

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

SEVENTH AND FINAL APPLICATION OF
 HEDLUND HANLEY & JOHN FOR
 COMPENSATION AND REIMBURSEMENT OF EXPENSES

Name of Applicant: Hedlund Hanley & John

Authorized to Provide Professional Services to: Debtors

Date of Retention: August 27, 1997, nunc pro tunc as of July 7, 1997

Period for which compensation and reimbursement are sought: July 8, 1997 - July 31, 1999

Amount of Compensation sought as actual, reasonable and necessary: \$1,968,222.77

Amount of Expense Reimbursement sought as actual, reasonable and necessary: \$ 286,291.68

This is an _____ Interim X Final Application

The total time expended for the preparation of this application is approximately four and a half hours, and the corresponding compensation is not requested herein.

If this is not the first application filed, disclose the following for each prior application:

INTERIM APPLICATIONS FILED

Date Filed	Period Covered	Requested Fees, Expenses	Approved Fees, Expenses
December 2, 1997	July 8, 1997 - November 7, 1997	\$341,250.38	Pending
April 7, 1998	November 8, 1997 - February 28, 1998	\$501,115.90	Pending
August 13, 1998	March 1, 1998 - June 30, 1998	\$596,765.98	Pending

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<u>Date Filed</u>	<u>Period Covered</u>	<u>Requested Fees, Expenses</u>	<u>Approved Fees, Expenses</u>
December 8, 1998	July 1, 1998 - October 31, 1998	\$294,393.19	Pending
April 7, 1999	November 1, 1998 - February 28, 1999	\$259,252.47	Pending
July 23, 1999	March 1, 1999 - June 30, 1999	\$213,308.32	Pending

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Hedlund Hanley & John ("HHJ"), special counsel of the above captioned Debtors and Debtors in Possession, hereby make this Seventh and Final Application for Compensation and Reimbursement of Expenses (the "Application") for the period July 8, 1997 through July 31, 1999 (the "Final Compensation Period") for an order: (1) approving on a final basis compensation for professional legal services rendered to the Debtors in the amount of \$1,968,222.77 together with actual and necessary expenses incurred during the Final Compensation Period in the amount of \$286,291.68; and (2) ordering Debtors to pay HHJ all fees and to reimburse to HHJ all expenses not otherwise paid in the amount of \$148,504.41 and \$0.00, respectively. In support of this Application, HHJ states as follows:

INTRODUCTION

1. On July 7, 1997, Montgomery Ward Holding Corp., et al. (collectively the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On August 27, 1997, the Court entered an order pursuant to Section 327(e) of the Bankruptcy Code authorizing the retention and employment of HHJ as special counsel, *nunc pro tunc* to July 7, 1997. A copy of the order authorizing the employment of HHJ is attached hereto as Exhibit A.

3. On December 2, 1997, HHJ filed its First Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period July 8, 1997 through November 7, 1997.

4. On April 7, 1998, HHJ filed its Second Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period November 8, 1997 through February 28, 1998.

5. On August 13, 1998, HHJ filed its Third Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period March 1, 1998 through June 30, 1998.

6. On December 8, 1998, HHJ filed its Fourth Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period July 1, 1998 through October 31, 1998.

7. On April 7, 1999, HHJ filed its Fifth Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period November 1, 1998 through February 28, 1999.

8. On July 23, 1999, HHJ filed its Sixth Application of Hedlund Hanley & John for Interim Compensation and Reimbursement of Expenses for the period March 1, 1999 through June 30, 1999.

9. Since June 30, 1999, HHJ has submitted to the Debtors one monthly statement for interim compensation and reimbursement of expenses for the period July 1, 1999 through July 31, 1999.

COMPENSATION AND EXPENSES REQUESTED

10. This Application is made by HHJ pursuant to sections 330(a) and 331 of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the First Amended Disclosure Statement with Respect to First Amended Joint Plan of Reorganization of Montgomery Ward Holding Corp. and its Debtor Subsidiaries, dated May 26, 1999, Findings of Fact, Conclusions of Law, and Order under 11 U.S.C. § 1129(a) and (b) and Fed. R. Bankr. Confirming Reorganization of Montgomery Ward Holding Corp. and its Debtor Subsidiaries, entered on July 15, 1999, and the Notice of Effective Date of First Amended Joint Plan of Reorganization of Montgomery Ward Holding Company and its Debtor Subsidiaries, dated August 3, 1999, regarding final fee claims for professional services rendered to the Debtors. This Application is for professional legal fees in the amount of \$1,968,222.77 and for reimbursement of actual and necessary expenses incurred in the amount of \$286,291.68 during the Final Compensation Period of July 8, 1997 through July 31, 1999.

