IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	
POLAROID CORPORATION, et al.,	)	Chapter 11
	)	Case No. 01 B 10864 (PJW)
Debtors.	)	Jointly Administered
	)	

APPLICATIONS FOR ORDER AUTHORIZING (i) COMPENSATION AND REIMBURSEMENT OF EXPENSES TO SALOMON GREEN & OSTROW, P.C., AND CORBALLY, GARTLAND AND RAPPLEYEA, LLP PURSUANT TO SECTIONS 503(b)(3)(D) AND 503(b)(4) OF THE BANKRUPTCY CODE AND (ii) WAIVER OF CERTAIN REQUIREMENTS OF LBR 2016-2(d)

Salomon Green & Ostrow, P.C. ("SGO") and Corbally, Gartland and Rappleyea, LLP ("CGR") (collectively "the 503(b) Applicants"), two of the five law firms[1] employed by William Cardinale and George Maiorelli (singly or collectively, "C&M")[2], move this Court for entry of an order, pursuant to sections 503(b)(3)(D) and 503(b)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), for an order authorizing payment of compensation for services rendered and reimbursement of expenses incurred in the above captioned cases, and for waiver of certain requirements under Rule 2016-2(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

[1] Along with SGO and CGR, the two "503(b) Applicants," the following other firms have served as co-counsel in this matter: Jaspan Schlesinger Hoffman LLP, The Jacob D. Fuchsberg Law Firm, and Goodkind Labaton Rudoff & Sucharow LLP. Only SGO and CGR are seeking 503(b) compensation. All counsel for C&M will be referred to collectively as the "C&M Attorneys."

[2] Cardinale and Maiorelli, shareholders of the Debtors, were instrumental in obtaining the appointment of an Examiner prior to the retention of SGO and CGR. Both are seeking 503(b) compensation pursuant to separate applications filed contemporaneously herewith.

Delaware (collectively, the "Applications"). In support of the Applications, the 503(b) Applicants respectfully represents as follows:

PRELIMINARY STATEMENT

1. The 503(b) Applicants served a unique, indispensable and highly beneficial role in these cases. Under the law in this district and the Third Circuit, they are entitled to compensation for their "substantial contribution."

2. As set forth below in detail, the 503(b) Applicants' efforts were crucial to obtaining the modification of the proposed exculpation and release provisions of the Debtor's Second Amended Plan, and to limiting the scope of the Debtor's proposed post-confirmation injunction, all of which enabled Polaroid's equity holders to seek recourse against certain of Polaroid's directors, officers, and pre-petition professionals in class-action litigation now pending in various non-bankruptcy proceedings. Also, the 503(b) Applicants were actively involved in the examination process. Their participation in voluntary discovery facilitated the expeditious issuance of the Examiner's Report, and they were instrumental in obtaining the publication of the Examiner's Report over the objection of virtually all other parties in interest. Applicants respectfully submit that without their involvement, the controversy caused by the alleged accounting problems would have continued to plague these Debtors to the extent they had prior to the appointment of the Examiner, and might have served as an insuperable barrier to confirmation of the Plan.

3. Finally, by their participation, the 503(b) Applicants reinforced the integrity of the bankruptcy process. Prior to Applicants' retention in the spring of 2003, shareholders had routinely appeared in this case without counsel, often ignorant of both their rights in bankruptcy

and the appropriate means to obtain information and relief. To a great extent, Applicants served as a clearinghouse and information center for all equity interests and concerns, not just limited to those of their two clients. Therefore, the 503(b) Applicants should be compensated for that substantial contribution to the administration of this estate.

BACKGROUND

4. On October 12, 2001 (the "Petition Date"), Polaroid Corporation and several affiliates (collectively, the "Debtors") filed petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

5. The Debtors have continued to operate their businesses and manage their affairs as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

6. An official committee of unsecured creditors (the "Creditors' Committee") was appointed by the Office of the United States Trustee on October 21, 2001.

