

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---------------------------------|---|---------------------------|
| In Re: | § | Jointly Administered Case |
| | § | No. 01-42530-H4-11 |
| | § | |
| Metals USA, Inc., <i>et al.</i> | § | Case Nos. 01-42530-H4-11 |
| | § | through 01-42574-H4-11 |
| | § | |
| Debtors. | § | Chapter 11 |

**FINAL APPLICATION OF
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.,
COUNSEL FOR THE OFFICIAL JOINT COMMITTEE
OF UNSECURED BONDHOLDERS AND CREDITORS,
FOR ALLOWANCE OF COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON WEDNESDAY, FEBRUARY 14, 2003 AT 9:30 A.M. IN COURTROOM 403, 515 RUSK, HOUSTON, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING UNLESS YOU DID NOT RECEIVE THIS NOTICE IN TIME TO DO SO. IN THAT SITUATION, FILE YOUR RESPONSE AS SOON AS POSSIBLE. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST GIVE A COPY OF YOUR RESPONSE TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE HONORABLE WILLIAM R. GREENDYKE,
UNITED STATES BANKRUPTCY JUDGE:

Akin, Gump, Strauss, Hauer & Feld, L.L.P. (“Akin Gump” or “Applicant”), counsel to the Official Joint Committee of Unsecured Bondholders and Creditors (the “Committee”) of Metals USA, Inc. (“Metals”) and its affiliated debtors and debtors in possession (the “Debtors”), files its final application for compensation for services rendered and reimbursement for expenses incurred (“Application”). In support of this Application, Akin Gump respectfully states and represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The relief requested may be granted in accordance with the provisions of 11 U.S.C. §§ 330 and 331 and Local Bankruptcy Rule 2016(g).

BACKGROUND

2. On November 14, 2001 (the “Petition Date”), the Debtors filed separate voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, thereby commencing the above styled cases. The Debtors have also filed a Notice of Designation as Complex Chapter 11 Bankruptcy Cases in accordance with General Order 2000-2.

3. The Debtors continue to operate their businesses and manage their assets as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed.

4. On November 20, 2001, the United States Trustee’s Office appointed an initial Official Unsecured Creditors Committee which was reconstituted on December 19, 2001. On November 27, 2001, the Committee held its organizational meeting, and interviewed law firms for the position of committee counsel. After the interviews, the Committee selected Akin Gump as their counsel in these cases.

5. On December 10, 2001, the Committee submitted their Application for an Order Authorizing the Employment and Retention of Akin, Gump, Strauss, Hauer & Feld, L.L.P., as Counsel to the Official Committee for Unsecured Creditors Effective as of July 24, 2001 (the “Application”). Applicant filed a statement under Rule 2014 of the Bankruptcy Rules and

affidavit in support of its retention (“Applicant’s Affidavit”). A copy of Applicant’s Affidavit is attached as Exhibit A.

6. By Order entered January 3, 2002, this Court approved the retention of Applicant as counsel to the Official Committee of Unsecured Creditors. A copy of the Order is attached as Exhibit B.

7. On December 11, 2001, this Court entered an order establishing a procedure for interim compensation and reimbursement of professionals [Docket Entry #113] (the “Interim Fee Order”). A copy of the Interim Fee Order is attached as Exhibit C.

8. Since November 27, 2001, Akin Gump has rendered professional services to the Committee as requested and as necessary and appropriate in furtherance of the interests of the Debtors’ unsecured creditors and bondholders. The variety and complexity of these cases and the need to act or respond on an expedited basis in furtherance of the Committee’s needs have required the expenditure of substantial time by personnel from several legal disciplines, on an as-needed basis. A more descriptive explanation of services provided and work done is set forth below and is fully detailed in the billing statements attached as Exhibit D.

9. Akin Gump has no agreement of any kind, express or implied, to divide with any other person or entity any portion of the compensation sought or to be received by it in these cases.

