

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

10:03 AM '00

IN RE:

PURINA MILLS, INC., a Delaware  
Corporation, et al.,

Debtors.

) Chapter 11

)

) Case No. 99-3938 (SLR)

)

) Jointly Administered

)

APPLICATION FOR COMPENSATION AND  
FOR REIMBURSEMENT OF EXPENSES

Name of Applicant: Akin, Gump, Strauss, Hauer & Feld, L.L.P.

Authorized to Provide  
Professional Services to: Official Committee of Unsecured Creditors

Date of Retention: December 9, 1999, nunc pro tunc to November 9, 1999

Period for which compensation  
and reimbursement is sought:

November 9, 1999 through June 30, 2000

Amount of Compensation sought as  
actual, reasonable, and necessary:

\$675,103.50

Amount of Expense Reimbursement sought  
as actual, reasonable and necessary:

\$72,641.95

Period for which compensation  
and reimbursement is sought:

October 28, 1999 through November 8, 1999

Amount of Compensation sought as  
actual, reasonable, and necessary:

\$60,938.00

Amount of Expense Reimbursement sought  
as actual, reasonable and necessary:

\$14,733.27

This is a final application.

*total fees = \$736,041.50*

*total expenses = \$87,375.22*

195

Prior Fee Applications:

Time Period	Fees	Expenses	Status
11/09/99 – 11/30/99	\$110,258.50	\$13,900.11	Approved
12/01/99 – 12/31/99	\$122,370.50	\$15,573.82	Approved
01/01/00 – 01/31/00	\$212,723.75	\$13,232.32	Approved
02/02/00 – 02/29/00	\$82,361.75	\$16,772.53	Approved
03/01/00 – 03/31/00	\$83,120.50	\$4,610.31	Pending Court Approval
04/01/00 – 04/30/00	\$29,188.00	\$3,680.57	Pending Court Approval
05/01/00 – 05/31/00	\$23,220.50	\$3,844.53	Pending Court Approval
06/01/00 – 06/30/00	\$11,860.00	\$1,027.76	Pending Court Approval

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

**IN RE:**

**PURINA MILLS, INC., a Delaware  
Corporation, et al.,**

**Debtors.**

)  
) **CHAPTER 11**  
) **Case No. 99-3938 (SLR)**  
) **Jointly Administered**  
)

**APPLICATION OF AKIN, GUMP, STRAUSS, HAUER &  
FELD, L.L.P., ATTORNEYS FOR THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS, (A) FOR FINAL ALLOWANCE OF  
COMPENSATION AND FOR THE REIMBURSEMENT OF  
EXPENSES FOR SERVICES RENDERED DURING THE PERIOD FROM  
NOVEMBER 9, 1999 THROUGH JUNE 30, 2000 AND (B) FOR ALLOWANCE  
OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
PURSUANT TO 11 U.S.C. §503(B) FOR SERVICES RENDERED DURING THE  
PERIOD OF OCTOBER 28, 1999 THROUGH NOVEMBER 8, 1999**

**TO: THE HONORABLE SUE L. ROBINSON,  
UNITED STATES DISTRICT JUDGE:**

Akin, Gump, Strauss, Hauer & Feld, L.L.P. ("Akin Gump" or "Applicant"),  
co-counsel to the Official Committee of Unsecured Creditors (the "Committee") of  
Purina Mills, Inc. ("Purina") and its affiliated debtors and debtors-in-possession, for its  
application pursuant to 11 U.S.C. §330 for a final allowance of compensation for services  
rendered and for reimbursement of expenses incurred in connection therewith and its  
application pursuant to 11 U.S.C. §503(b) for allowance of compensation and for  
reimbursement of expenses for services rendered, respectfully represents:

