

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
Special Regulatory Counsel
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Jean L. Kiddoo
Elise Scherr Frejka (ESF-6896)

Hearing Date: May 20, 2004 at 10:00 A.M.
Objection Deadline: May 10, 2004

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re :
 : Chapter 11 Case No.
Allegiance Telecom, Inc., et al., : 03-13057 (RDD)
 :
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Debtors. : (Jointly Administered)
 :
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**SUMMARY SHEET PURSUANT TO UNITED STATES TRUSTEE GUIDELINES
FOR REVIEWING APPLICATIONS FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330**

FIRST INTERIM APPLICATION

NAME OF APPLICANT:	Swidler Berlin Shereff Friedman, LLP	
TIME PERIOD:	August 1, 2003 through and including February 29, 2004	
ROLE IN CASE:	Special Regulatory Counsel (as of November 6, 2003) Ordinary Course Professional (May 14 to November 6, 2003)	
DATE OF RETENTION	Special Regulatory Counsel: December 3, 2003 <i>nunc pro tunc</i> to November 6, 2003 Ordinary Course Professional: May 14, 2003	
CURRENT APPLICATION:	Fees Requested:	\$547,754.00
	Expenses Requested:	\$14,417.84
PRIOR APPLICATIONS:	Fees Previously Requested:	\$0.00
	Fees Previously Awarded:	\$0.00
	Expenses Previously Requested:	\$0.00
	Expenses Previously Awarded:	\$0.00

SUMMARY

FEES

Name of Professional	Title	Department	Year Admitted	Hours	Hourly Rate	Amount
Andrew D. Lipman	Partner	Telecommunications	1977	89.00	\$540.00	\$48,060.00
				139.90	500.00	69,950.00
Jean L. Kiddoo	Partner	Telecommunications	1980	83.10	505.00	41,965.50
				99.70	470.00	46,859.00
Paul Gagnier	Partner	Telecommunications	1994	240.00	375.00	90,000.00
				57.60	340.00	19,584.00
Paul T. Dennis	Partner	Antitrust	1985	1.80	515.00	927.00
Shalom Jacob	Partner	Bankruptcy	1988	9.20	460.00	4,232.00
Eric J. Branfman	Partner	Telecommunications	1973	6.10	455.00	2,775.50
				5.90	425.00	2,507.50
Russell M. Blau	Partner	Telecommunications	1982	2.80	450.00	1,260.00
Richard M. Rindler	Partner	Telecommunications	1969	12.60	380.00	4,788.00
Rebecca P. Dick	Of Counsel	Antitrust	1978	6.60	410.00	2,706.00
				8.40	390.00	3,276.00
Patrick Donovan	Of Counsel	Telecommunications	1976	11.50	385.00	4,427.50
				55.70	360.00	20,052.00
Troy F. Tanner	Of Counsel	Telecommunications	1988	28.20	370.00	10,434.00
				16.50	345.00	5,692.50
Robin F. Cohn	Counsel	Telecommunications	1985	10.20	335.00	3,417.00
Elise Scherr Frejka	Associate	Bankruptcy	1990	6.40	410.00	2,624.00
				27.60	385.00	10,626.00
Grace R. Chiu	Associate	Telecommunications	1996	0.20	355.00	71.00
Harisha J. Bastiampillai	Associate	Telecommunications	1992	12.90	355.00	4,579.50
				51.20	330.00	16,896.00
Joshua M. Bobeck	Associate	Telecommunications	1992	6.90	350.00	2,415.00
				57.00	310.00	17,670.00
Edward S. Quill	Associate	Telecommunications	1995	42.80	350.00	14,980.00
Michael W. Fleming	Associate	Telecommunications	1994	2.20	330.00	726.00
Jeanne W. Stockman	Associate	Telecommunications	1994	5.50	325.00	1,787.50
Michael C. Sloan	Associate	Telecommunications	1995	0.50	325.00	162.50
Michael Donahue	Associate	Telecommunications	1996	9.60	310.00	2,976.00

