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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In Re:	)	Case No. 03-46590 (DML)
	)	Chapter 11
	)	
MIRANT CORPORATION, et al.,	)	(Jointly Administered)
	)	
Debtors.	)	
	)	
	)	

APPLICATION OF ABOVE-LISTED CREDITORS FOR ALLOWANCE OF COMPENSATION FOR FEES AND REIMBURSEMENT OF EXPENSES PURSUANT TO SECTION 503(b) OF THE BANKRUPTCY CODE

TO: THE HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

The Creditors listed above, by their counsel, Warner Stevens, L.L.P. ("Warner Stevens"), submit this application (the "Application") for entry of an order pursuant to Sections 503(b)(3)(D) and (b)(4) of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for reimbursement of compensation for professional services rendered and expenses incurred in connection with services performed by Warner Stevens from March 2, 2005 (the "Retention Date"), through December 31, 2005 (the "Compensation Period"). In support of their Application, the Creditors respectfully represent as follows:

PRELIMINARY STATEMENT[1]

This Application seeks reimbursement of Warner Stevens' fees and expenses for the role the Creditors played in preparing for and participating in the plan formulation and confirmation process and negotiating with the Debtors with respect to a suggested language and eventual amendments to the Plan.

The efforts of the Creditors and their professionals benefited all holders of unsecured claims that would have otherwise received post-petition interest at the federal judgment rate of 1.08% under Section 10.14 of the Plan. As a result of the Creditors' efforts, such unsecured creditors will receive 4%, almost a fourfold increase.

In the beginning of 2005, Mirant contended that its enterprise valuation provided no recovery to its equity security holders and a substantial discount in the proposed recovery to other Mirant unsecured creditors. The Debtors proposed a plan of reorganization that offered a nominal recovery to equity.

In February 2005, as a result of various disagreements among Mirant's stakeholders, the Court ordered a valuation trial to determine plan recoveries. After completion of the valuation hearings, the key constituencies reached a consensual agreement which resolved the disagreements among the Debtors and the three official committees (collectively the "Committees") and certain other interested parties (the "Mirant Settlement"). The Mirant Settlement paved the way for confirmation of the Plan on a fully consensual basis.

As a result of the Mirant Settlement, the key parties agreed that holders of Allowed Mirant Debtor Class 4 – Convenience Claims and Allowed MAG Debtor Class 7 – Convenience Claims (collectively, the "Convenience Claims") would not receive post-petition interest. The

[1] Capitalized terms used but not defined in this Preliminary Statement are defined in the text of this Application, and unless otherwise defined herein, capitalized terms shall have the meanings ascribed to such terms in the Plan (as defined herein) or the Disclosure Statement (also as defined herein) as applicable.

key constituencies also agreed that holders of Allowed Mirant Debtor Class 3 – Unsecured Claims (the "Mirant Unsecured Claims") and Allowed MAG Debtor Class 5 – Unsecured Claims (the "MAG Unsecured Claims") that have no stated interest rate would receive post-petition interest at the federal judgment rate in effect at the time of the commencement of these Chapter 11 cases, a paltry 1.08%. Since the official committee of unsecured creditors of Mirant Corporation (the "Corp. Committee") and the official committee of unsecured creditors of Mirant Americas Generation, LLC (the "MAG Committee"), were parties to the Mirant Settlement, the Creditors were forced to argue on their own that the proposed plan was prejudicial and unfair.

The Creditors demonstrated that under the circumstances of these cases unsecured creditors of all classes, including Mirant and MAG unsecured creditors and holders of convenience claims, should all receive interest at the state law judgment rate in effect for each claim. Moreover, the Creditors voted to reject the Plan on account of their unfair treatment, which caused the Plan with respect to several of the Debtors to be unconfirmable absent cram down, a costly and time-consuming process. As a result of the Creditors' reasoned opposition, the Debtors came to the negotiating table with the Debtors and offered a proposal which proved to be a substantial benefit to all holders of unsecured claims.