## **I. INTRODUCTION**

1. By this application, Akin Gump seeks (i) final allowance of fees and expenses in the aggregate amount of \$124,158.61 for the period of November 9, 1999 through November 30, 1999, which compensation was awarded to Akin Gump pursuant to an order of this Court dated February 25, 2000; (ii) final allowance of fees and expenses in the aggregate amount of \$137,944.32 for the period of December 1, 1999 through December 31, 1999, which compensation was awarded to Akin Gump pursuant to an order of this Court dated March 10, 2000; (iii) final allowance of fees and expenses in the aggregate amount of \$225,956.07 for the period of January 1, 2000 through January 31, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated April 4, 2000; (iv) final allowance of fees and expenses in the aggregate amount of \$99,134.28 for the period of February 1, 2000 through February 29, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated May 3, 2000; (v) final allowance of fees and expenses in the aggregate amount of \$87,730.81 for the period of March 1, 2000 through March 31, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated May 31, 2000; (vi) final allowance of fees and expenses in the aggregate amount of \$32,868.53 for the period of April 1, 2000 through April 30, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated June 2, 2000; (vii) final allowance of fees and expenses in the aggregate amount of \$27,065.03 for the

period of May 1, 2000 through May 31, 2000<sup>1</sup>; (viii) final allowance of fees and expenses in the aggregate amount of \$12,887.76 for the period of June 1, 2000 through June 30, 2000<sup>1</sup>; (ix) allowance and award of compensation for professional services rendered by Akin Gump pursuant to 11 U.S.C. §503(b) for the period of October 28, 1999 through November 8, 1999 (the "Pre-Committee Period") in the amount of \$60,938.00 representing 196.2 hours in professional services and 10.6 hours in paraprofessional services; and (x) reimbursement of actual and necessary expenses incurred by Akin Gump during the Pre-Committee Period in connection with the rendition of such professional services and paraprofessional services in the amount of \$14,733.27.

2. Venue of this proceeding and this application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 330 and 503(b) and Federal Rules of Bankruptcy Procedure 2002(a) and 2016.

## **II. BACKGROUND**

3. On October 28, 1999 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to an Order of this Court dated October 29, 1999, the Debtors' Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

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<sup>1</sup> Akin Gump filed a seventh interim fee application dated June 23, 2000 and eighth fee application dated July 12, 2000 which fee applications have not been ruled on by this Court. The first, second, third, fourth, fifth, sixth, seventh and eighth interim fee applications are on file with this Court and are incorporated herein by reference.

4. The Debtors remain in possession of their respective properties and are operating and managing their businesses as debtors-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

5. Debtor PM Holdings Corporation is the direct parent of Debtor Purina Mills, Inc. ("Purina Mills"). Purina Mills, in turn, is the direct or indirect parent of each of the other Debtors. The Debtors and their non-debtor subsidiaries (collectively, the "Purina Companies") together form the largest feed manufacturer in the United States and are recognized as industry leaders in animal nutrition products and related research and management programs. The Purina Companies produce over 20,000 active feed formulas for farm, companion, exotic, lab and zoo animals and provides customers with related technical and consulting services.

6. In August 1999, the Debtors commenced negotiations with an informal committee (the "Informal Committee") comprised of certain holders of the 9% Senior Subordinated Notes due 2010 issued by Purina Mills (the "Notes") in an effort to reach a consensual restructuring of the Debtors' debt obligations. Akin Gump served as counsel to the Informal Committee. The Informal Committee dissolved prior to the formation of the Committee and four of the six members of the Informal Committee are members of the Committee.

7. On November 9, 1999 (the "Committee Formation Date"), pursuant to Bankruptcy Code Section 1102, the United States Trustee appointed the Committee

consisting of seven members.<sup>2</sup> On the Committee Formation Date, the Committee selected Akin Gump to serve as counsel to the Committee pursuant to Bankruptcy Code Section 1103(a).

8. On January 18, 2000, the Debtors filed the Joint Plan of Reorganization of Purina Mills, Inc. (the "Initial Plan") and related disclosure statement (the "Disclosure Statement"). Subsequently, on February 4, 2000, the Debtors filed certain related exhibits. Thereafter, on February 16, 2000, the Debtors filed the Amended Joint Plan of Reorganization of Purina Mills, Inc. (the "Amended Plan") and on February 22, 2000, the Second Amended Joint Plan of Reorganization of Purina Mills, Inc., as modified (the "Plan"). The revisions reflected, among other items, a consensual settlement with the existing bank group in early February.

9. The Plan was approved by a favorable vote of more than 95 percent of the Debtors' creditors and on April 5, 2000, the Court entered an order (the "Confirmation Order") confirming the Plan.

