

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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US BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: :
 :
Montgomery Ward Holding Corp., : **Jointly Administered**
a Delaware corporation, et al., : **Case No. 97- 1409 (PJW)**
 :
 : **Chapter 11**
Debtors. :

**SECOND APPLICATION OF GROOM LAW GROUP, CHARTERED
FOR FINAL ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD
MARCH 1, 1999 THROUGH JULY 31, 1999**

Groom Law Group, Chartered ("Groom Law Group") hereby makes its Second Application (the "Application") for allowance of compensation of \$221,438.75 and reimbursement of related expenses of \$4,550.88 for the period (the "Second Compensation Period") from March 1, 1999 through July 31, 1999. In addition, Groom Law Group seeks final allowance of the compensation and expenses for which it sought allowance on an interim basis in its pending application covering the period September 11, 1998 through February 28, 1999 ("First Application"). In support of this Application,

Groom Law Group respectfully represents as follows:

	<u>period</u>	<u>Comp</u>	<u>Exp</u>
	1		
	2	221,438.75	4550.88

*pd. 179,008.49 for #1
(80% of base
100% of exp)*

A. General Background

1. On July 7, 1997, (the "Petition Date"), Montgomery Ward Holding Corp. ("MW Corp.") and the above captioned debtors and debtors in possession (collec-

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tively the "Debtors") commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). The Debtors' chapter 11 cases were consolidated for procedural purposes only and have been administered jointly.

2. The Debtors continued in possession of their respective properties and operated and managed their businesses, as debtors in possession, under sections 1107 and 1108 of the Bankruptcy Code. On July 18, 1997, the United States trustee for the District of Delaware (the "United States Trustee") appointed a statutory committee of unsecured creditors in these chapter 11 cases (the "Creditors' Committee") under section 1102 of the Bankruptcy Code.

3. The Bankruptcy Court has confirmed the Debtors' plan of reorganization, which became effective August 2, 1999.

4. The Court has jurisdiction under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of these chapter 11 cases and this Application is proper under 28 U.S.C. §§ 1408 and 1409. Groom Law Group makes this Application under the following: (a) sections 330(a) and 331 of the Bankruptcy Code, (b) Federal Rule of Bankruptcy Procedure 2016, (c) Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals entered on July 8, 1997 (the "Interim Compensation Order"), (d) Order Granting Relief from Certain Provisions of the Administrative Order, Pursuant to Section 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation of Reimbursement of Professionals (the

"Amendment to Interim Compensation Order"), (e) certain applicable provisions of the Guidelines for Applications for Compensation and Reimbursement of Expenses of Professionals adopted by the Office of the United States Trustee (the "Guidelines") and (f) Order #32 (Revising and Rescinding Order #27) of the United States Bankruptcy Court for the District of Delaware Local Rules ("Local Rule 32").

5. Groom Law Group also makes this Application in accordance with the requirements of the Order Appointing Fee Auditor and Establishing Related Procedures Concerning the Allowance and Payment of Compensation and Reimbursement of Expenses of Professionals and Consideration of Fee Applications, dated June 16, 1998 (the "Fee Auditor Order"), which, among other things, appointed Stuart, Maue, Mitchell & James as fee auditor in these cases (the "Fee Auditor").

B. The Debtors

6. Montgomery Ward & Co., Incorporated ("Montgomery Ward"), a wholly-owned subsidiary of MW Corp., is the primary operating company of the Debtors. MW Corp. is also the parent company of the other Debtors, each of which is a direct or indirect subsidiary of Montgomery Ward.

7. Founded in 1872, Montgomery Ward is engaged in retail merchandising and direct response marketing in the United States. As of December 31, 1997, Montgomery Ward and its subsidiaries generated over \$5.4 billion in annual revenue and employed over 46,000 full-time and part-time employees.

C. The Retention of Groom Law Group

8. On January 19, 1999, the Court entered an Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing Debtors and Debtors in Possession to Retain and Employ Groom Law Group, Chartered as Special Counsel (the "Retention Order"). The Retention Order authorized Groom Law Group to perform any and all legal services for the Debtors that are necessary or appropriate in connection with employee benefits matters.

