

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
In re)	Chapter 11 Cases
)	
Adelphia Communications Corp., <u>et al.</u> ,)	Case No. 02-41729 (REG)
)	
Debtors.)	Jointly Administered
_____)	

**FIFTH APPLICATION OF BOIES, SCHILLER & FLEXNER LLP,
AS SPECIAL COUNSEL FOR DEBTORS AND DEBTORS IN
POSSESSION, FOR INTERIM ALLOWANCE OF
COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
NOVEMBER 1, 2003 THROUGH FEBRUARY 29, 2004**

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

Boies, Schiller & Flexner LLP (“BS&F”), attorneys for the above-captioned debtors and debtors in possession in these cases (the “Debtors”), in support of its fifth interim application (the “Fifth Application”) for allowance of compensation for professional services rendered and reimbursement of expenses incurred from November 1, 2003 through February 29, 2004 (the “Fifth Application Period”), respectfully represents:

PRELIMINARY STATEMENT

1. By this Fifth Application and pursuant to sections 330 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”), BS&F requests that this Court authorize: (a) interim allowance of compensation for professional services BS&F rendered to the Debtors during the Fifth Application

Period in the amount of \$3,354,524;¹ and (b) the reimbursement of actual and necessary expenses BS&F incurred in connection with the rendering of such professional services in the amount of \$230,030.²

2. This Court has jurisdiction over this Fifth Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges," dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of these cases and this Fifth Application is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are sections 330 and 331 of chapter 11 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules.

BS&F'S FEES AND EXPENSES

3. BS&F's services in these cases have been substantial, necessary, and beneficial to the Debtors and to their estates, creditors, and other parties in interest. Throughout the Fifth Application Period, the continued variety and complexity of the issues involved in these cases and the need to address those issues on an expedited basis have required BS&F, in discharge of its professional responsibilities, to devote substantial time by professionals from many legal disciplines on a daily basis, and often through night and weekend work.

¹ As set forth in BS&F's monthly fee statements submitted during the Fifth Application Period, BS&F determined to "write off" approximately \$52,463 in fees in the exercise of its billing judgment. Such write off amounts are not included in the amounts requested in this Fifth Application. Accordingly, the time records represent the "pre-billing judgment" amount, while the actual fees and reimbursements requested herein represent the amounts that have been reduced by the billing adjustment amounts.

² BS&F reserves its right to seek at a later date compensation for expenses incurred during the Fifth Application Period that may not have been posted as of yet and thus are not included herein.

4. In accordance with section II.B. of the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, issued January 30, 1996 (the “UST Guidelines”), BS&F makes the following disclosures:

- (a) On February 25, 2004, the Debtors filed their proposed plan of reorganization and related disclosure statement. Upon consideration of the views of certain stakeholders, on April 22, 2004, the Debtors’ Board of Directors announced that it would embark upon a dual-track emergence strategy and pursue both a sale of the company and a stand-alone plan of reorganization.
- (b) To the best of BS&F's knowledge, all quarterly fees have been paid to the U.S. Trustee and all required monthly operating reports have been filed;
- (c) BS&F is advised that as of May 31, 2004, the Debtors had approximately \$245,394,000 in cash and cash equivalents, which amount includes certain restricted cash;
- (d) BS&F is advised that the Debtors are paying undisputed administrative expenses in the ordinary course of business from cash generated from operations; and
- (e) With the exception of asserted liens of the Debtors’ prepetition lenders and various contractors, the Debtors' funds are generally unencumbered.

5. By order, dated January 14, 2003, a copy of which is attached hereto as Exhibit G, this Court approved BS&F’s request for interim allowance of compensation for professional services BS&F rendered to the Debtors from June 25, 2002 through October 31, 2002 (the “First Application Period”) in the amount of \$2,879,781 and the reimbursement of actual and necessary expenses incurred by BS&F in connection with the rendering of such professional services in the amount of \$192,185.