7. At an auction on June 26, 2002, the Debtors sold substantially all of their assets to OEP Imaging Corporation ("OEP"). This Court subsequently approved the Sale to OEP after a contested hearing (the "Sale Hearing") on June 28, 2002.[3] The Sale Order[4] was entered by the Court on July 3, 2002, and the Sale to OEP closed on July 31, 2002.

[3] As part of the Sale, OEP purchased the name Polaroid Corporation and now operates under such name. The former Polaroid Corporation, a Debtor, is now known as Primary PDC, Inc. The terms "Debtors" and "OEP" as used and defined in this document are not changed.

[4] An appeal of the Sale Order filed by Stephen J. Morgan ("Morgan") is currently pending before the Hon. Joseph J. Farnan, Jr., in the United States District Court for the District of Delaware under 02-CV-1353 (the "Appeal"). See Docket Numbers 1266, 1369 and 1370. Neither Cardinale nor Maiorelli are parties to the Appeal.

8. Upon information and belief, since the transfer of the Debtors' active businesses to OEP in the summer of 2002, the Debtors' operations have focused solely on the reorganization process.

9. The Sale was the subject of substantial controversy which left lingering doubts in the minds of shareholders and creditors alike about the arms-length nature of the transactions. These questions were partially answered by the Examiner's Report, while additional questions raised by the Examiner's Report are the subject of pending class-action lawsuits which are not the subject of this proceeding.

10. The 503(b) Applicants took several important steps which materially and significantly improved the creditors' and equity holders' legal and economic positions. Their actions included:

A) The 503(b) Applicants first appeared in these cases in April 2003 by objecting to the scope of the Debtors' proposed releases (exculpation) and the plan injunction, at which point Polaroid had moved for approval of the Disclosure Statement related to the Second Amended Plan. After the filing of the objection, the Debtor withdrew its motion and amended its plan and disclosure statement further. In the Debtor's Third Amended Joint Plan (the "Plan"), the proposed broad releases and injunction to which the 503(b) Applicants had objected were withdrawn (although even the language of that Third Amended Joint Plan concerning exculpation and injunction required clarification; see sub-para. (B) below). The elimination of the releases and the limitation of the injunction laid the jurisdictional foundation for the class action lawsuits currently pending.

B) In September 2003, in response to Polaroid's motion for approval of the Disclosure Statement related to the Third Amended Joint Plan, the 503(b) Applicants objected to the language concerning the Debtors' proposed releases and the plan injunction, contending that either the scope of exculpation was too broad or the language too ambiguous. At the hearing on approval of the Disclosure Statement on October 8, 2003, the Debtors' and Creditors' Committee's counsel clarified that by promulgating the Third Amended Joint Plan, the Debtors did not intend to grant releases for any pre-petition activities, and that the plan injunction

did not intend to affect any of the pending class-action litigations. Thereafter, the order confirming the Third Amended Joint Plan contained the explicit clarification that the releases did not cover pre-petition activity.

C) The 503(b) Applicants actively participated in the Examiner's investigation, attending all depositions, meeting with the Examiner privately to respond to his inquiries and provide him with the shareholders' view of circumstances, and responding to the Examiner's miscellaneous questions along the way. In addition, C&M individually met with the Examiner to respond to his inquiries and to set forth their concerns. As part of this process, the 503(b) Applicants litigated motions for access to the depositions and to documents produced to the Examiner, and examined documents which had been produced to the Examiner.

D) In August 2003, the Examiner moved for authority to publish the Examiner's Report. The Debtor opposed vigorously, as did other parties in interest. At oral argument, the 503(b) Applicants argued for the broadest publication, emphasizing that openness and honesty in the process was required as a matter of principle, and that pragmatically, publication could quell the dissent which had arisen. At oral argument, the Court ordered that the report be published, specifically citing the 503(b) Applicant's argument in support of its decision.

E) After their retention by C&M in April of 2003, the 503(b) Applicants functioned as a shareholder clearinghouse for information concerning Polaroid specifically and the bankruptcy process in general. As is apparent from the 503(b) Applicants' time records, the applicants communicated and met with many shareholders, providing them with information about the case, Polaroid's plan, and the bankruptcy process.

