revised Order” [Docket No. 3804], and

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<sup>11</sup> By separate orders dated March 7, 2000, the Court also approved the employment and retention of Jenkens & Gilchrist Parker Chapin, LLP (“Jenkens”) and Young Conaway Stargatt & Taylor, LLP (“Young Conaway”) to represent the Debtors in these cases as of the Filing Date. During the pendency of the Debtors’ cases, Kaye Scholer, Jenkens and Young Conaway have divided responsibilities and coordinated their activities on behalf of the Debtors in order to minimize duplication of effort among the firms and to efficiently service the Debtors.

collectively with the First Interim Compensation Order, the “Compensation Orders”). Under the Revised Order, the Debtors’ professionals were authorized to submit monthly interim fee applications in the same manner authorized under the First Interim Compensation Order. However, the Revised Order amended the payment procedures set forth under the First Interim Compensation Order. Specifically, upon the expiration of the twenty (20) day negative notice period following the filing of an interim fee application, the Debtors were authorized to pay professionals an amount equal to the lesser of (i) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in the fee application and (ii) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses not subject to a properly filed objection. The Revised Order further authorized the Debtors to request that the Court schedule a hearing on interim fee applications at least once every six (6) months, at which time professionals may request that the Court authorize payment of any outstanding fees and disbursements.

7. On November 21, 2001, the Rotech Debtors filed a proposed form of disclosure statement and joint plan of reorganization pursuant to § 1125 of the Bankruptcy Code. By Order dated December 20, 2001 [Docket No. 6031], the Court approved the form of the Rotech Debtors’ disclosure statement and joint plan of reorganization, as amended, (the “Rotech Plan”) and approved the Rotech Debtors’ proposed procedures for soliciting acceptances of the Rotech Plan. By order dated February 13, 2002, the Bankruptcy Court entered an order confirming the Rotech Plan [Docket No. 6602] (the “Rotech Confirmation Order”). The Rotech Plan has since gone effective pursuant to the terms of the order approving confirmation.

8. On December 26, 2002, the IHS Debtors filed with the Court a disclosure statement (the “IHS DS”) and a joint plan of reorganization pursuant to § 1125 of the Bankruptcy

Code, as amended, (the "IHS Plan"). Following confirmation hearings held on April 29, May 7 and May 12, 2003, the Court confirmed the IHS Plan and substantively consolidated the IHS Debtors' estates. On May 12, 2003 (the "Confirmation Date"), this Court signed an order confirming the IHS Plan (the "Confirmation Order") which was entered on the docket on May 14, 2003 [Docket No. 9654]. The IHS Plan became effective on September 9, 2003 (the "Effective Date").

9. In accordance with the administrative order pursuant to §§ 105(a), 330(a) and 503(b)(2) of the Bankruptcy Code, Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure and Local Rule 9006-2 establishing revised procedures for the submission of final applications for allowance of compensation and reimbursement of expenses of professionals under the Rotech Plan signed on May 29, 2002 (the "Administrative Order") [Docket No. 7379], this Court granted an extension of time to file final fee applications in connection with the fees and expenses incurred on behalf of the Rotech Debtors under the Rotech Plan. The Administrative Order permitted professionals to file consolidated final fee applications at the end of the cases. Since the deadline to file final fee applications is linked to the Effective Date of the IHS Plan, a final fee application for all of the Debtors is now timely. As noted above, this Final Fee Application requests final approval of all fees and reimbursement of all expenses incurred by Kaye Scholer in connection with its representation of both the Rotech Debtors and the IHS Debtors.<sup>12</sup>

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<sup>12</sup> No prior application for the final allowance of fees and expenses incurred in the representation of the Rotech Debtors has been filed.

**B. Brief Description of the Debtors' Businesses**

10. At the time of the filing, the Debtors operated through three principal business segments: (i) the "Long-Term Care" ("LTC") division, which operated skilled nursing and subacute care facilities; (ii) the "Symphony" division, which provided contract rehabilitation and other contract services; and (iii) Rotech, which provided, among other things, home respiratory services, home infusion therapy and products.

11. Through their LTC division, the IHS Debtors operated over 300 geriatric care facilities and specialty hospitals. In such facilities, the IHS Debtors provided a wide range of basic medical services at its long-term care facilities, which are licensed as skilled care nursing facilities. Services provided to all patients included required nursing care, room and board, special diets, and other services which may be specified by a patient's physician who directs the admission, treatment and discharge of the patient. Inpatient services also included a wide array of rehabilitative therapies. In addition, the IHS Debtors offered specialized subacute care programs at its facilities, including complex care ventilators, Alzheimer's care, wound management, subacute rehabilitation and hospice care.