11. As part of the Administrative Order, Pursuant to Sections 105 and 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated July 8, 1997 (the "Administrative Order") for an interim allowance of compensation for professional services rendered to the Debtors, the Court authorized the submission of

monthly statements of professionals and a procedure by which 80% of fees and 100% of the expenses requested in such monthly statements could be paid by the Debtors. The Administrative Order also provided for quarterly applications to the Court for interim compensation and reimbursement.

12. Pursuant to the Administrative Order, HHJ submitted six applications to the Court for interim payment during the Final Compensation Period. In addition, pursuant to the Administrative Order, HHJ submitted to the Debtors a monthly statement for the period July 1, 1999 through July 31, 1999. The billing statements submitted with the six applications and this Application are redacted to omit descriptions of attorney-client communications, work product and other confidential information that could prejudice the Debtors if it were known by defendants in the litigation in which HHJ represents the Debtors. A copy of the Interim Applications (without their exhibits) previously filed with the Court and the redacted monthly statement for July, 1999 are attached as Group Exhibit B.

13. HHJ has also previously submitted to the Fee Auditor computer diskettes that contain the redacted billing statements for the Final Compensation Period.

14. On November 20, 1998, the Court entered an Order on Interim Compensation For the First Through Third Interim Fee Applications of Hedlund Hanley & John (HHJ) And Directing Debtors To Pay All Outstanding Fees (the "Order on Interim Compensation"). A copy of the Order is attached as Exhibit C.

15. In accordance with the Administrative Order and Order on Interim Compensation, the Debtors have paid HHJ \$1,819,718.36 in fees and 100% of the expenses (\$286,291.68) during the Final Compensation period. Debtors have not yet paid HHJ \$148,504.41 in fees.

SERVICES RENDERED BY HEDLUND HANLEY & JOHN

16. During the Final Compensation Period, HHJ professionals and paraprofessionals devoted a total of 11,425.50 hours rendering services to the Debtors with respect to two lawsuits involving insurance coverage under general liability policies for environmental liabilities (including defense) of the Debtors of potentially significant economic impact to these estates. A summary schedule of the names of each HHJ professional and paraprofessional that rendered services to the Debtors in these cases during the Final Compensation Period, the hourly rates and the total hours charged by each such professional and paraprofessional is attached hereto as Exhibit D.

17. During the Final Compensation Period, HHJ professionals were required to address numerous issues in the two lawsuits, and provided services that are summarized in the six interim applications and monthly statement for July, 1999.

18. As requested and agreed to by the Debtor and the Fee Auditor, HHJ has accounted for its time pursuant to The American Bar Association Uniform Task-Based Management System: Litigation Code Set. The Uniform Task-Based Management System is a budgeting and billing system designed to provide cost information through the use of codes. It was developed by the American Bar

Association Section of Litigation, the American Corporate Counsel Association and a sponsoring group of major corporate law departments and law firms. The codes are grouped into five basic phases or aspects of litigation, including (a) case assessment, development and administration, (b) pre-trial pleadings and motions, (c) discovery, (d) trial preparation and trial, and (e) appeal. Each phase consists of a number of tasks, and there are a total of 29 different tasks that comprise the Litigation Code Set. A copy of the list of tasks that comprise the Litigation Code Set is attached as Exhibit E.