Name of Professional	Title	Department	Year Admitted	Hours	Hourly Rate	Amount
Philip J. Macres	Associate	Telecommunications	1997	6.90	310.00	2,139.00
				8.90	260.00	2,314.00
Brian M. McDermott	Associate	Telecommunications	1998	88.90	310.00	27,559.00
				7.90	260.00	2,054.00
Brett Ferenchak	Associate	Telecommunications	1997	9.80	310.00	3,038.00
				19.20	260.00	4,992.00
Ronald W. Del Sesto	Associate	Telecommunications	1998	2.10	310.00	651.00
				1.00	260.00	260.00
Douglas D. Orvis, III	Associate	Telecommunications	1996	7.20	310.00	2,232.00
Andrew J. Topps	Associate	Antitrust	1997	2.00	305.00	610.00
Paul Hudson	Associate	Telecommunications	1998	8.00	290.00	2,320.00
Harry Malone	Associate	Telecommunications	1998	11.20	290.00	3,248.00
Matthew A. Pater	Associate	Intellectual Property	1997	0.20	280.00	56.00
Wendy M. Creeden	Associate	Telecommunications	1999	0.50	280.00	140.00
				3.70	240.00	888.00
Danielle C. Burt	Associate	Telecommunications	2003	9.70	205.00	1,988.50
Ulises R. Pin	Foreign Legal Consultant	Telecommunications		66.40	350.00	23,240.00
				2.60	310.00	806.00
M. Renee Britt	Legal Assistant	Telecommunications		1.70	175.00	297.50
				9.10	165.00	1,501.50
Chad Meyers	Legal Assistant	Bankruptcy		1.20	140.00	168.00
Rahel Menassie	Legal Assistant	Telecommunications		7.60	130.00	988.00
Felix B. Otchere	Legal Assistant	Telecommunications		12.10	125.00	1,512.50
Christine Johnson	Legal Assistant	Telecommunications		9.30	125.00	1,162.50
				1,404.80		\$542,592.50

BLENDED RATE

Professionals	Blended Rate	Hours Billed	Compensation
Partners	\$445.53	758.80	\$338,070.00
Counsel/Of Counsel	364.73	137.10	50,005.00
Associates	317.07	410.50	130,158.00
Foreign Legal Consultant	348.77	68.50	23,891.00
Support Staff		41.00	5,630.00
BLENDED RATE	\$393.61	1,415.90	\$547,754.00

EXPENSES

Description	Amount
Computerized Legal Research	\$13.99
DC Secretarial/Staff Overtime	596.72
Delivery Service	336.87
Documents	101.25
Federal Express	512.44
Filing Fees	556.25
Meal Charges	38.00
Miscellaneous Charges	3.75
Outside Photocopying	1,076.49
Parking	92.59
Photocopy & Printing	3,118.68
Postage	108.23
Printing	292.80
Professional Services	175.60
Publications/Subscriptions	764.76
Secretarial Services	131.39
Secretarial/Staff Overtime	97.23
Telephone	383.31
Trademark Fee - 6004/7004	300.00
Travel/Airfare	2,751.00
Travel/Lodging	296.70
Travel/Meal Expenses	40.00
Travel/Parking	40.00
Travel/Taxis	170.00
Westlaw Legal Research	2,419.79
TOTAL EXPENSES	\$14,417.84

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 Debtors. : (Jointly Administered)
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**FIRST APPLICATION OF SWIDLER BERLIN SHEREFF FRIEDMAN, LLP,
 AS SPECIAL REGULATORY COUNSEL, FOR AN INTERIM ALLOWANCE OF
 COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND FOR
 REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED
 FROM AUGUST 1, 2003 THROUGH AND INCLUDING FEBRUARY 29, 2004**

TO THE HONORABLE ROBERT D. DRAIN,
 UNITED STATES BANKRUPTCY JUDGE:

Swidler Berlin Shereff Friedman, LLP (“SBSF”), as Special Regulatory Counsel, for Allegiance Telecom, Inc. (“Allegiance”), and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), for its first application (the “Application”) pursuant to sections 330(a) and 331 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an interim allowance of compensation for professional services rendered by SBSF for the period commencing August 1, 2003, through and including February 29, 2004 (the “Compensation Period”)¹, and for

¹ As set forth below, SBSF previously served as Ordinary Course Counsel to the Debtors. This Application includes a request for compensation and reimbursement of expenses for the period prior to SBSF’s retention as

reimbursement of its actual and necessary expenses incurred during the Compensation Period, respectfully represents:

Background

1. On May 14, 2003 (the “Petition Date”), the Debtors filed with this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are continuing to possess their property and manage their businesses under sections 1107 and 1108 of the Bankruptcy Code.