10. On June 29, 2000, the Plan became effective in accordance with its terms, and the Debtors emerged from bankruptcy.

11. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

12. Venue is proper pursuant to 28 U.S.C. § 1409.

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<sup>2</sup> The Committee is comprised of Bank One Trust Co., Greenwich Street Capital Partners, Inc., Franklin Resources, William E. Simon & Sons, Kornitzer Capital Management, Inc., PCS Sales (U.S.A.) Inc. and Tyson Foods, Inc.

13. Other than in connection with its representation of the Noteholders' Committee prior to the appointment of the Committee and as described below in paragraph 14, Applicant has received no payment and no promises for payment from any source for services rendered in connection with these cases. There is no agreement or understanding between the Applicant and any other person (other than members of Akin Gump) for the sharing of compensation to be received for the services rendered in these cases. Akin Gump currently holds a retainer in the amount of \$149,150.92 (the 'Retainer'). The Retainer will be used to offset any outstanding fees and disbursements awarded to Akin Gump after deducting any amounts due Akin Gump for post-effective date services.

14. Pursuant to the terms of the Administrative Fee Order, Akin Gump filed its (i) First Application for Interim Allowance of Compensation and Reimbursement of Expenses for Services Rendered during the Period of November 9, 1999 through November 30, 1999 in the amounts of \$110,258.50 of fees and \$13,900.11 for reimbursement of expenses (the "First Interim Fee Application"); (ii) Second Application for Interim Allowance of Compensation and Reimbursement of Expenses for Services Rendered during the Period of December 1, 1999 through December 31, 1999 in the amounts of \$122,370.50 for fees and \$15,573.82 for reimbursement of expenses (the "Second Interim Fee Application"); (iii) Third Application for Interim Allowance of Compensation and Reimbursement of Expenses for Services Rendered during the Period of January 1, 2000 through January 31, 2000 in the amounts of \$212,723.75 for fees and



\$13,232.32 for expenses (the "Third Interim Fee Application"); (iv) Fourth Application for Interim Allowance of Compensation and Reimbursement of Expenses for Services Rendered during the Period of February 1, 2000 through February 29, 2000 in the amounts of \$82,361.75 for fees and \$16,772.53 for expenses (the "Fourth Interim Fee Application"); (v) Fifth Application for Interim Allowance of Compensation and Reimbursement of Expenses for the Period of March 1, 2000 through March 31, 2000 in the amounts of \$83,120.50 for fees and \$4,619.31 for expenses (the "Fifth Interim Fee Application"); (vi) Sixth Application for Interim Allowance of Compensation and Reimbursement of Expenses for the Period of April 1, 2000 through April 30, 2000 in the amounts of \$29,188.00 for fees and \$3,680.57 for expenses (the "Sixth Interim Fee Application"); (vii) Seventh Application for Interim Allowance of Compensation and Reimbursement of Expenses for the Period of May 1, 2000 through May 31, 2000 in the amounts of \$23,220.50 for fees and \$3,844.53 for expenses (the "Seventh Interim Fee Application"); and (viii) Eighth Application for Interim Allowance of Compensation and Reimbursement of Expenses for the Period of June 1, 2000 through June 30, 2000 in the amounts of \$11,860.00 for fees and \$1,027.76 for expenses (the "Eighth Interim Fee Application"). Akin Gump has received payment with respect to the First Interim Fee Application, the Second Interim Fee Application, the Third Interim Fee Application and the Sixth Interim Fee Application.

15. As stated in the Affidavit of Lisa G. Beckerman, Esq., annexed hereto as Exhibit "A," all of the services for which interim compensation is sought herein were rendered for or on behalf of the Committee solely in connection with these cases.

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

16. Since November 9, 1999, Akin Gump has rendered professional services to the Committee as requested and as necessary and appropriate in furtherance of the interests of the Debtors' unsecured creditors. The variety and complexity of these cases and the need to act or respond on an expedited basis in furtherance of the Committee's needs have required the expenditure of substantial time by personnel from several legal disciplines, on an as-needed basis.

17. Akin Gump respectfully submits that the professional services that it rendered on behalf of the Committee were necessary and have directly contributed to the effective administration of these cases.

18. The services rendered by Akin Gump for the period of November 9, 1999 through June 30, 2000 are described in the eight interim fee applications which are on file with this Court and are incorporated herein by reference.

