

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Case No. 97-1409 (PJW)
MONTGOMERY WARD HOLDING CORP.,	)	Jointly Administered
a Delaware corporation, <i>et al.</i>	)	
	)	
Debtors.	)	Chapter 11
_____	)	

**FIFTH INTERIM AND FINAL APPLICATION OF MCDERMOTT, WILL & EMERY  
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Name of Applicant: McDermott, Will & Emery

Authorized to Provide Professional Services to: Montgomery Ward Holding Corp. and its affiliated debtors

Date of Retention: January 2, 1998

Period for which Compensation and Reimbursement was sought: January 2, 1998 through August 2, 1999

Amount of Compensation Requested: \$939,322.50

Amount of Expense Reimbursement Requested: \$86,100.31

This is an:     Interim         Final Application  
(Fifth Application Period)

The total time expended for the preparation of fee applications in this latest interim period is 29.8 hours and the corresponding compensation requested is \$9,077.

MW&E make the following disclosures in connection with previous interim applications:

<u>Date Filed</u>	<u>Period Covered</u>	<u>Requested Fees, Expenses</u>	<u>Approved Fees, Expenses</u>
April 15, 1998	January 2, 1998 through February 28 1998	\$70,707 in fees and \$2,602.79 in expenses	None
August 15, 1998	March 1, 1998 through June 30, 1998	\$313,466 in fees and \$16,925.91 in expenses	None
December 15, 1998	July 1, 1998 through October 31, 1998	\$206,035.50 and \$24,891.22 in expenses	None
April 15, 1999	November 1, 1998 through February 28, 1999	107,307 in fees and \$10,644.65 in expenses	None

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a Delaware corporation, <i>et al.</i>	)	
	)	
Debtors.	)	Chapter 11
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	)	

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**FIFTH INTERIM AND FINAL APPLICATION OF  
McDERMOTT, WILL & EMERY FOR COMPENSATION AND  
REIMBURSEMENT OF EXPENSES**

McDermott, Will & Emery ("MW&E") hereby makes its fifth application ("Fifth Interim Application") for interim allowance of compensation in the amount of \$251,026.50 and reimbursement of related expenses in the amount of \$31,206.69 for the period from March 1, 1999 through August 2, 1999 ("Fifth Application Period"). MW&E further makes its application ("Final Application") for **final allowance of compensation** in the amount of **\$939,322.50** and **reimbursement of related expenses** in the amount of **\$86,100.31** for the period **January 2, 1998 through August 2, 1999** ("Final Application Period"). In connection with its consideration of the Fifth Interim and Final Application (collectively, the "Application"), MW&E further requests that the Court authorize payment of \$188,664.12 previously held back from MW&E's fees throughout the Final Application Period and \$3,454.02 in unpaid expenses. In support of the Application, MW&E respectfully represents as follows:

**PRELIMINARY STATEMENT**

Prior to July 7, 1997 ("Petition Date"), MW&E represented Montgomery Ward Holding Corp. ("MW Corp"), its operating subsidiary Montgomery Ward & Co., Inc. ("Montgomery Ward") and other debtors in these cases (collectively, the "Debtors") in a variety of labor and employee relations matters. Because of the automatic stay, neither the

Debtors nor MW&E expected substantial litigation activity after the Petition Date and the Debtor initially retained MW&E as an ordinary course professional pursuant to order of this Court. However, in late 1997, the named plaintiffs in *Karen Trent, et al. v. Montgomery Ward & Co., Inc.*, a class action pending in the United States District Court for the District of Wyoming ("Class Action Litigation"), sought and obtained relief from stay for the purpose of obtaining certification of a plaintiff class. The Debtors requested that MW&E vigorously oppose class certification.

In the Class Action Litigation,<sup>1</sup> Karen Trent and the other named plaintiffs are present and former commissioned sales associates for Montgomery Ward. The plaintiffs allege that Montgomery Ward failed to pay the correct commissions on numerous merchandise items and, in doing so, acted fraudulently and in violation of alleged contractual obligations. While the precise number of sales associates in the alleged class and the amount of commission underpayments are unknown, plaintiffs allege that approximately \$250,000,000 is owed to approximately 50,000 persons. The named plaintiffs also seek punitive damages. The Class Action Litigation is factually complex, dealing with Montgomery Ward's systems and methods for compensating thousands of commissioned sales agents over a period of approximately five years for the sale of millions of different items, all of which are subject to compensation arrangements which vary from time to time.

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<sup>1</sup> In addition to the Class Action Litigation, MW&E has defended Montgomery Ward in *Bruce Sloman v. Lechmere, et al.*, an action pending in Massachusetts state court based on allegations that commissions were underpaid systematically to sales associates at Lechmere stores. Because the plaintiff in *Sloman* never sought stay relief, this case has seen little activity post-petition other than settlement discussions regarding the plaintiff's proof of claim.

MW&E vigorously opposed class certification on a number of grounds, including: (i) that common questions of law and fact do not predominate over individual questions; (ii) that damages cannot be proven on a class-wide basis using statistics and other procedural shortcuts as a substitute for the trial of each class member's damages claim; and (iii) that the case cannot practically and fairly be tried as a class action. During the Final Application Period, MW&E's principal work consisted of the preparation of comprehensive, factually detailed briefs in opposition to the named plaintiffs' class certification motion. MW&E also assisted in the preparation of a number of declarations made by Montgomery Ward's employees in support of the various briefs. In preparing Montgomery Ward's briefs, MW&E extensively researched such issues as the standards under Rule 23 of the Federal Rules of Civil Procedure for class certification, the use of sampling in estimating class damages, the substantive causes of action pled by the named plaintiffs, the appealability of orders certifying a plaintiff class and the continuing subject matter jurisdiction of the Wyoming Federal District Court. MW&E also filed and briefed a motion to strike certain declarations filed by the plaintiffs with their class certification reply brief on the grounds that the declarations improperly raised new matters for the first time.

