

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

IN RE:	)	Chapter 11
	)	
OAKWOOD HOMES CORPORATION,	)	Case No. 02-13396 (PJW)
<u>et al.</u> ,	)	
	)	Jointly Administered
	)	
Debtors.	)	<b>Objections Due: December 8, 2003 @4:00pm</b>
	)	<b>Hearing Date: December 15, 2003 @1:30 pm</b>
	)	

---

**SEVENTH AND FINAL APPLICATION OF  
AKIN GUMP STRAUSS HAUER & FELD LLP,  
CO-COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,  
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED**

TO THE HONORABLE PETER J. WALSH,  
UNITED STATES BANKRUPTCY JUDGE:

Akin Gump Strauss Hauer & Feld LLP (“Akin Gump” or “Applicant”), co-counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Oakwood Homes Corporation and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), files its seventh and final application (the “Application”) pursuant to 11 U.S.C. §§ 330 and 331, Rule 2016 of the Federal Rules of Bankruptcy Procedure, Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware and the United States Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 effective January 30, 1996 for (a) an allowance of reasonable compensation for services rendered by Akin Gump to the Committee and (b) reimbursement of actual and necessary expenses incurred in connection therewith, and in support of this Application, Akin Gump respectfully represents as follows:

**I.**  
**BACKGROUND**

1. On November 15, 2002 (the “Petition Date”), the Debtors commenced their respective cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On December 2, 2002, the United States Trustee appointed the Committee, pursuant to Bankruptcy Code Section 1102. The Committee is comprised of: JP Morgan Chase Bank; U.S. Bank National Association; Absolute Recovery Hedge Funds, Ltd., c/o WL Ross & Co. LLC; Aegon USA Investment Management LLC; Patrick Industries, Inc.; Carriage Industries, Inc.; and LaSalle Bristol LP.

3. On or about January 8, 2003, the Committee filed its application to employ Akin Gump as co-counsel to the Committee. By Order dated February 6, 2003 (D.E. #612), this Court approved the Committee’s retention of Akin Gump *nunc pro tunc* to December 2, 2002.

4. On December 18, 2002, this Court, pursuant to Bankruptcy Code Sections 105 and 331, signed an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (the “Administrative Order”) (D.E. #277). The Administrative Order establishes procedures for, *inter alia*, (a) monthly applications for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during a given month (as defined in the Administrative Order, a “Monthly Fee Application”), and (b) quarterly applications for interim approval and allowance of the compensation and reimbursement of expenses sought in the Monthly Fee Applications (including any holdback) during the quarterly period (as defined in the Administrative Order, a “Quarterly

Interim Fee Request”). Pursuant to the terms of the Administrative Order, the Debtors may pay the applicable professional an amount equal to the lesser of (a) 80 percent of the compensation for services rendered and 100 percent of the expenses requested in the Monthly Fee Application and (b) 80 percent of the compensation for services rendered and 100 percent of the expenses requested in the Monthly Fee Application not subject to any objection. Pursuant to the terms of the Administrative Order, the Debtors shall request that the Court schedule a hearing on the Quarterly Interim Fee Requests at least once every six months, or at such other intervals as the Court deems appropriate. To the extent the Court approves a professional’s Quarterly Interim Fee Request, the Administrative Order authorizes the Debtors to pay the professional 100 percent of the compensation for services rendered and expenses incurred not previously paid to the professional pursuant to the professional’s Monthly Fee Applications for the relevant period.

5. On August 5, 2003, the Application of the Official Committee of Unsecured Creditors Pursuant to Sections 328 and 1103 of the Bankruptcy Code to Retain and Employ King & Spalding LLP (“King & Spalding”) as Replacement Counsel, *Nunc Pro Tunc* to June 19, 2003 (the “King & Spalding Application”) was filed with this Court (D.E. #1774). The certificate of no objection in connection with the King & Spalding Application was filed on August 22, 2003 (D.E. #1837). The order approving the King & Spalding Application was entered by this Court on August 25, 2003 (D.E. #1846)

6. On August 13, 2003, the Motion of Akin Gump and King & Spalding for Substitution of Co-Counsel for the Official Committee of Unsecured Creditors for Oakwood Homes Corporation, *et al.* Effective as of August 20, 2003 (the “Substitution Motion”) was filed with this Court (D.E. #1767). The certificate of no objection in connection with the Substitution Motion was filed on September 8, 2003 (D.E. #1916). The order approving the Substitution Motion was entered by this Court on September 24, 2003 (D.E. #2011).