### **IV. SUMMARY OF SERVICES RENDERED DURING THE PRE-COMMITTEE PERIOD**

19. Prior to the Committee Formation Date, Akin Gump rendered professional services to the Informal Committee as requested and as necessary and appropriate in furtherance of the interests of the Debtor's unsecured creditors. Four of the seven members of the Committee were members of the Informal Committee. The

variety and complexity of this case and the need to act or respond on an expedited basis in furtherance of the Informal Committee's needs have required the expenditure of time by personnel from several legal disciplines, on an as-needed basis. Akin Gump believes that these services were beneficial to the Debtor's estate and its creditors. Akin Gump is seeking the allowance of compensation and the reimbursement of expenses for the period of October 28, 1999 through November 8, 1999 pursuant to 11 U.S.C. §503(b).

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

(i) Case Administration

21. Akin Gump reviewed and analyzed all motions filed by the Debtors and other parties in interest in this Court, including, but not limited to, various motions for the retention of professionals and motions to reject certain executory contracts. Akin Gump kept the Informal Committee members advised of all material developments during the Pre-Committee Period. Akin Gump also consulted with Chanin and Company LLC ("Chanin"), the Informal Committee's financial advisors, regarding documents and other information received or required from the Debtors.

22. Due to Akin Gump's experience in counseling creditors' committees, Akin Gump believes it was able to efficiently address all issues relating to case administration that have arisen during the pendency of this case. At the request of the Informal Committee, Akin Gump assisted in or took the lead in analyzing all motions presented by the Debtors, advising the Informal Committee on its own initiatives and directions for the case, and analyzing inter-creditor issues. Akin Gump coordinated all Informal Committee activities, coordinated the activities of the Informal Committee's advisors.

(ii) Post-Petition Financing

23. The Debtors filed a motion seeking this Court's approval of a \$50 million post-petition financing facility (the "DIP Facility") from Chase Bank of Texas, N.A. ("Chase") and a group of lenders dated October 28, 1999.

24. Akin Gump reviewed and analyzed the DIP Facility and, at the Informal Committee's request, appeared at the hearing on October 29, 1999 to object to the DIP Facility. On October 29, 1999, this Court entered an interim order preliminarily approving the Debtors' borrowing under the DIP Facility on an interim basis, pending a final hearing.

(iii) Plan of Reorganization and Disclosure Statement

25. Akin Gump reviewed and analyzed the Plan of Reorganization and Disclosure Statement (the "Plan Documents") proposed by the Debtors. Akin Gump discussed its analysis of the Plan Documents with the Informal Committee. During the

Pre-Committee Period, Akin Gump played an active role in negotiating required modifications to the Plan Documents.

(iv) Koch Settlement

26. Akin Gump negotiated with counsel for Koch Industries, Inc. and Koch Agriculture Company (collectively, "Koch") on a form of a short-term lock up agreement which the members of the Informal Committee executed. Akin Gump then negotiated on behalf of the Informal Committee with counsel for the Debtors and counsel for Koch on a term sheet for a settlement with Koch (the "Koch Settlement") of potential claims that the Debtors and creditors of the Debtors had against Koch and Koch's claims against the Debtors' estates. Akin Gump prepared presentations to the Informal Committee regarding the Koch Settlement. Akin Gump negotiated a form of lock up agreement with counsel for Koch and had numerous discussions with the members of the Informal Committee regarding the proposed form of lock up agreement. On November 9, 1999, certain members of the Informal Committee executed a lock up agreement with Koch regarding support for the Koch Settlement. The Koch Settlement became the foundation for the Plan.

(v) Meetings of the Informal Committee

27. Akin Gump held three conference calls with the full Informal Committee during the Pre-Committee Period. Prior to these conference calls, Akin Gump reviewed each pending matter requiring the Informal Committee's attention and all underlying documentation in connection therewith. Thereafter, Akin Gump discussed

each of these matters with the full Informal Committee, as well as individual members of the Informal Committee, and assisted the Informal Committee in formulating a position thereon. In addition, Akin Gump prepared detailed memoranda to the Informal Committee during the Pre-Committee Period discussing the status of important matters in these proceedings.