12. The Symphony division had approximately 1,700 contracts to provide rehabilitation services, including physical, occupational, speech and respiratory therapies, to skilled nursing facilities, subacute care centers, assisted living facilities, hospitals and other locations. Symphony also provided mobile diagnostics services such as portable x-ray and electrocardiogram services to over 4,500 facilities.

13. The Rotech line of business provided home respiratory services, durable medical equipment and home infusion therapy services and products. On March 26, 2002, when

the Rotech Plan became effective, the Rotech Debtors ceased to be a wholly-owned subsidiary of IHS and the IHS Debtors ceased to provide the above mentioned services and products.

14. Additionally, the IHS Debtors formerly provided lithotripsy services and products through its wholly-owned subsidiary, Litho. The IHS Debtors sold all of the outstanding shares of common stock of Litho owned by it to Healthtronics Surgical Services, Inc. on December 11, 2001.

**C. Summary of Significant Services Performed by Kaye Scholer During the Total Fee Period**

15. On the Filing Date, the Debtors, with the guidance and assistance of Kaye Scholer, commenced 438 separate chapter 11 cases, which together constituted one of the largest bankruptcy cases and the largest healthcare bankruptcy case in the United States. As of the Filing Date, the Debtors were one of the nation's leading providers of post-acute and related specialty healthcare services and products in the United States, operating through over 1,300 health care service locations in 46 states and the District of Columbia. At that time, the Debtors operated 377 geriatric care facilities and 17 specialty hospitals, with a total of approximately 44,000 licensed beds and employing in excess of 65,000 people. As of December 31, 1999, the Debtors had total assets (book value) of approximately \$3.379 billion and total liabilities (book value) of approximately \$4.32 billion.

16. During the initial stages in these chapter 11 cases, an extraordinary amount of professional services were required to be rendered, under limited time constraints, to deal with various critical issues and crises faced by the Debtors. In an effort to stabilize operations, Kaye Scholer filed numerous first day applications and presented them to the Court on February 2, 2000. At that time, the Bankruptcy Court entered certain orders designed to minimize the



disruption of the Debtors' business operations and to facilitate their reorganization. These "first day" orders included:

- **Case Administration Orders.** These orders (i) authorized joint administration of the IHS reorganization cases, (ii) established interim compensation procedures for professionals, (iii) authorized the Debtors to file schedules and statements on a consolidated basis, and (iv) authorized the filing of a list of creditors without claim amounts in lieu of a matrix.
- **Payments on Account of Certain Prepetition Claims.** The Bankruptcy Court authorized the payment of prepetition (i) wages, compensation, and employee benefits, (ii) sales and use taxes, (iii) claims of common carriers and warehousemen, (iv) claims of critical trade vendors, and (v) refunds to patients.
- **Business Operations.** The Bankruptcy Court authorized the Debtors to (i) comply with certain license and regulatory agency fee requirements, (ii) continue customer programs, (iii) continue prepetition premium obligations under workers' compensation insurance and all other insurance policies, and bonds relating thereto, (iv) maintain existing bank accounts and business forms, (v) continue their existing cash management system, (vi) employ certain investment guidelines, (vii) provide adequate assurance to utility companies, including the payment of certain prepetition claims, (viii) grant administrative expense status to undisputed obligations arising from the postpetition delivery of goods ordered in the prepetition period and make payment of such claims in the ordinary course of business, and (ix) maintain patient trust accounts.

17. Following the initial stabilization of the Debtors' business, the Debtors, with the assistance of Kaye Scholer, focused their efforts on streamlining and restructuring their business operations and emerging out of bankruptcy. Kaye Scholer rendered professional services in furtherance of those activities including, *inter alia*:

- Assisting the Debtors with the filing of their statements of financial affairs, schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and schedules of equity security holders, each of which, other than the schedule of equity security holders, was prepared on a consolidated basis, as authorized by

order of the Bankruptcy Court dated April 17, 2000 [Docket No. 859].