6. By order, dated December 18, 2003, a copy of which is attached hereto as Exhibit H, this Court approved BS&F’s request for interim allowance of compensation for professional services BS&F rendered to the Debtors from November 1, 2002 through February 28, 2003 (the “Second Application Period”) and March 1, 2003 through June 30, 2003 (the “Third

Application Period”) in the amount of \$5,058,416 and the reimbursement of actual and necessary expenses incurred by BS&F in connection with the rendering of such professional services in the amount of \$251,150. Also pursuant to such order, BS&F received \$1,109,640 in fees previously “held back” pursuant to this Court’s Order Under Local Rule 2016-1 and 11 U.S.C. §§105(a) and 331 Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002 (the “Compensation Order”).

7. By order, dated June 15, 2004, a copy of which is attached hereto as Exhibit I, this Court approved BS&F’s request for interim allowance of compensation for professional services BS&F rendered to the Debtors from July 1, 2003 through October 31, 2003 (the “Fourth Application Period”) in the amount of \$3,277,951 and the reimbursement of actual and necessary expenses incurred by BS&F in connection with the rendering of such professional services in the amount of \$185,758. Also pursuant to such order, BS&F received \$259,795 in fees previously “held back” pursuant to this Court’s Compensation Order.

8. For the Fifth Application Period, pursuant to the Compensation Order, BS&F has received \$2,913,649.20 in payment for services rendered and expenses incurred in connection with the rendering of such professional services in these cases. This amount represents 100% payment of the reimbursement for expenses incurred and 80% payment for services rendered by BS&F. Pursuant to the Compensation Order, 20% of the fees for professional services is subject to a “holdback.” By this Fifth Application, BS&F seeks interim allowance in full of compensation for services rendered and expenses incurred during the Fifth Application Period.

9. During the Fifth Application Period, BS&F determined, in the exercise of its billing judgment, to write off approximately \$52,463 in fees and expenses, as reflected in the monthly

billing statements served pursuant to the Compensation Order. Additionally, consistent with its ordinary practice and as disclosed in its retention affidavit, BS&F raised its hourly rates on a firm-wide basis for Associates and Legal Assistants effective January 1, 2004. Katherine Eskovitz and Robert Leung's rates were increased as of January 1, 2004 due to their election to partner. A limited number of partners' rates were increased during the Fifth Application Period, but remain below their standard billing rates. These determinations resulted in a discount of \$81,217 for this Fifth Application Period.

10. No agreement or understanding exists between BS&F and any other entity for the sharing of compensation to be received for services rendered in or in connection with this case. See Affidavit of Christopher A. Boies, Esq., annexed hereto as Exhibit A.

11. Prior to the Petition Date, BS&F received payments, including retainers, totaling \$4,064,306 in the aggregate on behalf of services performed for the Debtors. A retainer in the amount of \$1,500,000 will continue to be held by BS&F as a prepetition retainer.

12. BS&F maintains written records of the time expended by attorneys, law clerks and paraprofessionals in rendering professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by each person rendering such services. A copy of the daily time records for the Fifth Application Period, broken down by matter and listing the name of the attorney, law clerk or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services, is annexed hereto as Exhibit B.³

³ Copies of the daily time records are being provided to the Court and the Office of the United States Trustee. Parties in interest required to be served with BS&F monthly fee statements pursuant to the Compensation Order have previously been furnished with such daily time records. Copies of the time records will be made available to other parties in interest upon reasonable request.

13. For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit C is a list of the attorneys, law clerks and paraprofessionals who have worked on those matters during the Fifth Application Period, the aggregate time expended by each individual during the Fifth Application Period, his or her hourly billing rate during the Fifth Application Period, and the amount of BS&F's fees attributable to each individual. Additionally, annexed hereto as part of Exhibit C is a list of all the matters for which services were rendered during the Fifth Application Period and the aggregate amount of hours and fees expended for each of those matters.

14. BS&F also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested is annexed hereto as Exhibit D.

15. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases, (the "Administrative Order"), BS&F recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during the Fifth Application Period.