28. Through these telephone conferences and correspondence, Akin Gump has assisted the Informal Committee in making informed decisions regarding the various issues which have arisen in these cases, to monitor closely the Debtors' management of these proceedings, and to reach independent conclusions on the merits of specific matters, as well as regarding the prospects of reorganization.

(vi) Court Hearings

29. Akin Gump attorneys appeared at the hearing on October 29, 1999 on the first day motions filed by the Debtors and actively asserted the Informal Committee's position at such hearing.

(vii) Creditor Inquiries

30. Akin Gump fielded numerous telephone inquiries from unsecured creditors to discuss the status of various pending matters, and to respond to their many questions about the bankruptcy process, status of their claims against the Debtors, and potential for recovery in these Chapter 11 proceedings.

31. Akin Gump maintains written records of the time expended by attorneys and paraprofessionals in the rendition of their professional services to the

Informal Committee during the Pre-Committee Period. Such time records were made contemporaneously with the rendition of services by the person rendering such services and in the ordinary course of Akin Gump's practice, and are presented in a form which is in compliance with this Court's Order #32 Re: Contents of Application for Compensation and Expenses. A compilation showing the name of the attorney or paraprofessional, the date on which the services were performed, a description of the services rendered, and the amount of time spent in performing the services during the Compensation Period is annexed hereto as Exhibit "D".

32. Akin Gump also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of its professional services, all of which are also available for inspection. A schedule of the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit "E".

**V. AUTHORITY FOR THE ALLOWANCE AND  
PAYMENT OF COMPENSATION AND  
REIMBURSEMENT OF EXPENSES RELATING  
TO THE PRE-COMMITTEE TIME PERIOD**

33. Section 503(b) of the Bankruptcy Code authorizes the Court, after notice and a hearing, to allow as administrative expenses (a) "the actual, necessary expenses . . . incurred by" an unofficial committee "in making a substantial contribution in a case under" chapter 11 of the Bankruptcy Code, *id.* § 503(b)(3)(D), and (b) "reasonable compensation for professional services rendered by an attorney . . . of an [unofficial committee] whose expense is allowable under [Section 503(b)(3)(D)], 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 [the Bankruptcy Code], and reimbursement for actual, necessary expenses incurred by such attorney,” *id.* § 503(b)(4).

34. Under Section 503(b), an applicant must establish by a preponderance of the evidence that the services it rendered for which it seeks compensation provided a substantial benefit to the estate. Michael Q. Lebron, Michael C. Lebron, and Anthony Lebron v. Mechem Financial, Inc., 27 F.3d 937 (3<sup>rd</sup> Cir. 1994); In re U.S. Lines, Inc., 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989, *aff’d*, 1991 WL 67464 (S.D.N.Y. 1991); *see In re McLean Industries, Inc.*, 88 B.R. 36, 38 Bankr. S.D.N.Y. 1988); In re Jack Winter Apparel, Inc., 119 B.R. 629, 622 (E.D. Wis. 1990); In re Hanson Industries, Inc., 90 B.R. 405, 409 (Bankr. D.Minn. 1988); In re D.W.G.K. Restaurants, Inc., 89 B.R. 684, 689 (Bankr. S.D.Cal. 1988).

35. Although the Bankruptcy Code does not define the term “substantial contribution,” courts have found that an applicant satisfies the substantial contribution test when it has provided “actual and demonstrable benefit to the debtor’s estate, its creditors, and to the extent relevant, the debtor’s shareholders.” Michael Q. Lebron, Michael C. Lebron, and Anthony Lebron v. Mechem Financial, Inc., 27 F.3d 937 (3<sup>rd</sup> Cir. 1994); U.S. Lines, 103 B.R. at 429; *see In re Richton International Corp.*, 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981) (“Services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization”).

36. Factors that courts have considered in determining whether an applicant has made a substantial contribution in a chapter 11 case include whether the



services (a) were provided to benefit the estate itself or all the parties in the bankruptcy case, (b) conferred a direct, significant, and demonstrably positive benefit upon the estate, and (c) were duplicative of services performed by others. See In re FRG, Inc., 124 B.R. 653, 658 (Bankr. E.D. Pa. 1991); In re Buttes Gas & Oil Co., 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989).