11. Among the administrative expenses allowed by Section 503(b) is the "reasonable compensation for professional services rendered by an attorney of an entity [including a creditor] whose expense is allowable under paragraph (3) of this subsection." 11 U.S.C. § 503(b)(4).

12. For the expenses of an entity and its counsel to be allowable as administrative expenses, Section 503(b)(3)(D) requires a showing that such expenses have been incurred in "making a substantial contribution" to the reorganization process.

13. The 503(b) Applicants have made a substantial contribution to these cases and should be compensated for the work that they have performed which inured directly to the benefit of the estate, its creditors and equity interests generally.[5]

14. Specifically, the 503(b) Applicants incurred the fees and expenses of the following entities in the following amounts, for which they now seek payment:

A) SGO seeks total compensation pursuant to section 503(b) of $288,432.30, which includes $274,390.50 in legal fees, representing 665.20 hours of services rendered at hourly rates ranging from $140-$160 for paralegals and $285-$595 for attorneys, and $14,055.80 of disbursements actually incurred.

B) CGR seeks total compensation pursuant to section 503(b) of $82,038.03, which includes $81,532.50 in legal fees, representing 155.30 hours of services rendered at $525.00 per hour, and $505.53 of disbursements actually incurred.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the Applications pursuant to 28 U.S.C. §§ 157 and 1334.

16. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Debtors' chapter 11 cases and these Applications is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief sought in these Applications are §§ 503(b)(3)(D) and (b)(4) of the Bankruptcy Code.

[5] To the extent that SGO and CGR performed work that did not provide a "substantial contribution" to the administration of the estate, no compensation is sought therefor. See paras. 49 and 50 below, respectively.

THE ACTIONS TAKEN BY THE 503(b) APPLICANTS SUBSTANTIALLY BENEFITED THE ESTATE

18. The 503(b) Applicants played an active and essential role in these cases. As described in further detail below, all of the actions taken by the 503(b) Applicants for which compensation is sought substantially contributed to the preservation and maximization of value for the benefit of the Estate by preserving the rights of equity holders, promoting the efficiency and cogency of the Examiner's investigation, and ensuring the transparency of the judicial process.

Substantive Objections to Plan and Disclosure Statement

19. In April 2003, when a motion seeking court approval of the Disclosure Statement to the Second Amended Plan was pending, the 503(b) Applicants objected to the Disclosure Statement (the "Objection").

20. The focus of the Objection was the scope of the proposed releases and the plan injunction. Under the Second Amended Plan, broad releases were to be granted and an injunction put in place that would have barred any action against third parties, such as the class actions currently pending, which were based on pre-bankruptcy activities.

21. The 503(b) Applicants' detailed objection to the scope of the exculpation and plan injunction provided in the Debtors' Second Amended Plan was set forth as follows:

> Article V.K. of the Disclosure Statement, entitled "Effect of Plan Confirmation, describes, at sub-section (2)(b), entitled "Releases by Holders of Claims and Interests," a broad release to be granted to "any Debtor and the present and former directors, officers, shareholders, employees, agents, advisors, accountants, investment bankers, consultants, attorneys and other representatives of all of the foregoing." Despite the title of the sub-section, which refers to "Releases by . . . Interests," the text describes only releases by holders of claims.

> The conflict between the heading and the text must be resolved. To the extent that the Debtors intend that the Plan provide (a) for any discharge or exculpation of claims arising prior to the commencement of this case in favor of any non-Debtors, including current or former directors, officers and other agents of the Debtors; (b) for any discharge or exculpation of claims, except for willful conduct or gross negligence, arising after the commencement of this case in favor of any non-Debtors, including current or former directors, officers and other agents of the Debtors; or (c) for an injunction against the assertion of any such claims by shareholders or other Interest holders; this must be specifically described and the conflict between the heading and the text reconciled.
>
> Moreover, the justification for any such non-Debtor discharge or exculpation must be set forth in detail. To the extent that such non-Debtor discharge is inconsistent with the applicable law set forth in, among other cases, *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203 (3rd Cir. 2000), justification therefor must specifically be set forth.