SUMMARY OF SERVICES RENDERED

16. Recitation of each and every item of professional services that BS&F performed during the Fifth Application Period would unduly burden the Court. Hence, the following summary highlights the major areas to which BS&F devoted substantive time and attention during

the Fifth Application Period. The full breadth of BS&F's services are reflected in BS&F's annexed time records. Additionally, Exhibit B annexed hereto lists: (a) all attorneys, law clerks and paraprofessionals who have performed services in each respective Service Category; and (b) a breakdown of the hours spent and the amount of compensation requested for each attorney, law clerk and paraprofessional within each Service Category.

A. **Litigation**

17. BS&F has been involved in all aspects of the litigation the Debtors have been involved in relating to the Rigases and the events surrounding the criminal investigations and indictments brought by the Department of Justice (the "USDOJ") and the investigations and the civil action brought by the United States Securities and Exchange Commission (the "SEC"). These activities, including the significant efforts to coordinate among the different litigations and to coordinate with the two formal committees in this bankruptcy, have included the following.

B. **USDOJ Criminal Investigation.**

18. Since the spring of 2002, two criminal investigations have been actively underway. The first is an investigation run out of the United States Attorney's Office in this District and has resulted in the arrests on July 24, 2002 of John Rigas, Timothy Rigas, Michael Rigas, James Brown, and Michael Mulcahey, all former executives with Adelphia. Each of these individuals were indicted on 24 counts of conspiracy, securities fraud, bank fraud and related charges on September 23, 2002. A superceding indictment was filed on October 1, 2003. The criminal trial commenced approximately March 1, 2004, immediately following the Fifth Application Period.

19. A second criminal investigation is being run out of the United States Attorney's Office in the Middle District of Pennsylvania.

20. Since the departure of the Rigases from Adelphia in mid-May, 2002, including all times during this bankruptcy, Adelphia has cooperated fully with both of these criminal investigations, as well as a related investigation by the Internal Revenue Service, concerning any issues the prosecutors or investigators involved in those investigations have sought to cover. Work in this area has ranged from preparing and providing several witnesses ranging from line level employees to directors and officers for interviews and grand jury testimony and the production of hundreds of boxes worth of documents. We believe the cooperation and assistance provided by the Debtors to the USDOJ has substantially assisted the government in its pursuit of its indictments and in the guilty pleas entered by James Brown and Timothy Werth to charges of conspiracy, securities fraud and bank fraud. In addition to cooperating in the criminal investigations regarding certain individuals, BS&F has been closely involved in efforts to avoid the indictment of the Debtors, which could have significant and perhaps drastic consequences on the Debtors and its stakeholders.

C. **SEC Civil Action.**

21. Largely in conjunction with the USDOJ investigation, the SEC has likewise engaged in an investigation of Adelphia, the Rigases and related parties. On the same day that the Rigases were arrested, the SEC commenced a civil action pending before Judge Wood in this District. The SEC suit names Adelphia, John Rigas, Tim Rigas, Michael Rigas, James Rigas, James Brown and Michael Mulcahey. On behalf of Adelphia, BS&F has engaged in discussions with the SEC concerning changes and updates regarding Adelphia since the departure of the Rigases and concerning the possibility of achieving a resolution to the claims against Adelphia. Adelphia has also cooperated with the SEC in its investigation of non-Adelphia defendants and other individuals and entities. These cooperation efforts are closely linked with the efforts to cooperate with the

USDOJ, including because the Debtors cooperation with both the prosecutors and the SEC will be a significant consideration in the determination of whether the Debtors will be indicted.

D. **Adelphia's Suit Against the Rigases.**

22. On July 24, 2002, the Debtors filed an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York against members of the Rigas family, Peter Venetis, James Brown, Michael Mulcahey and entities controlled by the Rigas family ("Rigas Adversary Proceeding"). An Amended Complaint was filed on November 15, 2002. The Amended Complaint alleges causes of action for violations of the Racketeer Influenced and Corrupt Organization Act, breach of fiduciary duty, securities fraud, fraudulent concealment, fraudulent misrepresentation, conversion, waste of corporate assets, breach of contract, fraudulent conveyance, unjust enrichment, and inducing breach of fiduciary duty. In the Rigas Adversary Proceeding, the Debtors seeks recovery for the estate of well in excess of \$1 billion.

