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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 12/16/03
AT: 9:45 a.m.

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In re :
ALLEGIANCE TELECOM, INC. *et al.*, : Chapter 11 Case
Debtors. : No. 03-13057 (RDD)
: Jointly Administered
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**FIRST APPLICATION OF TOGUT, SEGAL & SEGAL LLP
FOR ALLOWANCE OF INTERIM COMPENSATION
FOR SERVICES RENDERED AS CO-COUNSEL TO THE
DEBTORS FOR THE PERIOD MAY 14, 2003 THROUGH
SEPTEMBER 30, 2003 AND FOR REIMBURSEMENT OF EXPENSES**

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

Togut, Segal & Segal LLP (“TS&S”), as bankruptcy co-counsel for Allegiance Telecom, Inc. and the other above-captioned debtors and debtors in possession (collectively, the “Debtors”), as and for its first application (the “Application”) for allowance of interim compensation for professional services rendered for the period May 14, 2003, the date these Chapter 11 cases were commenced, through and including September 30, 2003 (the “First Interim Period”), and for reimbursement of expenses incurred in connection with such services, respectfully shows this Honorable Court that:

I. FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT

1. This Application is made pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for allowance of interim compensation for services rendered to the Debtors in the amount of \$144,449.50, and for reimbursement of expenses in the amount of \$4,971.97.

2. During the First Interim Period, TS&S attorneys and paraprofessionals expended a total of 366.8 hours for which compensation is requested. A schedule setting forth the number of hours expended by the partners, associates and paraprofessionals, their respective hourly rates, and the year in which each attorney was admitted to practice is attached hereto as Exhibit "1." A schedule specifying the type of expenses for which TS&S is seeking reimbursement and the total amount of each such category is attached hereto as Exhibit "2." To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the First Interim Period, but are not processed until after the date hereof, TS&S reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

3. TS&S maintains computerized records of the daily time slips completed by all TS&S attorneys and paraprofessionals. Preceding the time entries is a chart listing the names, billing rates and time spent by each of the attorneys and paraprofessionals rendering services on behalf of the Debtors. In support of this Application, copies of these computerized records, together with a computer generated detailed itemization of the expenses incurred, have been filed electronically with the Court as a supplement to this Application and furnished to the Debtors, the Court, the

United States Trustee, the Debtors' prepetition lenders, and counsel for the official statutory committee appointed in these cases (the "Committee").

4. This Court has not previously allowed any compensation or reimbursement of expenses for professional services rendered by TS&S. Other than the prepetition retainer paid to TS&S in the aggregate amount of \$100,000 and the payments described below made in accordance with the terms of the Administrative Order establishing procedures for interim compensation and reimbursement of professionals dated June 13, 2003 (the "Administrative Fee Order"), TS&S has not received payment of any additional compensation or reimbursement of expenses in these Chapter 11 cases.

5. Pursuant to the terms of the Administrative Fee Order, TS&S submitted five monthly invoices during the First Interim Period: (i) for the period May 14, 2003 through May 31, 2003 in the amounts of \$14,100.50 for fees and \$100.62 for expenses; (ii) for June 2003 in the amounts of \$59,212.50 for fees and \$2,707.46 for expenses; (iii) for July 2003 in the amounts of \$11,304.50 for fees and \$570.50 for expenses; (iv) for August 2003 in the amounts of \$32,439.50 for fees and \$267.22 for expenses; and (v) for September 2003 in the amounts of \$31,593.50 for fees and \$1,326.17 for expenses.

6. In accordance with the Administrative Fee Order, TS&S has received payment of 80% of its fees and 100% of its expenses for the period May 14, 2003 through July 31, 2003. As of the date of this Application, TS&S has not received payment on account of August and September 2003 invoices.

7. As confirmed by the Certification of Frank A. Oswald, a member of TS&S, attached hereto as Exhibit "3," all of the services rendered by TS&S during the First Interim Period for which compensation is sought were rendered for and on behalf of the Debtors in connection with their Chapter 11 cases.

II. BACKGROUND

8. On May 14, 2003 (the "Filing Date"), the Debtors each commenced with this Court a voluntary case under Chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. No trustee or examiner has been appointed in these Chapter 11 cases. On May 28, 2003, the United States Trustee for the Southern District of New York appointed the Committee in these cases.