9. With more than 40 attorneys and other professionals practicing in the employee benefits field, and with extensive experience in major Chapter 11 reorganization cases, Groom Law Group is especially qualified to represent the Debtors on employee benefits matters.

10. As in the First Compensation Period, Groom Law Group's services to the Debtors during the Second Compensation Period have been under the direction of Gary M. Ford, assisted principally by his partner Thomas S. Gigot. As explained in Groom Law Group's First Application, they have extensive experience directly relevant to the issues that have faced the Debtors. During this Second Compensation Period, they have been assisted by a number of other attorneys with relevant experience, as explained further below.

11. The services described in this Application, for which Groom Law Group seeks allowance of fees and expenses, demonstrate Groom Law Group's critical role in restructuring the Debtors' overfunded pension plan and enabling the Debtors to

make use of the excess assets in that Plan. Accordingly, Groom Law Group is entitled to allowance of the fees and expenses requested in this Application.

RELIEF REQUESTED AND REASONS THEREFOR

A. Request for Interim Allowance of Compensation and Reimbursement of Expenses

12. Groom Law Group hereby seeks interim allowance of compensation and reimbursement of expenses for its ^{1st} First Compensation Period as follows:

a. *Compensation of \$221,438.75* in connection with services rendered. In Exhibit A attached hereto and incorporated herein by reference, Groom Law Group has summarized the status and hourly billing rate and the total hours incurred and fees charged in each billing category for each of its professionals and paraprofessionals.

b. *Expense reimbursement of \$4,550.88* incurred in connection with services rendered. A summary and itemization of expenses is attached to this Application as Exhibit B and incorporated herein by reference.

B. Payments Already Made Pursuant to Monthly Statements

13. In accordance with the Interim Compensation Order and paragraph 3(b) of the Fee Auditor Order, professionals in these chapter 11 cases are authorized to submit a statement of fees and expenses (the "Monthly Statement") to the Debtors for payment on a monthly basis. The Debtors are directed to pay 80 percent of the fees requested in a professional's Monthly Statement and 100% of the expenses incurred, unless one of the Fee Parties (as defined in the Interim Compensation Order) objects to

the Monthly Statement within 15 days after delivery of the Monthly Statement. The remaining 20 percent of the professional fees requested in the Monthly Statement are held back until the next scheduled hearing on allowance of interim fees, at which time they become payable to the extent allowed by the Court.

14. Groom Law Group has submitted Monthly Statements during its Second Compensation Period to the Debtors as follows:

- a. For March 1, 1999 through March 31, 1999 — fees of \$28,218.50 and expenses of \$1,019.19; and
- b. For April 1, 1999 through April 30, 1999 — fees of \$19,807.50 and expenses of \$494.16.
- c. For May 1, 1999 through May 31, 1999 — fees of \$39,358.50 and expenses of \$478.82.
- d. For June 1, 1999 through June 30, 1999 — fees of \$60,857.25 and expenses of \$701.22.
- e. For July 1, 1999 through July 31, 1999 — fees of \$73,197.00 and expenses of \$1,857.49 (fees for this period reflect an annual rate increase as shown in Exhibit A).

In total, therefore, Groom Law Group has submitted Monthly Statements during its Second Compensation Period for fees totaling \$221,438.75 and expenses totaling \$4,550.88.

15. None of the Fee Parties objected to Groom Law Group's Monthly Statements for the months of March 1999 through July 1999.

16. Groom Law Group has been paid in respect of its Monthly Statements for March 1, 1999 through July 1999 in the aggregate amount of \$179,008.49 representing 80 percent of the requested fees and 100 percent of the requested expense disbursements for that period. None of these payments have been shared by Groom Law Group with any other party, nor are these or any other payments subject to a sharing agreement between Groom Law Group and any third party.