10. This is the final application Applicant will file with the Court for allowance of compensation and reimbursement of expenses for services rendered to the Committee. In this final application Applicant requests:

- a. Final approval of all fees and expenses approved by the Court and paid by the Debtors on an interim basis;
- b. Fees and expenses paid by the Debtors pursuant to the Interim Fee Order, but not yet approved by the Court; and

c. Fees and expenses that have neither been paid by the Debtors nor approved by the Court to date for the period from November 27, 2001 through and including October 31, 2002.

11. Pursuant to the Interim Fee Order, Akin Gump filed its First Application for Interim Allowance of Compensation and for Reimbursement of Expenses for Services Rendered during the Period of November 27, 2001 through March 27, 2002 in the amounts of \$319,624.00 for fees and \$36,656.64 for expenses (the "First Interim Fee Application"). On July 24, 2002, this Court entered an order awarding Akin Gump \$318,264.00 in fees (this amount does not include \$2,322.00 of fees incurred with respect to work done on conflicts, which remained subject to further order of the Court and is being hereby requested) and \$36,550.53 in expenses. On September 17, 2002, Akin Gump filed its Second Application for Interim Allowance of Compensation and for Reimbursement of Expenses for Services Rendered during the Period of March 28, 2002 through August 31, 2002, in the amounts of \$348,060.00 for fees and \$50,454.43 for expenses (the "Second Interim Fee Application"). On November 13, 2002, this Court entered an order awarding Akin Gump \$348,060.00 in fees and \$50,454.43 in expenses.

12. On October 18, 2002, the Bankruptcy Court entered the *Order Confirming Debtors' Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code* (the "Confirmation Order"). The Debtors' Amended Plan of Reorganization (the "Plan") provided that the Committee's constituency, the unsecured creditors, would receive the majority of the Reorganized Debtor's stock.

13. Following the entry of the Confirmation Order, Akin Gump began completing negotiations and finalizing the numerous documents necessary to consummate the Plan and close under the related agreements. Akin Gump coordinated various parties and their respective actions necessary to satisfy conditions for closing under the Plan and the related agreements.

14. The Effective Date of the Debtors' Plan occurred on October 31, 2002. The Plan provides that the Debtors may, without application to or approval by the Bankruptcy Court, pay fees that it incurs after the Effective Date for professional fees and expenses.

15. Since the Effective Date, the reorganized Debtors along with the assistance of Akin Gump have been administering the Plan.

COMPENSATION AND REIMBURSEMENT REQUESTED BY AKIN GUMP

16. This Application includes the period from September 1, 2002 through October 31, 2002 (the "Compensation Period").

17. Akin Gump requests allowance of compensation in the amount of \$365,694.50 for the Compensation Period.

18. The total amount requested for the Compensation Period represents a "lodestar" computation using the firm's normal hourly billing charges in effect during the Compensation Period for an aggregate of 948.85 hours of service. For the Compensation Period, the average billing rate is \$385.41 per hour. A detailed description of time spent and services rendered by each attorney and paraprofessional in each of the major issue areas in which Akin Gump has performed services is set forth on Exhibit D and summarized in Exhibit G. The applicable billing rates for each attorney and paraprofessional rendering services are included on Exhibit E. To aid in the Court's evaluation of the reasonableness of the hourly rates, a brief summary of the professional experience of the lawyers who provided the bulk of the services for which compensation is sought is attached as Exhibit F.

19. In addition, Akin Gump requests approval of the reimbursement of its actual and necessary disbursements made during the Compensation Period in the amount of \$24,475.35.

Schedules of disbursements incurred during the Compensation Period are attached hereto as Exhibit H.¹

20. Akin Gump represents that this Application complies with §§ 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, and the Guideline adopted by the Executive Office for the United States Trustee.

21. Applicant is cognizant of the fact that compensation will be paid to lawyers only for legal work and the dollar value of a particular task is not enhanced simply because a lawyer does it. Considerable care has been taken, therefore, to avoid the performance of purely ministerial tasks by lawyers through the use of paraprofessionals and law clerks where possible.