10. Allegiance is a facilities-based national local exchange carrier that provides integrated telecommunications products and services to small and medium-sized business customers, large businesses (*i.e.*, national customers with multiple locations), governmental entities, wholesale customers and other institutional users. Allegiance offers its customers a variety of services, including:

- local and long distance voice services, including basic telephone services and advanced calling features;
- broadband and other Internet and data services, including high-speed Internet access, wide area network interconnection, domain name registration, web hosting, email and colocation services;
- integrated local long distance/Internet access offerings, which provide customers with integrated voice and Internet access over a single broadband line;

- wholesale services to other regional and national service providers, including equipment colocation, managed modem ports and Internet protocol traffic aggregation; and
- customer premise equipment sales and maintenance services.

11. As of June 30, 2003, the Debtors served more than 100,000 business customers in major markets throughout the United States.

III. RETENTION OF TS&S

12. TS&S was retained by the Debtors just prior to the Filing Date in April 2003 to serve as bankruptcy co-counsel with Kirkland & Ellis, LLP (“K&E”). Among other matters, TS&S is responsible for handling all bankruptcy-related matters where K&E has an actual or perceived conflict, and other general bankruptcy work complementing K&E’s services. In connection with its retention, TS&S received \$100,000 as a retainer (the “Retainer”). TS&S’ fees and expenses through May 13, 2003 were \$10,075.50, leaving a balance from the Retainer of \$89,924.50, which is being held pending payment of final fees and expenses awarded to TS&S at the completion of the cases.

13. By Order dated June 13, 2003, the Debtors were authorized to retain TS&S on a final basis (the “Retention Order”). A copy of the Retention Order is attached hereto as Exhibit “4.”

14. Since its retention, TS&S and K&E have coordinated their efforts so that they do not to do the same things and their work is complimentary, not duplicative.

15. TS&S is a highly specialized “boutique”; for more than twenty years, its practice has been limited, almost exclusively, to insolvency and bankruptcy

matters pending in this Court. TS&S has considerable experience in representing high profile Chapter 11 debtors, and has acted in a professional capacity in hundreds of cases representing the interests of debtors, creditors' committees, secured creditors, and trustees.

16. Some of the Chapter 11 debtors TS&S has represented include: (i) Enron Corp. and certain of its affiliates, which are primarily engaged in energy trading and operating gas transmission systems and which filed the second largest Chapter 11 cases in U.S. history (TS&S is bankruptcy co-counsel for the Enron Debtors); (ii) Ames Department Stores, Inc., the largest regional discount retailer in the United States (where TS&S is co-counsel); (iii) the operating subsidiaries of Loews Cineplex Entertainment Corporation, which involved the restructuring of the second largest movie theatre exhibitors in the U.S. with over \$1.5 billion of debt (where TS&S is co-counsel); (iv) Daewoo International (America) Corp., an international trading company; (v) ContiMortgage Corporation and certain of its affiliates, which were engaged in the consumer finance business and which filed Chapter 11 cases to restructure more than \$1 billion of debt; (vi) OnSite Access, Inc. and certain of its subsidiaries, which provided voice and data communication services to tenants in commercial buildings located throughout the United States and which filed Chapter 11 cases to restructure more than \$100 million in debt; (vii) Rockefeller Center, which involved the restructuring of more than \$1.3 billion of debt and 12 historic land-marked buildings in the heart of Manhattan; and (viii) the Olympia & York Tower B Company's World Financial Center, which concerned the restructuring of more than \$1 billion of debt.

17. The work encompassed by this Application for which compensation is sought was performed efficiently and at the lowest cost to the estates. The manner in which staffing has been done has enabled TS&S to bill fewer hours than would have otherwise been possible.

18. All of the work summarized in this Application was performed in such a manner as to insure minimal duplication of services in an effort to keep the administration expenses to these estates to a minimum.

IV. SERVICES RENDERED BY TS&S DURING THE FIRST INTERIM PERIOD

19. The following is a summary description of the significant services performed by TS&S during the First Interim Period. All of the professional services provided by TS&S are set forth in TS&S' computerized time records, and the Court is respectfully referred to those records for the details of all of the work performed.

20. During the First Interim Period, TS&S had primary responsibility for addressing requests for postpetition security deposits or other forms of adequate assurances of payment made by the Debtors' utility service providers pursuant to section 366 of the Bankruptcy Code.