2. On May 15, 2003, this Court entered an Order authorizing the retention and employment of SBSF as an Ordinary Course Professional as of the Petition Date (the “OCP Order”). Pursuant to the OCP Order, on June 12, 2003, SBSF filed an affidavit in support of its engagement as an ordinary course professional. The OCP Order provides that an ordinary course professional may be compensated without application to the Court in accordance with a professional’s standard billing practices provided, however, that if an ordinary course professional’s fees and disbursements exceed (a) a total of \$30,000 per month or (b) \$500,000 in the aggregate in the Debtors’ cases, then payment for such excess amounts shall be subject to prior approval of the Court.

3. Because of SBSF’s unique expertise with respect to the regulatory aspects of the Debtors’ telecommunication business, the Debtors requested that SBSF perform additional legal services that caused the firm to exceed the monthly payment limits imposed under the OCP Order. Thereafter, on November 6, 2003, the Debtors sought authority to retain SBSF as Special Regulatory Counsel. By Order dated November 6, 2003, the Debtors were authorized to retain SBSF as Special Regulatory Counsel effective as of November 6, 2003. Accordingly, by this

Special Regulatory Counsel to the extent monthly fees and expenses were over and above the cap established for ordinary course professionals.

Application, SBSF seeks compensation and reimbursement of expenses for the period August 1, 2003 through and including November 5, 2003 for all amounts in excess of \$30,000 incurred by SBSF in the capacity of ordinary course counsel.

**Summary of Professional Compensation
and Reimbursement of Expenses Requested**

4. This Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted on April 19, 1995 (the "Local Guidelines"), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996 (the "UST Guidelines"). Pursuant to the Local Guidelines, a certification regarding compliance with the same is attached hereto as Exhibit A.

5. SBSF seeks allowance of interim compensation for professional services rendered as Special Regulatory Counsel, and initially as Ordinary Course Professionals, during the Compensation Period, in the aggregate amount of \$547,754.00, and for reimbursement of expenses incurred in the rendition of such services in the amount of \$14,417.84. During the Compensation Period, SBSF attorneys and paraprofessionals expended a total of 1,415.90 hours for which compensation is requested.

6. There is no agreement or understanding between SBSF and any other person, other than members of the firm, for the sharing of compensation for services rendered in this case.

7. The fees charged by SBSF in this case are billed in accordance with its existing billing rates and procedures in effect during the Compensation Period. The rates SBSF charges for the services rendered by its professionals and paraprofessionals in these Chapter 11 cases are

the same rates SBSF charges for professional and paraprofessional services rendered in comparable non-bankruptcy related matters. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable non-bankruptcy cases in a competitive national legal market.

8. Pursuant to the UST Guidelines, annexed hereto as Exhibit B are schedules setting forth all SBSF professionals and paraprofessionals who have performed services in these Chapter 11 cases during the Compensation Period, the capacity in which each such individual is employed by SBSF, the department in which each individual practices, the hourly billing rate charged by SBSF for services performed by such individual, the aggregate number of hours expended in this matter and the fees billed therefor, and the year in which each professional was first licensed to practice law.

9. Annexed hereto as Exhibit C are schedules specifying the categories of expenses for which SBSF is seeking reimbursement, and the amounts for each such expense category.

10. SBSF maintains computerized records of the time spent by all SBSF attorneys and paraprofessionals in connection with the rendition of services in these Chapter 11 cases.

Annexed hereto as Exhibit D are contemporaneously maintained time entries (redacted in certain instances to maintain client confidentiality) for each individual providing services during the Compensation Period. Included herein and made a part of Exhibit D, is the expense detail required by the UST Guidelines.