19. For its services rendered and expenses paid during the Final Compensation Period, HHJ has submitted to the Debtors statements that follow the format and guidelines of the Uniform Task-Based Management System: Litigation Code Set. These statements contain detailed information for the services provided on each litigation task, including individual time entries designating the particular professional rendering a service on each task, the time expended on a particular task and a description of the service rendered on each task. Simultaneous to providing detailed billing information to the Debtors, HHJ has submitted to other parties to the bankruptcy proceeding (Counsel for the Debtors, the Office of the United States Trustee, Counsel to the Creditor's Committee and the Court Appointed Fee Auditor) redacted billing statements that omit details of privileged attorney-client communications, attorney work product and other material (such as settlement discussions with certain of the defendants) that could be prejudicial to the Debtor in the

insurance litigation if it were disclosed. The time entries in the billing statements do not lump time, each task description includes the type of activity, and each activity is categorized by task. The redacted statements contain a general summary of the activities performed in each task to which time was billed during the Final Compensation Period.

20. The following is a general summary of the activities performed in each task to which time was billed, including the total hours and fees, during the Final Compensation Period:

a. Fact Investigation/Development (Task L110): During the Final Compensation Period, HHJ performed activities within this category that include locating and interviewing potential witnesses, including client personnel and fact witnesses, and examination of documents related to the fact investigation and development of facts.

Hours: 194.50 Fees: \$29,729.50

b. Analysis/Strategy (Task L120): During the Final Compensation Period, HHJ performed activities within this category that include discussions, research, memoranda and meetings on case strategy.

Hours: 283.00 Fees: \$58,036.00

c. Experts/Consultants (Task L130): During the Final Compensation Period, HHJ worked with experts and consultants, including on identification and selection of experts and on expert reports.

Hours: 526.70 Fees: \$98,337.50

d. Document/File Management (Task L140): During the Final Compensation Period, HHJ created and populated document and other filing systems.

Hours: 796.30 Fees: \$60,612.87

e. Budgeting (Task L150): During the Final Compensation Period, HHJ worked on budgeting for 1999.

Hours: 14.20 Fees: \$3,408.00

f. Settlement/Non-Binding ADR (Task L160): During the Final Compensation Period, HHJ planned for and participated in a mediation with defendant insurers, planned for and participated in settlement discussions and prepared draft and final settlement agreements with some of the defendant insurers.

Hours: 433.40 Fees: \$91,163.00

g. Other Case Assessment, Development and Administration (Task L190): During the Final Compensation Period, HHJ spent time related to the cases that is not attributable to any other overall task. Time in this entry includes time attributable to the bankruptcy.

Hours: 238.35 Fees: \$34,326.00

h. Pleadings (Task 210): During the Final Compensation Period, HHJ prepared pleadings related to the second amended complaint, the third amended complaint, motions to amend the complaint, motions to strike, status hearings and replies to the defendants' affirmative defenses,

Hours: 336.10 Fees: \$60,412.50

i. Preliminary Injunctions/Provisional Remedies (Task L220): During the Final Compensation Period, HHJ spent time on

motions for protective order, consolidation of discovery and on reviewing and responding to motions regarding entry of judgment as to the ACS site.

Hours: 13.90 Fees: \$2,637.50

j. Court Mandated Conferences (L230): During the Final Compensation Period, HHJ spent time on meet and confer conferences regarding discovery, continuation of discovery cut off period, refusal of defendant to produce witness, transfer to new Judge in the Illinois case and mandatory conferences in preparation for trial.

Hours: 41.40 Fees: \$9,385.50

k. Dispositive Motions (Task L240): During the Final Compensation Period, HHJ spent time related to motions for summary judgment, including as to some of the defendants' duties to defend and reimburse defense costs, the duty to indemnify regarding the Pleasant Hill claim, late notice regarding the ACS site, allocation as to the insurers and exhaustion of self-insured retentions, and the defendants affirmative defenses.

Hours: 1,214.95 Fees: \$227,232.50

l. Other Written Motions/Submissions (Task L250): During the Final Compensation Period, HHJ developed, prepared and submitted status reports, motions and responses to motions, and appeared in court for status reports and motions, regarding the length of expert witness depositions, transfer of venue, reassignment of judge, protective order regarding depositions, production of settlement agreements, clarification in opposition

to motion for protective order, and sanctions against one of the defendant insurers,

Hours: 477.60 Fees: \$89,003.50

m. Written Discovery (Task L310): During the Final Compensation Period, HHJ discussed, developed, responded to, negotiated and objected to interrogatories, and participated in mandatory meet and confer conferences with opposing counsel.