21. On May 15, 2003, this Court entered the Order deeming utilities adequately assured of future performance and establishing procedures for determining requests for additional adequate assurance (the "Utilities Order"). The Utilities Order, among other things, (i) directs the Debtors' utility service providers (collectively, the "Utilities") to provide postpetition service to the Debtors without postpetition deposits or prepayments, (ii) provides the Utilities with administrative expense priority claims under section 503(b) of the Bankruptcy Code for utility charges that accrue

postpetition, and (iii) establishes a procedure by which the Utilities may request additional assurances of future payment.

22. Following the entry and service of the Utilities Order, the Debtors requested that TS&S handle all demands for additional adequate assurances and termination notices from the Utilities. TS&S quickly coordinated with the Debtors' personnel and responded to numerous requests from the Utilities seeking additional adequate assurances, including, but not limited to, postpetition security deposits.

23. When a resolution could not be reached, TS&S was required to defend the Debtors' interests before the Court. During the First Interim Period, TS&S assisted the Debtors in defending adequate assurance demands made by: (a) Verizon Communications Inc. and its operating subsidiaries (collectively, "Verizon"); (b) BellSouth Telecommunications, Inc. ("BellSouth"); and (c) San Diego Gas & Electric Company ("SDG&E"), Commonwealth Edison Company ("ComEd") and Southern California Edison Company ("SCE," and together with SDG&E and ComEd, the "Requesting Utilities"). All of these utilities demanded cash deposits equal to at least two months' charges as part of their adequate assurance motions. Ultimately, TS&S was successful in eliminating the demands, either by agreement or Court ruling. As of the date hereof, TS&S has been successful in consensually resolving the demands made by Verizon and BellSouth, subject to Bankruptcy Court orders. As is more fully described below, the Requesting Utilities matter for the remaining utilities could not be resolved consensually, and following a full hearing on the matter, the Debtors' objection was sustained.

A. Verizon's Adequate Assurances Demand/Cash Collateral Objection

24. During the First Interim Period, TS&S actively assisted and vigorously defended the Debtors in a motion made by Verizon for additional adequate assurances pursuant to section 366 of the Bankruptcy Code, and Verizon's objection to the Cash Collateral Order.

25. Following entry of the Utilities Order, by letter dated June 4, 2003 (the "Verizon Demand"), Verizon requested additional adequate assurances of payment from the Debtors, including, among other things, the payment of security deposits of approximately \$4 million and/or an agreement by the Debtors to make prepayments for utility services. The Debtors and TS&S determined that before expending time, money and effort in litigation over the Verizon Demand, a settlement should be explored. Verizon is the Debtors' largest utility service provider and any interruption in service would have been extremely detrimental to the Debtors' estates.

26. Notwithstanding the Debtors' financial wherewithal to make payments for postpetition Verizon charges, Verizon insisted on a cash deposit and/or prepayments. Unable to reach a settlement, Verizon filed its motion dated June 10, 2003 (the "Verizon 366 Motion") to support the Verizon Demand. Verizon asserted that the Debtors did not provide it with adequate assurances of future payment pursuant to section 366 of the Bankruptcy Code because, among other things, the Debtors had allegedly been in prepetition default and the Debtors did not have sufficient resources to maintain postpetition payments on a current basis.

27. Also on June 10, 2003, Verizon filed an objection (the "Cash Collateral Objection") to final approval of the Debtors' Cash Collateral Order. Verizon objected to the proposed final Cash Collateral Order on the basis that (i) it prohibits the

Debtors' use of cash upon a default and (ii) the Debtors waived their rights under section 506(c) of the Bankruptcy Code to surcharge the lenders' collateral for administrative expenses incurred in preserving collateral.

28. The hearings to consider the Verizon 366 Motion and approval of the final Cash Collateral Order were scheduled for June 13, 2003. With less than three days for the Debtors to respond, TS&S professionals were required to put other matters aside to quickly review and analyze the underlying agreements between the Debtors and Verizon and the proposed Cash Collateral Order.

