

United States Courts
Southern District of Texas
FILED

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Michael N. Milby, Clerk

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: §
Metals USA, Inc., et al., § Jointly Administered Case No. 01-42530-H4-11
Debtors. §
§ Case Nos. 01-42530-H4-11 through 01-42573-H4-11
§
§ Chapter 11

**INTERIM FEE APPLICATION FOR ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES BY
DKW CAPITAL MARKETS, LLC AS MARKETING ADVISERS TO THE
DEBTOR FOR THE PERIOD FROM APRIL 22, 2002
THROUGH OCTOBER 31, 2002**

NOTICE UNDER COMPLEX CASE ORDER

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 14, 2003 AT 9:00 A.M. IN COURTROOM 403, 515 RUSK, HOUSTON, TEXAS 77002. 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 UNITED STATES BANKRUPTCY JUDGE:

DKW Capital Markets, LLC hereby submits this Application (the "Application") for Allowance of Compensation and Reimbursement of Expenses for Professional Services Rendered as Marketing Advisers to Metals, USA and Affiliated

debtors¹ (“Debtors”) for the period from April 22, 2002 through October 31, 2002. In support of this Motion, the Debtor respectfully represents as follows:

1. On November 14, 2001 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

I. RETENTION OF DKW CAPITAL MARKETS

2. On April 30, 2002 the Debtors filed an application to engage DKW Capital Markets LLC (“DKW”) as marketing advisors to the Debtors (“Application”) pursuant to the terms of a letter agreement between the Debtors and DKW (“Letter Agreement”).

3. On May 8, 2002 this Court entered an order authorizing the retention of DKW pursuant to the terms of the Application and the Letter Agreement. A copy of this order is attached as Exhibit “A” and incorporated by reference.

4. Pursuant to the terms of the Application and the Letter Agreement, subject to court approval, the Debtors agreed to pay DKW up to \$350,000 for services to be performed as marketing advisors (“Threshold”); provided, however that in the event the services and/or sales contemplated under the Engagement were not completed but

¹ Metals USA Management Co., L.P., MUSA GP, Inc., MUSA L.P., Inc., Metals USA Finance Corp., Metals USA Realty Company, Metals Receivables Corporation, Jeffrey’s Real Estate Corporation, Aerospace Specification Metals, Inc., Aerospace Specification Metals-U.K., Inc., Allmet Building Products, L.P., Allmet GP, Inc., Allmet LP, Inc., Cornerstone Building Products, Inc., Cornerstone Metals Corporation, Cornerstone Patio Concepts, L.L.C., Harvey Titanium, Ltd., Interstate Steel Company of Maryland, I-Solutions Direct, Inc., Metalmart, Inc., Metals Aerospace International, Inc., Metals USA Building Products Southeast, Inc., Metals USA Carbon Flat Rolled, Inc., Metals USA Flat Rolled Central, Inc., Metals USA Plates and Shapes Northcentral, Inc., WSS Transportation, Inc., Metals USA Plates and Shapes Northeast, L.P., Levinson Steel GP, Inc., Levinson Steel LP, Inc., Metals USA Plates and Shapes Southcentral, Inc., Metals USA Plates and Shapes Southeast, Inc., Queensboro L.L.C., Metals USA Plates and Shapes Southwest, L.P., Intsel GP, Inc., Intsel LP, Inc., Metals USA Specialty Metals Northwest, Inc., Metals USA Contract Manufacturing, Inc., Metals USA Specialty Metals Northcentral, Inc., National Manufacturing Inc., Texas Aluminum Industries, Inc., Valley Aluminum, Co., Valley Aluminum of Nevada, Inc., Western Awning Company, Wilkof-Morris Steel Corporation.

DKW's fees were at or near the Threshold, DKW and the Debtor would confer and after the Debtors' approval, the parties would submit to the court for its approval a supplement outlining the additional estimated fees to complete the Engagement.

5. On October 9, 2002, the Debtor filed a motion to supplement and modify the order authorizing the retention of DKW Capital Markets to increase the threshold amount to \$500,000.00.