Because the issue of class certification raised numerous factual issues, both sides conducted extensive discovery during the Final Application Period. MW&E moved early in the case for an order compelling responses to its interrogatories, a motion the District Court granted. MW&E paralegals worked with Montgomery Ward's employees in producing to the named plaintiffs a massive number of documents containing commission

plans and rates, transaction information, compensation payment information and commission adjustment information. Alan Rutkoff, lead counsel for Montgomery Ward, took the depositions of plaintiffs Miles, Trent and Syracuse. MW&E also responded to various discovery requests propounded by the plaintiffs, including the renewal of previous document requests that necessitated a search for additional documents and a new review of documents produced previously; a new request related to claims and defenses under the Fair Labor Standards Act; and the request for additional deposition testimony from Montgomery Ward's employees (later abandoned, but not before considerable time was spent in preparation for these depositions).

The parties finished briefing the class certification issue in the summer of 1998 and in September 1998, Mr. Rutkoff traveled to Cheyenne, Wyoming to present oral argument against class certification. Chief Judge Johnson ordered supplemental briefing on the issue of manageability, which was completed in October 1998.

In December 1998, the District Court, based on a November 1998 decision of the Tenth Circuit Court of Appeals, denied class certification on the grounds that the District Court lacked subject matter jurisdiction and remanded the case back to Wyoming state court. MW&E successfully opposed a motion for reconsideration. The class action plaintiffs then refiled their class action in this Court as Adversary Proceeding No. A-99-72. The Debtors asked MW&E to continue to act as lead counsel with the assistance of the Debtors' bankruptcy counsel. MW&E researched and analyzed new issues raised by the filing in this Court, such as the Bankruptcy Court's jurisdiction and the extent to which notice to putative class members was required in light of prior notices sent to them because

of their status as present and former employees. Substantial additional research and redrafting were required because the new class certification motion sought class certification under case law in the Third Circuit, as opposed to the Tenth Circuit. MW&E prepared an answer and a second set of papers in opposition to class certification. On April 20, 1999, Mr. Rutkoff argued the class certification issue before this Court and the Court has taken the matter under advisement. Subsequently, additional time was devoted to formulating, analyzing and negotiating settlement proposals.

Although the Class Action Litigation was the principal matter addressed by MW&E during the Final Application Period, it was by no means the only matter. Early in the Final Application Period, Harry Sangerman, head of MW&E's Labor and Employee Relations practice group, represented Montgomery Wards in negotiations with Local 408 of the Teamsters Union over unionization of Montgomery Wards' sales associates. Mr. Sangerman traveled to Kentwood, Michigan several times to meet with Montgomery Ward and Teamsters representatives. During the Second Application Period, MW&E completed the negotiations, but Ward's employees then filed a petition to decertify the union before the National Labor Relations Board ("NLRB"). Mr. Sangerman prepared witnesses and presented Ward's case in favor of certification to the NLRB in July 1998.

Peter Holbrook, a partner in MW&E's Newport Beach office, represented Montgomery Ward and certain of its employees in ten separate employee lawsuits and arbitrations of employee disputes in California (generally, the "California Litigation"). Activity in the California Litigation increased throughout the Final Application Period. MW&E defended Wards manager Joseph Ringer in the *Blakely* lawsuit. This case and a

related suit against General Electric as Ward's alleged alter ego were removed to federal district court in April, 1998. MW&E filed several motions to dismiss the claims against Mr. Ringer, resulting in numerous amendments to the plaintiff's complaint, and opposed the plaintiff's efforts to remand the case back to California state court. MW&E also negotiated with plaintiffs over a stipulation for relief from stay pertaining to the suit against Montgomery Ward. In March 1999, MW&E obtained summary judgment on behalf of Mr. Ringer. The parties have recently settled these cases.

Late in the Final Application Period, the Debtors requested MW&E's assistance in defending three new cases filed in California state court: *Tellez v. Montgomery Ward*, alleging sexual harassment; *Koart v. Montgomery Ward*, alleging sexual harassment, race discrimination and retaliation; and *Wilder v. Montgomery Ward*, alleging age and disability discrimination. Mr. Holbrook and his colleagues have analyzed the relevant pleadings, interviewed witnesses, prepared answers or other responses to the complaints, prepared discovery requests, taken and defended depositions and participated in court ordered conferences. In *Koart*, MW&E has been forced to compel the plaintiff's responses to Montgomery Ward's legitimate discovery requests.

The Newport Beach office has also handled for the Debtors several arbitrations commenced by disgruntled employees before the Judicial Arbitration Mediation Service (or JAMS). These matters are the Neil Carroll, Kim Embry (settled in July 1998) and Sharmaine Horton arbitrations from early in the Final Application Period and, later in the Period, the Joseph Hall and George Haste arbitrations.

As the Court is well aware, the last ten years have witnessed a notable increase in the number of wrongful termination, discrimination and other employee relations lawsuits on both the federal and state court dockets. MW&E formed effective, highly coordinated legal teams in both its Chicago and Newport Beach offices to defend Montgomery Ward and its employees. It should be noted that each of the lead attorneys in the Class Action Litigation, the Kentwood negotiations and the California Litigation have remained unchanged from the pre-petition period, enabling Wards to take advantage of their backgrounds in these matters. In the Class Action Litigation, a matter of considerable importance in connection with Wards' effort to emerge successfully from chapter 11, MW&E fought the named plaintiffs to a standstill in Wyoming, forcing the plaintiffs to abandon the Wyoming action and proceed before this Court. In the Class Action Litigation and the numerous other matters for which the Debtors sought assistance, MW&E has provided considerable benefit to the bankruptcy estates while at the same time making every effort to minimize legal fees and expenses.

### **BACKGROUND**

#### **A. General Background of Chapter 11 Case**

1. On the Petition Date, the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code"). The Court consolidated the Debtors' chapter 11 cases for procedural purposes only and the cases are being jointly administered.
2. Prior to August 2, 1999, the effective date of the Debtor's First Amended Plan of Reorganization of MW Corp and its Debtor Subsidiaries ("Plan"), the Debtors were



in possession of their respective properties and operated and managed their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On July 18, 1997, the United States Trustee appointed a committee of unsecured creditors in these chapter 11 cases (the "Creditors' Committee") pursuant to section 1102 of the Bankruptcy Code.

4. The Debtors filed an initial plan and disclosure statement in these cases on April 26, 1999. On July 15, 1999, this Court confirmed the Plan. The Plan became effective on or about August 2, 1999. Decretal paragraph 47 of the Court's Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. § 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming Plan ("Confirmation Order") requires all final professional fee applications to be filed no later than sixty days after the Plan's Effective Date, or on or before October 1, 1999.