23. On August 26, 2002, and in connection with the Rigas Adversary Proceeding, the Debtors moved for an emergency order to enjoin the sale or transfer of various parcels of real property held in the name of, or under the control of, members of the Rigas family or entities that they control. By Memorandum Decision issued on the same date and by subsequent written order entered on September 10, 2002, the Court granted the Debtors' motion. This order will help prevent any potential spoliation of assets that properly should be included in the estate.

24. On November 26, 2002, and in connection with the Rigas Adversary Proceeding, the Debtors further moved for an emergency order to freeze all of the assets of members of the Rigas family and entities that they control. By Memorandum Decision issued from the Bench on the same date, the Court granted the requested relief and froze all of the assets of the Rigas family

members and their entities subject to expenditures for reasonable living expenses, necessary business expenses, and reasonable defense costs, including payment of attorneys fees in the pending civil and criminal actions against the Rigas family and entities they control.

25. On July 18, 2003, the Rigases filed a motion in the Chapter 11 cases seeking to modify the August 26, 2002 and November 26, 2002 temporary restraining orders to permit funding of the Rigases' criminal and civil defense costs from cash generated by the Rigas private cable companies managed by Adelpia ("Managed Entities"). On July 31, 2003, BS&F filed an opposition to the Rigases' motion. A hearing on this motion was held on August 1, 2003. In an opinion issued from the bench on the same date, and entered as an Order on August 7, 2003, the Court permitted the Managed Entities, subject to certain limitations, to pay certain specified defense costs on behalf of the Rigases and Michael Mulcahey. On August 12, 2003, BS&F filed a notice of appeal with respect to this August 7, 2003 Order, and researched and drafted Debtor's appellate briefs in this matter. Prior to oral argument on the appeal, the parties entered into a Stipulation and Order settling the appeal. This agreement was so ordered by the Bankruptcy Court on September 2, 2003. BS&F negotiated this settlement on behalf of the Debtors.

26. BS&F has a continuing role in negotiating with the attorneys for the Rigas family and entities they control with regard to appropriate budgets for living expenses and continuation of family businesses and has an ongoing role in negotiations with regard to disposition of property held in the name of the Rigas family and entities they control. BS&F has also worked with attorneys for the Rigases to coordinate the production of documents and information to the Rigases (where appropriate) and to the government. BS&F has also represented the Debtors in opposing certain discovery requested by the Rigases.

27. BS&F is lead trial counsel for the Debtors in the Rigas Adversary Proceeding.

Work by BS&F in connection with this proceeding has included all aspects of representing the Debtors and has ranged from factual development such as document review and witness interviews; legal research; drafting the Complaint, Amended Complaint, motion for emergency relief, and other pleadings; attendance and argument at hearings before the Court; preparation of discovery materials; communication and coordination with the creditors and equity committees in this bankruptcy; and communications with opposing counsel.

28. BS&F, for example, had primary responsibility for responding to lengthy motions to dismiss the Amended Complaint that Defendants filed on or about January 16, 2003.⁴ BS&F devoted substantial resources to researching and drafting responses to each of the issues raised in Defendants' respective motions. On or about March 20, 2003, BS&F filed memoranda of law in opposition to the three motions to dismiss and on or about April 9, 2003, Defendants filed their respective reply briefs.