Hours: 400.10 Fees: \$67,863.00

n. Document Production (Task L320): During the Final Compensation Period, HHJ discussed, responded to, objected to and negotiated document requests, reviewed documents, identified documents for production and privilege, prepared privilege logs, and effected production of documents, and reviewed documents produced by defendants. In addition, during the Final Compensation Period, HHJ participated in mandatory meet and confer conferences with opposing counsel.

Hours: 457.00 Fees: \$69,802.00

o. Depositions (Task L330): During the Final Compensation Period, HHJ determined the deponents, and the timing and sequence of depositions, discussed deposition strategy, prepared deposition notices and subpoenas, communicated with opposing and other counsel on depositions, planned for and prepared to take, attend or defend depositions, prepared witnesses for deposition, reviewed documents for depositions, attended, took and defended depositions, reviewed deposition transcripts and prepared deposition summaries.

Hours: 3,156.10 Fees: \$539,486.40

p. Expert Discovery (Task L340): During the Final Compensation Period, HHJ discussed, prepared and defended experts at depositions, prepared for taking depositions of experts, took depositions of experts and reviewed transcripts of experts' depositions.

Hours: 379.60 Fees: \$79,310.50

q. Discovery Motions (Task L350): During the Final Compensation Period, HHJ developed, discussed strategy for, researched, and prepared motions and replies regarding filing confidential material under seal, protective order, in camera inspection, compelling production of documents, compelling deposition testimony from the defendants, and compelling document and interrogatory responses from defendants, and researched and responded to defendants' motions for clarification regarding discovery cut-off and compelling production of settlement agreements. In addition, during the Final Compensation Period, HHJ prepared for and attended hearings on the motions.

Hours: 977.10 Fees: \$168,042.50

r. Other Discovery (Task L390): During the Final Compensation Period, HHJ analyzed other potential forms of discovery.

Hours: 12.30 Fees: \$2,854.00

s. Fact Witnesses (Task L410): During the Final Compensation Period, HHJ spent time preparing for examination and cross-examination of non-expert witnesses for the California trial.

Hours: 4.60 Fees: \$1,104.00

t. Expert Witnesses (Task L420): During the Final Compensation Period, HHJ spent time preparing for examination of expert witnesses.

Hours: 58.00 Fees: \$13,606.50

u. Written Motions/Submissions (Task L430): During the Final Compensation Period, HHJ developed and responded to written motions and memoranda of law during preparation for trial and the legal phase (Phase I) of the trial, including a trial brief, motions in limine, brief on legal issues for the bifurcated trial (Phase I) and jury instructions.

Hours: 248.70 Fees: \$50,762.50

v. Other Trial Preparation and Support (Task L440): During the Final Compensation Period, HHJ spent time preparing for trial of the cases, and attending a status conference on a phased trial in the California action.

Hours: 554.30 Fees: \$92,204.00

w. Trial and Hearing Attendance (Task L450): During the Final Compensation Period, HHJ attended the final pretrial conference.

Hours: 9.20 Fees: \$2,015.50

x. Post-Trial Motions and Submissions (Task L460): During the Final Compensation Period, HHJ reviewed and discussed the proposed judgment and objections to the proposed judgment and motions to tax costs.

Hours: 6.30 Fees: \$1,120.00

y. Appellate Motions and Submissions (Task L510): During the Final Compensation Period, HHJ attended to issues

regarding appeals, including notice of appeal, designation of the record on appeal, motions to file under seal, motion to extend time to file briefs, brief in opposition to an amicus brief, motions to supplement the record and substantive legal issues.

Hours: 182.10 Fees: \$33,814.50

z. Appellate Briefs (Task L520): During the Final Compensation Period, HHJ reviewed material regarding appeals, and developed, discussed, researched and wrote appellants' briefs, or portions thereof.

Hours: 409.70 Fees: \$81,953.00

EXPENSES

21. Section 330 of the Bankruptcy Code authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a Chapter 11 case. Accordingly, HHJ seeks reimbursement for expenses incurred rendering services during the Final Compensation Period in the amount of \$286,291.68. Detail as to these expenses are in the six quarterly applications previously filed with the Court and statement for July, 1999, attached hereto as Group Exhibit B.