6. On October 30, 2002, this court entered an Order, *inter alia*, increasing the threshold amount DKW Capital Markets could be paid to \$500,000. A copy of this Order is attached as Exhibit "B" and incorporated by reference.

II. FEES AND EXPENSES REQUESTED

7. Applicant requests allowance of fees in the amount of \$470,061.08 and reasonable and necessary expenses in the amount of \$20,655.34 in expenses for a total request of \$490,716.42 for the period from April 22, 2002 through October 31, 2002.

8. All members of Applicant involved in this case have avoided unnecessary duplication of work and Applicant believes that no duplication has occurred.

9. Under the provisions of Federal Rule of Bankruptcy Procedure 2016(a), Applicant had not shared or agreed to share with any other entity or law firm the compensation received, except to the extent that funds received may be distributed to partners of Applicant. All professional services for which allowance is requested were performed by Applicant for and on behalf of Debtors and not on behalf of any other entity or party-in-interest.

10. This Application has been provided to the Debtors.

III. LEGAL AUTHORITIES RELEVANT TO AWARDING REASONABLE COMPENSATION

11. The Fifth Circuit uses the “lodestar” method to calculate professional fees. *In re Fender*, 12 F.3d 480, 487 (5th Cir. 1994) (citation omitted). The lodestar is the number of hours reasonably expended multiplied by “the prevailing hourly rate in the community for similar work.” *Id.* The request for fees is then adjusted upward or downward based on the factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) and *In re First Colonial Corporation of America*, 544 F.2d 1291 (5th Cir. 1977). These factors include the following: (a) time and labor expended, (b) experience, reputation, and ability, (c) skill required for performance of services, (d) the novelty and difficulty of issues, (e) customary fees, (f) time involved and results obtained, (g) preclusion from other employment, (h) contingent nature of fees, (i) time limitations and other circumstances, (j) the undesirability of the case, (k) nature and length of relationship, and (l) awards in similar cases. A detailed description of the application of each of these 12 factors is set forth below as required by Local Bankruptcy Rule 2016(a).

A. Results Obtained

12. During its engagement, DKW Capital Markets actively advised the Debtor in its efforts to market and sell ten separate business units. Although all units were not sold, DKW Capital Markets was successful in locating buyers for several of the business units for an aggregate amount exceeding \$75,000,000.

B. Time and Labor Expanded

13. Applicant’s blended rate of \$196.56 compares favorably with the blended rate encompassed within the fee award in *In re Lawler*, 807 F.2d 1207, 1211 (5th Cir. 1987), given the passage of time since that ruling on fees incurred in 1984 and earlier.

The actual amount of time expended by Applicant during the Period is set forth in substantial detail in Exhibit "C".

C. Experience, Reputation, and Ability

14. Applicant possess a reputation for experience in the marketing, purchase and sale of businesses in the metal industry. Applicant's professionals possess the experience, reputation, and ability to merit an award of the requested compensation and reimbursement.

D. Skill Required for Performance of Services

15. Professional services rendered in this case have been performed by professionals with broad experience and a high level of skill in the areas for which they have been employed. Applicants submit that its professionals, who have varying levels of experience and seniority, have been used effectively and efficiently. Applicant's blended rate \$196.56 reflects this. Applicant's expertise and experience in these matters have enabled this case to progress in an efficient manner to the benefit of Debtors and their creditors.

E. The Novelty and Difficulty of Issues

16. Applicant's representation in this bankruptcy proceeding has involved numerous marketing efforts and the maintenance of a data room for the use of prospective purchasers.

F. Customary Fees

17. Applicant has applied for allowance of compensation for fees that reflect its customary billing rates charged to clients by Applicant in 2002. These rates are

consistent with those of other firms of requisite and comparable skill and ability. Such hourly rates compare very favorably with the community standard at this time.

G. Categorization of Time Involved

18. These Chapter 11 cases have required the expenditure of substantial time and effort on the part of the professionals of Applicant. Applicant represents that the time expended is commensurate with the size and complexity of this case and the marketing efforts necessary to elicit interest in the various business units. As shown on Appendix C, the professional services rendered by Applicant on behalf of Debtors have been divided into two categories: advisory services and data room maintenance.

