

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In re:</b>	:	
	:	<b>Jointly Administered</b>
<b>LOEWEN GROUP INTERNATIONAL,</b>	:	<b>Case No. 99-1244 (PJW)</b>
<b>INC., a Delaware corporation, <u>et al.</u>,</b>	:	
	:	<b>Chapter 11</b>
<b>Debtors.</b>	:	

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**THIRTIETH INTERIM AND FINAL APPLICATION OF JONES, DAY,  
REAVIS & POGUE FOR COMPENSATION FOR SERVICES RENDERED  
AND REIMBURSEMENT OF EXPENSES AS COUNSEL TO  
LOEWEN GROUP INTERNATIONAL, INC. AND ITS DEBTOR AFFILIATES**

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Dated: February 28, 2002

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ATTORNEYS FOR REORGANIZED  
DEBTORS

Jones, Day, Reavis & Pogue ("Jones Day"), counsel to the above-captioned debtors and reorganized debtors (collectively, the "Debtors"), hereby makes its thirtieth application for (i) interim allowance of compensation of \$2,451,838.10 for services rendered and reimbursement of related expenses of \$398,711.09 for the period from November 27, 2001 through January 2, 2002 (the "Thirtieth Interim Compensation Period"); (ii) final allowance of compensation of \$32,120,878.80 and reimbursement of related expenses of \$3,061,452.49 for the period from June 1, 1999 through January 2, 2002 (the "Combined Compensation Period");<sup>1</sup> and (iii) subject to the procedures described herein, final allowance of \$50,000.00 in estimated expenses incurred by Jones Day during the Combined Compensation Period but not yet billed due to delays in the applicable billing cycle for such expenses (the "Estimated Expenses"). In support of this Application, Jones Day respectfully represents as follows:

### **PRELIMINARY STATEMENT**

With their recent emergence from bankruptcy, the Debtors completed a restructuring that the Court described as the most complex over which it has ever presided. With Jones Day's assistance as counsel, the Debtors achieved their goal of achieving reorganization of their businesses that maximized the value of their estates for the benefit of all parties. In all, consideration estimated to total approximately \$1.5 billion has been or will be distributed to creditors and other parties in interest pursuant to the plan of reorganization confirmed by the Court (the "Plan").

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<sup>1</sup> The Combined Compensation Period is comprised of the Thirtieth Interim Compensation Period and the interim compensation periods for which Jones Day previously has filed fee applications in these cases, as identified on Exhibit G to this Application (collectively, the "Prior Interim Compensation Periods").

As the Court is aware, the Debtors and their nondebtor affiliates comprise a large, extremely complex organization. As of the June 1, 1999 date of commencement of these cases (the "Petition Date"), the Debtors and their nondebtor affiliates had approximately \$4.5 billion in assets and \$3.6 billion in liabilities. On the Petition Date, 865 of the Debtors commenced chapter 11 cases — to the Debtors' knowledge, the largest number of chapter 11 cases commenced by affiliated companies in history. More than 100 additional cases (the "Canadian Cases") were commenced under the Canadian Companies' Creditors Arrangement Act by Debtor The Loewen Group Inc. ("TLGI") and Canadian affiliates of the Debtors. As of the Petition Date, the Debtors conducted business at more than 1,000 locations scattered throughout nearly every state and several U.S. territories and had approximately 13,000 full-time and part-time employees. Most of these operations have been preserved and reorganized.

From the beginning of these cases, Jones Day took a leading role in the day-to-day administration of the Debtors' chapter 11 cases and in efforts to minimize the adverse impact of the Debtors' chapter 11 filings on the ongoing operation of the Debtors' businesses. For example, upon the commencement of these cases, Jones Day assisted the Debtors in stabilizing their businesses and achieving a "soft landing" in chapter 11 through a series of motions to address a variety of specific business concerns. Among other things, these motions and related activities permitted the Debtors to:

- (a) pay prepetition employee wages, salaries and related items without interruption;
- (b) honor important prepetition customer obligations;
- (c) pay the prepetition claims of critical vendors, service providers and independent contractors essential to the continued operation of the Debtors' businesses;
- (d) maintain essential cash management systems; and
- (e) continue to comply with the myriad state, territorial and local statutes and regulations that govern the Debtors' funeral home, cemetery and related businesses.