22. Applicant has made every effort to restrict the number of lawyers involved in these cases to a minimum at any particular stage so as to (a) maximize familiarity with the subject matter and avoid waste or duplication of time; (b) employ special expertise in a given field of law when necessary to do the best job possible with the least amount of effort; and (c) assign the performance of all tasks to the least senior lawyer capable of performing it consistent with sound legal representation and supervision.

23. Care has been taken to avoid duplication of effort and to employ lawyers whose expertise is of the requisite level to perform the services. However, it must be noted that in some instances questions involving the Debtors' estates have involved legal issues requiring a larger proportion of senior time. Furthermore, it is occasionally necessary for the participation of more than one attorney in order to adequately and completely represent the Committee. However, dual participation does not equate to duplication of effort but rather promotes efficiency and

¹ Akin Gump has included all actual and necessary disbursements processed by its accounting department for the Application period. However, Applicant may not receive regular invoices from some vendors. As a result, it is possible that some disbursements for this Application Period will be processed in subsequent periods. Accordingly, Akin Gump reserves the right to seek reimbursement of additional expenses that may have been incurred during the Application Period, but which have not been accounted for in Applicant's billing system.

prevents future duplication of effort and interoffice conferences or preparation of memorandums, which would become necessary for factual communication. Meetings occasionally involved multiple separate subject matters and issues, which are being handled by different attorneys. Accordingly, the attorneys with responsibility for the respective matters are necessary for an informed and thorough discussion or presentation.

SERVICES PERFORMED DURING THE COMPENSATION PERIOD

24. Akin Gump respectfully submits that the professional services that it rendered on behalf of the Committee were necessary and have directly contributed to the effective administration of these cases.

25. The following summary of services rendered during the Compensation Period is not intended to be a detailed description of the work performed, as those day-to-day services and the time expended in performing such services are fully set forth in Exhibit D. Rather, it is merely an attempt to highlight certain of those areas in which services were rendered to the Committee, as well as to identify some of the problems and issues that Akin Gump was required to address.

A. Case Administration – B110

26. Akin Gump's attention to the Committee's organizational needs during the Compensation Period enabled the Committee to continue to function as a coordinated group and to acquit its fiduciary duties.

27. Akin Gump reviewed and analyzed all pleadings filed by the Debtors and other parties in interest in this Court, including, without limitation, (a) lease and executory contract rejection and assumption motions; (b) sale procedures and the sale of assets; (c) administrative claim motions; (d) motions for relief from the automatic stay; (e) motion to place monies in the registry of the Court pursuant to final sale order; (f) motion to expedite trial settings on claim

objections; (g) reclamation motions; (h) fee applications; (i) motions to estimate claims; (j) motion for approval of payment of alternative commitment fees for exit financing, (k) claim objections; (l) retention applications; (m) disclosure statement; and (n) plan of reorganization. Akin Gump kept the Committee members advised of all material developments during the Compensation Period.

28. Due to Akin Gump's experience in counseling creditors' committees, Akin Gump believes it was able to efficiently address all issues relating to case administration that have arisen during the pendency of this case. At the request of the Committee, Akin Gump assisted in or took the lead in analyzing all motions presented by the Debtors and advised the Committee on its own initiatives and directions for the case. In addition, Akin Gump coordinated all Committee activities and attended to member issues.

29. Fees in this category total \$5,110.00, representing 20.1 hours of time spent.

B. Asset Disposition – B130

30. During the Compensation Period, at the Committee's request, Akin Gump reviewed and analyzed the following motions: (a) motion to sell certain real estate in Harris County, Texas to Capital Commercial Development, Inc. free of liens, claims and encumbrances; (b) motion to sell assets of Metalmart, Inc. to Metalmart Specialty Metals, Inc.; (c) motion to sell certain real estate in Jackson County, Missouri to Kansas City Terminal Railway Company free of liens, claims and encumbrances; and (d) motion to sell assets of Metals USA Plates & Shapes Southeast, Inc. and Jeffrey's Real Estate Corporation to Allied Properties, Inc.

