

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

In re:	)	Chapter 11
	)	
ONCO INVESTMENT CO	)	Case No. 04-10558 (DDS)
A Delaware Corporation, <u>et al.</u>	)	Jointly Administered
	)	
Debtors.	)	<b>Objection Deadline: March 24, 2005 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: TBD</b>

**FINAL APPLICATION OF MORRIS, NICHOLS, ARSHT & TUNNELL, COUNSEL TO  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR ALLOWANCE  
OF INTERIM AND FINAL COMPENSATION FOR SERVICES RENDERED AND FOR  
REIMBURSEMENT OF ALL ACTUAL, REASONABLE AND NECESSARY EXPENSES  
INCURRED FOR THE PERIOD MARCH 5, 2004 THROUGH JANUARY 31, 2005**

Name of Applicant:	MORRIS, NICHOLS, ARSHT & TUNNELL
Authorized to Provide Professional Services to:	Official Committee of Unsecured Creditors
Date of Retention:	April 28, 2004, <u>nunc pro tunc</u> to March 5, 2004
Period for Which Compensation and Reimbursement is Sought:	March 5, 2004 through January 31, 2005
Amount of Compensation Sought as Actual, Reasonable and Necessary:	\$56,900.50, plus \$2,000.00 for preparation of final fee application
Amount of Reimbursement Sought as Actual, Reasonable and Necessary:	\$12,695.08
This is an <u>x</u> interim	<u>    </u> final application

The total time expended for the preparation of this application is approximately 13.0 hours, and the corresponding compensation requested is approximately \$2,000.00.

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

<b>Date Filed</b>	<b>Period Covered</b>	<b>Requested Fees/Expenses</b>	<b>Approved/Allowed Fees/Expenses</b>
1 <sup>st</sup> Interim 06/21/04 D.I. 1227	03/05/04 – 04/30/04	\$13,643.00/\$2,205.38	\$13,643.00/\$2,205.38
2 <sup>nd</sup> Interim 07/15/04 D.I. 1344	05/01/04 – 05/31/04	\$1,592.50/\$356.84	\$1,568.95/\$356.84
3 <sup>rd</sup> Interim 08/16/04 D.I. 1500	06/01/04 – 06/30/04	\$3,677.00/\$575.25	\$2,941.60/\$575.25
4 <sup>th</sup> Interim 09/17/04 D.I. 1618	07/01/04 – 07/31/04	\$5,687.00/\$2,370.79	\$4,627.10/\$2,370.79
5 <sup>th</sup> Interim 10/01/04 D.I. 1722	08/01/04 – 08/31/04	\$5,622.50/\$424.30	\$4,498.00/\$424.30
6 <sup>th</sup> Interim 11/09/04 D.I. 1899	09/01/04 – 09/30/04	\$9,151.50/\$1,148.03	\$7,321.20/\$1,148.03
7 <sup>th</sup> Interim 12/07/04 D.I. 2074	10/01/04 – 10/31/04	\$3,876.50/\$2,226.39	\$3,101.20/\$2,226.39
8 <sup>th</sup> Interim 01/05/05 D.I. 2141	11/01/04 – 11/30/04	\$4,511.50/\$2,403.02	\$3,609.20/\$2,403.20
9 <sup>th</sup> Interim 01/21/05 D.I. 2169	12/01/04 – 12/31/04	\$4,785.00/\$230.86	\$3,828.00/\$230.86
10 <sup>th</sup> Interim 02/07/05 D.I. 2210	01/01/05 – 01/31/05	\$4,354.00/\$754.22	\$3,483.20/\$754.22

**ATTACHMENT TO FEE APPLICATION**

ONCO INVESTMENT COMPANY,  
 (Case No. 04-10558/JBR)  
 March 5, 2004 through January 31, 2005