7. This is the seventh and final application Applicant will file with the Court for allowance of compensation and reimbursement of expenses for services rendered to the Committee. In this final application Applicant requests:

- a. Final approval of all fees and expenses approved by the Court and paid by the Debtors on an interim basis;
- b. Fees and expenses paid by the Debtors pursuant to the Administrative Order, but not yet approved by the Court;
- c. Actual fees and expenses that have neither been paid by the Debtors nor approved by the Court to date for the period from June 1, 2003 through and including August 31, 2003; and
- d. Estimated fees and expenses in the amount of \$2,500.00 to prepare and prosecute this Seventh and Final Fee Application after August 31, 2003.

8. Akin Gump filed its first interim application for compensation (the "First Application") on March 12, 2003 (D.E. #775), requesting fees in the amount of \$390,680.00 and reimbursement of expenses in the amount of \$25,276.64 for the period December 2, 2002 through December 31, 2002. The certificate of no objection in connection with the First Application was filed on March 31, 2003 (D.E. #934). Akin Gump filed its second interim application for compensation (the "Second Application") on March 26, 2003 (D.E. #869), requesting fees in the amount of \$162,821.50 and reimbursement of expenses in the amount of \$3,263.06 for the period January 1, 2003 through January 31, 2003. The certificate of no objection in connection with the Second Application was filed on April 15, 2003 (D.E. #1017). Akin Gump filed its third interim application for compensation (the "Third Application") on May 1, 2003 (D.E. #1092), requesting fees in the amount of \$136,324.00 and reimbursement of expenses in the amount of \$29,425.85 for the period February 1, 2003 through February 28, 2003. The certificate of no objection in connection with the Third Application was filed on May 22, 2003 (D.E. #1242). Akin Gump filed its fourth interim application for compensation (the "Fourth Application") on June 5, 2003 (D.E. #1324), requesting fees in the amount of

\$125,364.50 and reimbursement of expenses in the amount of \$7,528.06 for the period March 1, 2003 through March 31, 2003. The certificate of no objection in connection with the Fourth Application was filed on June 27, 2003 (D.E. #1495). Akin Gump filed its fifth interim application for compensation (the "Fifth Application") on June 13, 2003 (D.E. #1364), requesting fees in the amount of \$86,867.50 and reimbursement of expenses in the amount of \$11,313.88 for the period April 1, 2003 through April 30, 2003. The certificate on no objection in connection with the Fifth Application was filed on July 7, 2003 (D.E. #1528). Akin Gump filed its sixth interim application for compensation (the "Sixth Application") on July 29, 2003 (D.E. #1673) requesting fees in the amount of \$48,090.00 and reimbursement of expenses in the amount of \$7,124.29 for the period May 1, 2003 through May 31, 2003. The certificate of no objection in connection with the Sixth Application was filed on August 20, 2003 [D.E. #1820].

9. Pursuant to the Administrative Order, the Debtors have made the following payments to Akin Gump for services rendered and expenses incurred during the compensation period of December 2, 2002 through August 31, 2003:

- (a) The Debtors have paid Akin Gump \$747,791.05 (100% of the fees and 100% of the expenses) for the period of December 2, 2002 through February 28, 2003.
- (b) The Debtors have paid Akin Gump \$234,223.83 (80% of the fees and 100% of the expenses) for the period of March 1, 2003 through May 31, 2003.
- (c) Through this Application, Akin Gump is requesting that the Debtors pay (i) \$13,312.52 (100% of the fees and 100% of the expenses) for the period of June 1, 2003 through August 31, 2003, plus (ii) 20% of the fees for the period of March 1, 2003 through May 31, 2003 that have been unpaid and total \$52,064.40, plus (iii) \$2,500 (100% of the estimated fees and expenses) for the period after August 31, 2003.