22. HHJ's billing rates do not include charges for photocopying, word processing and other office services because the needs of each client for such services differ. HHJ believes that it is fairest to charge each client for the services actually used in these areas, which is HHJ's practice in all matters that it handles.

23. HHJ's photocopy charges reflect internal costs for the equipment, personnel and supplies required to perform the work.

The rate per page is uniform for all of HHJ's clients, and at \$0.10 per copy, is fair, reasonable and customary.

24. In accordance with HHJ's normal practice, travel and lodging expenses of lawyers based in HHJ's Chicago office (the only office of HHJ) who are required to travel to California, Delaware, New York, Philadelphia, or elsewhere for work on the cases are reflected in this Application. HHJ does not seek reimbursement for first class air fare, luxury accommodations or deluxe meals, or for personal, incidental charges, such as personal telephone calls and laundry.

25. Other disbursements and expenses have been incurred in accordance with HHJ's normal practice of charging clients for expenses clearly related to and required by particular matters. HHJ has endeavored to minimize these expenses to the extent possible. In addition, HHJ states that it: (a) charges for computer assisted research at the provider's cost, (b) charges for domestic outgoing facsimile transmissions at \$1.00 per page, (c) separately charges for actual long distance carrier charges for outgoing facsimile transmissions, and (d) does not charge for word processing.

STANDARDS

26. To grant a request for compensation pursuant to sections 330 and 331 of the Bankruptcy Code, a court must find that the request is reasonable as determined by the "lodestar" method:

It is now settled that the "lodestar" method of fee calculation developed by the Third 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. 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 the professional. Importantly, there is a "strong presumption" that the lodestar 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). HHJ's lodestar calculation is based on hourly rates that are well within, if not lower than, the range of hourly rates of comparable firms handling comparable complex insurance litigation on behalf of the insured. Accordingly, HHJ's lodestar calculation is reasonable under sections 330 and 331 of the Bankruptcy Code. See, id.

CONCLUSION

27. The fees and expenses requested herein by HHJ are based on hourly billing rates that are less than its usual and customary hourly rates and expenses charged during the Final Compensation Period for work performed for other clients on both insurance and non-insurance litigation matters.¹ HHJ has filed six prior interim fee applications in these cases, for the period July 8, 1997 to November 7, 1997, November 8, 1997 to February 28, 1998, March 1, 1998 to June 30, 1998, July 1, 1998 to October 31, 1998, November 1, 1998 to February 28, 1999 and March 1, 1999 to June 30, 1999.

¹ HHJ has not raised its hourly billing rates on its services for Debtors in these insurance cases since January 1, 1997. Additionally, it was charging between 10%-27% less than its established rates at that time.

In addition, this Application includes the monthly statement for July, 1999. Neither HHJ, nor any principal, partner or employee thereof, has received or has been promised any compensation for services rendered or to be rendered in any other capacity in connection with these cases.

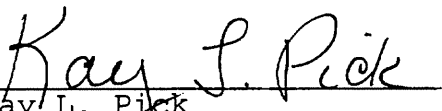
28. No agreement or understanding exists between HHJ or any third person for the sharing of compensation, except as allowed by section 504(b) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016 with respect to sharing of compensation between and among partners of HHJ.

29. All services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Debtor, and not on behalf of any other entity.

30. HHJ respectfully requests that it be allowed final compensation for the period July 8, 1997 through July 31, 1999 in the amount of \$1,968,222.77 for services rendered to the Debtor in connection with the insurance litigation during the Final Compensation Period and that it be allowed reimbursement of reasonable and necessary expenses incurred during the Final Compensation Period on behalf of the Debtor in the amount of \$286,291.68. HHJ further requests that the Debtors be authorized

and directed to pay HHJ the unpaid balance of such allowed fees and expenses in the total amount of \$148,504.41² and that HHJ be granted such other and further relief as the Court deems appropriate.

Dated: September 30, 1999 Respectfully submitted:



Kay L. Pick
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Chicago, Illinois 60606
Special Counsel for the Debtors

² As of July 20, 1999, Debtors had paid to HHJ \$1,819,718.36 and \$286,291.68 for services and expenses, respectively, for the period July 8, 1999 through July 31, 1999. The remaining balance owed by Debtors to HHJ is \$148,504.41 in fees and \$0.00 in expenses.