11. Pursuant to the terms of the order of this Court establishing procedures for monthly compensation and reimbursement of expenses of professionals, dated June 13, 2003,

eight (8) fee statements (the “Fee Statements”) during the Compensation Period to the Debtors as follows:²

<u>Invoice No.</u>	<u>Fee Statement Date</u>	<u>Month</u>	<u>Billed Amount</u>	<u>Payment</u>
256968	09/30/2003	August 2003	20,089.61	\$16,177.81
256969	10/28/2003	September 2003	31,758.94	25,764.54
256971	11/26/2003	October 2003	33,663.27	27,759.17
257211	12/31/2003	November 2003	64,421.70	52,014.00
259534	12/31/2003	November 2003	15,516.50	12,413.20
258391	01/30/2004	December 2003	110,194.08	88,827.58
260715	03/01/2004	January 2004	143,612.73	0.00
262225	03/15/2004	February 2004	142,915.01	0.00
TOTAL			\$562,171.84	\$222,956.30

12. To the extent time or disbursement charges for services rendered or disbursements incurred relate to the Compensation Period, but were not processed prior to the preparation of this Application, SBSF reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

13. SBSF reserves its right to supplement this Application pending a hearing on the Application.

14. SBSF currently holds an escrow retainer balance \$38,550.88 for post-petition services and post-petition expenses.

15. This is SBSF’s first application for compensation and reimbursement of expenses.

Qualifications of SBSF

16. Since July 1997, SBSF has been the Debtors primary counsel in the United States for state and federal telecommunications regulatory issues arising from the Debtors' construction, installation, operation, and acquisition of telecommunications equipment and their provision of

² These amounts do not include invoice amounts submitted by SBSF and amounts paid by Debtors that were below monthly payment limits imposed under the OCP Order.

telecommunications, and has represented the Debtors in state and federal telecommunications regulatory matters and judicial proceedings involving regulatory decisions.

17. SBSF's Telecommunications Practice Group is one of the country's largest telecommunications practices. Its practice includes virtually every aspect of federal, state and international telecommunications law and related fields, including regulatory, transactional, securities, international, litigation, legislative, and land use. SBSF's practice extends to all 50 states, U.S. territories, and many international markets.

Summary of Services Performed During the Current Compensation Period

18. SBSF has rendered extensive professional services for or on behalf of the Debtors during the Compensation Period. Rather than burden the Court with an overly detailed or lengthy recitation of each and every matter SBSF addressed during the Compensation Period, the following is a summary description of the primary services rendered by SBSF during the Compensation Period, which highlights the benefits conferred upon the Debtors, their estates and other parties-in-interest as a result of SBSF's efforts. All of the professional services rendered by SBSF are set forth in the computerized time records maintained by SBSF, and the Court is respectfully referred to those records for the specific details of all of the work performed by SBSF.

19. SBSF was required to render substantial professional services during the Compensation Period on a wide array of matters, including, without limitation:

- a. Federal Communication Commission ("FCC") Advice. During the Compensation Period, SBSF represented the Debtors in connection with FCC matters related to the Chapter 11 cases, specifically the prosecution of the Debtors' FCC applications for transfer of control. SBSF's activities included (i) preparation of the FCC transfer applications for the Qwest Communications transaction and subsequently applications for the XO Communications transaction; (ii) regular consultations with the Debtors and counsel for Qwest and subsequently XO regarding the FCC

approval process; (iii) meetings with FCC staff regarding both of the proposed transactions; (iv) preparation and filing of pleadings at the FCC in the FCC proceedings in response to opposition to the grant of transfer approval; and (v) research in connection with the transactions that could affect the FCC's review. As of the date of this Application, SBSF has successfully obtained approval of the XO transaction from the FCC.

- b. State Public Utility Commission Advice. SBSF has advised the Debtors regarding state regulatory requirements in connection with the filing of the Chapter 11 cases and the proposed transfer of control transactions with Qwest and XO. During the Compensation Period, SBSF prepared and filed, in coordination with counsel for Qwest and subsequently XO, applications for transfer of control with 13 states and notices of the transactions in 11 states. SBSF also prosecuted both sets of applications for transfer of control. When the Qwest transaction was terminated, SBSF also prepared and filed the requisite withdrawal filings with the state authorities. SBSF's work included coordination and communication with local counsel in those states where local counsel was needed and ongoing communication with state regulatory agencies. As of the date of this Application, approvals for the XO transaction have been obtained in approximately 7 of the 13 states in which approval is required.
- c. Ongoing Ordinary Course Regulatory Work. A portion of SBSF's work for the Debtors related to "ordinary course" regulatory work on matters important to the ongoing operations of the Debtors, most of which began prior to the Chapter 11 filings or related to regulatory work done in the past by SBSF.
- d. Preparation of Documents for the Bankruptcy Court. A portion of SBSF's work in this area was to advise the Debtors and bankruptcy counsel with respect to telecommunications contract issues. Another portion of SBSF's work was for the preparation of Bankruptcy Court filings, , including certain regulatory sections of the Plan of Reorganization, Disclosure Statement, and Sale Order, the Asset Purchase Agreements and Management/Operating Agreements for both Qwest and XO Communications, and the preparation of documents in support of SBSF's retention and Monthly Fee Statements.