22. After the Debtors' receipt of the Objection, the Debtors' motion was withdrawn and the proposed Plan amended further. In the Third Amended Joint Plan, the broad releases and injunction to which the 503(b) Applicants had objected appeared to have been withdrawn or limited in scope. The language was ambiguous, however, so the 503(b) Applicants were constrained to object to the Disclosure Statement to the Third Amended Plan for several reasons, including: (a) the confusing and inadequate disclosure concerning the scope of the injunction and exculpation of non-debtors; (b) the absence of information concerning the Debtors' intentions to assert claims for the estates' benefits; and (c) the inadequacy of disclosure concerning the proposed substantive consolidation (the "Second Objection").

23. The Second Objection set forth the 503 Applicants' opposition to the revised scope of exculpation and plan injunction provided in the Third Amended Joint Plan as follows (paragraph numbers in original):

A. Disclosure Concerning Scope of Injunction and Exculpation of Non-Debtors is Confusing and Inadequate

4. As simple as the underpinnings of the Class-Action Litigation are – claims against the Debtors' pre-petition principals and professionals exclusively for pre-petition acts – it is unclear whether the Third Amended Joint Plan of Reorganization (the "Plan") purports to provide exculpation for any of the named defendants for any of the claims set forth in the complaint in the Class-Action Litigation. Similarly, it is unclear whether the proposed injunction purports to enjoin any of the Class-Action Litigation.

5. The "Exculpation and Limitation of Liability" provision of the Plan purports to absolve certain specified entities from

> any liability to . . . any Holder of . . . an Interest . . . for any act or omission in connection with, relating to, or arising out of, the Debtors' Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct or gross negligence . . .

See Disclosure Statement, Art. IV.K.3. The named beneficiaries of the exculpation provision include the Debtors, their former officers and directors, and their former advisors, attorneys or agents. *See id.* Plainly, KPMG and Polaroid's former officers and directors, who comprise all of the named defendants in the Class-Action Litigation, are within the scope of exculpation. But equally plainly, the pre-petition acts on which the Class-Action Litigation is premised do not relate to or arise out of the Debtors' Chapter 11 cases, since the acts pre-date these cases, nor any of the other circumscribed acts. So without more, it appears that the exculpation and limitation of liability is *not* intended to affect the Class-Action Litigation.

6. Yet confusion arises from the express exclusion set forth in the last sentence of that exculpation provision in the Plan and the Disclosure Statement. The last sentence of Article IV.K.3 of the Disclosure Statement provides that "Nothing, however, shall be deemed to waive, or in any way limit or otherwise affect, the right of any party in interest . . . (ii) to assert any claims or causes of action against any professional employed by the Debtors or the Committee based upon action or omissions prior to the Petition Date." Except for that last sentence, the scope of exculpation/limitation of liability would not have appeared to apply to *any* "claims or causes of action . . . based upon action or omissions prior to the Petition Date." That is, the express exclusion does not appear to be necessary. But because the Plan expressly states that "Nothing, however, shall be deemed to waive" such a claim, the intended scope of the exculpation is brought into

question. Moreover, it is further confusing why that exclusion, if necessary at all, is limited to "any professional employed by the Debtors." Since prior officers of the Debtors are named defendants in the Class-Action Litigation, yet they are not expressly within the scope of the exclusion from exculpation contained in that last sentence, the Debtors may intend that such pre-petition officers/directors be included within the scope of exculpation.

7. Therefore, whether the Debtors intend that such pre-petition acts of officers, directors and professionals be included within the scope of exculpation must be clarified.

8. Second, the Plan "injunction" described in Article IV.K.4. of the Disclosure Statement purports to enjoin all Holders of Interests

> from commencing or continuing, in any manner or in any place, any action or other proceeding [against] the Estate(s), the Debtors, Reorganized Polaroid, the Plan Administrator, the DIP Agent, the DIP Lenders, the Indenture Trustee, the Pre-Petition Agent, the Pre-Petition Lenders, the Creditors' Committee or the members thereof, the Plan Committee or the members thereof . . . .

Former Debtors' directors and officers, and former Debtors' professionals such as KPMG, do not appear to be included within the express scope of those protected by the Plan "injunction."