## **II.**

### **COMPENSATION AND REIMBURSEMENT REQUESTED**

10. Akin Gump requests as its final allowance of compensation of the total sum of \$957,601.50, which includes \$7,454.00 (the "Compensation Amount") for compensation for

services rendered by Akin Gump to the Committee during June 1, 2003 through August 31, 2003 (the "Compensation Period"). Section III, *infra*, contains a summary of the services rendered.

11. A compilation showing the name of the attorney or paraprofessional, the date on which the services were performed, a description of the services rendered, and the amount of time spent in performing the services during the Compensation Period is annexed hereto as Exhibit "A." Akin Gump maintains written records of the time expended by attorneys and paraprofessionals in the rendition of their professional services to the Committee. Such time records were made contemporaneously with the rendition of services by the person rendering such services and in the ordinary course of Akin Gump's practice, and are presented in a form which is in compliance with the Local Rules for the District of Delaware.

12. The Compensation Amount represents a "lodestar" computation using the firm's normal hourly billing charges in effect during the Compensation Period. The Compensation Period includes an aggregate of 38.20 hours of service and an average billing rate of \$195.13 per hour. A schedule of the hours expended by the attorneys and paraprofessionals during the Compensation Period, a brief description of their backgrounds, their normal hourly rates, and the value of their services is annexed hereto as Exhibit "B."

13. Akin Gump is cognizant of the fact that compensation will be paid to lawyers only for legal work and the dollar value of a particular task is not enhanced simply because a lawyer does it. Considerable care has been taken, therefore, to avoid the performance of purely ministerial tasks by lawyers through the use of paraprofessionals where possible.

14. Care has been taken to avoid duplication of effort and to employ lawyers whose expertise is of the requisite level to perform the services. It is occasionally necessary for the participation of more than one attorney in order to adequately and completely represent the Committee. For example, meetings may involve multiple separate subjects that are being

handled by different attorneys who need to coordinate their efforts. The participation of multiple attorneys may be intended to promote efficiency, prevent duplication of effort and/or avoid the preparation of interoffice memorandums.

15. In addition, Akin Gump requests final approval of the reimbursement of its actual and necessary disbursements made in the total sum of \$89,790.30, which includes \$5,858.52 incurred during the Compensation Period (the "Expense Reimbursement Amount"). Akin Gump also maintains records, which are available for inspection, of all actual and necessary expenses incurred in connection with the rendition of its professional services. A schedule of the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit "C." The expenses for which Akin Gump seeks reimbursement include the following:

- Computer Research: Akin Gump's practice is to bill clients for LEXIS and PACER research at the actual cost, which does not include amortization for maintenance and equipment. Akin Gump subscribes to electronic legal research with Westlaw. Akin Gump's contract with Westlaw is on a fixed fee basis, with the monthly fee charged determined based on the prior usage of Westlaw services during the previous year. In light of the fixed fee terms of the contract, Akin Gump is required to perform a cost rationalization to ensure that clients are fairly and accurately billed for Westlaw services used by Akin Gump on behalf of such client. Under this cost rationalization, Akin Gump takes the time spent on each research and bills each client based on the published rates for time-billed research set by Westlaw on the Westlaw website.
- Duplication: Akin Gump charges \$0.15 per page for internal duplication. When duplication is performed by an outside service, Akin Gump seeks reimbursement of the amount Akin Gump was charged.
- Facsimiles: Outgoing domestic facsimile transmittals are billed at \$1.00 per page. There is no charge for incoming facsimiles.
- Telephone: Long distances calls are billed at actual cost.
- Travel: Airfare, train fare, ground transportation, lodging, meals and incidentals are charged at actual cost.