20. SBSF has rendered substantial professional services to the Debtors and their estates in fulfilling its professional responsibilities during the Compensation Period. These large and complex Chapter 11 cases, and the numerous regulatory issues raised during these proceedings, has required thoughtful effort by the partners and associates of SBSF. SBSF submits that it has addressed these issues in a professional, expeditious and efficient manner.

21. The foregoing professional services performed by SBSF were necessary and appropriate to the administration of these Chapter 11 cases. The professional services performed by SBSF were in the best interests of the Debtors, their Estates, and other parties-in-interest. Compensation for the foregoing services as requested is commensurate with the complexity, importance and nature of the problems, issues or tasks involved.

22. Most of the services performed by members and associates of SBSF during the Compensation Period were rendered by the Telecommunications Practice Group at SBSF. SBSF has a preeminent practice in this area and enjoys a national reputation for its expertise.

23. During the Compensation Period, SBSF's hourly billing rates for attorneys ranged from \$205 to \$540 per hour. Allowance of compensation in the amount requested would result in a blended hourly billing rate for attorneys of approximately \$393.61 (based on 1,415.90 hours for attorneys at SBSF's regular billing rates in effect at the time of performance of services). Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy cases in a competitive legal market. As noted, attached hereto as Exhibit B is a schedule listing each SBSF professional and paraprofessional who performed services in these cases during the Compensation Period, the hourly rate charged by SBSF for services performed by each such individual and the aggregate number of hours and charges by each individual.

24. Time spent preparing this Application is not included within the time for which compensation is sought. Allowance of compensation for such time will be sought in a subsequent fee application.

The Compensation Requested

25. There are numerous factors to be considered by the Court in determining allowances of compensation. *See, e.g., In re First Colonial Corp.*, 544 F.2d 1291 (5th Cir. 1977), cert. denied, 431 U.S. 904 (1977); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); In re Drexel Burnham Lambert Group Inc., 133 B.R. 13 (Bankr. S.D.N.Y. 1991). See also In re Nine Associates, Inc., 76 B.R. 943 (S.D.N.Y. 1987); In re Cuisine Magazine, Inc., 61 B.R. 210 (Bankr. S.D.N.Y. 1986).

26. The perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to section 330 of the Bankruptcy Code:

[B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and Massachusetts Mutual Life Insurance Co. v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code. 124 Cong. Rec. H11,089 (daily ed. Sept. 28, 1978) (emphasis added). See also In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Drexel Burnham Lambert Group Inc., 133 B.R. at 13; In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Service Co. of New Hampshire, 93 B.R. 823 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885 (Bankr. N.D. Ohio 1985).

27. The philosophy underlying the adoption of section 330 of the Bankruptcy Code is equally applicable to interim compensation. The Bankruptcy Code provides that the same considerations apply to making interim awards of compensation under section 331 as to final allowances under section 330. *See In re Public Service Co.*, 93 B.R. at 826; In re International

Horizons, Inc., 10 B.R. 895 (Bankr. N.D. Ga. 1981). Section 331 of the Bankruptcy Code provides:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title 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 before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the Court may allow and disburse to such applicant such compensation or reimbursement. 11 U.S.C. § 331.

28. In awarding compensation pursuant to sections 330 and 331 of the Bankruptcy Code to professional persons employed under sections 327 of the Bankruptcy Code, the Court must take into account, among other factors, the cost of comparable non-bankruptcy services.

Section 330 of the Bankruptcy Code provides, in pertinent part, for payment of:

- a. reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by such person; and
- b. reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1).

29. The professional services rendered by SBSF have required and will continue to require an expenditure of substantial time and effort. During the Compensation Period, 133.90 recorded hours were expended by SBSF's professionals in the rendition of the required professional services for which SBSF seeks compensation.