Ultimately, holders of Convenience Claims as well as holders of Mirant Unsecured Claims and MAG Unsecured Claims that would have otherwise received the federal judgment rate at 1.08% are now to receive post-petition interest at a rate of 4% per annum. Because of the Creditors' efforts, holders of Mirant and MAG unsecured trade claims and convenience claims could receive an *additional* $16.8 million of post-petition interest. The amount of additional

post-petition interest to these unsecured creditors is substantial when compared to the minimal amount of professional fees and expenses the Creditors seek to recoup.

In total, the Creditors incurred $90,415.84 in professional fees and expenses with respect to their activities in these chapter 11 cases. The Debtors have stated that they will support the Creditors' request for allowance of their counsels' fees and costs under section 503(b) for the substantial contribution the Creditors have made to these cases, up to the amount of $75,000.

As described below, Warner Stevens' fees and expenses are reasonable and the Court should allow reimbursement of such fees and expenses under Section 503(b) of the Bankruptcy Code based on the Creditors' undisputed substantial contribution to these chapter 11 cases.

BACKGROUND

1. On July 14, 2003 (the "Petition Date"), the Debtors commenced their Chapter 11 cases. On or about July 25, 2003, the United States Trustee appointed the Corp. Committee and the MAG Committee. On or about September 18, 2003, the United States Trustee appointed the official committee of equity security holders of Mirant Corporation (the "Equity Committee" and collectively with the Corp. Committee and MAG Committee, the "Committees").

2. On or about January 19, 2005, the Debtors filed the Disclosure Statement Relating to the Debtors' Joint Chapter 11 Plan of Reorganization and the Joint Chapter 11 Plan of Reorganization for Mirant Corporation and Its Affiliated Debtors.

3. On or about March 25, 2005, the Debtors filed the First Amended Disclosure Statement Relating to the Debtors' First Amended Joint Chapter 11 Plan of Reorganization and the First Amended Joint Chapter 11 Plan of Reorganization for Mirant Corporation and Its Affiliated Debtors.

4. On or about September 22, 2005, the Debtors filed the Second Amended Disclosure Statement Relating to the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization (the "Disclosure Statement") and the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization (the "Second Amended Plan").

5. On or about October 3, 2005, the Court entered the Order approving the Disclosure Statement.

6. Under the Second Amended Plan, the Debtors were reorganized into two groups: the MAG Debtors and the Mirant Debtors. With respect to the MAG Debtors, the Second Amended Plan, *inter alia*, created the following classes and proposed the following treatment:

> MAG Debtor Class 5 – Unsecured Claims (the "MAG Unsecured Claims"): Each holder of an Allowed MAG Debtor Class 5 – Unsecured Claim (including accrued interest as calculated pursuant to Section 10.14(b)) shall receive on the Distribution Date a Pro Rata Share of (i) at the option of the Debtors, $1,231,110,000 in Cash or New MAG Holdco Notes; and (ii) 2.1% of the shares of New Mirant Common Stock issued under the Plan (excluding the shares to be reserved for issuance pursuant to the New Mirant Employee Stock Programs). The treatment set forth herein is based upon an assumed Effective Date of December 31, 2005. To the extent the Effective Date occurs on a date other than December 31, 2005, the Plan Distributions set forth in subclause (i) shall be adjusted to reflect the appropriate amount of accrued interest payable, calculate in accordance with Section 10.14(b). Second Amended Plan Section 5.2(e).
>
> Section 10.14 (b) of the Plan provides that for purposes of making Plan Distributions to the holders of Allowed MAG Unsecured Claims that have a contractual rate of interest, interest will be accrued at the contractual non-default rate from the Petition Date through the Effective Date. *With respect to holders of Allowed MAG Unsecured Claims that do not have a contractual rate of interest, interest will be accrued at the Federal Judgment Rate, from the Petition Date through the Effective Date without compounding.* Second Amended Plan Section 10.14(b). The Federal Judgment Rate is defined as 1.08%. Exhibit A of the Second Amended Plan (emphasis added).
>
> MAG Debtor Class 7 – Convenience Claims (the "MAG Convenience Claims"): Each holder of an Allowed Convenience Claim against any of the MAG Debtors shall receive on the Distribution Date a single Cash payment in an amount equal to the amount of such holder's Allowed Convenience Claim. Plan Section 5.2(g). Convenience Claims are defined in the case of the MAG Debtors as "any

> Unsecured Claim, other than a MAG Short-term Debt Claim, or a Claim of a current or former director, manager, officer or employee of a Debtor, in an amount equal to or less than $25,000." See Exhibit A of the Second Amended Plan. There is no provision for interest on MAG Convenience Claims.