37. Akin Gump's representation of the Informal Committee during the period from the Petition Date to the date of the formation of the Committee satisfies these factors. The viewpoint of unsecured creditors was represented by Akin Gump in connection with the first day motions and the hearing held regarding same. Since the members of the Informal Committee turned into the majority of the Committee, there was no duplication of effort by Akin Gump. Indeed, Akin Gump's services meant that there was no need for the Committee to review and seek changes with respect to the first day orders because Akin Gump and the Committee were already knowledgeable about the first day motions having reviewed them and negotiated any necessary changes in their capacity as the Informal Committee and its professionals. Similarly, Akin Gump's review of the DIP Facility, the Plan Documents, and the Koch Settlement documents enabled Akin Gump to be in a position to advise the members of the Committee with respect to these matters early on in the Chapter 11 case. The work performed by Akin Gump in the Pre-Committee time period enabled the Debtors' Chapter 11 cases to proceed in a fast track manner because Akin Gump and the Committee was fully informed about the first day motions, the DIP Facility, the Plan Documents and the Koch Settlement.

38. In particular, Akin Gump's work negotiating the Koch Settlement during the Pre-Committee time period substantially contributed to the successful result in these Chapter 11 cases. The Koch Settlement was a building block of the Plan because it resulted in a quick and fair resolution of complex claims and it provided the Debtors with additional cash (\$60 million). This cash, along with other available cash, was used to pay down the pre-petition bank group's debt which enabled the Debtors and the Committee to negotiate a consensual treatment of the pre-petition bank group's claims as set forth in the Plan and to obtain exit financing. Although the Pre-Committee time period was relatively short (12 days), much was accomplished by the Informal Committee and Akin Gump during that time period.

39. The total time spent by Akin Gump attorneys and paraprofessionals during the Pre-Committee Period was 206.8 hours. The work involved, and thus the time expended, was carefully assigned in light of the experience and expertise required for a particular task.

40. As shown by this application and supporting documents, Applicant spent its time economically and without unnecessary duplication of time. Attached hereto as Exhibit "D" is a schedule of the hours expended by the attorneys and paraprofessionals during the Pre-Committee Period, their normal hourly rates, and the value of their services. In addition, Akin Gump incurred actual out-of-pocket expenses in connection with the rendition of the professional services to the Informal Committee in the sum of \$14,733.27 for which Akin Gump respectfully requests reimbursement in full.

41. The disbursements and expenses have been incurred in accordance with Akin Gump's normal practice of charging clients for expenses clearly related to and required by particular matters. Akin Gump has endeavored to minimize these expenses to the fullest extent possible.

42. Akin Gump's billing rates do not include charges for photocopying, telephone and telecopier toll charges, computerized research, travel expenses, "working meals," secretarial overtime, postage and certain other office services, since the needs of each client for such services differ. Akin Gump believes that it is fairest to charge each client only for the services actually used in performing services for it. In these proceedings, Akin Gump charges \$.15 per page for internal duplicating and \$.25 per page for outgoing facsimile transmissions. Akin Gump does not charge for incoming facsimile transmissions.

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

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

(A) The Time and Labor Required. The professional services rendered by Akin Gump on behalf of the Committee have required the continuous expenditure of substantial time and effort, under time pressures that on a

regular basis required the performance of services late into the evening and, on a certain occasions, over weekends. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.

(B) The Novelty and Difficulty of Questions. In this case, as in all others in which the firm is involved, Akin Gump's effective advocacy and creative approach have helped clarify and resolve such issues.

(C) The Skill Requisite to Perform the Legal Services Properly. Akin Gump believes that its recognized expertise in the area of corporate reorganization, its ability to draw from highly experienced professionals in other areas of Akin Gump's practice, and its creative approach to the resolution of issues will contribute to the maximization of distributions to the Debtors' unsecured creditors.

(D) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Due to the size of Akin Gump's insolvency department, Akin Gump's representation of the Committee has not precluded its acceptance of new clients.

(E) The Customary Fee. The fee sought herein is based upon Akin Gump's normal hourly rates for services of this kind. Akin Gump respectfully submits that the fee sought herein is not unusual given the magnitude and complexity of these cases and the time expended in

attending to the representation of the Committee, and is commensurate with fees Akin Gump has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience.