5. MW&E does not have any information on current cash on hand, the Debtors' payment of the quarterly fees of the United States Trustee, the submission of monthly operating reports or accrued and unpaid administrative expenses. MW&E believes that the Debtors have sufficient cash to pay all accrued and unpaid administrative expenses.

This is a core matter pursuant to 28 U.S.C. § 1334. This is a core matter pursuant to 28 U.S.C. § 157(b)(2). The venue of these cases and this Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409. MW&E makes this Application pursuant to the following authority; (a) sections 330(a) and 331 of the Bankruptcy Code; (b) Bankruptcy Rule 2016; (c) Order Establishing Procedures for

Interim Compensation and Reimbursement of Professionals entered by the Court on July 8, 1997 (“Interim Compensation Order”); (d) the Confirmation Order; (e) 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, entered by the Court on June 16, 1998 (“Fee Auditor Order”); (f) certain applicable provisions of the United States Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement Filed Under 11 U.S.C. §330 (Appendix A to 28 C.F.R. § 58), issued January 30, 1996 (“Guidelines”); and (g) Standing Order #32 (Revising and Rescinding Order #27) of the United States Bankruptcy Court for the District of Delaware (“Standing Order #32”).

B. The Debtors

7. Montgomery Ward is the primary operating company of the Debtors and engages in retail merchandising and direct response marketing in the United States. MW Corp. is the parent company of Montgomery Ward and each of the other Debtors, each of which is a direct or indirect subsidiary of Montgomery Ward.

8. Founded in 1872, Montgomery Ward is one of the largest retail merchandising organizations in the United States. Montgomery Ward is one of the largest retailers of prominent name brand electronics, appliances, furniture and fine jewelry. Other major product offerings include apparel and automotive parts and services. On the Petition Date, Montgomery Ward operated 301 retail stores in 37 states (with approximately 23 million total square feet of selling space). In addition, Montgomery Ward operated six liquidation centers that sell overstock merchandise, 15 distribution

facilities and 82 product service centers. During the course of these cases, the Debtors have divested themselves of certain of these properties.

C. The Retention of MW&E

9. On or about July 8, 1997, the Court entered its Order Authorizing the Retention, Employment and Payment of Certain Professionals in the Ordinary Course of Debtors' Businesses ("Ordinary Course Retention Order"). The Ordinary Course Retention Order authorized the Debtors to retain certain ordinary course professionals without obtaining specific orders authorizing their retention and to pay the ordinary course professionals up to \$25,000 per month. However, if the amount of monthly compensation to a professional exceeded \$25,000 per month, the Ordinary Course Retention Order required the Debtors to obtain a retention order specific to the particular professional.

10. Prior to the Petition Date, MW&E represented the Debtors in several labor and employee relations cases and other matters, including the Class Action Litigation. Because of the automatic stay, neither the Debtors nor MW&E thought the Class Action Litigation would continue during the pendency of the chapter 11 cases and, accordingly, did not believe monthly compensation to be paid to MW&E subsequent to the Petition Date would exceed \$25,000. MW&E therefore proceeded to represent the Debtors pursuant to the Ordinary Course Retention Order.

11. The Ordinary Course Retention Order required MW&E to file a verified statement pursuant to Bankruptcy Rule 2014. Accordingly, on October 6, 1997, the Debtors submitted to the Court and served on certain parties in interest the Affidavit of Harry M. Sangerman and Disclosure Statement Pursuant to (A) Section 327, 329 and 504

of the Bankruptcy Code, (B) Bankruptcy Rules 2014 and 2016 and (C) Order Authorizing the Retention, Employment and Payment of Certain Professionals in the Ordinary Course of Debtors' Business ("Original Sangerman Affidavit"), a copy of which is attached as Exhibit A hereto.

12. Subsequent to the Petition Date, the plaintiffs in the Class Action Litigation pending in Wyoming sought relief from the automatic stay in this Court. On January 30, 1998, this Court entered a Stipulation and Agreed Order Providing for Limited Relief from Stay to Permit Resolution of Class Certification and Related Matters, which Stipulation modified the stay to, *inter alia*, permit the parties to litigate the issue of class certification in Wyoming Federal District Court. Moreover, several lawsuits and arbitration proceedings generally described as the California Litigation have been commenced post-petition in California. Several of these cases, in particular *Blakely v. General Electric Company* and a related case filed against Montgomery Ward, continued to be quite active during the Fifth Application Period.

13. Because MW&E's fees and expenses in these matters were likely to cause its monthly bills to exceed \$25,000, the Debtors sought MW&E's retention as special labor and employee relations counsel pursuant to section 327(e) of the Bankruptcy Code. On December 9, 1997, the Debtors filed and served their Application for an Order Authorizing the Retention and Employment of McDermott, Will & Emery as Special Labor and Employee Relations Counsel ("Retention Application"). In support of the Retention Application, the Debtor submitted the Affidavit of Harry M. Sangerman in Support of Debtor's Application for Retention of McDermott, Will & Emery and Disclosure

Statement Pursuant to (A) Sections 327, 329 and 504 of the Bankruptcy Code and (B) Bankruptcy Rules 2014 and 2016 ("Second Sangerman Affidavit"), a copy of which is attached as Exhibit B hereto.

14. On December 15, 1997, the Debtors filed a Supplement to the Retention Application.

15. On January 2, 1998, this Court entered an Order Authorizing Debtors and Debtors in Possession to Retain and Employ McDermott, Will & Emery as Special Labor and Employee Relations Counsel ("Retention Order"), a copy of which is attached hereto as Exhibit C.

16. On October 29, 1998, MW&E filed and the Debtor's bankruptcy counsel served a Supplement to the Second Sangerman Affidavit disclosing MW&E's representation of Burlington Coat Factory Warehouse in connection with its bid on a lease held by the one of the Debtors on a facility in Gaithersburg, Maryland. The Debtors waived any conflicts in connection with this emergency representation, which benefited the Debtors by enabling Burlington Coat Factory Warehouse to submit the high bid for the Gaithersburg lease. A copy of the Supplement to the Second Sangerman Affidavit is attached as Exhibit D.