<b>Name of Professional Person</b>	<b>Position of the Applicant/Year Admitted/ Area of Expertise</b>	<b>Hourly Billing Rate (including changes)</b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Derek C. Abbott	Partner/1995/Bankruptcy	425	40.60	17,255.00
Michael G. Busenkell	Associate/2000/Bankruptcy	360	3.10	1,116.00
Gilbert R. Saydah	Associate/2002/Bankruptcy	280	0.80	224.00
Jason W. Harbor	Associate/2002/Bankruptcy	250	15.70	3,925.00
Gregory T. Donilon	Associate/2002/Bankruptcy	240	50.80	12,192.00
Gregory T. Donilon	Associate/2002/Bankruptcy	260	5.90	1,534.00
Angela R. Conway	Paralegal	155	54.40	8,432.00
Angela R. Conway	Paralegal	165	7.70	1,270.50
Emma Campbell	Paralegal	155	5.50	852.50
Uraina Norman	Paralegal	155	7.00	1,085.00
Cassandra Lewicki	Paralegal	155	7.00	1,085.00
Crystal Day	Paralegal Assistant	125	16.00	2,000.00
Crystal Day	Paralegal Assistant	135	9.50	1,282.50
Kim deBrabander	Case Clerk	100	7.70	782.50
Kim deBrabander	Paralegal Assistant	125	4.50	517.50
Kim deBrabander	Paralegal Assistant	135	0.20	27.00
Anne Phillips	Case Clerk	100	27.90	2,790.00
Rachel McGhee	Case Clerk	100	1.20	120.00
Lisa Bate	Case Clerk	100	0.40	40.00
Jillian Pitcher	Case Clerk	100	0.60	60.00
Maja Murphy	Case Clerk	100	3.10	310.00
<b>TOTALS</b>			<b>269.60</b>	<b>\$56,900.50</b>
<b>BLENDDED RATE: \$211.06</b>				

**COMPENSATION BY PROJECT CATEGORY**

ONCO INVESTMENT COMPANY,  
 (Case No. 04-10558/JBR)  
 March 5, 2004 through January 31, 2005

<b>Project Category</b>	<b>Total Hours</b>	<b>Total Fees</b>
Case Administration	52.50	\$ 11,806.00
Asset Disposition	1.20	440.00
Relief from Stay/Adequate Protection	1.40	339.00
Meetings of/and Communications w/ Creditors	6.80	2,872.50
Fee/Employment Applications	139.30	21,752.50
Fee/Employment Objections	1.30	338.00
Avoidance Action Analysis	0.80	124.00
Assumption/Rejection of Leases/Contracts	0.90	166.00
Employee Benefits/Pensions	0.50	77.50
Business Operations	0.50	77.50
Other Contested Matters	4.40	944.00
Financing/Cash Collections	7.10	2,593.00
Claims and Plans	0.80	124.00
Claims Administration and Objections	8.10	2,702.00
Plan and Disclosure Statement	28.20	9,489.00
General Bankruptcy	15.80	3,055.00
<b>TOTALS</b>	<b>269.60</b>	<b>56,900.00</b>

**EXPENSE SUMMARY**

ONCO INVESTMENT COMPANY,  
 (Case No. 04-10558/JBR)  
 March 5, 2004 through January 31, 2005

<b>Expense Category</b>	<b>Service Provider (if applicable)</b>	<b>Total Expenses</b>
Transcripts		642.34
Photos/Art/Spec Duplication		8,010.97
Meals/Business Entertaining		144.13
In-House Messenger Service		264.00
Courier Service		851.04
Duplicating		1,561.55
Postage		731.38
Telephone		9.79
Facsimile		171.00
Computer Research	Pacer	190.54
Paralegal Overtime		112.34
<b>TOTAL</b>		<b>\$12,695.08</b>

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FOR THE DISTRICT OF DELAWARE**

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	)	
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A Delaware Corporation, <u>et al.</u>	)	Jointly Administered
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Debtors.	)	<b>Objection Deadline: March 24, 2005 @ 4:00 p.m. (ET)</b>
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	)	