31. Fees in this category total \$3,505.00, representing 6.6 hours of time spent.

C. Meetings of and Communications with Creditors – B150

32. Akin Gump held telephonic meetings and meetings with the Committee during the Compensation Period. Prior to its meetings with the Committee, Akin Gump reviewed each pending matter requiring the Committee's attention and all underlying documentation in

connection therewith. Thereafter, Akin Gump discussed each of these matters with the full Committee, as well as individual Committee members, and assisted the Committee in formulating a position thereon. In addition, Akin Gump prepared memoranda to the Committee during the Compensation Period discussing the status of important matters in these proceedings.

33. Through these meetings, telephone conferences and correspondence, Akin Gump has assisted the Committee in fulfilling its statutory duties to make informed decisions regarding the various issues which have arisen in these cases, to monitor closely the Debtors' management of these proceedings, and to reach independent conclusions on the merits of specific matters, as well as regarding the prospects of reorganization

34. Fees in this category total \$900.00, representing 3.6 hours of time spent.

D. Fee/Employment Applications – B160

35. During the Compensation Period, Akin Gump prepared its monthly fee statements, and prepared its second interim fee application.

36. Fees in this category total \$4,635.00, representing 27.4 hours of time spent.

E. Fee/Employment Objections – B170

37. During the Compensation Period, retention applications were filed by and/or on the behalf of: (i) DKW Capital Markets, L.L.C. as marketing advisors to Debtors, and (ii) FTI Consulting, Inc. (As Successor in Interest to the Business Recovery Services Practice of PricewaterhouseCoopers L.L.P.) as Financial Advisors to the Debtors.

38. Akin Gump, at the Committee's request, reviewed and analyzed the fee structures and indemnification provisions of these applications.

39. Fees in this category total \$510.00, representing 3.4 hours of time spent

F. Avoidance Action Analysis – B180

40. Akin Gump, at the Committee's request, reviewed and analyzed insider transactions and fraudulent transactions.

41. Fees in this category total \$1,305.00, representing 2.5 hours of time spent.

G. Assumption/Rejection of Leases and Contracts – B185

42. During the Compensation Period, Akin Gump, at the Committee's request, reviewed and analyzed motions regarding the assumption and rejection of leases and executory contracts.

43. Fees in this category \$250.00, representing 0.5 hours of time spent.

H. Other Contested Matters – B190

44. During the Compensation Period, at the Committee's request, Akin Gump prepared a motion for Lisa Beckerman to appear *pro hac vice*. This motion was necessary for attendance at the hearings on the disclosure statement and plan of reorganization.

45. Fees in this category total \$410.00, representing 2.2 hours of time spent.

I. Non-working Travel – B195

46. At the Committee's request, Akin Gump traveled to Houston, Texas and New York for issues relating to the disclosure statement and plan of reorganization.

47. Fees in this category total \$19,140.00, representing 34.8 hours of time spent.

J. Business Operations – B210

48. During the Compensation Period, Akin Gump reviewed monthly operating reports, financial information and operational matters.

49. Fees in this category total \$550.00, representing 1.0 hours of time spent.

K. Employee Benefits/Pensions – B220

50. During the Compensation Period, Akin Gump reviewed the key employee retention program, stock option plan, severance agreement and the new management incentive plan with respect to the plan of reorganization at the request of the Committee.

51. Fees in this category total \$6,512.50, representing 13.5 hours of time spent.

L. Financing/Cash Collections – B230

52. During the Compensation Period, the Debtors and the Committee entered into a stipulation and agreed order extending the investigation period under the DIP order.