- Assisting the Debtors with establishing the date and time by which proofs of claim were required to be filed in the IHS reorganization cases for individual claim holders as well as governmental entities.
- Successfully assisting the Debtors in negotiating and securing the Initial DIP Credit Facility (defined below) and the Replacement DIP Credit Facility (defined below), each of which was crucial to the continued operations of the Debtors' business. In addition to the negotiations of the facilities, Kaye Scholer drafted the relevant pleadings and underlying documents, represented the Debtors in Court and assisted in obtaining Court approval of the credit facilities pursuant to §§ 363 and 364 of the Bankruptcy Code.<sup>13</sup>
- Reviewing and advising the Debtors of their options with regard to their facility lease portfolio, assisting the Debtors in their divestiture of approximately 126 long term care facilities and various other assets, including participating in negotiations with landlords and preparing pleadings seeking approval for the transfer of operations relating thereto.

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<sup>13</sup> By order dated March 6, 2000 [Docket No. 359], the Bankruptcy Court approved up to \$300 million in financing under a Secured Super-Priority Debtor-In-Possession Revolving Credit Agreement, among IHS, as borrower, and Citicorp USA, Inc., as agent, and the lenders party thereto (the "Initial DIP Credit Facility"). The Initial DIP Credit Facility would have terminated by its terms on February 3, 2002, but was extended with the assistance of Kay Scholer, pursuant to an amendment approved by the Bankruptcy Court on January 24, 2002 [Docket No. 6276], to the earlier of May 3, 2002 and the effective date of the Rotech Plan (which ultimately occurred on March 26, 2002). By Order dated March 21, 2002 [Docket No. 6921], the Bankruptcy Court approved a Secured Super-Priority Debtor-In-Possession Revolving Credit Agreement, among IHS, as borrower, the CIT Group/Business Credit, Inc., as Administrative Agent and Lender, CapitalSource Finance LLC, as Collateral Agent and Lender, and the lenders party thereto (the "Replacement DIP Credit Facility"). The Replacement DIP Credit Facility by its original terms was scheduled to terminate on the earlier of March 21, 2003 (the "Maturity Date") or the Effective Date of the IHS Plan. By Order dated March 12, 2003 [Docket No. 9117], the Bankruptcy Court approved, on an interim basis, an amendment to the Replacement DIP Credit Facility, pursuant to which, among other things, the Maturity Date was extended to October 31, 2003. The Replacement DIP Credit Facility was approved by final order of the Bankruptcy Court on March 26, 2003 [Docket No. 9231].

- Seeking and obtaining approval pursuant to § 363(b) of the Bankruptcy Code for the Debtors to sell certain businesses not essential to their reorganization, including, *inter alia*, (i) the Lithotripsy Division; (ii) APS Enterprises Holding Company, Inc. interests; and (iii) divestiture of 45 owned long term care facilities.
- Working extensively with the creditor constituencies concerning the details contained in the Debtors' key employee retention program, as a result of which, the Debtors were able to establish a retention program for key employees, which was approved by the Bankruptcy Court by two Orders dated June 21, 2000 [Docket No. 1698], and January 22, 2001 [Docket No. 3525], respectively, as part of a comprehensive retention program for key employees of all of the Debtors. Kaye Scholer prepared the moving papers and represented the Debtors at Bankruptcy Court hearings in connection with these approvals.
- Negotiating the terms of the separation and settlement agreement from the Debtors of Dr. Robert N. Elkins, the Debtors' co-founder and former Chief Executive Officer. The agreement between IHS and Dr. Robert N. Elkins received Bankruptcy Court approval on January 5, 2001 [Docket No. 3422].
- Successfully assisting the Debtors with a transition of management which culminated in the appointment of restructuring experts, Alvarez & Marsal, Inc. ("A&M"). With the assistance of Kaye Scholer, on September 8, 2000, the Debtors were authorized to employ Joseph A. Bondi ("Bondi") as the Chief Restructuring Officer of IHS until the anticipated departure of IHS' then-Chief Executive Officer Robert N. Elkins, and as Chief Executive Officer of IHS thereafter. With the efforts of Kaye Scholer, the Debtors were also authorized to employ two other A&M personnel, Guy Sansone and William Johnsen as officers of the Debtors.
- Kaye Scholer assisted the Debtors in successfully negotiated key settlements which were crucial to the Debtors' emergence from bankruptcy including, among others, the: (i) IHS-Rotech settlement agreement; (ii) IHS noteholder settlement agreement; and (iii) Premiere settlement agreement, which were approved by Orders of the Bankruptcy Court.<sup>14</sup>

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<sup>14</sup> The terms of these settlements are fully set forth in the motions to approve them and in the IHS DS.