30. Time and labor devoted, however, is only one of many pertinent factors to be considered in awarding attorney compensation. The number of hours expended must be considered in light of (i) the amount involved and the results achieved to date; (ii) the novelty and difficulty of the questions presented; (iii) the skill requisite to perform properly the legal services; (iv) the preclusion of other employment on behalf of other clients; (v) the customary

fee charged to a private client for the services rendered; (vi) awards in similar cases; (vii) time constraints required by the exigencies of the case, including the frequency and amount of time required to be devoted other than during regular business hours; (viii) the experience, reputation and ability of the attorneys rendering services; and (ix) the nature and length of the professional relationship with the client (the “Johnson Factors”). See Johnson v. Georgia Highway Express, 488 F.2d at 717-19 (enumerating the “Johnson Factors” to be considered in awarding attorneys’ fees in equal employment opportunities cases under Title VII); In re First Colonial Corp., 544 F.2d at 1298 (applying the Johnson Factors in bankruptcy cases).

31. The majority of the Johnson Factors are codified in section 330(a) of the Bankruptcy Code, and have been applied by various courts in making determinations that requested attorneys’ fees constitute reasonable compensation. The Supreme Court has clearly articulated that the “lodestar method”³ is presumed to subsume the Johnson Factors, as does section 330(a) of the Bankruptcy Code. See, e.g., Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air, 483 U.S. 711 (“Delaware Valley II”), on remand, 826 F.2d 238 (3d Cir. 1987); Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546 (1986) (“Delaware Valley I”); United States Football League v. National Football League, 887 F.2d 408, 413 (2d Cir. 1989), cert. denied, 493 U.S. 1071 (1990); Lindy Bros. Builders Inc. v. American Radiator and Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973), vacated on other grounds, 540 F.2d 102 (3d Cir. 1976); In re Cena’s Fine Furniture, Inc., 109 B.R. 575 (E.D.N.Y. 1990); In re Drexel Burnham Lambert Group Inc., 133 B.R. at 13.

³ Application of the “lodestar method” involves multiplying the number of hours reasonably expended on the case by the reasonable hourly rate of compensation for each attorney. In re Grant Assocs., 154 B.R. 836, 843 (S.D.N.Y. 1993). This method of calculating attorney fees is appropriate in light of section 330(a) of the Bankruptcy Code, which serves as a starting point, permitting bankruptcy courts, in their own discretion, to consider other factors, such as the novelty and difficulty of the issues, the special skills of counsel, and their results obtained. In re Copeland, 154 B.R. 693, 698 (Bankr. W.D. Mich. 1993).

32. SBSF respectfully submits that application of the foregoing criteria more than justifies the compensation requested in this Application. This is an application for interim compensation. Therefore, such compensation is reviewable by the Court at such time as it considers SBSF's application for final compensation in this case.

33. SBSF has encountered novel and difficult legal problems during the course of the Compensation Period, involving many areas of expertise. The professional services rendered in these Chapter 11 cases have been performed by attorneys with broad expertise and high levels of skill in their practice area or specialty. This highly professional and expert group of attorneys has ensured that this representation has progressed in an efficient manner.

34. During the Compensation Period, SBSF has been required to furnish extensive services, which have often occupied a substantial portion of the time of its attorneys. If this were not a case under the Bankruptcy Code, SBSF would charge the Debtors and expect to receive on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally examined in bankruptcy cases, and based upon the factors to be considered in accordance with sections 330 and 331 of the Bankruptcy Code, the results that have been achieved during the Compensation Period more than substantiate charges in that amount. The services that SBSF has rendered thus far have produced benefits that have inured to the Debtors, their estates and their creditors.

35. In view of the foregoing, SBSF respectfully requests that it be allowed reasonable interim compensation in the amount of \$547,754.00 for professional services rendered as Ordinary Course Professionals and \$14,417.84 for reimbursement of expenses incurred in the rendition of such services. SBSF's services as Ordinary Course Professional justifies interim compensation at least in the amount requested. Thus, SBSF requests that one hundred (100%)

percent of such compensation be allowed. In view of the policy underlying sections 330 and 331 of the Bankruptcy Code that attorneys in bankruptcy cases be compensated on parity with attorneys practicing in other fields, it is respectfully submitted that interim compensation should be allowed as requested.

SBSF's Staffing and Billing Practices

36. SBSF has assigned the work performed during the Compensation Period to attorneys having the experience and specialization to perform the services required efficiently and properly, often to the exclusion of providing services for other clients of SBSF. Moreover, to provide the required services on the most economical basis possible, SBSF assigned as much work as possible that did not require significant levels of experience to associates.