17. On or around December 15, 1998, at the time MW&E filed its Third Application and after discussion with the Debtors and their bankruptcy counsel, the Debtors filed their Second Supplement to the Retention Application ("Second Supplement") attached hereto as Exhibit D-1. The Second Supplement discusses MW&E's work subsequent to the Petition Date as environmental counsel for one of the Debtors,

Standard T Chemical Company ("Standard T"), pursuant to the Ordinary Course Retention Order. As contemplated by the Second Supplement, the Debtors and MW&E have continued throughout the Final Application Period to allow compensation for MW&E's environmental work under the Ordinary Course Retention Order. This procedure was implemented because of the *de minimus* nature of the post-petition work for Standard T. All post-petition fees and expenses with respect to Standard T have amounted to \$10,354.16. No party in interest has previously objected to compensation of MW&E as an ordinary course professional for the services rendered on behalf of Standard T. The attorney handling the Standard T matters has left MW&E and MW&E has ceased handling any matters for Standard T.

18. As identified in the cover sheet to this Application, MW&E has filed four prior interim fee applications in these cases requesting interim allowance of fees and expenses for the prior application periods relevant to MW&E (collectively the "Prior Interim Applications").<sup>2</sup> Pursuant to the Fee Auditor Order, Stuart, Maue, Mitchell &

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<sup>2</sup> Those prior application periods are: (1) January 2, 1998 through February 28, 1999 (covered by the First Application of MW&E for Interim Allowance of Compensation and Reimbursement of Expenses for the Period January 2, 1998 through February 28, 1998, filed on or about April 15, 1999 ("First Interim Application")); (2) March 1, 1999 through June 30, 1999 (covered by the Second Application of MW&E for Interim Allowance of Compensation and Reimbursement of Expenses for the period March 1, 1998 through June 30, 1998, filed on or about August 15, 1999 ("Second Interim Application")); (3) July 1, 1998 through October 31, 1998 (covered by the Third Application of MW&E for Interim Allowance of Compensation and Reimbursement of Expenses for the Period July 1, 1998 through October 31, 1998, filed on or about December 15, 1998 ("Third Interim Application")); and (4) November 1, 1998 through February 28, 1999 (covered by the Fourth Application of MW&E for Interim Allowance of Compensation and Reimbursement of Expenses for the Period November 1, 1998 through February 28, 1999, filed on or about April 16, 1999 ("Fourth Interim Application")). In order to reduce expenses to the estates, the estates' professionals have deferred filing interim fee applications for the period after February 28, 1999 through the Effective Date until the filing of their respective final fee applications.

By way of further explanation, MW&E did not file a fee application for the first relevant application period in these cases, the Petition Date through October 31, 1997. During that period, the Debtor retained MW&E

James, the fee auditor appointed by the Court ("Fee Auditor"), has reviewed MW&E's Second, Third and Fourth Interim Applications and provided the Court with final reports on the Second and Third Interim Applications.

### RELIEF REQUESTED

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

19. MW&E hereby seeks interim allowance of compensation and reimbursement of expenses for the Fifth Application Period as follows.
  - a. Compensation of \$251,026.50 in connection with services rendered. A summary of the total hours worked and fees charged by each professional during the Fifth Application Period is set forth in Exhibit E attached hereto and a detailed description of all services organized by billing matter is set forth in Group Exhibits F, G, H, I and J, all of which are incorporated herein by reference; and
  - b. Reimbursement of expenses of \$31,206.69 incurred in connection with MW&E's services. A summary and itemization of total expenses is attached to this Fifth Interim Application as Exhibit K and incorporated herein by reference. Exhibit L is a monthly breakdown of expenses by billing matter during the Fifth Application Period.
  
20. MW&E hereby seeks final allowance of compensation and reimbursement of expenses for the Final Application Period as follows:
  - a. Compensation of \$939,322.50 in connection with services rendered. A summary of the total hours worked and fees charged by each professional during the entire Final Application Period, along with the professional's position, bar admission date and field of concentration, is set forth in attached Exhibit M. Detailed descriptions of the respective services organized by billing matter

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pursuant to the Ordinary Course Professional Order. That Order did not require Ordinary Course Professionals to file fee and expense applications.

were attached as exhibits to the Prior Interim Applications and are incorporated herein by reference.<sup>3</sup>

- b. Reimbursement of expenses of \$86,100.31 incurred in connection with MW&E's services. An itemized summary of total expenses for the entire Final Application Period is attached as Exhibit N hereto and incorporated herein by reference. In addition, each Prior Interim Application contains an exhibit itemizing by month and billing matter all expenses incurred on the Debtors' behalf during each particular month during the First, Second, Third and Fourth Application Periods. These various exhibits to the Prior Interim Applications are incorporated herein by reference.

B. Payments Made During the Final Application Period

21. Pursuant to the Interim Compensation Order, professionals in these chapter 11 cases are authorized to submit a statement of fees and expenses to the Debtors and the other fee parties for payment on a monthly basis (the "Monthly Statement"). The Debtors are directed to pay 80% of the fees requested in each professional's Monthly Statement and 100% of the expenses incurred, unless one of the fee parties objects to the Monthly Statement within fifteen days after delivery of the Monthly Statement. The remaining 20% of the professional fees requested in the Monthly Statement are held back until the next scheduled hearing on allowance of interim fees or until the hearing on final allowance of fees. MW&E has not received approval of any of its Prior Interim Applications. MW&E understood from the Interim Compensation Order and its discussions with the Debtors' bankruptcy counsel that Court approval was to be deferred until the hearing on the final applications of the various retained professionals.

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<sup>3</sup> Shortly after filing this Application with the Court, MW&E will provide courtesy copies of the Prior Interim Applications to the fee parties (*i.e.* the Debtor, the Creditors' Committee and the United States Trustee).