17. The Debtors paid no prepetition retainer to Groom Law Group.

C. Description of Services Rendered

18. As explained in the First Application, Groom Law Group was retained to advise the Debtors regarding a number of legal issues under the Employee Retirement Income Security Act of 1974 ("ERISA") arising with respect to the Debtors' intention to recover excess assets from their overfunded pension plan. Recovery of excess pension plan assets triggers liability under I.R.C. § 4980 in the amount of 50 percent of the assets recovered, unless 25 percent of the excess assets are transferred to a qualified replacement plan, in which case the § 4980 liability is reduced to 20 percent of the reversion. During the Second Compensation Period, much of Groom Law Group's work related to this liability. Groom Law Group designed and drafted a legislative proposal for relief from the 20 percent § 4980 liability, analyzed the potential effects on federal tax revenues of the proposal, prepared a comprehensive revenue estimate

(consisting of detailed spreadsheets and an accompanying analysis) and worked closely with other representatives of the Debtors in presenting the legislative proposal and revenue estimate to Congressional members and staff, and to Treasury Department staff. In addition, Groom Law Group prepared a comprehensive analysis of the legal issue whether § 4980 liability is entitled to tax priority in bankruptcy, provided the Internal Revenue Service and the Department of Justice with a detailed explanation of the reasons why priority does not apply, and conducted settlement negotiations. These efforts resulted in an extremely favorable settlement, reducing the Debtors' § 4980 liability from \$50 million to \$35 million. Finally, Groom Law Group continued providing general advice concerning implementation of the plan termination and establishment of a qualified replacement plan.

19. Groom Law Group's work during the Second Compensation Period falls into the Employee Benefits/Pensions project billing category, with the exception that 49.5 hours in connection with its preparing monthly statements and the First Application in accordance with Court and fee auditor requirements and responding to the fee auditor's review and analysis are within the Fee/Employment Applications billing category. Groom Law Group's monthly statements, attached as Exhibit C, divide the services into four billing matters: pension matters (01), fee/employment applications (02), legislation (03), and excise tax dispute (04). A detailed description of Groom Law Group's activities is set forth in the daily time records included in the attached Exhibit C.

D. Description of Expenses Incurred

20. Groom Law Group seeks reimbursement for actual, necessary expenses (the "Expenses") incurred in rendering services during the Second Compensation Period. The total amount of the Expenses is \$4,550.88. The Expenses were reasonable and necessary in light of the services provided.

21. Groom Law Group maintains the following policies with respect to Expenses:

- a. Groom Law Group has retained documentation for all Expenses in excess of \$25.00, and upon request will provide such documentation to the Court, the United States Trustee, the Debtors and the Creditors' Committee, in accordance with paragraph V.D of Local Rule 32. Additionally, in accordance with paragraph 8(b) of the Fee Auditor Order, appropriate documentation of all outside expenses over \$100.00 have been submitted to the Fee Auditor along with a copy of this Application.
- b. No amortization of the cost of any investment, equipment, or capital outlay is included in the Expenses, nor does Groom Law Group make a profit on any Expense. In addition, for those items or services that Groom Law Group justifiably purchased or contracted from a third party (such as outside copy services), Groom Law Group seeks reimbursement only for the exact amount billed to Groom Law Group by the third party vendor and paid by Groom Law Group to the third party vendor. Accordingly, all of the Expenses are billed at Groom Law Group's "actual cost," as defined in paragraph 8(a) of the Fee Auditor Order.
- c. Photocopying by Groom Law Group was charged at \$.15 per page in accordance with paragraph 8(c) of the Fee Auditor Order. To the extent practicable, Groom Law Group utilized less expensive, outside copying services.

- d. Telecopying charges by Groom Law Group are based solely on the cost of long distance transmissions.
- e. Lexis was used for legal research only when cost effective. Specifically, Groom Law Group used computer research for shepardizing cases and for selected case law research. With the use of Lexis, the total shepardization and research time and cost were greatly reduced.

LEGAL ARGUMENT

A. The Legal Standard

22. To grant a request for compensation pursuant to sections 330 and 331 of the Bankruptcy Code, a court must find that such request is reasonable. The reasonableness of a compensation request is determined by the so-called "lodestar" method:

It is now settled that the "lodestar" method of fee calculation developed by the Fourth Circuit, *see Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a "reasonable" attorney fee in all the federal courts, including the bankruptcy courts. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987).