7. The Creditors hold MAG Unsecured Claims and MAG Convenience Claims.[2]

8. On November 10, 2005, the Creditors filed their Objection to Confirmation of the Second Amended Plan [Docket Nos. 12113 and 12115] (the "Confirmation Objection"). The Creditors filed the Confirmation Objection since the Second Amended Plan purported to give value to shareholders but failed to provide for adequate post-petition interest to (i) MAG Unsecured Claims that do not have a stated contractual rate of interest and (ii) MAG Convenience Claims that are not provided post-petition interest in any circumstance.

9. The Creditors and the Debtors then engaged in negotiations to resolve the Confirmation Objection. These negotiations were successful and on November 23, 2005, the Debtors filed their Motion Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Settling the Objection of the Creditors Sierra Liquidity Fund, LLC, et al. to Confirmation of the Debtors' Second Amended Joint Chapter 11 Plan of Reorganization [Docket No. 12313] (the "Rule 9019 Motion"). The Rule 9019 Motion provided:

- Section 10.14 of the Plan will be modified to provide simple interest accruing at four percent (4%) per annum to the holders of Convenience Claims.
- Section 10.14 of the Plan will be modified to provide simple interest accruing at four percent (4%) per annum to the holders of Mirant Class 3 Unsecured Claims and MAG Class 5 Unsecured Claims that would have otherwise received the Federal Judgment Rate under Section 10.14 of the Plan.
- The Creditors would withdraw their Objection and will agree to change any rejection votes on the Plan to acceptances.

[2] Some of the Creditors also hold claims against the Mirant Debtors.

- Conditioned upon the approval by the Court as required under the Bankruptcy Code, the Creditors shall receive reimbursement from the bankruptcy estates of the professional fees and expenses they have incurred in connection with their activities in the chapter 11 cases. Subject to a reasonable opportunity to review such professional fees and expenses, each of the Debtors and the Committees shall not object to such professional fees and expenses to the extent they do not exceed $75,000.00 in the aggregate.

10. No objections to the Rule 9019 Motion were filed and on November 30, 2005, the Court approved the Rule 9019 Motion at the hearing duly scheduled for that time.

11. On November 30, 2005, the Creditors withdrew the Confirmation Objection [Docket No. 12390].

12. On December 9, 2005, the Clerk for the United States Bankruptcy Court for the Northern District of Texas entered an order (the "Confirmation Order") confirming the Debtors' Amended and Restated Second Amended Joint Chapter 11 Plan of Reorganization (the "Plan").

13. On January 3, 2006 (the "Effective Date"), the Plan became effective.

RELIEF REQUESTED

14. Pursuant to Sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code, the Creditors seek payment of Warner Stevens' fees and reimbursement of expenses in the amount of $75,000.00 for the Compensation Period.

15. The actual fees and expenses incurred by Warner Stevens during the Compensation Period total $90,415.84. These amounts were incurred in the following increments:

	Fees	**Expenses**	**Total**
March 2, 2005 – March 31, 2005	$23,326.00	$3,036.06	$26,362.06
April 1, 2005 – April 30, 2005	$6,077.50	$284.47	$6,361.97

May 1, 2005 – May 31, 2005	$2,322.50	$0	$2,322.50
June 1, 2005 – June 30, 2005	$492.50	$0	$492.50
July 1, 2005 – July 31, 2005	$337.50	$0	$337.50
August 1, 2005 – August 31, 2005	$1,550.00	$0	$1,550.00
September 1, 2005 – September 30, 2005	$17,808.00	$114.79	$17,922.79
October 1, 2005 – October 31, 2005	$4,892.50	$62.14	$4,954.64
November 1, 2005 – November 30, 2005	$23,322.50	$606.88	$23,929.38
December 1, 2005 – December 9, 2005	$6,182.50	$0	$6,182.50
TOTAL	$86,311.50	$4,104.34	$90,415.84

Warner Stevens' time and expense records for the Compensation Period are attached as Exhibit "A".