29. On June 12, 2003, the Debtors and their prepetition lenders agreed to adjourn the hearing to consider the Cash Collateral Order to June 23, 2003. Since the Debtors' Senior Vice President of Finance and Accounting would testify at both hearings, the Debtors requested Verizon to adjourn the Verizon 366 Motion to June 23. Thereafter, TS&S participated in several conference calls with the Court and Verizon's counsel to discuss adjourning the hearing on the Verizon 366 Motion and scheduling an evidentiary hearing. The Court adjourned the Verizon 366 Motion to June 23 and directed the Debtors to provide Verizon with cash availability reports in the meantime.

30. TS&S continued to negotiate with Verizon in an attempt to reach a consensual resolution. At the same time, TS&S worked on responsive pleadings. TS&S researched, drafted and, on June 20, filed the Debtors' Objection to the Verizon 366 Motion (the "Debtors 366 Objection"). The Debtors 366 Objection contained an analysis of the decisions in the Second Circuit interpreting section 366 of the Bankruptcy Code, including the recent decisions by Courts in this District in the Chapter 11 cases of WorldCom, Inc., Global Crossing, Inc., Adelphia Business

Solutions, Inc., all of which denied demands by utility service providers for cash security deposits.

31. TS&S also drafted and filed the Debtors' Reply to the Verizon Cash Collateral Objection. In preparing the Reply, TS&S was required to review and analyze the prepetition financing documents, the proposed Cash Collateral Order and confer with the Debtors and representatives of the prepetition lenders about the provisions of the Cash Collateral Order.

32. Thereafter, the Debtors and TS&S continued to negotiate with Verizon and its counsel, while simultaneously preparing for the evidentiary hearing scheduled for June 23. At the eleventh hour, just prior to the hearing, the parties reached an agreement on Verizon's section 366 demand. At the hearing, which was held *in camera* before the Court, with counsel for the Committee and the prepetition lenders present, the parties outlined the terms of the settlement. As part of the settlement, Verizon withdrew its objection to the Cash Collateral Order.

33. After the hearing, TS&S assisted the Debtors in documenting the terms of the Verizon settlement. TS&S made sure that the terms accurately reflected the agreement reached and outlined to the Court at the *in camera* hearing. After an extended period of continued negotiations over the details of the settlement agreement, due in part to the proprietary and sensitive nature of certain provisions, the parties executed the final form of the agreement on October 23, 2003 (the "Verizon Stipulation"). During this process, TS&S made certain that counsel for the Creditors' Committee was kept informed of all terms of the Verizon Stipulation so that it could promptly review same with the members of the Creditors' Committee.

34. Significantly, the Verizon Stipulation does not provide Verizon with a cash security deposit and/or right to prepayment for charges; it provides Verizon with, among other things, a fixed payment cycle for postpetition service charges, default and termination provisions on shortened notice to the Debtors and the Committee and upon approval of the Court, and access to certain financial information on a confidential basis.

35. Pursuant to the Verizon Stipulation, the parties agreed to keep its terms confidential. TS&S drafted and filed a motion for an order approving the Verizon Stipulation and authorizing the filing of same under seal. The Verizon Stipulation and the Order authorizing the filing of same under seal were approved by the Court on November 7, 2003.

B. BellSouth's Adequate Assurance Demands

36. During the First Interim Period, TS&S was required to assist and vigorously defend the Debtors in connection with a demand made by BellSouth for additional adequate assurances pursuant to section 366 of the Bankruptcy Code.

37. On or about May 20, 2003, the Debtors received BellSouth's demand for additional adequate assurances (the "BellSouth Demand"), which sought, among other things, payment of security deposits of approximately \$2.3 million and/or an agreement by the Debtors to make prepayments for utility services.

38. After receipt of the BellSouth Demand, the Debtors entered into negotiations with BellSouth and were able to reach an agreement in principle pursuant to which, among other things, BellSouth agreed to forego its demand for a postpetition deposit in exchange for other forms of adequate assurances. On June 11, 2003, BellSouth forwarded a proposed stipulation to the Debtors that purported to

memorialize the agreement reached between the parties. The proposed stipulation, however, contained many additional forms of assurances that were not agreed to by the Debtors.