22. MW&E has submitted Monthly Statements to the Debtors for Prior

Application Periods as follows:

- a. For January 2, 1998 through January 31, 1998 -- fees of \$30,175.50 and expenses of \$1,686.75. The Debtors have previously paid all fees except for the 20% holdback amount of \$6,035.10 and all expenses incurred in January 1998.<sup>4</sup>
- b. For February 1, 1998 through February 28, 1998 -- fees of \$40,531.50 and expenses of \$922.28. The Debtors have previously paid all fees except the 20% holdback amount of \$8,106.30 and all expenses incurred in February 1998.
- c. For March 1, 1998 through March 31, 1998 -- fees of \$53,964.50 and expenses of \$4,226.38. The Debtors have previously paid all fees except the 20% holdback amount of \$10,792.90 and a voluntary reduction of \$3,500 and all expenses incurred in March 1998.
- d. For April 1, 1998 through April 30, 1998 -- fees of \$76,763.50 and expenses of \$2,947.45. The Debtors have previously paid all fees except the 20% holdback amount of \$15,352.70 and all expenses incurred in April 1998.
- e. For May 1, 1998 through May 31, 1998 -- fees of \$84,488 and expenses of \$2,930.81. The Debtors have previously paid all fees except the 20% holdback amount of \$16,897.60 and all expenses incurred in May 1998.
- f. For June 1, 1998 through June 30, 1998 -- fees of \$101,750 and expenses of \$5,660.81. The Debtors have previously paid all fees except the 20% holdback amount of \$20,350 and all expenses incurred in June 1998.
- g. For July 1, 1998 through July 31, 1998 -- fees of \$89,186.50 and expenses of \$8,260.47.<sup>5</sup> The Debtors have previously paid all fees except the 20% holdback amount of \$17,837.30 and all expenses incurred in July 1998.

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<sup>4</sup> The Debtor did not initially deduct the \$6,035.10 holdback amount for January 1998. This holdback amount was subsequently deducted from payments made to MW&E on its March 1998 invoice.

<sup>5</sup> The July Monthly Statement includes some June time in the Trent case for MW&E associate Adam Deutsch. Similarly, the August Monthly Statement includes some of Mr. Deutsch's July billings.

- h. For August 1, 1998 through August 31, 1998 -- fees of \$33,020 and expenses of \$5,399.29. The Debtors have previously paid all fees except the 20% holdback amount of \$6,604 and all expenses incurred in August 1998.
- i. For September 1, 1998 through September 30, 1998 -- fees of \$47,260 and expenses of \$2,559.38. The Debtors have previously paid all fees except the 20% holdback amount of \$9,452 and all expenses incurred in September 1998.
- j. For October 1, 1998 through October 31, 1998 -- fees of \$37,569 and expenses of \$8,672.08. The Debtors have previously paid all fees except the 20% holdback amount of \$7,513.80 and all expenses incurred in October 1998.
- k. For November 1, 1998 through November 30, 1998 -- fees of \$4,819 and expenses of \$449.52. The Debtors have previously paid all fees except the 20% holdback amount of \$963.80 and all expenses incurred in November 1998.
- l. For December 1, 1998 through December 31, 1998 -- fees of \$16,232.00 and expenses of \$6,322.74.<sup>6</sup> The Debtors have previously paid all fees except the 20% holdback amount of \$3,246.40 and all expenses incurred in December 1998.
- m. For January 1, 1999 through January 31, 1999 -- fees of \$45,501 and expenses of \$1,515.77. The Debtors have previously paid all fees except the 20% holdback amount of \$9,100.20 and all expenses incurred in January 1999.
- n. For February 1, 1999 through February 28, 1999 -- fees of \$41,654.50 and expenses of \$2,356.52. The Debtors have previously paid all fees except the 20% holdback amount of \$8,330.90 and all expenses incurred in February 1999.

23. MW&E has submitted Monthly Statements to the Debtors during the Fifth

Application Period as follows:

- a. For March 1, 1999 through March 31, 1999 -- fees of \$53,883 and expenses of \$6,848.95. The Debtor has previously paid all fees

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<sup>6</sup> Certain of MW&E expenses posted in December 1998 were incurred in previous months. This accounts for the relatively high expense figure in comparison to the fees billed in December 1998.

except for \$2,203.82 relating to the Blakely matter and all expenses incurred in March 1999.<sup>7</sup>

- b. For April 1, 1999 through April 30, 1999 – fees of \$100,290.50 and expenses of \$3,659.68. The Debtors have previously paid all fees except the 20% holdback amount of \$20,058.10 and all expenses incurred in April 1999.
- c. For May 1, 1999 through May 31, 1999 – fees of \$45,908.50 and expenses of \$12,461.73. The Debtors have previously paid all fees except for \$6,554.50 with respect to the Tellez matter and \$1,095.50 with respect to the Koart matter and all expenses incurred in May 1999 except for \$1,177.16 relating to Tellez and \$354.54 relating to Koart.<sup>8</sup>
- d. For June 1, 1999 through June 30, 1999 – fees of \$32,480 and expenses of \$5,641.53. The Debtors have previously paid all fees except the 20% holdback amount of \$6,496.40 and all expenses incurred in June 1999.
- e. For July 1, 1999 through July 31, 1999 -- fees of \$18,398.50 and expenses of \$2,093.27. The Debtor has not yet paid the July 1999 Monthly Statements, which were not issued until August 25, 1999.

24. In addition to the Monthly Statements for the Fifth Application Period, MW&E has posted certain expenses in its latest billing records which pertain to the Final Application Period ("Trailing Expenses"). The Trailing Expenses are in the total amount of \$960.38 and described in Exhibit O hereto. MW&E reserves the right to file a supplement to this Application to seek approval of additional Trailing Expenses.

25. In total, MW&E has submitted Monthly Statements during the Final Application Period in an aggregate fee amount of \$953,403 (less a \$3,500 reduction

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<sup>7</sup> In calculating total remaining holdbacks, MW&E has not included any holdbacks for March 1999 and May 1999 except those indicated above. MW&E was not aware the full holdback amounts had not been deducted from the Debtors' payments until preparation of this Application.

<sup>8</sup> See Footnote 7 above.

requested by the Debtors for March 1998) and an aggregate expense amount of \$86,271.26. None of the Fee Parties objected to any of MW&E's Monthly Statements pursuant to the Interim Compensation Order or to any of MW&E's Prior Interim Applications.

26. To date, MW&E has received payments on its Monthly Statements in the full amount requested except for the above referenced holdbacks, the March 1998 reduction and the above referenced unpaid invoices in the total amount of \$199,244.62 and unpaid expenses of \$3,624.97. MW&E has also taken certain voluntary write-offs of fees in the amount of \$10,580.50 (not including the \$3,500 reduction noted above, which was subtracted from the March monthly fee before calculating the holdback)<sup>9</sup> and of expenses in the amount of \$170.95. Taking these into account, MW&E is currently owed \$188,664.12 in compensation and \$3,454.02 for reimbursement of its expenses.