16. However, pursuant to the Rule 9019 Motion, the Creditors seek payment of Warner Stevens' fees and reimbursement of expenses in the maximum amount of $75,000.00 for the Compensation Period.

JURISDICTION AND VENUE

17. This Court has jurisdiction over these cases and this Application pursuant to 28 U.S.C. §§ 157 and 1334, paragraph 80 of the Confirmation Order and Article XVI, subsection (iv), of the Plan. Venue of these proceedings and this Application is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are Sections 105(a) and Section 503(b) of the Bankruptcy Code and Bankruptcy Rule 2016.

<u>WARNER STEVENS' FEES AND EXPENSES SHOULD BE APPROVED UNDER SECTIONS 503(B)(3) AND (4) OF THE BANKRUPTCY CODE.</u>

A. <u>Applicable Substantial Contribution Standards.</u>

(i) Bankruptcy Policy Favors Reimbursement Of Fees And Expenses Of Active Creditors That Contribute To The Estate.

18. The Bankruptcy Code recognizes that active and meaningful creditor participation for companies to achieve the Bankruptcy Code's overarching twin goals of a consensual, expeditious reorganization that preserves to the greatest extent possible the economic value of the restructured company. To this end, the Bankruptcy Code permits – in fact, requires – that the restructured company reimburse ad hoc creditor groups and individual creditors, like the Creditors, that have contributed substantially to a successfully concluded Chapter 11 case. *See In re Consolidated Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir. 1986) (internal quotation marks omitted) (citations omitted); *In re American 3001 Telecomm., Inc.*, 79 B.R. 271 (Bankr. N.D. Tex. 1987) (same); *In re Richton Int'l Corp.*, 15 B.R. 854 (Bankr. S.D.N.Y. 1981) (same). Here, the Creditors submit that its constructive, cost-effective, successful, and substantial contribution to these cases presents a clear case for the award of reimbursement under Section 503(b)(3) of the Bankruptcy Code.

(ii) Legal Requirements For Reimbursement Of Professional Fees And Expenses As A Substantial Contribution.

19. Section 503(b)(3)(D) of the Bankruptcy Code provides for the payment of allowed administrative expenses, including the actual and necessary expenses of a creditor in making a substantial contribution in a Chapter 11 case. Similarly Section 503(b)(4) of the Bankruptcy Code provides for the payment of allowed administrative expenses, including reasonable

compensation for professional services rendered by an attorney or an accountant of an entity whose expenses are allowable under Section 503(b)(3). 11 U.S.C. § 503(b)(4). Thus, a creditor is entitled to reimbursement of fees and expenses of its professionals to the extent that the creditor has made a substantial contribution to the Chapter 11 case. *See In re Datavon, Inc.*, 303 B.R. 119 (Bankr. D. Tex. 2003).

20. To secure administrative expense priority for reimbursement of fees and expenses under Section 503(b)(3), the claimant must be a creditor; and notice and a hearing are required. 11 U.S.C. §§ 101(4), 101(9), 102(1) and 503(b). Only a creditor has standing to make the application; its professionals do not. *See In re American Preferred Prescription, Inc.*, 194 B.R. 721, 726 (Bankr. S.D.N.Y. 1996).

21. The applicant carries the burden of proof by a preponderance of the evidence. *Id. At* 727; *In re Johnson,* 72 Bankr. 115 (Bankr. E.D.N.C. 1987); *In re 1 Potato 2, Inc.,* 71 Bankr. 615 (Bankr. D. Minn. 1987). The determination of whether a creditor's participation has resulted in a substantial contribution to the estate is a question of fact and must be determined based on the unique facts of each case. *See In re Hooker Invs., Inc.,* 188 B.R. 117, 120 (S.D.N.Y. 1995) (*citing In re Consolidated Bancshares, Inc.,* 785 F.2d 1249, 1253 (5th Cir. 1986)).

(iii) Factors Considered By Courts In Determining Substantial Contribution.