**FINAL APPLICATION OF MORRIS, NICHOLS, ARSHT & TUNNELL, CO-COUNSEL  
FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR  
ALLOWANCE OF COMPENSATION FOR ACTUAL, REASONABLE AND  
NECESSARY SERVICES RENDERED AND FOR REIMBURSEMENT OF ALL  
ACTUAL, REASONABLE AND NECESSARY EXPENSES INCURRED FOR THE  
PERIOD MARCH 5, 2004 THROUGH JANUARY 31, 2005**

Pursuant to U.S.C. §§ 330, 331 and 1103 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, the laws firm Morris, Nichols, Arsht & Tunnell (“Morris Nichols”) hereby applies (the “Final Application”) for a final order awarding it reasonable compensation for professional legal services rendered as Delaware bankruptcy co-counsel for the Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), in the above-captioned cases, and its affiliated in the amount of \$56,900.50, plus \$2,000.00 for preparation of this Final Application, together with reimbursement for actual and necessary expenses incurred in the amount to \$12,695.08 for the period commencing March 5, 2004 through and including January 31, 2005 (the “Fee Period”). In support of its Final Application, Morris, Nichols respectfully represents as follows.

## BACKGROUND

1. On February 23, 2004 (the “Petition Date”), the Debtors filed voluntary petitions for reorganization under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On March 8, 2004, the United States Trustee appointed the Committee.

3. By its Order Approving Retention Of Morris, Nichols, Arsht & Tunnell As Co-Counsel For The Official Committee Of Unsecured Creditors *Nunc Pro Tunc* To March 5, 2004 (D.I. 515) (the “Morris Nichols Retention Order”), dated April 28, 2004, the Court authorized the Committee to retain Morris Nichols as Delaware bankruptcy co-counsel for the Committee.

4. On November 16, 2004, the Court entered an order confirming the Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession (D.I. 1945) (the “Plan”).

5. On January 31, 2005, the Plan became effective and the ONCO Investment Company Liquidating Trust (the “Trust”) was established for the benefit of the creditors of the Debtors.

6. This Final Application is made pursuant to Rule 2016-2 of the Local Rules Of Bankruptcy Practice and Procedure for United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and this Court’s Administrative Order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals [Re: D.I. 55], dated March 22, 2004 (D.I. 225) (the “Interim Compensation Order”), whereby the Court established procedures for interim compensation and reimbursement of expenses for certain professionals in these cases. Morris Nichols submits the Final Application to this Court for an order awarding

Morris Nichols final allowance of compensation for actual, necessary professional services by it as co-counsel for the Committee in the amount of \$56,900.50, plus \$2,000.00 for preparation of this Final Application, together with reimbursement for actual and necessary expenses incurred in the amount of \$12,695.08, for the period commencing March 5, 2004 through and including January 31, 2005.

7. Professional services and expenses for which compensation and reimbursement are sought were rendered and expended on behalf of the Committee pursuant to Chapter 11 of the Bankruptcy Code. Morris Nichols believes it is appropriate that it be compensated for the time spent and be reimbursed for the expenses incurred in connection with this matter.

#### **FINAL APPLICATION**

8. By this Application and in accordance with the Fee Procedures Order, Morris Nichols is seeking (a) allowance of final compensation for actual reasonable and necessary professional services rendered by Morris Nichols as bankruptcy co-counsel for the Committee during the Final Application Period and (b) final reimbursement of actual, reasonable and necessary expenses incurred during the Final Application Period. Morris Nichols has previously submitted interim fee applications covering services rendered and expenses incurred during the entire Final Application Period.

9. Morris Nichols seeks the allowance of \$56,900.00, plus \$2,000.00 for the preparation of the final application, for actual, reasonable and necessary legal services rendered on behalf of the Committee during the Final Application Period and \$12,695.08 for reimbursement of actual, reasonable and necessary expenses incurred in connection with the rendition of such services during the Final Application Period. With respect to fees and expenses

incurred during the Final Application Period, Morris Nichols is requesting that the Trust be authorized and directed to pay Morris Nichols an amount equal to the sum of the allowed compensation and expense reimbursement during the Final Application Period, less any amounts previously paid by the Debtors or Trust.