29. In addition, during this fee application period, BS&F engaged in discovery for and researched and drafted a motion to disqualify former Adelphia in-house counsel that were hired by the Rigases; analyzed the potential effects of other actions, including the Creditors' Committee action against the pre-petition lenders, on Adelphia's claims against the Rigases; continued to deal with the Rigases on issues pertaining to the Rigas Managed Cable Entities; opposed the Rigases'

⁴ John Rigas, Tim Rigas, Michael Rigas, James Rigas, Doris Rigas, and the Rigas Family Entities (collectively, the "Rigas Defendants") filed one motion to dismiss; Peter Venetis filed a second motion to dismiss; and Ellen Rigas Venetis filed a third motion to dismiss. On or about February 3, 2003, Michael Mulcahey joined in certain parts of the foregoing motions to dismiss. Because James Brown pleaded guilty to several charges and agreed to cooperate with the United States Attorney's Office in its investigation of the wrongdoing alleged, at least in part, in the Amended Complaint, Adelphia extended Mr. Brown's time to respond to the Amended Complaint.

request for access to additional funding for the payment of their attorneys' fees; analyzed the prospect of successfully presenting a dispositive motion based on res judicata or other grounds; and coordinated witness preparation sessions with and responses to document requests from the United States Attorney's Office.

30. BS&F believes that the prosecution of this action against the Rigases could provide a substantial recovery to the Adelpia estate.

E. **Adelpia v. Deloitte & Touche LLP.**

31. On November 6, 2002, the Debtors filed a suit in the Court of Common Pleas for Philadelphia County against Deloitte & Touche LLP ("Deloitte"). The Complaint alleges causes of action for professional negligence, breach of contract, fraud, and other wrongful conduct arising out of Deloitte's complicity in the wrongdoing by the Rigases. In this action, the Debtors are seeking recovery of damages suffered as a result of Deloitte's wrongful conduct, as well as punitive damages. Those alleged damages could easily exceed \$1 billion.

32. BS&F is lead trial counsel to the Debtors in this action. Work by BS&F in connection with this action has included all aspects of representing of the Debtors and has ranged from factual development such as document review and witness interviews; legal research; drafting the Complaint; preparation of discovery materials; coordination with local counsel; communication and coordination with the creditors and equity committees in this bankruptcy; and communications with opposing counsel.

33. In January 2003, Deloitte filed preliminary objections to the Debtors' Complaint in this action. BS&F researched and drafted an opposition to these preliminary objections, which was filed in April 2003. Deloitte's motion was denied.

34. Deloitte subsequently filed a motion to transfer and consolidate another Pennsylvania state court action against Deloitte with the Debtor's own action against Deloitte. Together with Pennsylvania Counsel, BS&F researched and drafted an opposition to this motion, which was withdrawn by Deloitte days before argument.

35. On September 15, 2003, Deloitte filed and served an Answer to the Debtor's Complaint and Counterclaims. BS&F has answered the counterclaims and has commenced discovery. In its representation of the Debtors, BS&F has performed work in connection with a potential action against Buchanan Ingersoll LLP, which has included massive document review (i.e., millions of pages of documents) and legal research. BS&F has also been preparing and reviewing documents and discovery materials in anticipation of proceeding with and in conjunction with pursuing discovery and trial preparation.

36. We believe that the prosecution of this action against Deloitte could provide a substantial recovery for the Adelpia estate.

F. **Other Litigation.**

37. In its representation of the Debtors, BS&F is evaluating the potential liability of other individuals and entities (apart from those already named as defendants in the lawsuits against the Rigases and Deloitte) who may have caused damages to Adelpia as a result of their role in the wrongful conduct by the Rigases. BS&F is also evaluating whether certain of the potential secured and unsecured claims against the Adelpia estate are proper under the bankruptcy laws and other applicable legal principles.