9. Therefore, whether the Debtors intend that the Plan "injunction" apply to the Class-Action Litigation in its current form should be clarified.

10. To the extent that the Debtors intend that the Plan provide exculpation for any of the named defendants in the Class-Action Litigation or that Plan injunction is intended to affect the Class-Action Litigation in any manner, the justification for any such non-Debtor discharge, exculpation, or injunction must be set forth in detail. To the extent that such non-Debtor discharge is inconsistent with the applicable law set forth in, among other cases, *Gillman v. Continental Airlines (In re Continental Airlines)*, 203 F.3d 203 (3rd Cir. 2000), justification therefor must specifically be set forth.

24. The 503(b) Applicants' objections resulted in substantive changes to the Plan and additional disclosures to creditors and other parties in interest. At the hearing on approval of the Disclosure Statement, counsel for the Unsecured Creditors' Committee stated expressly, in response to the 503(b) Applicants' request for clarification, as follows:

> Your Honor, counsel for the debtors has just reminded me that we would also like to make a representation which we believe will resolve one of Mr. Cardinale and Mr. Maiorelli's objections that the exculpation provisions contained in the plan do not in any way affect the actions that they have previously commenced or any actions with respect to pre-petition conduct from third parties.

See October 8, 2003 Transcript at 26-27. Also, the Debtors' counsel clarified the nature of the change from the Second Amended Joint Plan to the Third Amended Joint Plan:

> On behalf of the debtors from Skadden – we have actually carved out all the releases I believe so there are no releases in there anymore. There's exculpation. We've pretty well limited the release section.

See October 8, 2003 Transcript at 31-32.

25. Finally, the actual confirmation order was drafted to conform to the 503(b) Applicants' objection and the Debtors' representations on the record, as follows: "14. Exculpation and Limitation of Liability . . . provided further, however, that nothing in this paragraph shall or is intended to, release, exculpate, or discharge any person for any act or omission prior to the Petition Date." See "Findings of Fact, Conclusions of Law and Order Confirming the Third Amended Joint Plan of Reorganization," dated November18, 2003, at para. 14, p. 16.

26. The elimination of the releases and the limitation of the injunction in the Third Amended Joint Plan laid the jurisdictional foundation for the class actions currently pending. As tangible as was the pecuniary distribution provided to unsecured creditors under the Plan, so too did equity interests tangibly reap the benefit of the elimination of the third-party exculpation provisions under the Plan.

Assistance to Examiner's Investigation

27. In furtherance of his duties, the Examiner sought discovery pursuant to Bankruptcy Rule 2004.

28. The 503(b) Applicants were actively involved in the Examiner's investigation, attending the depositions, meeting with the Examiner to provide him with the shareholders' perspective on the circumstances of the case, and responding to the Examiner's miscellaneous questions. The C&M Attorneys attended all thirteen Rule 2004 Examinations conducted by the Examiner and reviewed the Produced Material. The C&M Attorneys also answered inquiries from various interested parties, many of whom were appearing *pro se* or not actively involved in the cases but directly affected by the outcome.

29. During the Investigation, the 503(b) Applicants prosecuted successfully several motions to facilitate their participation in depositions and to assure their access to documents.

30. First, it was necessary to clarify the terms of the Protocol Order regarding attendance at depositions. Paragraph 6 of the Protocol Order provided "Each of the Debtors, Polaroid Holding Corporation, the Official Committee of Unsecured Creditors, the Agent, the Appearing Shareholders, the Appearing Retirees and Stephen J. Morgan, may designate no more than one representative (each a "Representative") who shall have the right to be present at such depositions on their behalf." See Protocol Order at para. 6(a). Because the Protocol Order gives the collective designation of "Appearing Shareholders" to Messrs. Lockwood, Cardinale, and Maiorelli, one interpretation of the Protocol Order was that the "Appearing Shareholders" were entitled to only one Representative in attendance at the 2004 Examinations even if C&M had counsel separate from Mr. Lockwood. This interpretation would have defeated the intent and

spirit of the Protocol Order and unfairly denied C&M the right to counsel of their own choosing. Therefore, the 503(b) Applicants moved to clarify (or amend) the Protocol Order to allow the 503(b) Applicants to participate separately from any Representative designated by Mr. Lockwood. That motion was granted.