22. A creditor makes a substantial contribution when its actions foster and enhance, rather than retard or interrupt, the progress of the reorganization. *See In re DP Partners, Ltd. P'shp.,* 106 F.3d at 672 (quoting *In re Consolidated Bancshares, Inc.,* 785 F. 2d at 1253 (5th Cir, 1986)); *see also Crane vs. Commissioner,* 331 U.S. 1, 6, (1947) (the phrase "substantial

contribution" in Section 503 means a contribution that is "considerable in amount, value or worth.").

23. A creditor makes a substantial contribution when its actions contribute to a result benefiting the estate. *See In re Richton Int'l Corp.,* 15 B.R. 854 (Bankr. S.D.N.Y. 1981). The creditor's services that help move the case forward and aid the formulation and confirmation of a plan of reorganization merit compensation from the estate. *See In re Richton Int'l Corp.,* 15 B.R. 856; In *re 9085 E. Mineral Office Bldg., Ltd.,* 119 B.R. 246 (Bankr. D Colo. 1990); *In re Perdido Motel Group, Inc.,* 115 B.R. 340 (Bankr. N.D. Ala. 1990); *see also In re Granite Partners* L.P., 213 B.R. 440, 446 (Bankr. S.D.N.Y. 1997) (substantial contribution is appropriate when, *inter alia,* "the creditor took an active role in facilitating the negotiation and successful confirmation of the plan.").

24. To prove a substantial contribution, the applicant must demonstrate that the contribution provided a tangible benefit to the estate and to unsecured creditors. Among the factors to be considered in determining whether services benefited all parties in the case, include: (1) whether the services provided a significant demonstrable benefit to the estate and creditors, and (2) whether the services were duplicative of services rendered by a committee, the debtor, or the attorneys for a committee or the debtor. *See Buttes,* 112 B.R. at 194.

25. Courts also consider whether the allowance of the application will results in the impairment of other creditors. *See In re Richton Int'l Corp.,* 15 B.R. at 856 ("This Court emphasizes that the Debtor's estate is well-able to pay the allowances granted with no impairment of other creditors."). Another factor courts consider is the speed with which a successful results has been achieved. *See In re Penn-Dixie Indus.,* 18 B.R. 834, 836 (Bankr. S.D.N.Y. 1982) (awarding fees to creditor bank and noting "time compression is reflective of the

intensity of efforts exerted by all concerned"). In addition, a creditor who mediates disputes that facilitate a consensual plan has made a substantial contribution. *See In re Baldwin United Corp.,* 79 B.R. 321, 341 (Bankr. S.D. Ohio 1987) ("[O]ngoing efforts to meditate disputes among the Debtors' potential adversaries and to develop a consensual plan provided a substantial benefit to all involved").

26. A creditor's efforts that increase creditor recoveries *as a class* qualify as a substantial contribution. *See In re Pow Wow River Campground*, 296 B.R. 81, 87-88 (Bankr. D.N.H. 2003); *see also In re W.G.S. C. Enters.,* 47 B.R. 53 (Bankr. N.D. Ga. 1985) (finding trade creditors who increased recovery of unsecured creditors from fifty percent to one hundred percent had made a substantial contribution). Improving the recovery of a sub-class of creditors is a similar benefit to the estate. *See In re Pettibone Corp.,* 138 B.R. 210 (Bankr. N.D. I11. 1991) (holding that actions of plaintiff in products liability action may provide substantial contribution to the estate by increasing recovery to the sub-class of similarly situated claimants).

B. <u>The Creditors Made A Substantial Contribution In These Cases.</u>

(i) The Creditors' Contributions.

27. The Creditors' role in plan negotiations resulted in a substantial contribution by any standard. The Creditors, among other things:

- Protected the interests of all holders of Convenience Claims as well as holders of Mirant Class 3 Unsecured Claims and MAG Class 5 Unsecured Claims that would have otherwise received post-petition interest at the rate of 1.08% under Section 10.14 of the Plan.
- Participated in the plan formulation and confirmation process.