16. Akin Gump has included in the Expense Reimbursement Amount all actual and necessary expenses processed by its accounting department for the Compensation Period.

17. Akin Gump also requests an additional \$2,500.00 to prepare and prosecute this Seventh and Final Fee Application after August 31, 2003.

### **III.** **SUMMARY OF SERVICES RENDERED**

18. Since December 2, 2002, Akin Gump has rendered professional services to the Committee as requested and as necessary and appropriate in furtherance of the interests of the Debtors' unsecured creditors. The variety and complexity of these cases and the need to act or respond on an expedited basis in furtherance of the Committee's needs have required the expenditure of substantial time by personnel from several legal disciplines on an as-needed basis.

19. The following summary of services rendered during the Compensation Period is not intended to be a detailed description of the work performed, as those day-to-day services and the time expended in performing such services are fully set forth in Exhibit "A" and summarized on Exhibit "D." Rather, it is to highlight certain of those areas in which services were rendered to the Committee, as well as to identify some of the problems and issues that Akin Gump was required to address.

- Analyzing certain motions presented by the Debtors and advising the Committee appropriately.
- Preparing appropriate court filings to facilitate the transition of counsel to the Committee from Akin Gump to King & Spalding.

20. Akin Gump's attention to the Committee's organizational needs during the Compensation Period enabled the Committee to continue to function as a coordinated group and to satisfy its fiduciary duties.



21. Due to Akin Gump's experience in counseling creditors' committees, Akin Gump believes it was able to efficiently address all issues that have arisen during the pendency of these cases.

#### **IV.**

#### **FACTORS TO BE CONSIDERED IN AWARDING ATTORNEYS' FEES**

22. The factors to be considered in awarding attorneys fees have been enumerated in In re First Colonial Corporation of America, 544 F.2d 1291, 1298-99 (5<sup>th</sup> Cir. 1977), reh'g denied, 547 F.2d 573, cert. denied, 431 U.S. 904, which standards have been adopted by most courts. Akin Gump respectfully submits that a consideration of these factors should result in this Court's allowance of the full compensation sought.

- a) The Time and Labor Required. The professional services rendered by Akin Gump on behalf of the Committee have required the continuous expenditure of substantial time and effort, under significant time pressures. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.
- b) The Novelty and Difficulty of Questions. In this case, as in all others in which the firm is involved, Akin Gump's effective advocacy and creative approach have helped clarify and resolve such issues.
- c) The Skill Requisite to Perform the Legal Services Properly. Akin Gump believes that its recognized expertise in the area of corporate reorganization, its ability to draw from highly experienced professionals in other areas of Akin Gump's practice, and its creative approach to the resolution of issues will contribute to the maximization of distributions to the Debtors' unsecured creditors.

- d) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Due to the size of Akin Gump's insolvency department, Akin Gump's representation of the Committee has not precluded its acceptance of new clients.
- e) The Customary Fee. The fee sought herein is based upon Akin Gump's normal hourly rates for services of this kind. Akin Gump respectfully submits that the fee sought herein is not unusual given the magnitude and complexity of these cases and the time expended in attending to the representation of the Committee, and is commensurate with fees Akin Gump has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience.
- f) Whether the Fee is Fixed or Contingent. Pursuant to sections 330 and 331 of the Bankruptcy Code, all fees sought by professionals employed under section 327 of the Code are contingent pending final approval by this Court, and are subject to adjustment dependent upon the services rendered and the results obtained.
- g) Time Limitations Imposed by Client or Other Circumstances. As already indicated, Akin Gump has been required to attend to certain issues arising in these cases in a compressed and urgent time-frame.
- h) The Amount Involved and Results Obtained. Through the efforts of Akin Gump, the Committee has been an active participant in these Chapter 11 cases, and its constructive assistance, as well as criticism, has greatly contributed to enhancement of the recoveries available to the Debtors' creditors and to the efficient administration of these cases.
- i) The Experience, Reputation and Ability of the Attorneys. Akin Gump has a large and sophisticated financial restructuring practice and is playing and has

played a major role in numerous cases of national import including, for example, the reorganization proceedings of Carmike Cinemas, Inc.; Polaroid Corporation; The LTV Corporation; OpTel, Inc.; Pillowtex Corporation; Scott Cable Communications, Inc.; Genesis Health Ventures, Inc.; and Golden Books Publishing Company, Inc. Akin Gump's experience enables it to perform the services described herein competently and expeditiously. In addition to its expertise in the area of corporate reorganization, Akin Gump has called upon the expertise of its partners and associates in other practice areas to perform the wide ranging scope of the legal work necessitated by these cases.