27. The source of the compensation paid to MW&E is the Debtors' general revenues. MW&E does not hold any retainer. MW&E also holds a general unsecured claim for pre-petition legal services and related expenses as disclosed in Exhibits A and B hereto.<sup>10</sup>

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<sup>9</sup> In addition, MW&E professionals have voluntarily written off 3.9 hours of time when they entered their time for an additional benefit to the estates of \$1,111.

<sup>10</sup> On the Petition Date, the Debtors owed MW&E \$269,035.69 in pre-petition fees and expenses. MW&E filed a proof of claim in this amount on February 27, 1998. No objection has yet been filed. MW&E has received an initial payment of approximately \$54,000 on the pre-petition claim pursuant to the Plan. Pursuant to the Ordinary Course Retention Order, the Debtors have previously paid MW&E in full for all work done between the Petition Date and December 31, 1997.

28. Neither MW&E nor any principal, partner or employee thereof has received or has been promised any compensation for services rendered or to be rendered in any capacity in connection with these cases.

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

### **SERVICES RENDERED**

30. MW&E has set forth below a summary of the services rendered to the Debtors during the Fifth Application Period. Those services have been divided into the following discrete matters: Karen Trent, et al. v. Montgomery Ward; Bruce Sloman, et al. v. Montgomery Ward (May, June and July); California Labor Matters (March, April and May); Tellez v. Montgomery Ward, Blakely v. General Electric, et al., Joseph T. Hall Arbitration (March, April, June and July); George Haste Arbitration (April); Koart v. Montgomery Ward (April, May, June and July); Wilder v. Montgomery Ward (July) and General Matter (relating primarily to retention and fee application matters and MW&E's response to the interim and final reports of the Fee Auditor). These services are described in greater detail in Group Exhibits F (March 1999), G (April 1999), H (May 1999), I (June 1999) and J (July 1999).<sup>11</sup>

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<sup>11</sup> MW&E has redacted certain entries from Exhibit I-3 because the entries contain confidential information subject to the attorney-client privilege.

**Trent v. Montgomery Ward; Sloman**

31. During the Fifth Application Period MW&E continued as counsel to Montgomery Ward in the Class Action Litigation. At the close of the Fourth Application Period, the plaintiffs filed the Class Action Litigation as an adversary proceeding in this Court and moved for class certification. MW&E analyzed the motion under Third Circuit case law and prepared a brief opposing class certification. MW&E also analyzed the plaintiff's class action proof of claim and their complaint and filed an answer. Research topics included bankruptcy court jurisdiction over the complaint and notice to putative class members.

32. On April 20, 1999, lead counsel Alan Rutkoff presented the Debtors' opposition to class certification at a hearing before this Court. The Court has taken the class certification issue under advisement. In May, June, and July, Mr. Rutkoff together with bankruptcy counsel, conducted preliminary settlement negotiations with counsel for the named plaintiffs and, in connection therewith, researched, analyzed and developed various settlement strategies and proposals.

33. During this same time period, Alan Rutkoff also conducted settlement negotiations with plaintiff's counsel in *Bruce Sloman v. Lechmere*, a case pending against the Debtors in Massachusetts state court. In *Sloman*, the plaintiffs seek sales commissions allegedly unpaid by Montgomery Ward's Lechmere subsidiary. Unlike the Class Action Litigation, the plaintiffs in *Sloman* have never sought stay relief. MW&E also analyzed the status of the *Sloman* case in light of confirmation of the Plan

**California Labor Litigation/Blakely v. GEC/  
Hall Arbitration/Tellez/Koart/Stella Plascenia/Wilder**

34. Peter Holbrook, an employee relations partner in MW&E's Newport Beach office, continued representing certain of the Debtors and certain of their employees in the California Litigation. The California Litigation was very active during the Fifth Application Period. In the Blakely lawsuit against Montgomery Ward, MW&E successfully obtained summary judgment on behalf of Joseph Ringer, a Ward's employee and a co-defendant in the case. MW&E also defeated Blakely's motion to remand the case from federal district to state court. MW&E also prepared a second summary judgment motion on behalf of the Debtors based on ERISA preemption of state law. That motion was argued late in May along with the Debtors' motion to transfer venue to Illinois. Both these motions were denied. MW&E opposed the plaintiff's motion to amend their complaint, participated in meetings with plaintiff's counsel regarding discovery, prepared written discovery and responded to the plaintiff's interrogatories and discovery requests. At the close of the Fifth Application Period, Peter Holbrook began settlement negotiations with Blakely counsel and the parties have very recently settled the two cases.

35. Mr. Holbrook and his colleagues handled a number of other employee relations matters for the Debtors. In the Tellez sexual harassment case, MW&E interviewed witnesses, defended the deposition of several of the Debtors' employees and commenced the plaintiff's deposition. Peter Holbrook attended a case management conference in June. In July, the parties began work on a settlement agreement. In the Koart state court suit, MW&E prepared interrogatories and document requests and then a motion to compel when the plaintiff did not respond to the discovery requests. MW&E

also interviewed witnesses regarding the plaintiff's allegations and noticed the plaintiff's deposition. In the Joseph Hall and George Haste arbitrations, MW&E handled various matters related to commencement of the arbitral proceedings. In July MW&E began work on a new lawsuit commenced in the United States District Court for the Central District of California by Paul Wilder, a former employee of the Debtors. Mr. Wilder has asserted age and disability discrimination claims.

#### **General Matters**

36. MW&E partner Dean Gramlich has generally supervised MW&E's retention and fees and reviews the Monthly Statements to ensure their compliance with the Guidelines, Standing Order #32 and the Fee Auditor Order. MW&E prepared its Fourth Interim Fee Application in April 1999 and began work on this Application in late July. In addition to work on fee applications, MW&E reviewed and analyzed the initial reports of the Fee Auditor on MW&E's Second, Third and Fourth Interim Fee Applications. MW&E prepared written responses and numerous exhibits responsive to the Fee Auditor reports. MW&E also reviewed and analyzed the final Fee Auditor reports for the Second and Third Interim Application Periods submitted by the Fee Auditor to the Court and the fee parties.

37. In connection with the Final Fee Application, MW&E incorporates by reference the description of services set forth in the Preliminary Statement above and the Prior Interim Applications.