G. **D&O Coverage Litigation.**

38. Beginning in September 2002, several motions (the “D&O Motions”) were filed in the bankruptcy court regarding coverage issues arising with respect to the Debtors’s D&O Policies. On September 13, 2002, the Rigases filed a motion seeking relief from the automatic stay, to the extent applicable, to allow payment and/or advancement of defense costs under the D&O Policies. On September 23, 2002, James Brown filed a similar motion. On September 26, 2002, the three Carriers who issued the D&O Policies filed a motion seeking relief from the automatic stay, if applicable, so they could provided the Debtors with notice of rescission of the D&O Policies and join the Debtors as a defendant in a declaratory judgment action relating to the D&O Policies that had been commenced in the United States District Court for the Eastern District of Pennsylvania. In response, on October 16, 2002, the Debtors initiated an adversary proceeding against the Carriers seeking to enjoin the prosecution of the action in the Eastern District of Pennsylvania and sought an order enforcing or extending the automatic stay with respect to this action.

39. BS&F is counsel to the Debtors with respect to the D&O Motions. Work by BS&F in connection with the D&O Motions has included all aspects of representing the Debtors and has ranged from factual development such as document review and witness interviews; legal research; review of the motions and briefs filed by the parties; drafting briefs in connection with each motion; drafting the complaint in the adversary proceeding filed by Adelphia; appearing for and arguing on behalf of the Debtors at hearings before the Court; coordinating with Adelphia’s creditors and equity committee regarding the strategy for these motions; and communication and coordination with counsel for the parties with an interest in the D&O coverage issues, including counsel for the Carriers, ABIZ, Adelphia’s independent directors, and the Rigases.

40. On November 15, 2002, consistent with the arguments made by the Debtors in connection with the D&O Motions, the Court limited access to the D&O proceeds.

41. The Rigases appealed the Court's decision. BS&F is appellate counsel to the Debtors on this appeal and researched, drafted, and argued an opposition to the Rigases' appeal brief.

42. On appeal, the Bankruptcy Court's November 15, 2002 order was vacated and remanded, BS&F researched, drafted, and argued the filings by the Debtors on remand.

43. We believe that the Debtors's litigation of the D&O Motions has succeeded and will continue to succeed in preserving proceeds of the D&O Policies as an important part of the Adelpia estate.

H. **Corporate Governance Adversary Proceeding**

44. On January 9, 2003, the Official Committee of Equity Security Holders of Adelpia (the "Equity Committee") commenced an adversary proceeding (the "Corporate Governance Adversary Proceeding") against Adelpia in the bankruptcy court seeking declaratory, equitable, and injunctive relief. The complaint seeks to force a shareholder meeting and effectively to transfer the voting rights appurtenant to the Rigas shares to minority shareholders. In addition to the complaint, the Equity Committee filed a motion for a preliminary injunction seeking the same relief on an interim basis. The Equity Committee filed an amended complaint on March 31, 2003, dropping its claim to force a shareholder meeting and adding a claim to invalidate the May 23 agreement between the Rigases and the Special Committee, which, among other things, transfers the right to vote the Rigas shares to the Special Committee.

45. BS&F is lead trial counsel for the Debtors in the Corporate Governance Adversary Proceeding. Work by BS&F in connection with this proceeding has included all aspects of representing the Debtors and has ranged from factual development such as document review and witness interviews; retention of an expert witness and preparation of an expert report; legal research; drafting a motion to dismiss and objections to the Equity Committee's motion for a preliminary injunction; communication and coordination with the creditors committee in this bankruptcy; and communication with counsel for the Equity Committee.

46. We believe that the Debtor have significant arguments to eliminate some or all of the claims brought by the Equity Committee. These motions are fully briefed as of September 12, 2003. No hearing date has been scheduled.

I. **Litigation Coordination with the Unsecured Creditors and the Equity Committees.**

47. In connection with the various litigation matters being pursued by the Debtors and litigation facing the Debtors (including the issue of indictment of the Debtors), BS&F coordinated its efforts with both the equity and creditors committees. These coordination efforts, as with many of the other coordination efforts, have been central to maintaining the best possible litigation position on all of the many fronts to ensure the Debtors are well positioned to maximize their recoveries under all possible viable litigations that may be brought by or on behalf of the Debtors or the committees. For example, we have regularly updated the committees on the status of litigation being considered or brought by the Debtors and sought the advise and comment from counsel for the committees to pleadings and other documents filed by the Debtors in the different litigations described herein. In addition, BS&F has worked closely with the committees with respect to the adversary proceeding filed by the committees against certain of the Debtor's lenders, and is

monitoring and participating in this litigation on behalf of the Debtor. We consider these coordination efforts central to our overall efforts of representing Debtors in their litigation matters while appropriately taking into consideration all of the different stakeholders whose interests need to be considered in connection with those efforts.