j) The "Undesirability" of the Case. These cases are not undesirable.

k) Nature and Length of Professional Relationship. Akin Gump was selected as co-counsel to the Committee on December 2, 2002. The Court entered an order on February 6, 2003 authorizing the employment and retention of Akin Gump *nunc pro tunc* to December 2, 2002. Akin Gump has been rendering services continuously to the Committee since December 2, 2002 and continuing through the Compensation Period, as necessary and appropriate.

## V.

### **RELIEF REQUESTED**

23. Akin Gump respectfully requests: (i) approval of final compensation for 38.2 hours of time spent for services furnished as attorney to the Committee during the Compensation Period in the amount of \$7,454.00, (ii) approval of reimbursement of actual out-of-pocket expenses of \$5,858.52 for the Compensation Period, (iii) approval of final allowance of \$957,601.50 for compensation for professional services rendered to the Committee during the period of December 2, 2002 through and including August 31, 2003, including payment of \$52,064.40 of unpaid fees, (iv) approval of final reimbursement of Akin Gump's out-of-pocket

expenses incurred in connection with the rendering of such services during the period December 2, 2002 through and including August 31, 2003, in the amount of \$89,790.30, (v) approval of compensation of an additional \$2,500.00 for the preparation of this Seventh and Final Fee Application after August 31, 2003, and (vi) the Debtors pay Akin Gump the foregoing sums (less any amounts previously awarded and paid) within 10 days from the date the order approving this Application is entered.

24. Akin Gump has no agreement of any kind, express or implied, to divide with any other person or entity any portion of the compensation sought or to be received by it in these cases.

25. No prior application has been made in this or in any other Court for the relief requested herein for the Compensation Period.

## **VI.** **CONCLUSION**

WHEREFORE, Akin Gump respectfully requests an order (i) approving final compensation for 38.20 hours of time spent for services furnished as attorney to the Committee during the Compensation Period in the amount of \$7,454.00; (ii) approving reimbursement of actual out-of-pocket expenses of \$5,858.52 for the Compensation Period; (iii) approving and granting final allowance of compensation for 2,689.35 hours of time spent for professional services furnished to the Committee in the amount of \$957,601.50 during the period of December 2, 2002 through and including August 31, 2003; (iv) approving and granting final reimbursement of Akin Gump's out-of-pocket expenses incurred in connection with the rendering of such services during the period December 2, 2002 through and including August 31, 2003, in the amount of \$89,790.30; (v) approving compensation of an additional \$2,500.00 for the preparation of this Application after August 31, 2003; (vi) directing the Debtors to pay

Akin Gump \$67,876.91 (the foregoing sums less any amounts previously awarded and paid) within 10 days of the date of this order; and (vii) such other and further relief to which it may be entitled.

Dated: November 13, 2003  
Wilmington, Delaware

**McCARTER & ENGLISH, LLP**

By: /s/ William F. Taylor, Jr.  
William F. Taylor, Jr. (#2936)  
Katharine L. Mayer (#3758)  
919 Market Street, Suite 1800  
P.O. Box 111  
Wilmington, Delaware 19801  
302-984-6300

and

/s/ S. Margie Venus  
S. Margie Venus  
Partner  
Akin Gump Strauss Hauer & Feld, LLP  
711 Louisiana, Suite 1900  
Houston, Texas 77002  
(713) 220-5800

Co-Counsel to the Official Committee of  
Unsecured Creditors

WL1: 84188.01