## EXPENSES

38. MW&E seeks reimbursement for its actual and necessary expenses incurred in rendering services during the Fifth Application Period. The types of expenses for which reimbursement is requested are customarily charged to non-bankruptcy clients of MW&E. The total amount of the expenses for which reimbursement is sought is \$31,206.69. The incurring of these expenses was necessary in light of the services provided. Exhibit K hereto is an itemization of all expenses incurred during the Fifth Application Period. Exhibit L hereto is a breakdown by month and billing matter of expenses incurred during the Fifth Application Period.

39. MW&E seeks reimbursement for its actual and necessary expenses incurred during the Final Application Period. The total amount of expense for which reimbursement is sought is \$86,100.31. The incurring of these expenses was necessary in light of the services provided. Attached as Exhibit N is an itemization of all expenses incurred by MW&E during the Final Application Period.

40. MW&E has observed the following with respect to these expenses.

- a. MW&E's Chicago office charged for photocopying at 20¢ per page for the first 500 copies on any particular job, with the price per page being reduced to 15¢ per page for each page after the initial 500.
- b. MW&E's Newport Beach office charged for photocopying at 25¢ per page for the first 500 copies on any particular job, with the price per page being reduced to 15¢ on that job for each page after the initial 500.
- c. Telecopying by MW&E was charged at \$1.00 per page plus line costs. MW&E charges clients only for outgoing faxes.
- d. Computer assisted legal research was used only when time pressures rendered it impracticable to conduct such research manually or it

was otherwise cost efficient to employ computer data bases. The use of computer applications in the cite checking and shepardization of cases substantially decreases professional time which would otherwise be expended. Most of the computer expenses incurred in this case were in connection with class certification issues in the *Trent* case.

During 1998, MW&E billed at 21% over the regular WestLaw subscription rate for WestLaw on-line research and 12% over the regular subscription rate for Lexis on-line research. During 1999, MW&E billed at 21% over the regular WestLaw subscription rate for WestLaw on-line research and at the regular subscription rate for Lexis on-line research. The percentage markups were necessary to cover certain administrative expenses associated with computer searches for clients.

- e. During the Fifth Application Period, Alan Rutkoff traveled to Wilmington, Delaware in June for the hearing on class certification before this Court. Airfare was billed at coach. MW&E attorneys Peter Holbrook and Chris Scheithauer also incurred travel costs in attending court hearings in the Blakely and Tellez cases

#### **RESPONSES TO FEE AUDITOR REPORTS**

41. In June 1998, the Court appointed the Fee Auditor to review professional fee applications in these cases. MW&E has submitted hard copies of its Second, Third and Fourth Interim Applications to the Fee Auditor along with ASCII disks containing the billing entries.<sup>12</sup> The Fee Auditor issued initial reports to MW&E on MW&E's Second, Third and Fourth Interim Applications. As provided in the Fee Auditor Order, on March 3, 1999, May 21, 1999 and July 23, 1999, respectively, MW&E submitted detailed responses

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<sup>12</sup> The Court did not authorize retention of MW&E until January 2, 1998, midway through the second interim application period in these cases (November 1, 1997 through February 28, 1998). The Fee Auditor Order did not apply to professionals who did not assert fees and expenses in excess of a \$100,000 threshold for any particular interim application period and who satisfied certain other conditions. (See Fee Auditor Order at ¶ 1) Because MW&E's fees and expenses were less than \$100,000 during the period November 1, 1997 through February 28, 1998 and MW&E otherwise satisfied the remaining conditions, the Fee Auditor did not review MW&E's fees and expenses for this period. However, MW&E did send the Fee Auditor a hard copy of the First Interim Application.

to the Fee Auditor reports. Copies of those responses, without the voluminous exhibits attached thereto, are attached hereto as Exhibits P, Q and R.<sup>13</sup>

42. Notwithstanding MW&E's responses, the Fee Auditors' final reports are still critical of certain aspects of MW&E's of the Second and Third Interim Applications.

MW&E generally addresses certain of the Fee Auditor's points:

- As the Fee Auditor has frequently noted, the line items in its Summaries of Findings overlap with respect to hour and fee calculations. Because certain entries may appear on more than one exhibit to the Fee Auditor reports, the hours and fees regarding which the Fee Auditor has expressed concern may be counted more than once.
- The Fee Auditor has raised concerns regarding so-called lumped billing entries. In its final reports on MW&E's Second and Third Interim Application ("Second Report" and "Third Report", respectively) and its initial report on MW&E's Fourth Interim Application ("Fourth Initial Report"), the Fee Auditor lists \$25,335.50 in fees falling within this category. MW&E has done its best to revise any lumped entries. However, two attorneys working on the Class Action Litigation, Brent Austin and Adam Deutsch, left MW&E during the Final Application Period. Although MW&E contacted both after they left the firm, Mr. Deutsch did not submit any revised entries and Mr. Austin submitted revised entries only for the Second and Third Interim Periods. Although MW&E could un lump these entries, the revisions would obviously not reflect the actual amount of time spent by these two attorneys.
- The Fee Auditor criticizes MW&E for being unable to list separately all travel time for which it seeks compensation. A total of \$14,821.50 in fees is listed as in violation of the Fee Auditor Order and Standing Order #32. Based on the revised entries it has submitted, MW&E believes it has substantially complied with the Fee Auditor Order on this issue. The Court should also note the billing entries of Peter Holbrook, Michael Schaefer and Chris Scheithauer for time spent driving to and

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<sup>13</sup> In its final reports to the Court and the Fee Parties on MW&E's Second and Third Interim Applications, the Fee Auditor included MW&E's entire response, including the exhibits. The exhibits consist primarily of revisions to particular billing entries the Fee Auditor believed were incomplete or otherwise in violation of the standards set forth in section 330 of the Bankruptcy Code, Bankruptcy Rule 2016, the Guidelines and the Fee Auditor Order.

from court hearings and meetings in Southern California. MW&E believes the Court should allow compensation for this travel time inasmuch as Messrs. Holbrook, Schaefer and Scheithauer could not work on Montgomery Ward's matters while driving.