31. In addition, several entities objected to C&M's requests for access to materials produced to the Examiner pursuant to the Protocol Order. The 503(b) Applicants moved to overrule those objections, and negotiated agreements with some of the objecting parties. Access to these documents was crucial to C&M's meaningful participation in the Investigation and the grant of access, through court order and stipulations among several of the parties, ensured that the case proceeded to confirmation without additional litigation.

Publication of the Examiner's Report

32. By motion dated August 19, 2003, the Examiner moved on an emergency basis for authority to publish the Examiner's Report, requesting that the Court overrule objections which had previously been interposed by KPMG to the Examiner; alternatively, for authority to file the report under seal.

33. In response to the emergency motion, the Debtors objected to the publication of the Examiner's Report (with exhibits) until all Principal Parties had the opportunity to review it. The United States Trustee, recognizing that it "was working in somewhat of a vacuum not actually having seen the documents to which KPMG is objecting," argued that the Court could promptly review and determine whether any of the subject documentation was privileged. And KPMG objected outright to the publication of the report to the extent it referred to or annexed KPMG documents as exhibits.

34. At oral telephonic argument on August 22, 2003, the 503(b) Applicants argued for the broadest publication of the Examiner's Report, with no reservations or redactions, contending (i) that the Bankruptcy Code contained a strong presumption in favor of disclosure and public filings, (ii) that the price of the protection which Polaroid had obtained in chapter 11 was broad disclosure, (iii) that openness and honesty in the process was required as a matter of principle, and (iv) that only publication could quell the dissent which had arisen. See August 22, 2003 Transcript at 23-25. At oral argument, the Court ordered that the report be published broadly, specifically citing the 503(b) Applicant's argument in support of its decision. See id. at 27-28.

Clearinghouse for Shareholders Inquiries and Concerns

35. After their retention by C&M in April of 2003, the 503(b) Applicants functioned to a great extent as a shareholder clearinghouse for information concerning Polaroid specifically and the bankruptcy process in general. As is apparent from the 503(b) Applicants' time records, the applicants collected information concerning the case, and communicated and met with many shareholders, providing them with information about the case, the Plan, and the bankruptcy process.

36. The 503(b) Applicants met with Messrs. Lockwood and Jarrett on separate occasions at SGO's offices. Moreover, Applicants spoke on numerous occasions with Stephen Morgan, who continued to represent himself *pro se* in court but who sought information concerning the bankruptcy processes from the 503(b) Applicants. Finally, as reflected in the annexed time records, the 503(b) Applicants spoke to miscellaneous equity holder interests, both at the Examiner's depositions and elsewhere, explaining the nature of the bankruptcy process, the likely result of plan confirmation, and the possible remedies for the injustices they perceived.

37. The 503(b) Applicants respectfully submit that their services as an informal clearinghouse, collecting and distributing information to equity interests, significantly ameliorated both the distrust which many equity holders expressed for the judicial process and the persistent expressions of dissent which had threatened to sidetrack the confirmation processes, all of which is cognizable as a "substantial contribution" warranting compensation under Section 503(b).

THE 503(b) APPLICANTS ARE ENTITLED TO COMPENSATION FOR THEIR "SUBSTANTIAL CONTRIBUTION"

38. The 503(b) Applicants should be compensated for the legal fees and expenses they incurred in making a substantial contribution to the Debtors' cases.

39. Section 503(b)(3) of the Bankruptcy Code provides that there shall be allowed as administrative expenses of the estate, among other things:

> the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by . . . [D] a creditor . . . or committee representing creditors . . . in making a substantial contribution in a case under chapter . . . 11 of this title.

11 U.S.C. § 503(b) (3). In addition, Section 503(b)(4) requires allowance of:

> reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b) (4).