53. Fees in this category total \$1,270.00, representing 3.4 hours of time spent.

M. Claim Administration and Objections - B310

54. At the Committee's request, Akin Gump reviewed and analyzed administrative claims, reclamation claims, motions to estimate claims, claim objections, and the settlement of various claims.

55. Fees in this category total \$14,360.00, representing 32.8 hours of time spent.

N. Plan and Disclosure Statement – B320

56. During the Compensation Period, at the request of the Committee, Akin Gump met and negotiated with the Debtors', their professionals and the Committee's professionals regarding plan alternatives and strategies, reviewed and revised the plan and disclosure statement, and proposed confirmation order. On behalf of the Committee, during the Compensation Period, Akin Gump counseled the Committee and the persons selected by the Committee as initial directors of Metals upon the effective date of the Plan (the "New Board") regarding, negotiated with representatives of the Debtors and their professionals and other interested parties with respect to, and assisted in providing overall coordination of, the implementation of the Plan, including:

- preparation of documents to implement the Plan, including (i) preparing initial drafts of the Amended and Restated Certificate of Incorporation and Bylaws of Metals, amendments to organizational documents of other Debtors and the Warrant Agreement (and form of Warrant Certificate) and providing comments on the Registration Rights Agreement, (ii) assembling comments of representatives of the Debtor, Debtors' counsel, the Warrant Agent and other interested persons thereon, (iii) analysis of legal issues raised in course of negotiations, including timing of financial statement availability and registration form eligibility, (iv) formulating possible resolutions to issues raised by such persons and responding to comments and issues by preparing and distributing multiple revised drafts of such documents, and (v) preparing and arranging for execution of final forms thereof and coordination of filing of organizational documents with appropriate state officials;
- planning, documenting and coordinating issuance of new securities pursuant to the Plan, including (i) analysis and research regarding NASDAQ listing requirements, (ii) coordination with the registrar and transfer agent and warrant agent, (iii) preparation of closing checklist and related orders, certificates and receipts of Metals, registrar and transfer agent and warrant agent, and (iv) preparation of initial stock and warrant certificates;
- participation in arranging for exit financing facility, including (i) negotiations with and selection of exit financing lenders, (ii) review, comparison and comment on draft commitment letters and term sheets of five proposed lenders and draft credit agreements of two proposed lenders, (iii) consultation with representatives of Debtors and Debtors' professionals regarding selection of exit financing lenders, (iv) review of and comments on exit facility closing documents, (v) preparation of termination agreements and lien releases with respect to collateral of the Debtors pledged under three preexisting loan facilities, and (vi) assistance in consummation of closing of exit financing facility; and
- counseling and advising regarding corporate governance, organizational, management and strategic planning matters, including (i) analysis of issues with respect to compensation and duties of office of the chairman, director appointments and severance arrangements, (ii) preparation of draft board resolutions regarding actions to be taken at initial meeting of New Board, (iii) research and analysis in respect of reporting requirements under Section 16 of the Securities Exchange Act and compliance and independence and financial expert qualification issues under Sarbanes-Oxley Act and NASD rules and (iv) preparation and review of director qualification questionnaires, audit committee and compensation committee charters, research memoranda and Section 16 reporting forms.

57. Due to Akin Gump's experience in counseling creditors' committees, Akin Gump believes it was able to address efficiently all issues relating to implementation of the Plan that

have arisen during the pendency of this case and assist in coordinating a smooth transition of Metals from protection of the Bankruptcy Code to a publicly held company under direction of the New Board.

58. Fees in this category total \$307,237.00, representing 797.05 hours of time spent.

EXPENSES

59. It has been necessary for the Applicant law firm to incur and pay in advance out-of-pocket expenses in connection with its representation of the Committee in these cases. Careful records of those expenditures have been maintained and the expenses incurred are also shown in Exhibit H to this Application.