10. Morris Nichols rendered all services for which compensation is sought from the Trust solely in connection with its representation of the Committee in this case, in furtherance of the duties and the functions of the Committee, and not on behalf of any creditor or other person. Morris Nichols has maintained written records of the time expended in the rendition of the professional services required by the Committee. These records are maintained in the ordinary course of Morris Nichols' practice.

11. Annexed as Exhibit "A" hereto are records of the time Morris Nichols has expended in rendering professional services to the Committee, which show the attorneys, paralegals and case clerks recording time for these matters, how much time was recorded by each professional or case clerk and descriptions of the services provided.

12. Exhibit "B" hereto contains a breakdown of disbursements incurred by Morris Nichols during the period to which this Application relates. The disbursements for which Morris Nichols seeks reimbursement include the following:

- Duplicating. Morris Nichols charges \$0.15 per page for internal copying. When copying has been performed by an outside copying service, Morris Nichols seeks reimbursement for the amount Morris Nichols was charged.
- Telecommunications. Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$1.00 per page. There is no charge for incoming facsimiles.
- Computer Research Charges. Morris Nichols' practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment.



- Working Meals. Morris Nichols' practice is to allow any attorney, paraprofessional or legal assistant working outside of normal business hours to charge a working meal to the appropriate client.
- Delivery Services. Morris Nichols' practice is to charge postal, overnight delivery and courier service at actual cost.

13. Morris Nichols has endeavored to represent the Committee in the most expeditious and economical manner possible. Tasks have been assigned to attorneys, paralegals, case clerks and administrative assistants at Morris Nichols so that work has been performed by those most familiar with the particular matter or task and, where attorney or paralegal involvement was required, by the lowest hourly rate professional or paraprofessional appropriate for a particular matter. Moreover, Morris Nichols has sought to coordinate with other professionals involved in this case so as to minimize any duplication of effort and to minimize attorneys' fees and expenses to the Debtors. Morris Nichols believes it has been successful in this regard.

### **APPLICABLE AUTHORITY**

#### **A. Statutory Basis For Awarding Fees**

14. The allowance of interim compensation for services rendered and reimbursement of expenses in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

Any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

15. With respect to the level of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person “reasonable compensation for actual, necessary services rendered.” 11 U.S.C. § 330(a)(1).

16. Section 330(a)(1)(3)(A), in turn, provides that: [i]n determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including —

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issues or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3)(A).

17. The congressional policy expressed in this statute is to provide for adequate compensation in order to continue to attract qualified and competent professionals to bankruptcy cases. See In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 850 (3d Cir. 1994) (“Congress rather clearly intended to provide sufficient economic incentive to lure competent bankruptcy specialists to practice in the bankruptcy courts”) (citation and internal quotation marks omitted).

## B. Factors To Be Considered In Awarding Fees

18. The factors to be considered in awarding fees have been enumerated in In re First Colonial Corp. of America, 544 F.2d 1291, 1298-99 (5<sup>th</sup> Cir. 1977), which standards have been adopted by most courts.<sup>1</sup>

- (A) The Time and Labor Required. The professional services rendered by Morris Nichols on behalf of the Committee have required the expenditure of substantial time and effort and a high degree of professional competence and expertise in order to be administered with skill and dispatch.
- (B) The Novelty and Difficulty of Questions. Novel and complex issues arose in the course of the Debtors' chapter 11 cases. In this case, as in others in which the firm is involved, Morris Nichols' effective advocacy and creative approach to problem solving have helped clarify and resolve difficult issues.
- (C) The Skills Requisite to Perform the Legal Services Properly. Morris Nichols believes that its expertise in numerous areas of Delaware law, its ability to draw from highly experienced professionals in various areas of Morris Nichols' practice, and its practical approach to the resolution of issues, contributed to the success of the Debtors' cases and helped obtain additional value for the benefit of the Debtors' estates and creditors.
- (D) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Although its representation of the Official Committee did not preclude acceptance of new clients, Morris Nichols' attention to certain complex issues that arose during the Final Application Period required several of its attorneys to commit significant amounts of time to the Debtors' chapter 11 case.
- (E) The Customary Fee. The compensation sought herein is based upon Morris Nichols' normal hourly rates for services of this kind.