40. Section 503(b)(3)(D) authorizes an administrative expense priority claim where a substantial contribution has been made to a reorganization. 11 U.S.C. § 503(b)(3)(D); *Lebron v.*

Mechem Financial Inc., 27 F.3d 937 (3d Cir. 1994); *In re Buckhead America Corp*., 161 B.R. 11, 14-15 (Bankr. D. Del. 1993).

41. Although the term "substantial contribution" is not defined in the Bankruptcy Code, a contribution has been deemed substantial where it has "conferred a significant and demonstrable benefit to the debtor's estate and to the creditors." *In re Washington Lane Assocs.*, 79 B.R. 241, 244 (Bankr. E.D. Pa. 1987) (*quoting In re Consolidated Bancshares, Inc.*, 785 F.2d 1249, 1254 (5th Cir. 1986)). Phrased another way, a contribution is substantial if "tangible benefits to the bankruptcy estate and to other unsecured creditors" are provided, *In re Buckhead America Corp.*, 161 B.R. 11, 15 (Bankr. D. Del. 1993), or if the services provided a "direct benefit" to the reorganization process and chapter 11 estate. *See Lebron*, 27 F.3d at 943 (services engaged by parties in interest, although presumed to be incurred for the benefit of the engaging party, are reimbursable if they "'directly and materially contributed' to the reorganization").

42. An applicant for substantial contribution should establish that the

> [s]ervices which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization . . . . Those services which are provided solely for the client-as-creditor, such as those services rendered in prosecuting a creditor's claim, are not compensable. [Compensable services] are those which facilitated the progress of these cases.

In re K-Fab, Inc., 118 B.R. 240, 242 (Bankr. M.D. Pa. 1990) (*quoting In re Richton Int'l Corp.*, 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981)); *accord, Lebron*, 27 F.3d at 944 (quoting *Consolidated Bancshares, Inc*., 785 F.2d 1249, 1253 (5th Cir. 1986)).

43. The 503(b) Applicants respectfully submit that, however the test is formulated, they have made a "substantial contribution" to the administration of these cases. All services for

which the 503(b) Applicants seek compensation have resulted either in a direct and immediate benefit for parties in interest, or have laid the foundation for other parties to provide a substantial benefit to the creditors and equity holders.

44. First and foremost, through the efforts of the 503(b) Applicants, the Plan was amended to eliminate third-party releases for pre-petition activity and injunctions against shareholder actions. As a result, the Plan provisions concerning exculpation and injunction became unobjectionable to the equity class and confirmable by the Court. In the absence of the Debtors' response to the 503(b) Applicants' objections, attempts at plan confirmation would have elicited more vehement opposition and more intractable positions, likely resulting in further delay and expense to the proceedings.

45. Moreover, by cooperating with and actively participating in the Examiner's investigation, the 503(b) Applicants assured that the investigation proceeded quickly and efficiently. Certainly, the mere investigation process would not have quelled the dissent of equity interests had the Examiner's Report not been published broadly. Therefore, the 503(b) Applicants benefited the confirmation process further by prevailing in its advocacy for the broadest publication of the Examiner's Report.

46. Finally, by serving as a clearinghouse for shareholder communications and information, the 503(b) Applicants further facilitated confirmation of the Plan. Indeed, the 503(b) Applicants could be entitled to compensation as professionals serving an *ad hoc* equity committee. *See Marcus Montgomery Wolfson & Burten P.C. v. AM Int'l, Inc. (In re AM Int'l Inc.)*, 203 B.S. 898, 904 (D. Del. 1996) (awarding compensation to accountants/financial advisors to *ad hoc* committee).

47. Although the 503(b) Applicants were retained solely by C&M, the services they rendered benefited most constituencies. Indeed, the appointment of an Examiner, the investigation undertaken by the Examiner, the broad publication of the Examiner's Report, and the limitation on the scope of exculpation and plan injunction, proved ultimately to be prerequisites to confirmation of the Plan. Thus, creditors and shareholders alike benefited from the 503(b) Applicants' services.

48. In conclusion, the 503(b) Applicants have met all tests for making a "substantial contribution" to these cases, and are entitled to compensation for their efforts.