39. The parties were thereafter unable to reach closure on the details of a settlement agreement based on BellSouth's new terms and, on July 29, 2003, BellSouth filed its Motion for Additional Adequate Assurances Pursuant to Section 366 of the Bankruptcy Code (the "BellSouth 366 Motion"). Simultaneous with continuing settlement negotiations, TS&S prepared an objection to the BellSouth 366 Motion. BellSouth agreed to adjourn the hearing to consider the BellSouth 366 Motion so that the parties could continue their negotiations. TS&S made certain that the Committee was kept informed of all proposals made to BellSouth to resolve its demands for adequate assurances.

40. After months of protracted negotiations, the parties agreed upon the terms of a settlement agreement to resolve the BellSouth 366 Motion. As with the Verizon Stipulation, BellSouth will not receive a security deposit nor will it receive prepayments for future charges. The Debtors have agreed to provide BellSouth with payments on a fixed payment cycle, financial information on a confidential basis and default and termination provisions on shortened notice. TS&S is in the process of finalizing the settlement agreement and the parties anticipate executing and seeking Court approval of the same shortly. TS&S will also prepare and file a motion to approve the BellSouth settlement agreement.

C. Motion to Vacate the Utilities Order

41. In June 2003, the Debtors received demands for additional adequate assurances pursuant to section 366 of the Bankruptcy Code from each of the

Requesting Utilities – with each seeking cash deposits equal to two to four months of estimated service. The Debtors advised the Requesting Utilities that the additional assurance requests were unreasonable under the circumstances, particularly when the Debtors’ cash on hand was almost \$275 million.

42. On August 1, 2003, the Requesting Utilities filed a motion (the “Motion to Vacate”) for an order (a) vacating the Utilities Order and (b) determining adequate assurances of future payment. In addition to seeking deposits, the Motion to Vacate sought to vacate the Utilities Order because (i) the Court entered it as a “first day” order without prior notice to the Requesting Utilities and (ii) it allegedly granted unauthorized injunctive relief by prohibiting the Requesting Utilities from terminating utility services to the Debtors in accordance with state regulatory procedures absent further order of the Court. The Requesting Utilities argued that section 366 of the Bankruptcy Code does not authorize the Bankruptcy Court to interfere with non-bankruptcy state law procedures for termination in the event of a post-petition default.

43. Prior to the hearing on the Motion to Vacate, the Debtors attempted to negotiate a resolution with the Requesting Utilities. The Requesting Utilities, however, would not agree to a settlement unless they were each provided with postpetition cash security deposits and the Debtors consented to state law termination procedures without prior Bankruptcy Court approval. The Debtors and the Committee were adamant that (i) no cash deposits be required and (ii) the Requesting Utilities obtain Bankruptcy Court approval, on notice to the Debtors, prior to any termination of service on account of a post-petition default.

44. Thereafter, TS&S drafted an objection to the Motion to Vacate. TS&S was required to research a number of issues, including the Bankruptcy Court’s

authority to (i) enjoin the Requesting Utilities from terminating service without prior Bankruptcy Court approval on account of a postpetition default and (ii) enter the Utilities Order as a “first day” order in the absence of an adversary proceeding in accordance with Bankruptcy Rule 7001. After extensive research on the applicable bankruptcy and certain non-bankruptcy law, TS&S concluded that the Bankruptcy Court does have such authority.

45. Under the plain language of section 366(b) of the Bankruptcy Code when a bankruptcy court determines that a utility provider has been provided with adequate assurance of payment, the utility provider is enjoined from terminating service – there is no distinction between prepetition or postpetition termination. Without this ability to enjoin a utility provider from unilaterally terminating service for postpetition defaults, a debtor would be faced with the risk of hasty or improper termination shutting down the debtor’s business to the significant detriment of all creditors and customers.

46. Moreover, the Utilities Order was a first-day order of a type routinely entered in Chapter 11 cases in this Court and the protections set forth therein were approved by the Second Circuit in Caldor. Although the Utility Companies did not receive prior notice of the entry of the Utilities Order, they are protected by the Utilities Order itself, which provides a mechanism whereby each Utility receives notice of, and an opportunity to be heard, regarding the relief granted therein. Indeed, the Utilities Order specifically provides that it “is without prejudice to the rights of any Utility Company to request in writing within 25 days of the date hereof, additional assurances in the form of deposits or other security.” In accordance with its terms, the

Debtors served the Utilities Order on all of the Utilities within five days of its entry. The Utilities, including Requesting Utilities, were free to contest it at that point.