- Because of the Creditors' efforts, holders of Mirant and MAG unsecured trade claims and convenience claims could receive an *additional* $16.8 million of post-petition interest. This amount is calculated as follows:

	Total Estimated Amount of Claims[3]	Total Estimated Amount of Post-Petition Interest Originally Proposed[4]	Maximum Amount of Post-Petition Interest Awarded @ 4.0%	Maximum Amount of Additional Post-Petition Interest Awarded
Mirant Debtor Class 3 Other Unsecured Claims	$157.7 million	$4.2 million	$16.8 million	$12.6 million
Mirant Debtor Class 4 Convenience Claims	$6.2 million	$0	$496,000	$496,000
MAG Debtor Class 5 Unsecured Claims	$43.1 million	$1.1 million	$4.4 million	$3.3 million
MAG Debtor Class 7 Convenience Claims	$4.8 million	$0	$384,000	$384,000
TOTAL				$16.8 million

- The amount of additional post-petition interest to these unsecured creditors is substantial when compared to the minimal amount of professional fees and expenses the Creditors seek to recoup.

All of these activities satisfy the substantial contribution standards described above, which is clearly why the Debtors agreed that the Creditors' professional fees and expenses should be reimbursed without further litigation.

[3] Pursuant to the Disclosure Statement, pages 142 through 152.

[4] Pursuant to the Disclosure Statement, pages 142 through 152. The Disclosure Statement does not delineate between post-petition interest associated with those claims that already have a stated interest rate which will be paid pursuant to the Plan. For our purposes here, we have assumed that convenience claims and unsecured trade claims without a stated interest rate will now receive 4.0% (an increase from 1.08%) and that the maximum amount of post-petition interest is roughly four times that of the estimated post-petition interest disclosed in the Disclosure Statement.

(ii) No Plan Distributions Will Be Impaired By This Application.

28. The Debtors are worth in excess of $11 billion and they have ample cash and liquidity to support their operations. There will be no impairment of other creditors' recoveries if this Court awards Warner Stevens' compensation pursuant to Section 503(b) of the Bankruptcy Code.

(iii) The Creditors' Self-Interest In The Case Does Not Preclude Reimbursement Of Fees And Expenses Under Section 503(b).

29. That the Creditors acted to protect their self interest in the case rather is irrelevant to a Section 503(b) analysis. As explained by the Fifth Circuit:

> nothing in the Bankruptcy Code requires a self-deprecating, altruistic intent as a prerequisite to recovery of fees and expenses under section 503. Rather, section 503 patently states that a creditor is entitled to actual and necessary expenses "incurred . . . in making a substantial contribution in a case under chapter 9 or 11." . . . The benefits, if any, conferred upon an estate are not diminished by selfish or shrewd motivations. We therefore hold that a creditor's motive in taking actions that benefit the estate has little relevance in that determination whether the creditor has incurred actual and necessary expenses in making a substantial contribution to a case.

Hall Fin. Group, Inc. v. DP Partners, L.P. (In re DP Partners, L.P.), 106 F.3d 667, 673 (5th Cir.) (internal citations omitted), *cert. denied,* 522 U.S. 815 (1997).

30. A number of bankruptcy courts also have held that a creditor's self-interest or motive is irrelevant to a Section 503(b) analysis. *See , e.g., In re United Container LLC,* 305 B.R. 120, 126 (Bankr. M.D. Fla. 203); *In re Pow Wow River Campground, Inc.,* 296 B.R. 81, 86 (Bankr. D.N.H. 2003); *In re Amfesco Indus.,* 1988 U.S. Dist. LEXIS 14675, * 8 (E.D.N.Y. Dec.21, 1988); *In re 1 Potato 2, Inc.,* 71 B.R. 615, 618 n.3 (Bankr. D Minn. 1987); *In re*

W.G.S.C. Enters., 47 B.R. 53, 58 (Bankr. N.D. Ga. 1985); *In re Richton Int'l Corp.,* 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981). Thus, any self-interest by the Creditors is irrelevant to the substantial contribution analysis under Section 503(b). Here, however, the Creditors' actions benefited all holders of Mirant and MAG convenience claims and unsecured claims.

31. Once a substantial contribution is found, fees are reviewed under Section 503(b)(4) and general fee analysis factors applicable to retained professionals. *See In re Texaco, Inc.,* 90 B.R. 622 (Bankr. S.D.N.Y. 1988); *In re 9085E. Mineral Office Bldg., Ltd.,* 119 B.R. 246 (Bankr. D. Colo. 1990). In *In re Texaco,* the court imported a previously enunciated fee analysis structure into the process of evaluating the reasonableness of expenses enumerated in a Section 503(b) application. 90 R.R. 622, 631-32 (Brankr. S.D.N.Y. 1998). Specifically, the Court stated:

> All post petition fees which are compensable pursuant to 11 U.S.C. § 503(b) must be scrutinized in accordance with the factors expressed in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974), which holds that in assessing the reasonableness of attorney fees the court must consider: '(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other of employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; (12) awards in similar cases.'