In re Cena's Fine Furniture, Inc., 109 B.R. 575, 581 (Bankr. E.D.N.Y. 1990). The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate of that professional. There is a strong presumption that the lodestar product is reasonable under section 330 of the Bankruptcy Code. *See In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991). Groom Law Group's lodestar calculation is based upon hourly rates that are well within the range of

rates that are charged by comparable firms in other large bankruptcy cases. Accordingly, Groom Law Group's lodestar calculation is reasonable under sections 330 and 331 of the Bankruptcy Code. *See In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. at 22.

B. Groom Law Group's Fees Were Reasonable

23. Groom Law Group's fees during the Second Compensation Period were reasonable under the prevailing legal standard and should be allowed on an interim basis. The amount of these fees is reasonable, particularly in light of the complexity of the legal issues involved. Groom Law Group has worked closely with the Debtors, who are therefore familiar with the nature and quality of the work the firm has performed. The Debtors have authorized all of this work and have not objected to any of Groom Law Group's fees or expenses. Moreover, Groom Law Group's work is cost-effective, because of the large amount at stake and the importance to the Debtors of recovering the maximum possible amount of excess assets from their overfunded pension plan while minimizing liability under I.R.C. § 4980. The professional services rendered in these chapter 11 cases have been performed by attorneys with broad expertise and high levels of skill in the areas in which they have provided services. Groom Law Group's services have significantly benefited the Debtors, their estates, and creditors and have furthered the Debtors' reorganization.

C. Groom Law Group's Expenses Were Actual and Necessary

24. Section 330(a)(1)(B) of the Bankruptcy Code permits reimbursement for actual, necessary expenses. As noted above, Groom Law Group already has conducted a review process to ensure compliance of Expenses with the Interim Compensation Order and eliminated expenses that it deemed "not necessary." Accordingly, those expenses for which reimbursement is sought in this Application satisfy the standards presented by section 330(a)(1)(B) of the Bankruptcy Code and should be allowed.

NOTICE AND HEARING

25. In accordance with the Interim Compensation Order and the Fee Auditor Order, copies of this Application have been served on counsel to the Creditors' Committee, the United States Trustee and the Fee Auditor. Additionally, as required by paragraph 4(d) of the Fee Auditor Order, the Fee Auditor will be served with a software version of this Application in a computer-readable format approved by the Fee Auditor.

26. In accordance with paragraph 5 of the Fee Auditor Order, no hearing on this Application has been scheduled. Any objections to this Application will be heard at the conclusion of these cases in accordance with the Fee Auditor Order, following the completion of the Fee Auditor's review and the related procedures described in paragraphs 4(h) and 4(i) of the Fee Auditor Order.

CONCLUSION

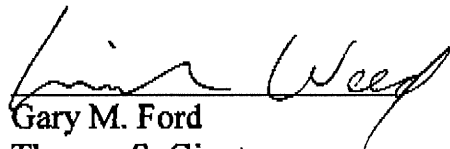
27. For all the foregoing reasons, the fees requested in this Application are reasonable and reflect the value of the services provided to the Debtors' estates. Moreover, Groom Law Group has requested reimbursement only of actual and necessary expenses in compliance with the Interim Compensation Order and the Fee Auditor Order.

28. The undersigned certify that they have reviewed the requirements of the Interim Compensation Order, the Amendment thereto, the Guidelines and Local Rule 32, and the Fee Auditor Order, and that this Application complies therewith.

WHEREFORE, Groom Law Group respectfully requests that the Court enter an order substantially in the form of the order attached hereto as Exhibit D (i) allowing on a final basis the amounts requested in the pending First Application, compensation of \$221,438.75 for services rendered in the Second Compensation Period, reimbursement of expenses incurred during the Second Compensation Period of \$4,550.88, (ii) authorizing the Debtors to pay to Groom Law Group all amounts held back from payment on the Monthly Statements for September 11, 1998 through July 31, 1999 subject to any timely objection thereto, and (iii) granting such other and further relief as the Court may deem proper.

Dated: October 29, 1999

Respectfully submitted,



Gary M. Ford
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Lincoln Weed

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