60. Pursuant to Exhibit H, the expenses incurred during the Compensation Period are as follows:

| <u>Expense Description</u> | <u>Total</u> |
|--------------------------------------|------------------|
| Computerized Legal Research | 3,004.85 |
| Courier Service/Messenger Service | 646.51 |
| Duplication - In House | 3,206.80 |
| Duplication - Off Site | 224.32 |
| Facsimile | 403.75 |
| Postage | 69.24 |
| Research | 669.68 |
| Telephone - Calling Card | 41.50 |
| Telephone - Conference Call Services | 2,257.82 |
| Telephone - Long Distance | 573.36 |
| Travel - Airfare | 8,907.50 |
| Travel - Ground Transportation | 1,527.12 |
| Travel - Incidentals | 2.00 |
| Travel - Lodging | 2,667.31 |
| Travel - Meals | 53.47 |
| Travel - Telephone & Fax | 2.12 |
| Travel - Train Fare | 218.00 |
| | |
| TOTAL: | 24,475.35 |

61. Photocopies made at Applicant's offices are normally charged at \$.25 per copy but in compliance with General Order 2001-5, Applicant has voluntarily reduced its photocopy charges to \$.20 per copy. Whenever possible large copy projects are sent to Applicant's offsite contract reproduction center and are charged at between \$.12 and \$.15 per copy. Telecopy communication is utilized on those occasions when written communication must be immediate and oftentimes it is necessary to quickly transfer information. Due to cost and timing, it is not only faster but often more economical to telecopy a few pages rather than to send it by courier or overnight, or for Applicant to communicate it orally. Telecopies sent locally are normally charged at the flat rate of \$.50 per page for outgoing telecopies only and charges for long distance telecopies are normally billed at \$ 1.50 per page. However, in accordance with General Order 2001-2, Applicant has voluntarily reduced all charges relating to telecopies to \$.25 per page.

62. Akin Gump has made every effort to minimize its expenses in this case. It is submitted that all of these expenses were reasonable, necessary, and the same as Applicant customarily charges its other clients. Applicant submits that it is entitled to approval of the reimbursement paid in the sum of \$24,475.35 during the Compensation Period.

FACTORS AFFECTING COMPENSATION

63. It has been recognized that factors other than number of hours spent and the hourly rate normally charged may be considered in fixing the amount of reasonable attorneys fees to be awarded in a bankruptcy proceeding. There are twelve such factors set forth in *In re First Colonial Corp. of America* 544 F.2d 1291 (5th Cir.) cert. den. 97 S.Ct. 1696 (1977) and *Johnson v. Georgia Highway Express, Inc., supra*. One or more of these factors may serve as a basis for enhancing the hourly rate which might otherwise be allowed. *Wolf v. Frank*, 555 F.2d 1213 (5th Cir. 1977). The Applicant does not, however, at this time seek an enhancement of

customary rates as set forth in Exhibit E of this Application. The subjective factors which the Courts are required to consider on applications, however, also have an impact in the case of compensation requests and awards. Each of those factors is discussed below.

A. **Time and Labor Required.** The professional services rendered by Akin Gump on behalf of the Committee have required the continuous expenditure of substantial time and effort, under significant time pressures. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.

B. **Novelty and Difficulty.** Because these cases are complex chapter 11 cases, the factual and legal issues associated with such representation of the Committee are of a greater complexity. Akin Gump's effective advocacy and creative approach has helped clarify and resolve numerous complex issues.

C. **Skill Requisite to Perform the Legal Service Properly.** Akin Gump believes that its recognized expertise in the area of corporate reorganization, its ability to draw from highly experienced professionals in other areas of Akin Gump's practice, and its creative approach to the resolution of issues will contribute to the maximization of distributions to the Debtors' unsecured creditors.

D. **Preclusion of Other Employment.** The time demands of general representation of the Committee in this proceeding have not resulted in a significant dislocation in the Applicant firm. No large scale reassignment of work has been called for in order to properly represent the Committee.