- Kaye Scholer counseled and provided services to the Debtors in connection with certain claims which, could have been, and in certain instances were asserted against the Debtors, including, but not limited to, certain pending litigations arising out of or in connection with the following: (i) professional and general liability claims -- (a) insurance coverage and exposure for prepetition professional and general liability claims; (b) litigation with reliance over coverage for 1999 insured tort claims; and (c) insurance coverage and exposure for postpetition professional and general liability claims; -- (ii) the compensation action commenced pursuant to a Bankruptcy Court Order dated January 24, 2002 by the Creditors' Committee against certain former and current officers and directors of the Debtors; (iii) the "Litchfield Action" commenced by the Debtors' against Litchfield Investment Company, LLC; (iv) approximately 30 preference actions commenced by the Debtors on February 1, 2002; (v) the "Qui Tam Suits"; (vi) the Jay M. Felsler, *et al.* litigation; and (vii) the "Angell Action".<sup>15</sup> Additionally, Kaye Scholer has provided service to the Debtors in connection with several appeals which were taken from orders of the Bankruptcy Court.
- Kaye Scholer was integral in assisting the Debtors with the evaluation of strategic alternatives for the Debtors, including, but not limited to, the separatez emergence from bankruptcy of the Rotech Debtors through a plan of reorganization.
- Kaye Scholer was instrumental in the preparation of the Rotech Debtors' disclosure statement and the Rotech Plan, obtaining Court approval of the solicitation materials over objections of certain creditor consistencies and soliciting acceptances thereof which culminated in the confirmation of the Rotech Plan in February of 2002.
- Likewise, Kaye Scholer was instrumental in the IHS Debtors' emergence process. In consultation with their key creditor constituencies and with the assistance of UBS Warburg, the IHS Debtors, with the guidance of Kaye Scholer, undertook a series of marketing efforts for the sale of the IHS Debtors' remaining businesses, which included contacting parties with potential interest in submitting a bid for LTC, the contract rehabilitation business, or both. This extensive marketing effort eventually led to contacting approximately 85 entities, 50 of which were provided

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<sup>15</sup> A description of these litigations is fully set forth in the IHS DS.

financial and organizational information regarding the LTC and Symphony businesses. Through Kaye Scholer, the Debtors negotiated a stock purchase agreement, dated as of December 3, 2002, which was made subject to a Bankruptcy Court-approved overbid process that culminated in an auction held on January 22, 2003.

- In connection with the sale process, Kaye Scholer assisted the IHS Debtors with the preparation of the IHS DS and the IHS Plan, including resolving objections thereto and obtaining Court approval thereof. Kaye Scholer assisted the Debtors with analyzing a myriad of issues related to emergence from bankruptcy, including, but not limited to, assessing various alternative sale and stand alone proposals. On the road to confirmation, Kaye Scholer assisted the IHS Debtors with negotiating with numerous parties and responding to objections prior to the disclosure statement and the confirmation hearings. Kaye Scholer prepared for and represented the IHS Debtors in contested, multi-day hearings on confirmation of the IHS Plan in April-May 2003 which led to the IHS Confirmation Order.

18. Throughout the Total Fee Period, Kaye Scholer has prepared hundreds of documents, motions, briefs, responsive pleadings, and stipulation on behalf of the Debtors. A more detailed description of the services rendered in the forty (40) fee periods is contained in the interim fee applications (the "Fee Applications") filed by Kaye Scholer in these cases and each such application is incorporated herein by reference as if fully set forth herein.<sup>16</sup>

### **RELIEF REQUESTED**

19. Section 330 provides that a court may award a professional employed under Section 327 of the Bankruptcy Code "reasonable compensation for actual necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. §330(a)(1). Section 330 also sets forth the criteria for the award of such compensation and reimbursement:

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<sup>16</sup> Due to their voluminous nature, the Fee Applications filed by Kaye Scholer in these cases are not annexed hereto. The Fee Applications are filed with the Court and will be made available upon request.

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, extent, and the value of such services, taking into account all relevant factors, including

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(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. §330(a)(3).