19. Applicant believes these services, described in Appendix C, were performed as effectively and efficiently as possible and that the time expended is commensurate with the issues and objectives involved.

H. Preclusion from Other Employment

20. Applicant was somewhat precluded from other employment during this case because Applicant has devoted a great deal of effort to this case.

I. Contingent Nature of Fees

21. The only contingency concerning fees was the achievement of a successful result and Court approval of fees requested.

J. Time Limitations and Other Circumstances

22. In many instances, this case required immediate responses that imposed time limitations on the professionals and staff involved. Applicant believes that it has successfully handled the time limitations in this case, and has enabled the sales to progress in an efficient manner.

K. The Undesirability of the Case

23. Undesirability has not been a factor in this proceeding, except to the extent of the contingency of the allowance of the fee.

L. Nature and Length of Relationship

24. DKW Capital Markets, LLC had represented the Debtors in connection with several transactions in the years prior to being engaged herein.

M. Awards in Similar Cases

25. Applicant's fees incurred in representing Debtors during the Period are consistent with fees incurred in other similar cases.

IV. EXPENSES

26. Before filing this Application, Applicant has reviewed the guidelines of General Order 2001-2, entered by the Court on May 3, 2001. Applicant has reviewed its invoices to Debtors to be sure the expenses charged to Debtors are in line with General Order 2002-2. Applicant believes all of the remaining out-of-pocket expenses requested are reasonable and necessary, and in accordance with the guidelines of General Order 2001-2.²

V. CONCLUSION

27. Applicant submits that the time records provided in Exhibit "C" hereto supply detailed time records and provide the court with a summary of the activities of applicant's professionals in this case. Additionally, Applicant has necessary incurred out-of-pocket expenses in connection with its representation of Debtors. Careful records of these expenditures were maintained and are included in Exhibit "C" to this

² In fact, Applicant is actually charging less than the maximum amount under the guidelines (i.e., copies are billed at 15¢ per page, rather than 20¢).

Application. These expenses were reasonable and necessary and Applicant is entitled to the allowance of the sum provided therein.

28. Applicant submits that the foregoing services rendered warrant the allowance of the fees and expenses requested by Applicant hereunder the twelve factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

29. Applicant seeks final approval of the fees and expenses already paid by Debtor to Applicant and an order authorizing payment of the fees and reasonable and necessary out-of-pocket expenses due to Applicant for the Period.

WHEREFORE, PREMISES CONSIDERED, DKW Capital Markets, LLC respectfully request that this Court grant its Application and allow Applicant \$470,061.08 in professional fees and \$20,655.34 in reasonable and necessary expenses, for a total of \$490,716.42, to be paid to DKW Capital Markets LLC for the period April 22, 2002 through October 31, 2002, and such other and further relief as may be just and equitable either at law or in equity.

Dated: December 3, 2002,
Houston, Texas.

Respectfully Submitted,

DKW CAPITAL MARKETS, LLC

/s/ John McCague
John McCague
57th Floor, USX Tower
600 Grant Street
Pittsburgh, PA 15219

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SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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Debtors.	§
	§ Chapter 11

Summary of Exhibits

These exhibits are referred to in the Interim Fee Application for Allowance of Compensation and Reimbursement of Expenses by DKW Capital Markets, LLC as Marketing Advisors to the Debtor for the Period From April 22, 2002 through October 31, 2002:

Description of Exhibit

Summary of Pertinent Parts

A. Order Authorizing Employment and Retention of DKW Capital Markets, LLC as Marketing Advisors to Debtors entered with the Bankruptcy Court on May 8, 2002.	Order authorizing the retention of DKW.
B. Order Authorizing Increase in the Fee Threshold for DKW Capital Markets, LLC as Consultant for the Debtor and Debtors-in-Possession entered with the Bankruptcy Court on October 30, 2002.	Order increasing the threshold amount DKW Capital Markets could be paid to \$500,000.00.
C. Invoices for the period of April 22, 2002 through October 31, 2002.	

Copies of the exhibits are available by request to:

Signature: s/ Johnathan C. Bolton
Name: Johnathan C. Bolton
Address: Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713)651-5151
Facsimile: (713)651-5246
E-Mail: jbolton@fulbright.com