47. TS&S filed and served the Objection on October 16, 2003. On October 17, 2003, the Requesting Utilities filed a Reply to the Objection. TS&S expended significant effort in reviewing and analyzing the arguments made by the Requesting Utilities and in preparing for the hearing.

48. On October 21, 2003, Mr. Oswald attended and argued the matter on behalf of the Debtors. The Creditors Committee joined in the Debtors' objections. The Court agreed with the Debtors' arguments and denied the Motion to Vacate. The Court ruled that section 366 of the Bankruptcy Code gives the Court authority to enjoin a utility company from terminating service for postpetition defaults and ordered that the Requesting Utilities must first seek Bankruptcy Court approval before terminating service to the Debtors. Moreover, the Court ruled that the "first-day" motion procedure that has been adopted in this district is appropriate, and it works well, obviating commencement of an adversary proceeding (or multiple adversary proceedings) to obtain the relief typically provided by the Utilities Order.

49. The Court directed the Debtors to submit an order. Once the transcript of the October 21 Hearing is prepared, TS&S will prepare and submit a proposed order consistent with the Court's ruling.

D. Miscellaneous Matters Addressed By TS&S

50. In addition to the matters discussed above, TS&S has rendered services for, or on behalf of the Debtors in connection with other miscellaneous matters, such as:

- (i) participating at meetings between the Debtors and the Creditors' Committee;
- (ii) responding to inquiries from parties-in-interest as necessary;
- (iii) reviewing pleadings that impacted (or could impact) the Debtors' financial position in connection with responding to Utilities' requests for additional assurances;
- (iv) conferring with K&E regarding the delegation of responsibilities of certain matters in this case to identify matters to be handled by TS&S and to prevent duplication of efforts between the two firms;
- (v) commencing the review and analysis of potential preference payments made to K&E (as required by the Court order authorizing the retention of K&E).

V. **THE COMPENSATION REQUESTED**

51. 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 Company 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. H11,092 (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. 13 (Bankr. S.D.N.Y. 1991); In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Service Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885 (Bankr. N.D. Ohio 1985).

52. 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. of New Hampshire, 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.

53. At all times throughout this case, TS&S has successfully endeavored to avoid expensive litigation by brokering reasonable settlements among the parties. TS&S' efforts have therefore been of significant value to the Debtors and the creditors of these estates.

54. TS&S has not sought to burden this Court by setting forth all of the myriad services rendered to the Debtors and the benefit of creditors. TS&S has reviewed all of its office files which indicate numerous legal situations and problems resolved over and above those detailed in this Application, and which are more fully

summarized in the time sheet entries annexed hereto and made a part hereof which were contemporaneously prepared when the services were rendered.

55. TS&S has devoted 366.8 hours of actual recorded time during the First Interim Period, resulting in time charges of \$144,449.50, as reflected in Exhibit "1" hereto.

56. Throughout the First Interim Period, TS&S sought to assign projects in this case to associates, law clerks, and paraprofessionals who could most efficiently and expeditiously handle them. TS&S respectfully submits that the legal services reflected in the annexed time slip entries are fair and reasonable and are commensurate with the quality of services provided herein.

57. In addition to the fees sought for legal services, TS&S has incurred \$4,971.97 in out-of-pocket expenses during the First Interim Period directly attributable to the representation of the Debtors. Annexed hereto as Exhibit "2" is a schedule of such out-of-pocket expenses incurred by TS&S. Accordingly, TS&S respectfully requests an allowance in the amount of \$4,971.97 for reimbursement of those out-of-pocket expenses.

58. No part of the compensation to be received pursuant to this Application will be shared with any other person or firm, and no other agreements, either express or implied, to share any compensation received as attorneys for the Debtors has been, or will be, made by TS&S.

59. Notice of this Application has been given to: (i) the Debtors; (ii) the Committee; (iii) the United States Trustee; and (iv) any other party-in-interest who has filed a notice of appearance in these cases.

WHEREFORE, TS&S respectfully requests that this Application be granted and that it be awarded an interim allowance of \$144,449.50 for legal services rendered to the Debtors during the First Interim Period, and \$4,971.97 for reimbursement of expenses, and that such other and further relief be granted as may be just and proper.

DATED: New York, New York
November 10, 2003

TOGUT, SEGAL & SEGAL LLP,
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/s/Frank A. Oswald
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