20. In accordance with the Compensation Orders, Kaye Scholer filed monthly fee applications with the Court for each of the interim fee periods.<sup>17</sup> By this Final Fee Application, Kaye Scholer requests (i) \$18,451,753.73 (inclusive of word processing charges), as allowance of reasonable compensation for actual and necessary professional services performed

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<sup>17</sup> Prefixed to this Final Fee Application is a summary schedule setting forth the date, period covered, amounts requested and amounts approved (a total of \$18,126,567.23 excluding \$278,225.73 for the April and May 2003 holdback, approval of which is currently pending) in each of the Fee Applications filed by Kaye Scholer for services rendered and expenses incurred during the Total Fee Period. Additionally, the summary includes any reductions and the reasons therefor, including the three objections filed by the United States Trustee to Kaye Scholer's February 2000 [Docket No. 518], May 2000 [Docket No. 1762] and June 2000 [Docket No. 1998] fee applications. By Certification of Counsel dated August 8, 2000 [Docket No. 2185], Kaye Scholer and the United States Trustee agreed to defer the issues raised in the objections to a later date.

by Kaye Scholer and (ii) \$812,246.08 as reimbursement of actual and necessary expenses incurred by Kaye Scholer in connection with its representation of the Debtors during the Total Fee Period.<sup>18</sup>

21. For the period covered by this Final Fee Application, Kaye Scholer has provided a total of 51,529.55 hours of attorney and paraprofessional time in connection with these chapter 11 cases (not including an additional 7,548.32 hours of word processing time ancillary to the provision of such services, the charges for which are included as a separate item in the total calculation of fees),<sup>19</sup> and incurred fees for such services totaling \$18,112,079.33.

22. For the same period, Kaye Scholer has incurred actual and necessary expenses in connection therewith totaling \$812,246.08.

23. Kaye Scholer advised and assisted the Debtors in every phase of the Debtors' reorganization cases and has endeavored to represent the Debtors in the most expeditious and economical manner possible. Tasks have been assigned to attorneys and paralegals at Kaye Scholer so that work has been performed by those most familiar with the particular matter or task and by the lowest hourly rate professional appropriate for a particular matter. A core team of 11 attorneys, as well as numerous others from a variety of specialty areas,

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<sup>18</sup> Kaye Scholer believes that all of the Fee Applications are in accordance with Local Rule 2016.

<sup>19</sup> The Third Circuit in *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 848 (3d Cir. 1994), in determining the reasonableness of fees requested under § 330, enunciated a market driven approach in which the Court acts as a "surrogate for the estate, reviewing fee applications much as a sophisticated non-bankruptcy client would review a legal bill." The Court determined that it is appropriate to allow compensation for legal, paralegal, and other services, including clerical services, "if and only if analogous non-bankruptcy clients agree to pay for the same, and then only at that rate." *Id.*; see also *In re Owens Corning, et al.*, 00-03837 (JKF) (February 28, 2003). Accordingly, Kaye Scholer submits that all such fees and charges are appropriately reimbursed by the Debtors' estates pursuant to Third Circuit law.

worked with the Debtors throughout the pendency of the cases to provide expertise in bankruptcy, employment, securities litigation, real estate, corporate finance and tax issues. Moreover, Kaye Scholer has sought to coordinate with other professionals involved in these cases, including Jenkens and Young Conaway, who are also retained as attorneys for the Debtors, so as to minimize any duplication of effort and to minimize attorneys' fees and expenses to the Debtors. Kaye Scholer believes it has been successful in this regard.

24. Professional services and expenses for which compensation and reimbursement are sought were rendered and expended on behalf of the Debtors pursuant to chapter 11 of the Bankruptcy Code. In accordance with the factors enumerated in § 330 of the Code, the final allowance of the amount requested is fair and reasonable given (a) the complexity of these cases, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the cost of comparable services other in cases other than under this title. Kaye Scholer believes it is appropriate that it be compensated for the time spent and reimbursed for the expenses incurred in connection with these matters.

25. As stated in the Affidavit of Michael J. Cramers, annexed hereto as Exhibit "A," no agreement or understanding exists between Kaye Scholer and any other person for the sharing of compensation received or to be received for services rendered in or in connection with these cases.

26. Except to the extent of the retainer paid by the Debtors to Kaye Scholer as described in the first interim fee application filed by Kaye Scholer, Kaye Scholer has received no payment and no promise for payment from any source for services rendered in connection with the Fee Applications.



27. The undersigned has reviewed the requirements of Local Rule 2016 of the United States District Court for the District of Delaware and certifies to the best of his information, knowledge and belief that this application complies with that rule.

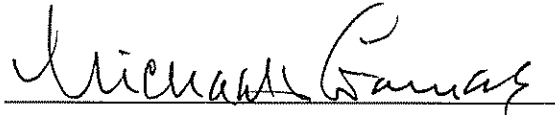
28. The Debtors have received and reviewed this Final Fee Application, and support the full and final allowance of compensation and reimbursement of expenses requested by Kaye Scholer.