(F) Whether the Fee is Fixed or Contingent. Pursuant to sections 330 and 331 of the Bankruptcy Code, all fees sought by professionals employed under section 327 of the Code are contingent pending final approval by this Court, and are subject to adjustment dependent upon the services rendered and the results obtained.

(G) Time Limitations Imposed by Client or Other Circumstances. As already indicated, Akin Gump has been required to attend to certain issues arising in these cases in a compressed and urgent time frame. Occasionally, Akin Gump has had to perform those services under significant time constraints requiring attorneys assigned to these cases to work evenings and on weekends.

(H) The Amount Involved and Results Obtained. Through the efforts of Akin Gump, the Committee has been an active participant in these Chapter 11 cases, and its constructive assistance, as well as criticism, has greatly contributed to enhancement of the recoveries available to the Debtors' creditors and to the efficient administration of these cases.

(I) The Experience, Reputation and Ability of the Attorneys. Akin Gump has a large and sophisticated insolvency practice and is playing and

has played a major role in numerous cases of national import including, for example, the reorganization proceedings of Levitz Furniture Incorporated, Hillsborough Holdings Corporation, Scott Cable Communications, Inc., Boston Chicken, Inc., Criimi Mae, Inc., New Valley, Inc., Raytech Corporation, Toshoku America, Inc., Barneys, Inc., Livent, Inc., Pittsburgh Penguins and Golden Books Publishing Company, Inc. Akin Gump's experience enables it to perform the services described herein competently and expeditiously. In addition to its expertise in the area of corporate reorganization, Akin Gump has called upon the expertise of its partners and associates in other practice areas to perform the wide ranging scope of the legal work necessitated by these cases.

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

(K) Nature and Length of Professional Relationship. Akin Gump was selected as counsel to the Committee on November 9, 1999. Pursuant to an order of this Court, dated December 9, 1999, Akin Gump was retained as Counsel to the Committee, nunc pro tunc to November 9, 1999. Akin Gump has been rendering services continuously to the Committee since November 9, 1999, and continuing through the Compensation Period as necessary and appropriate.

## **VII. ALLOWANCE OF COMPENSATION**

44. The professional services rendered by Akin Gump required a high degree of professional competence and expertise so that the numerous issues requiring

evaluation and determination by the Committee could be addressed with skill and dispatch and have, therefore, required the expenditure of substantial time and effort. It is respectfully submitted that the services rendered to the Committee were performed efficiently, effectively and economically, and the results obtained to date have benefited not only the members of the Committee, but also the unsecured creditor body as a whole and the Debtors' estates.

45. With respect to the level of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person:

reasonable compensation for actual, necessary services rendered ...

Section 330(a)(3)(A), in turn, provides that

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

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

11 U.S.C. §330(a)(3)(A). The clear Congressional intent and policy expressed in this statute is to provide for adequate compensation in order to continue to attract qualified and competent bankruptcy practitioners to bankruptcy cases.

46. No agreement or understanding exists between Akin Gump and any other person for the sharing of any compensation to be received for professional services rendered or to be rendered in connection with these cases.

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

**WHEREFORE**, Akin Gump respectfully requests that this Court enter an order:

(a) approving and granting final allowance of \$23,220.50 for compensation of professional services rendered to the Committee during the period from May 1, 2000 through and including May 31, 2000;

(b) approving and granting final reimbursement of Akin Gump's out-of-pocket expenses incurred in connection with the rendering of such services during the period May 1, 2000 through and including May 31, 2000 in the amount of \$3,844.53;

(c) approving and granting final allowance of \$11,860.00 for compensation and professional services to the Committee during the period from June 1, 2000 through and including June 30, 2000;



(d) approving and granting final reimbursement of Akin Gump's out-of-pocket expense incurred in connection with the rendering of professional services during the period of June 1, 2000 through June 30, 2000 in the amount of \$1,027.75.