J. **Corporate Matters**

48. During the Fifth Application Period, BS&F advised the Debtors on general corporate matters, including among other things, advising on corporate governance reform and implementation; drafting and revising corporate governance documents; working with the Board of Directors and Board Committee members; analysis of officer and director indemnification issues; and various research and analysis of a number of general corporate issues.

K. **Fee Statements/Fee Applications**

49. During the Fifth Application Period, in accordance with the Court's order Establishing Procedures For Interim Compensation And Reimbursement Of Expenses Of Professionals And Committee Members, dated August 9, 2002, BS&F has served monthly statements on the relevant service parties. In addition, BS&F has worked to comply with the directives of the fee committee (the "Fee Committee") and the requirements of the fee protocol approved by the Court on March 7, 2003, by participating in negotiations with the Fee Committee and providing relevant fee materials so that the Fee Committee may monitor the fees incurred in these cases.

EVALUATING BS&F'S SERVICES

50. As highlighted above, during the Fifth Application Period, BS&F provided extensive services to facilitate the Debtors' discharge of their duties as debtors in possession and otherwise move these cases forward. Moreover, BS&F has provided day-to-day legal advice respecting the ordinary course operation of the Debtors' businesses. All of these services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

51. “[T]he ‘lodestar’ method of fee calculation developed by the Fifth Circuit, see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a ‘reasonable’ attorney fee in all the federal courts, including the bankruptcy courts.” In re Cena’s Fine Furniture, Inc., 109 B.R. 575, 581 (E.D.N.Y. 1990); In re Poseidon Pools of America, Inc., 216 B.R. 98, 100 (E.D.N.Y. 1997). Accord In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) (“In determining the ‘reasonableness’ of the requested compensation under § 330, Bankruptcy Courts now utilize the ‘lodestar’ method”).

52. “The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate, with the ‘strong presumption’ that the lodestar product is reasonable under § 330.” Drexel, 133 B.R. at 22 (citations omitted). BS&F’s hourly rates and fees charged are consonant with the market rate for comparable services. The hourly rates and fees charged by BS&F are the same as (or less than) those generally charged to, and paid by, BS&F’s other clients. Indeed, unlike fees paid by most BS&F clients, due to the “holdbacks” of fees from prior monthly fee statements and the delays inherent in the fee application process, the present value

of the fees paid to BS&F by the Debtors is significantly less than fees paid monthly by other BS&F clients.

53. The hours expended by BS&F were necessary. “[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity or project should be disallowed *only* where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive.” Drexel, 133 B.R. at 23 (emphasis added). Moreover, in passing upon the reasonableness of hours expended, courts should be mindful of the “practical judgments, often within severe time constraints, [professionals make] on matters of staffing, assignments, coverage of hearings and meetings, and a wide variety of similar matters.” Id. These judgments are presumed to be made in good faith. Id.

BS&F'S REQUEST FOR INTERIM COMPENSATION

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

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

11 U.S.C. § 331.

55. Concerning 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, including the debtor's attorney:

reasonable compensation for actual, necessary services rendered by
the . . . professional person, or attorney

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

56. BS&F submits that its request for interim allowance of compensation is reasonable. The services rendered by BS&F, as highlighted above, required substantial time and effort, much of which occurred under substantial pressure and during nights and weekends.

57. The services rendered by BS&F during the Fifth Application Period were performed diligently and efficiently. Accordingly, when possible BS&F delegated tasks to lower cost junior attorneys and law clerks or, for discrete matters, to attorneys with specialized expertise in the particular task at issue. While that approach may have required intra-office conferences or involved individual attorneys who spent only a few hours on the matter at hand, the net result was enhanced cost efficiency.