E. **Customary Fee.** The hourly rate at which compensation is requested is set forth by individual in Exhibit D and such rates are summarized on Exhibit E. These rates are no greater, and in some instances may be lower, than those being charged by attorneys

with similar qualifications and experience. The rates are those customarily charged by Applicant to its usual and regular corporate legal clients and to the clients that Applicant represents in bankruptcy related matters. Based on investigation performed by Applicant, the hourly rates for compensation requested by Applicant compare very favorably with average costs for similar legal services being provided by a national law firm.

F. **Whether the Fee is Fixed or Contingent.** Applicant's fee is neither fixed nor contingent. It is based upon the actual total number of hours worked, plus the actual costs incurred.

G. **Time Limitations.** There have been no significant time limitations on the Applicant firm during the time period covered in this Application.

H. **Amount Involved and Results Obtained.** Exhibit D to this Application sets forth in detail all of the work performed for which compensation is sought. The date such services were rendered, the individual performing such services, a description of the services and the time expended are all detailed in Exhibit D. Applicant believes that the detail of Exhibit D supports the position that reasonable compensation is being requested. Through the efforts of Akin Gump, the Committee has been an active participant in these Chapter 11 cases, and its constructive assistance, as well as criticism, has greatly contributed to enhancement of the recoveries available to the Debtors' creditors and to the efficient administration of these cases and to the successful culmination of this case on a consensual basis.

I. **Experience, Reputation, and Ability of the Attorneys.** Members of the Applicant law firm have regularly appeared in significant bankruptcy cases throughout the United States over a period of many years and have acquired a substantial reputation in the legal community. Additionally, the intellectual property, real estate and corporate

attorneys providing legal services in these cases have a similar national major client representative base of experience and expertise. Exhibit F attached to this Application describes the experience of Applicant's attorneys who have devoted time to the representation of the Committee. The described experience of the attorneys demonstrates that the Applicant law firm is particularly qualified to serve as counsel for the Committee in these cases and demonstrates a level of experience and expertise to justify the compensation sought in this Application. Performance in these cases before this Court should support these conclusions.

J. **“Undesirability” of Case.** There is a definite risk that fees and expenses will not get paid when a firm agrees to represent a Committee. Due to this uncertainty, firms frequently elect not to represent Committees.

K. **Nature and Length of the Professional Relationship with Client.** Akin Gump was selected as counsel to the Committee on November 27, 2001. The Court entered an order on January 3, 2002 authorizing the, *nunc pro tunc*, employment and retention of Akin Gump to November 27, 2001. Akin Gump has been rendering services continuously to the Committee since November 27, 2001, and continuing through the Compensation Period, as necessary and appropriate.

L. **Awards in Similar Cases.** Akin Gump’s requested fees and expenses are similar to those fees and expenses paid in other Chapter 11 cases bankruptcy cases of this nature, length of time, and complexity.

ECONOMIC ADMINISTRATION OF THE ESTATE

64. Historically, some courts believed that the most important consideration in fixing attorneys fees in a case arising under the Bankruptcy Act was the conservation of the estate or the so called "principle of economy". See, e.g., *In re: Beverly Crest Convalescent Hospital, Inc.*,

548 F.2d 817 (9th Cir. 1976). This view was rejected by Congress in the adoption of the Bankruptcy Code which provides that professionals shall be compensated on the basis of the cost of comparable services in cases outside the area of Bankruptcy. House Report Number 95-595, 95th Cong. 1st Sess. 329-30 (1977). Thus, fees are no longer subject to an artificial limitation merely because they are being paid from the estate of a debtor. The Applicant would submit, nonetheless, that the fees and expenses requested are reasonable in light of the appropriate considerations.

PREPARATION OF THIS APPLICATION

65. The *First Colonial* case and other similar holdings have required the preparation of very detailed applications for compensation. These applications have served the additional purpose of informing the Court and the creditors of the status of the case and the activities of the attorneys for the Committee. "It would be unduly penurious to require such accounting without granting reasonable compensation". *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088 (5th Cir. 1980). Applicant reserves the right to seek compensation for preparing this Application upon invoice to the Debtors.