WHEREFORE, Kaye Scholer LLP respectfully requests that this Court:

- (i) award Kaye Scholer final compensation in the sum \$18,451,753.73 for actual and necessary professional services rendered on behalf of the Debtors during the period February 2, 2000 through May 12, 2003;
- (ii) award Kaye Scholer final reimbursement in the amount of \$812,246.08 for actual and necessary expenses incurred during that period;
- (iii) authorize the Debtors to pay Kaye Scholer in respect any outstanding interim compensation and expenses; and
- (iv) grant such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 22, 2003

KAYE SCHOLER LLP



Michael J. Crames  
Arthur Steinberg  
Marc D. Rosenberg  
425 Park Avenue  
New York, NY 10022-3598  
(212) 836-8000

*Attorneys For Debtors and  
Debtors in Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re ) Chapter 11  
)  
INTEGRATED HEALTH SERVICES, INC., et al., ) Case No. 00 - 389 (MFW)  
)  
Debtors. ) Jointly Administered

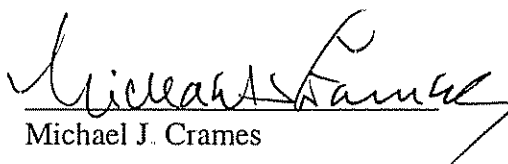
**AFFIDAVIT OF MICHAEL J. CRAMES  
PURSUANT TO  
11 U.S.C. § 504 AND RULE 2016  
OF THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE**

STATE OF NEW YORK )  
ss:  
COUNTY OF NEW YORK )

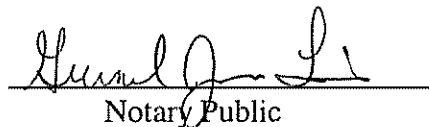
Michael J. Crames, being duly sworn, deposes and states:

1. I am a member of the firm of Kaye Scholer LLP (“Kaye Scholer”), attorneys for the above-captioned debtors.
2. In accordance with Rule 2016 of the Federal Rules of Bankruptcy Procedure and section 504 of title 11 of the United States Code, no agreement or understanding exists between Kaye Scholer and any other person for a division of compensation or reimbursement received or to be received herein or in connection with the within chapter 11 cases.
3. This affidavit certifies that I have reviewed the requirements of Del. Bankr. L. R. 2016 and that the Final Application of Kaye Scholer as Counsel to the Debtors and Debtors in Possession For Final Allowance of Compensation and

Reimbursement of Expenses for the Period February 2, 2000 through May 12, 2003, complies with Del. Bankr. L. R. 2016 of the United States District Court for the District of Delaware.

  
Michael J. Crames

Sworn to before me this  
22 day of October, 2003

  
Notary Public

**GURNEL JEAN-LOUIS  
Notary Public, State of New York  
No. 01JE6016979  
Qualified in Queens County  
Commission Expires Nov. 30, 2006**

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	
INTEGRATED HEALTH SERVICES, INC., et al.,	)	Case No. 00 -389 (MFW)
	)	
Debtors.	)	Jointly Administered

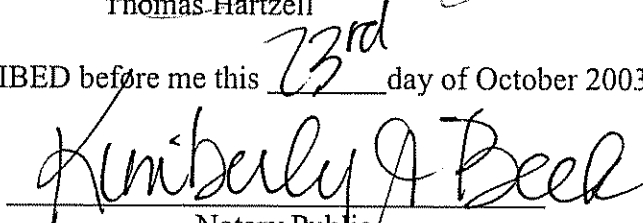
**AFFIDAVIT OF SERVICE**

STATE OF DELAWARE )  
 ) SS  
 NEW CASTLE COUNTY )

Thomas Hartzell, being duly sworn according to law, deposes and says that he is employed by the law firm of Young Conaway Stargatt & Taylor, LLP, attorneys for the Debtors in the within captioned matter, and that on the 23<sup>rd</sup> day of October 2003, he caused a copy of the attached pleading to be served, as indicated, on the parties on the attached service list.

  
 \_\_\_\_\_  
 Thomas Hartzell

SWORN TO AND SUBSCRIBED before me this 23<sup>rd</sup> day of October 2003.

  
 \_\_\_\_\_  
 Notary Public  
 KIMBERLY A. BECK  
 NOTARY PUBLIC  
 STATE OF DELAWARE  
 My commission expires Oct. 1, 2006

**CORE GROUP SERVICE LIST**  
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**10/23/2003**

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