58. During the course of our representation, BS&F has been able to assign a relatively small number of associates to work on a large number of specific assignments. By coordinating and consolidating work on a relatively small number of attorneys where possible, BS&F has been able to obtain economies for the estate by reducing the need to coordinate across a larger population of associates and by ensuring that persons assigned to tasks already have a large base of

working knowledge concerning Adelpia, the issues it faces, and the tasks that are already underway. Nonetheless, because of the large number of matters and issues facing the estate on which BS&F has performed legal services and the overlap of those issues with one another, there are a significant number of separate timekeepers that necessarily must perform work on Adelpia's behalf. BS&F has taken significant steps to coordinate the efforts of those different timekeepers through the firm's internal structure including the oversight of associates' work by more senior associates and/or partners familiar with and working on the various matters.

59. Although duplication of effort has been avoided to the greatest extent possible, some duplication may have occurred as a result of the intensity of the matters in which BS&F was engaged, the complexity of the issues that arose during these cases, and the urgent basis upon which some of these services were rendered. However, BS&F believes that any duplication of effort was de minimis, is covered by BS&F's write-offs in the exercise of billing judgment and otherwise unavoidable, and was beneficial to the estates in that thorough knowledge of the background and the history of these cases makes each successive task more efficient.

60. In many instances, BS&F has been able to successfully resolve disputes without the need to request assistance from the Court. When necessary, however, BS&F actively represented the Debtors' interests before the Court and, through litigation or settlement, substantially furthered the Debtors' reorganization efforts.

61. During the Fifth Application Period, BS&F encountered certain novel and complex legal issues, often requiring extensive research and drafting. BS&F brought to bear legal expertise in many areas, including litigation, tax, regulatory issues, corporate governance, employee

benefits, and bankruptcy. BS&F attorneys have rendered advice in all of these areas with skill and dispatch.

DISBURSEMENTS

62. BS&F incurred actual and necessary out-of-pocket expenses during the Fifth Application Period in connection with the rendition of the professional services described above, in the amounts set forth in Exhibit D.⁵ By this Fifth Application, BS&F respectfully requests allowance of such reimbursement in full.

63. The disbursements for which BS&F seeks reimbursement include the following:

- a. Duplicating - Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;⁶
- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.15 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by BS&F for machine maintenance, phone charges and supplies used in operating the fax machine;
- c. Computer Research Charges - BS&F's practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment;
- d. Overtime Expenses - BS&F's practice is to allow any attorney working later than 8:00 p.m. and any legal assistants working later than 7:30 p.m. to charge a working meal to the appropriate client. The meal charge is limited to \$20 per person;

⁵ BS&F's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in BS&F's accounting system.

⁶ BS&F's document reproduction costs at this stage have included the copying and imaging of millions of pages of documents requested by the government and turned over to the government, the banks and others in connection with the various litigations and investigations facing the Debtors.

- e. Local Car Service - BS&F's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after 8:00 p.m.; and
- f. Delivery Services - BS&F's practice is to charge postal, overnight delivery and courier services at actual cost.

PROCEDURE

64. BS&F has provided notice of this Fifth Application to: (i) the Office of the United States Trustee; (ii) counsel to the agents for the Debtors' prepetition and postpetition bank lenders; (iii) counsel to the Committees; (iv) the Debtors; (v) the Fee Committee; and (vi) all other parties that have filed a notice of appearance in these cases prior to the date hereof.

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

CONCLUSION

WHEREFORE, BS&F respectfully requests that this Court enter an order awarding
BS&F:

- (a) interim compensation from the Debtors for services rendered from November 1, 2003 through February 29, 2004, inclusive, in the amount of \$3,354,524;
- (b) reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$230,030; and
- (c) such other and further relief as may be just.

Dated: July 16, 2004

BOIES, SCHILLER & FLEXNER LLP

By: /s/Christopher Boies
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