TIME RECORDS AND ITEMIZATION OF EXPENSES
AND WAIVER OF CERTAIN REQUIREMENTS UNDER LOCAL RULE 2016-2

49. Attached hereto as Exhibits A and B respectively are SGO's itemized time records for professionals and paraprofessionals performing services and an itemized list of expenses incurred by SGO. The first page of Exhibit A is a summary of professional time devoted by SGO, containing an analysis by professional. The actual contemporaneously-kept time records follow the one-page summary. SGO has redacted from its time records those services which SGO does not believe qualify for compensation within the parameters of Section 503(b), particularly services rendered concerning its clients' motion pursuant to Federal Rule of Civil Procedure 60(b), and those directly related to the commencement of its shareholder class-action in a non-bankruptcy forum.

50. Attached hereto as Exhibits C and D respectively are CGR's itemized time records for professionals and paraprofessionals performing services and an itemized list of expenses incurred by CGR. CGR has redacted from its time records and expenses those services

(and related expenditures) which CGR does not believe qualify for compensation within the parameters of Section 503(b), particularly services rendered concerning its clients' motion pursuant to Federal Rule of Civil Procedure 60(b), and those directly related to the commencement of its shareholder class-action in a non-bankruptcy forum.

51. The time records and itemized expenses submitted by SGO and CGR comply with their general policies for recording time and listing expenses.

52. Local Rule 2016-2 (d) requires that (i) time records include certain activity descriptions, (ii) time allotments be recorded in tenths of an hour, and (iii) activity descriptions not be lumped. Local Rule 2016(h) also provides, however, that a party within the scope of Local Rule 2016-2 may request of waiver of one or more requirements of the rule. Because C&M retained the 503(b) Applicants outside of the bankruptcy process and were not required to seek court authorization for this retention, the 503(b) Applicants treated C&M as any other firm client. Neither SGO nor CGR generally categorize the work that is performed for a client into activity descriptions; thus all services are recorded under one client matter.

53. Accordingly, the 503(b) Applicants respectfully request that this Court grant a waiver of the requirements of Local Rule 2016-2(d) to the extent specified above, since compliance would cause a substantial administrative burden and cost on SGO and CGR.

NO PRIOR REQUEST; NO IMPERMISSIBLE FEE SHARING

54. No previous application for the relief sought herein has been made to this or any other Court.

55. No agreement exists in violation of the prohibitions of Section 504 of the Code for the division or sharing of any fees which are allowed pursuant to this or any future application made by the 503(b) Applicants herein.

56. The 503(b) Applicants are filing this one pleading because of the virtual identity of the services rendered in these proceedings, because they shared responsibility for performing the services for which compensation is sought herein, and because they served as co-counsel for Cardinale and Maiorelli. Nevertheless, these are two distinct fee applications seeking two distinct awards based on the distinct quantum of services performed by each applicant and the distinct documentation submitted in support thereof.

WAIVER OF MEMORANDUM OF LAW

57. Because the Applications present no novel issues of law and the authorities relied upon by the 503(b) Applicants are set forth herein, the 503(b) Applicants hereby requests that this Court waive the requirement of filing of a memorandum of law in support of these Applications pursuant to D. Del. L.R. 7.1.2, except that the 503(b) Applicants reserve their right to file a brief in reply to any objections to the Applications.

NOTICE

58. Section 12.3(b) of Polaroid's Third Amended Joint Plan fixes the notice to be given of the Applications. Pursuant to the terms of Article 12.3(b), notice of these Applications has been given to those denominated in the Plan as "Notice Parties": the Plan Administrator (on behalf of Reorganized Polaroid), counsel to the Debtors, and counsel to the Creditors' Committee. Additionally, although not specified in the Plan, notice has been given to the United

States Trustee for the District of Delaware. Based upon the express terms of the Plan, the 503(b) Applicants submit that no further notice need be given.

CONCLUSION

WHEREFORE, the 503(b) Applicants respectfully request entry of an order in the form annexed hereto as Exhibit E authorizing the 503(b) Applicants to be granted compensation and reimbursement of their legal fees and expenses incurred during the Substantial Contribution Period, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 25, 2003

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