(e) granting final allowance of fees and expenses in the aggregate amount of \$124,158.61 for the period of November 9, 1999 through November 30, 1999, which compensation was awarded to Akin Gump pursuant to an order of this Court dated February 25, 2000;

(f) granting final allowance of fees and expenses in the aggregate amount of \$137,944.32 for the period of December 1, 1999 through December 31, 1999, which compensation was awarded to Akin Gump pursuant to an order of this Court dated March 10, 2000;

(g) granting final allowance of fees and expenses in the aggregate amount of \$225,956.07 for the period of January 1, 2000 through January 31, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated April 4, 2000;

(h) granting final allowance of fees and expenses in the aggregate amount of \$99,134.28 for the period of February 1, 2000 through February 29, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated May 3, 2000;

(i) granting final allowance of fees and expenses in the aggregate amount of \$87,730.81 for the period of March 1, 2000 through March 31, 2000, which

compensation was awarded to Akin Gump pursuant to an order of this Court dated May 31, 2000;

(j) granting final allowance of fees and expenses in the aggregate amount of \$32,868.53 for the period of April 1, 2000 through April 30, 2000, which compensation was awarded to Akin Gump pursuant to an order of this Court dated June 2, 2000;

(k) approving and granting final allowance of \$60,938.00 for professional services rendered during the period of October 28, 1999 through November 8, 1999;

(l) approving and granting final reimbursement of Akin Gump's out-of-pocket expenses incurred in connection with the rendering of legal services during the period of October 28, 1999 through November 9, 1999 was in the amount of \$14,733.27;

*total fees + expenses = \$823,416.67*


(m) authorizing and directing the Debtor to pay compensation to Akin Gump (i) in the aggregate amount of \$226,817.93 representing \$747,745.45 for professional services rendered and disbursements incurred by Akin Gump during the period of November 9, 1999 through June 30, 2000 less \$520,927.52, which amount has been paid by the Debtors as of the date of this Application; (ii) in the aggregate amount of \$75,671.27 for professional services rendered and disbursements incurred during the period of October 28, 1999 through November 8, 1999; (iii) the amount to be paid by the Debtors will be offset against the Retainer after deducting any amounts due Akin Gump

for post-effective date services; (v) the balance of the Retainer will be returned to the Debtors; and

(n) granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
August 24, 2000

**AKIN, GUMP, STRAUSS, HAUER  
& FELD, L.L.P.**

By:   
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No attachment

08/28/2000	1963	APPLICATION for Compensation and for Reimbursement of Expenses [Akin, Gump, Strauss, Hauer & Feld L.L.P.] [Filed by Lisa G. Beckman, Atty./OFFICIAL COMMITTEE/ UNSECURED CREDITORS.] FINAL 10/28/99 thru 6/30/00 , [JW] AFFIDAVIT of Service , [JW], ORIGINAL NIBS DOCKET ENTRY #1957 (Entered: 09/06/2000)
08/28/2000	1964	AFFIDAVIT of Service Re: Item # 1957, [JW], ORIGINAL NIBS DOCKET ENTRY #1958 (Entered: 09/06/2000)
08/28/2000	1965	APPLICATION for Compensation and for Reimbursement of Expenses [Members/Official Committee/Unsecured Creditors] [Filed by Lisa G. Beckerman, Atty./OFFICIAL COMMITTEE/ UNSECURED CREDITORS.] , [JW], ORIGINAL NIBS DOCKET ENTRY #1959 (Entered: 09/06/2000)
08/29/2000	1966	AFFIDAVIT of Maurice Wilder in Support of Objection to Motion Re: Item # 1951, [JW], ORIGINAL NIBS DOCKET ENTRY #1960 (Entered: 09/06/2000)
08/29/2000	1967	COUNSEL'S Agenda with Matters Scheduled on 09/06/00 at 04:00 P.M. at U.S. District Court, 844 King Street, 6th Floor, Courtroom #6B, Wilmington, 19801, [JW], ORIGINAL NIBS DOCKET ENTRY #1961 (Entered: 08/31/2000)
09/01/2000	1968	OBJECTION to Third Motion to Reduce Claim [Filed by David M. Fournier, Atty./IMC GLOBAL, INC.] Re: Item # 1900, [JW] CERTIFICATE of Service , [JW], ORIGINAL NIBS DOCKET ENTRY #1962 (Entered: 09/06/2000)
09/05/2000	1970	COUNSEL'S Letter w/Exhibits to Objection to Fifth Motion to Disallow Claims [Filed by Mark S. Morthland, Atty./WILDER CORPORATION.] Re: Item # 1952, [JW], ORIGINAL NIBS DOCKET ENTRY #1964 (Entered: 09/13/2000)