CONCLUSION

66. The Applicant is requesting an order (i) approving final compensation for 948.85 hours of time spent for services furnished as attorney to the Committee during the Compensation Period in the amount of \$365,694.50, (ii) approving reimbursement of actual out-of-pocket expenses of \$24,475.35 for the Compensation Period, (iii) approving and granting final allowance of \$1,032,018.50 for compensation for professional services rendered to the Committee during the period of November 27, 2001 through and including October 31, 2002, (iv) approving and granting final reimbursement of Akin Gump's out-of-pocket expenses incurred in connection with the rendering of such services during the period November 21, 2001

through and including October 31, 2002, in the amount of \$111,480.31, and (v) directing the Debtors to pay Akin Gump the foregoing sums (less any amounts previously awarded and paid) within 10 days of the date of this order, and (v) such other and further relief to which it may be entitled.

Respectfully submitted this 27th day of November, 2002.

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

By: /s/ Christopher Adams

H. Rey Stroube, III
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S. Margie Venus
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ATTORNEYS FOR OFFICIAL JOINT COMMITTEE
OF UNSECURED BONDHOLDERS AND CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing interim fee application has been served by overnight deliver or first class mail, postage pre-paid, as indicated below, upon the parties listed below on this 27th day of November, 2002.

Via first class mail, postage pre-paid

Metals USA, Inc.
Attn: John A. Hageman
Three Riverway, Suite 600
Houston, TX 77056

Via first class mail, postage pre-paid

Zack A. Clement, Esq.
Fulbright & Jaworski L.L.P.
1301 Mckinney, Suite 4100
Houston, TX 77010-3095

Via first class mail, postage pre-paid

Nancy Holley, Esq.
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002

Via first class mail, postage pre-paid

Mike Brown
Merrill Lynch Corporate Bond
High Income Fund
800 Scudders Mill Road
Plainsboro, NJ 08536

Via Federal Express, overnight delivery

Metals USA Project Manager
CSC Legalgard Services
1617 JFK Boulevard, Suite 700
Philadelphia, PA 19103

/s/ Christopher Adams

Christopher Adams

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---------------------------------|---|---------------------------|
| In Re: | § | Jointly Administered Case |
| | § | No. 01-42530-H4-11 |
| | § | |
| Metals USA, Inc., <i>et al.</i> | § | Case Nos. 01-42530-H4-11 |
| | § | through 01-42574-H4-11 |
| | § | |
| Debtors. | § | Chapter 11 |

SUMMARY OF EXHIBITS

The following exhibits are referred to in the Final Application of Akin, Gump, Strauss, Hauer & Feld, L.L.P., Counsel for the Official Joint Committee of Unsecured Bondholders and Creditors, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred:

- 1) Exhibit “A” – Statement Under Rule 2014 of the Bankruptcy Rules and Affidavit of H. Rey Stroube, III dated December 10, 2001;
- 2) Exhibit “B” – Order Approving the Employment and Retention of Akin, Gump, Strauss, Hauer & Feld, L.L.P. as Counsel to the Official Joint Committee of Unsecured Bondholders and Creditors Effective as of November 27, 2001;
- 3) Exhibit “C” – Order Granting Debtors’ Motion to Establish Procedures for Interim Compensation of Professionals;
- 4) Exhibit “D” – Detailed Billing Statements of Akin, Gump, Strauss, Hauer & Feld, L.L.P. from September 1, 2002 through October 31, 2002;
- 5) Exhibit “E” – Summary of Timekeepers’ Hours;
- 6) Exhibit “F” – Attorney Biographies;
- 7) Exhibit “G” – Summary of Services Rendered; and
- 8) Exhibit “H” – Summary of Expenses.

Copies of the exhibits are available by request to the undersigned.

Dated: November 27, 2002.

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

By: /s/ Christopher Adams
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