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<sup>1</sup> The factors embraced by the Fifth Circuit in First Colonial were adopted by the Fifth Circuit's decision in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5<sup>th</sup> Cir. 1974), except that First Colonial also included the "spirit of economy" as a factor which was explicitly rejected by Congress in enacting section 330 of the Bankruptcy Code. See In re Hillsborough Holdings, Corp., 127 F.3d 1398, 1403 (11<sup>th</sup> Cir. 1997). The remaining First Colonial factors continue to apply to determine the reasonableness of fees awarded under the Bankruptcy Code. See 3 Collier on Bankruptcy ¶ 330.04[3]. At 330-06 (15<sup>th</sup> ed. 2000). In addition, a majority of the First Colonial factors are now codified in section 330(a)(3). Id.

Such compensation is commensurate with fees Morris Nichols has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience and skill.

- (F) Whether the Fee is Fixed. Morris Nichols charges customary hourly rates for the time expended by its attorneys and paraprofessionals in representing the Committee and Morris Nichols' fee is not outcome dependent.
- (G) Time Limitation Imposed by Client or Other Circumstances. As stated above, Morris Nichols has been required to attend to various issues as they have arisen in this case. Occasionally, Morris Nichols has had to perform those services outside of normal business hours.
- (H) The "Undesirability" of the Case. The Debtors' case was not undesirable, but as already indicated, it required a significant commitment of time from certain Morris Nichols attorneys.

19. The professional services rendered by Morris Nichols has required a high degree of professional competence and expertise so that the number of issues requiring evaluation and action by the Committee could be addressed with skill and dispatch. It is respectfully submitted that the services rendered to the Committee were performed efficiently, effectively and economically, and the results obtained have benefited the creditors of the Debtors, the Debtors and their estates.

20. The total time spent by Morris Nichols attorneys and paraprofessionals and staff during the Final Application Period has a fair market value of at least \$56,900.50. As shown by this Application and supporting exhibits, Morris Nichols spent its time economically and without unnecessary duplication of time. In addition, the work involved, and thus the time expended, was carefully assigned in light of the experience and expertise required for a particular task.

**CERTIFICATIONS**

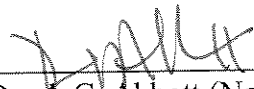
21. The undersigned certifies that no agreement or understanding exists between Morris Nichols and any other person or entity for the sharing of compensation received or to be received for services rendered in connection with this case.

22. The undersigned has reviewed the requirements of Local Bankruptcy Rule 2016-2 and certifies to the best of his information, knowledge and belief that this Application complies with Local Bankruptcy Rule 2016-2.

**WHEREFORE**, Morris Nichols respectfully requests that this Court enter a final order: (a) allowing Morris Nichols final compensation in the amount of \$56,900.50, plus \$2,000.00 for preparation of this Application, for actual reasonable and necessary professional services rendered to or on behalf of the Committee during the Final Application Period and final reimbursement of \$12,695.08 for actual, reasonable and necessary expenses incurred during the Final Application Period, (b) authorizing and directing the Trust to pay Morris Nichols an amount equal to the sum of such allowed compensation and expense reimbursement, less any amounts previously paid by the Debtors or Trust and (c) granting such other and further relief as the Court deems just and proper.

Dated: February 22, 2005  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL

  
\_\_\_\_\_  
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Unsecured Creditors