90 B.R. 622, 631-32 (Bankr. S.D.N.Y. 1988). Reasonableness of fees under Sections 503(b)(4) and 330(a) is based on time, nature, extent and value of services and whether expenses are actual and necessary. *See Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.,* 50 F.3d 253 (3d Cir. 1995); *In re Busy Beaver Building Centers,* 19 F.3d 833 (3d Cir. 1994).

32. As more fully discussed *supra,* the Creditors respectfully submit that all their actions were actual, necessary and non-duplicative. The Creditors satisfy each of the tests and factors set forth above that warrant reimbursement of professional fees and expenses as a substantial contribution. Accordingly, the Creditors are entitled to full reimbursement for Warner Stevens' fees and expenses up to $75,000 because Warner Stevens' services benefited all parties in the case.

DISBURSEMENTS

33. In accordance with Local Rule 2016 and the Standing Order and Guidelines for Compensation and Expense Reimbursement of Professionals dated January, 1, 2001, United States Bankruptcy Court Northern District of Texas (together, the "Guidelines"), the Creditors only seek reimbursement at actual cost for disbursements incurred both in-house and from third-party vendors by Warner Stevens up to $75,000. With respect to photocopying expense, the Creditors seek reimbursement at the rate of $.20 per page, which was the rate charged by Warner Stevens. These charges are intended to cover Warner Stevens' direct operating costs for photocopying facilities, which costs are not incorporated into Warner Stevens' hourly billing rates. The amount of the standard photocopying charges is intended to allow Warner Stevens to cover the related expenses of their photocopying services. With respect to facsimile expenses, Warner Stevens' policy is not to charge for long distance telephone costs for outgoing fax transmissions. Instead, Warner Stevens charges clients $1 per page for such incoming and outgoing faxes. With respect to courier and delivery services, Warner Stevens uses courier services for delivering/retrieving documents from the Court, the clients, and various counsel. Delivery services, such as Federal Express, are utilized when necessary to facilitate overnight

delivery of documents. Warner Stevens does not mark-up the billing it receives for courier services.

34. The actual expenses incurred in providing professional services were necessary, reasonable, and justified under the circumstances.

CONCLUSION

35. To the best of the Creditors' knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement it is seeking payment of is in conformity with the Guidelines and the compensation and expense reimbursement requested were billed at rates, in accordance with practices, no less favorable than those customarily employed by Warner Stevens and accepted by their clients.

36. No agreement or understanding exists between Warner Stevens and any other person for a sharing of compensation received or to be received from the Creditors for services rendered in or in connection with these cases, nor shall Warner Stevens share or agree to share the compensation paid or allowed from the estates for such services with any other person.

37. No agreement or understanding prohibited by 18 U.S.C. § 155 has been or will be made by Warner Stevens.

38. No prior application has been made to this or any other Court for the relief requested herein.

39. The Creditors respectfully request that, because this Application includes the legal support upon which it is based, the Court waive the requirement that a separate memorandum of law be filed in support of this Application.

WHEREFORE, the Creditors respectfully requests (i) approval of Warner Stevens' fees and expenses for the Compensation Period in the amount of $75,000 based on the substantial contribution provided by the Creditors to these chapter 11 cases, and (ii) such other and further relief as is just and proper under the circumstances.

Dated: January 24, 2006
Fort Worth, Texas

Warner Stevens, L.L.P.
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/s/ Michael D. Warner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Application of Above-Listed Creditors for Allowance of Compensation for Fees and Reimbursement of Expenses Pursuant to Section 503(b) of the Bankruptcy Code has been served upon the parties on the attached service list on this 24th day of January, 2006, via electronic mail and/or regular First Class Mail, properly addressed, with postage pre-paid.

/s/ Michael D. Warner

SERVICE LIST

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