- The Fee Auditor has classified virtually all MW&E's research during the Second, Third and Fourth Application Periods (an amount of \$79,584 in fees) as violative of Standing Order #32 because the Fee Auditor believes MW&E has not adequately described what research involved the use of computers and what did not (described as "book" or "manual" research). MW&E's representation of Montgomery Wards in the Class Action Litigation required extensive research on class certification requirements and a number of other issues. MW&E has submitted revised entries by all its current attorneys delineating to the best of their abilities what entries involved computer assisted legal research (or CALR) and what did not. The departure of Brent Austin and Adam Deutsch unfortunately handicapped MW&E in satisfying the Standing Order #32 with respect to CALR. MW&E requests that the Court not disallow its research billings in the Class Action Litigation and other matters described above.
- The Fee Auditor has asked the Court to review the billings of professionals under ten hours to determine the benefit of their work to the estate. MW&E understands the concern of the Fee Auditor: that professionals will be thrown into a project for relatively brief periods of time and then taken off when other cases demand their attention. However, that is not the way MW&E has staffed the Class Action Litigation and other matters. Messrs. Rutkoff, Holbrook and Sangerman have generally used the same type of staffing throughout the Final Application Period. For example, Peter Holbrook has staffed the California Litigation with a single junior attorney in each matter (Tambra Raush at the beginning of the Final Application Period, with either Chris Scheithauer or Michael Shaefer becoming involved after Ms. Raush left MW&E). Professionals with less than ten hours in any Interim Application Period are usually library staff working on particular research projects, senior attorneys called in to assist in an area in which they have considerable experience or paralegals working on massive document productions in the Class Action Litigation. MW&E believes use of these professionals benefited the estate while at the same time avoiding charges for learning the specifics of a particular matter.
- The Fee Auditor has asked the Court to review billings for what the Fee Auditor believes are administrative/clerical tasks and as such do not involve the rendition of legal services. For example, in the Second

Application Period, the Revised Summary of Findings categorizes 140.8 hours as administrative/clerical with another 31.5 hours categorized as potential administrative/clerical. MW&E disagrees with the Fee Auditor's categorizations. Much of this time involved document production in the Class Action Litigation. MW&E utilizes paralegals to assist in reviewing documents (a term which now encompasses electronic records stored on computer disk drive as well as paper), insuring that legible copies are made for production, keeping complete and accurate records of what was produced and when and creating and maintaining accurate indices of documents produced and received. To prevent unnecessary discovery disputes, MW&E paralegals placed their indices on ASCII disks and by agreement produced the indices to the class action plaintiffs. MW&E paralegals also assisted the attorneys by maintaining an orderly case file and obtaining copies of pleadings, orders and other documents. In connection with the class certification hearing in Wyoming, paralegal Kelly Moore, the paralegal principally involved in the Class Action Litigation, assisted Alan Rutkoff by locating deposition testimony. MW&E believes this work and other work categorized as administrative/clerical constitutes the performance of legal services.

- In connection with its review of MW&E's photocopying expenses, the Fee Auditor was unable to verify the accuracy of MW&E's figures because the figures were not in multiples of 15, 20 or 25.<sup>14</sup> This problem was caused by inclusion in the photocopy totals of client charges from outside copy services in odd numbers (e.g. numbers not a multiple of 15, 20 or 25).

To clear up this confusion, MW&E has prepared itemizations of all its photocopy expenses during the Final Application Period showing each outside copy service charge as a separate item. These summaries are attached hereto as Group Exhibit S

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<sup>14</sup> As noted above, MW&E's Chicago office charges 20¢ per page for the first 500 pages on a particular internal photocopy job and 15¢ for any copies on that job over 500. MW&E's Newport Beach office charges 25¢ per page for the first 500 pages and 15¢ per copy thereafter.

## LEGAL ARGUMENT

### A. The Legal Standard

43. To grant a request for compensation pursuant to section 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 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, including the bankruptcy courts. *See Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 483 U.S. 711, 97 L. Ed.2d 585, 107 S. Ct. 3078 (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). MW&E’s lodestar calculation is based upon hourly rates that are well within the range of rates that are charged by comparable firms in similar litigation matters. Accordingly, MW&E’s lodestar calculation is reasonable under sections 330 and 331 of the Bankruptcy Code.

### B. MW&E’s Fees Were Reasonable

44. MW&E’s fees during the Final Application Period were reasonable under the prevailing legal standard and should be allowed. The amount of these fees is not unusual given the complexity and potential magnitude of the Class Action Litigation and

the level of activity in the California Litigation. MW&E's experience and background in representing Montgomery Ward in employee benefits and labor matters reduced the Debtors' legal expenses because it has been unnecessary subsequent to the Petition Date to have new counsel brought in to address these ongoing matters. MW&E's services have benefited the Debtors and their respective bankruptcy estates.

C. MW&E's Expenses Were Actual and Necessary

45. Section 330(a)(1)(B) of the Bankruptcy Code permits reimbursement for actual, necessary expenses. MW&E already has conducted a review process to ensure substantial compliance of the expenses with section 330(a)(1)(B), Bankruptcy Rule 2016, the Interim Compensation Order, the Fee Auditor Order, the Guidelines and Standing Order #32.

46. MW&E's expenses for which reimbursement is sought in the Fifth Application Period satisfy these standards and should be allowed.

CONCLUSION


47. For all the foregoing reasons, the fees requested in this Fifth Application are reasonable and reflect the value of the services provided to the Debtors' estates. Moreover, MW&E has requested reimbursement only of actual and necessary expenses in compliance with the Interim Compensation Order.

**WHEREFORE**, MW&E respectfully requests that the Court enter an order: (i) allowing on an interim basis compensation of \$251,026.50 for services rendered in the Fifth Application Period; (ii) allowing on an interim basis the reimbursement of expenses incurred during the Fifth Application Period in the amount of \$31,206.69; (iii)

allowing on a final basis compensation of \$939,322.50 for services rendered in the Final Application Period; (iv) allowing on a final basis the reimbursement of expenses incurred during the Final Application Period in the amount of \$86,100.31; (v) authorizing the Debtors to pay MW&E all fees previously held back from the payments of MW&E's Monthly Statements, net of any adjustments described earlier, in the amount of \$188,664.12; (vi) authorizing the Debtors to reimburse MW&E for additional unpaid expenses in the amount of \$3,454.02 and (vii) granting such other and further relief as the Court may deem proper.

Dated: September 30, 1999

Respectfully submitted,



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