37. This Application summarizes the time and effort required of SBSF attorneys and paraprofessionals during the Compensation Period to address the complex legal issues and a variety of other matters that have arisen. During the Compensation Period, the Debtors called on SBSF to furnish extensive services that often fully occupied the time of its attorneys and paraprofessionals. In short, the services that SBSF has rendered, thus far, have, in SBSF's view, produced benefits that have inured to all parties-in-interest in this case.

Actual and Necessary Disbursements by SBSF

38. As set forth in Exhibit C hereto, SBSF has disbursed \$14,417.84 as actual and necessary expenses incurred in providing professional services during the Compensation Period.

39. With respect to photocopying and printing expenses, SBSF routinely charges its clients \$0.20 per page. This charge includes the cost of maintaining the duplicating facilities and the actual cost involved with respect to duplication. These charges are intended to cover SBSF's direct operating costs for photocopying and printing facilities, which costs are not incorporated into the SBSF hourly billing rates. Only clients who actually use photocopying, printing, and

other office services of the types set forth in Exhibit C are separately charged for such service. The effect of including such expenses as part of the hourly billing rates would impose that cost upon clients who do not require extensive photocopying and document production facilities and services. The amount of the standard photocopying and printing charge is intended to allow SBSF to cover the related expenses of its photocopying and printing services. A determination of the actual expenses per page for photocopying and printing, however, is dependent on both the volume of copies and the total expenses attributable to photocopying and printing on an annual basis.

40. SBSF imposes no charge for incoming or outgoing facsimile transmissions, except for long distance telephone charges incurred in sending facsimiles.

41. It is SBSF's practice to use computer-assisted legal research when time pressures have rendered it impracticable to conduct such research manually. It is also SBSF's practice to use computer-assisted research to assist its clients and to reduce the amount of time spent by attorneys and paraprofessionals in manual research when it was anticipated that the resulting manual research would have resulted in a greater cost to the client.

42. The legal services summarized by this Application and rendered by SBSF as Ordinary Course Professional during the Compensation Period were substantial, professional, and beneficial to the Debtors' Chapter 11 cases. They were reasonable and necessary to the preservation and maximization of the Debtors' estates.

43. As noted above, the amounts sought by SBSF consist only of actual and reasonable billable time expended by attorneys and legal support staff (\$547,754.00) and actual and necessary disbursements made by SBSF (\$14,417.84) during the Compensation Period. As demonstrated throughout this Application, the other factors typically considered in determining

compensation – including, complexity, results achieved, special expertise, magnitude of the matter, and professional standing -- all militate toward the conclusion that the amount of compensation requested by SBSF is necessary, fair, and reasonable.

Memorandum of Law

44. SBSF submits that the relevant legal authorities are set forth herein and that the requirement pursuant to Local Bankruptcy Rule 9013-1 that SBSF file a memorandum of law in support of this Application is satisfied.

Notice

45. Notice of this Application has been given in accordance with the Interim Compensation Order. SBSF submits that such notice is adequate and sufficient.

Conclusion

46. In light of (a) the complexity of this Chapter 11 case, (b) the results achieved, (c) the significant contributions made and time devoted, (d) awards of compensation in similar cases, and (e) other factors pertinent to the allowance of compensation, SBSF believes that the compensation sought herein is fair and reasonable and is authorized under the relevant provisions of the Bankruptcy Code.

WHEREFORE, Swidler Berlin Shereff Friedman, LLP respectfully requests (i) interim approval and allowance of compensation in the amount of \$547,754.00 for professional services rendered as Ordinary Course Professional during the Compensation Period, and reimbursement of actual and necessary out-of-pocket expenses in the amount of \$14,417.84; (ii) authorization for the Debtors to pay SBSF such sums as are awarded; (iii) that allowance of such compensation for professional services rendered and reimbursement of actual and necessary expenses incurred be without prejudice to SBSF's right to seek additional compensation for

services performed and expenses incurred during the Compensation Period; (iv) authority to seek compensation for preparing this Application in subsequent applications for compensation; and (v) such other and further relief as the Court may consider just and proper.

Dated: New York, New York
April 8, 2004

Respectfully Submitted,

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
Special Regulatory Counsel

By: /s/ Jean L. Kiddoo

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