Jones Day also spearheaded a comprehensive effort to communicate and meet with the regulators of the Debtors' businesses in all 50 states, to minimize adverse regulatory actions resulting from the filing of these cases. Jones Day also assisted the Debtors in obtaining the Court's approval of a Cross-Border Insolvency Protocol with respect to these cases and the Canadian Cases. Shortly after the Petition Date, Jones Day assisted the Debtors in taking further steps to solidify the Debtors' relationships with their employees, including the formulation of a key employee retention program designed to provide financial incentives to those employees of the Debtors who were critical to the success of the Debtors' chapter 11 cases.

With the assistance of Jones Day, the Debtors also filed motion papers and took the other steps necessary to obtain approval of and implement a \$200 million debtor in possession financing facility (the "DIP Facility") with First Union National Bank, as agent for the Debtors' postpetition lenders. The DIP Facility was necessary to provide the Debtors with sufficient liquidity to maintain their operations during the early days of these cases and was an essential component to the Debtors' smooth transition into chapter 11.

The complexity of the Debtors' funded debt arrangements and related disputes added significantly to the difficulty of resolving these chapter 11 cases. Jones Day played a key leadership role in resolving these issues. As of the Petition Date, the Debtors had funded debt in the approximate amount of \$2.0 billion, including a bank revolving credit facility, public and private notes and certain other borrowings, all of which were contemplated to share certain collateral and guaranties on a *pari passu* basis under a collateral trust agreement (the "CTA"). In early 2000, however, a dispute arose over the secured status of approximately \$1.1 billion of the debt (the "Subject Debt") issued under the CTA. In Spring and Summer 2000, Jones Day conducted a factual investigation into the circumstances

surrounding the secured status of the Subject Debt. Following the completion of this factual investigation and an extensive legal analysis of the status of the Subject Debt under the CTA, Jones Day prepared a comprehensive memorandum discussing the factual investigation and legal analysis, which memorandum was filed with the Court and distributed to parties in interest. After litigation regarding the status of the Subject Debt was filed in this Court, Jones Day coordinated discovery and other activity regarding the litigation. When the litigation was referred to mediation, Jones Day took a lead role in the mediation conducted with respect to the CTA dispute and other ongoing plan negotiations with interested parties. During this period, Jones Day negotiated and documented a plan of reorganization settlement with the Official Committee of Unsecured Creditors (the "Creditors' Committee") and several significant CTA debtholders.

Although the CTA mediation in itself did not resolve the CTA dispute, it spawned negotiations among the parties that resulted in the CTA settlement embodied in the Plan. In June 2001, the Debtors, with the assistance of Jones Day, filed an amended version of the Plan and accompanying disclosure statement (as such was amended, the "Disclosure Statement") reflecting that settlement in principle. On September 4, 2001, the Court entered its order (the "Disclosure Statement Order") approving the Disclosure Statement. In September 2001, the Debtors filed and served on parties in interest a further amended version of the Plan and the Court-approved version of the Disclosure Statement. On December 5, 2001, after an extensive evidentiary hearing to consider confirmation of the Plan, the Court entered its order confirming the Plan. With the assistance of Jones Day, the Debtors completed the financing and restructuring transactions contemplated by the Plan and authorized by the Confirmation Order (collectively, the "Restructuring Transactions") and emerged from bankruptcy on January 2, 2002 (the "Effective Date").

The success of the Plan development, confirmation and implementation process required the coordinated and dedicated efforts of numerous Jones Day bankruptcy, finance, securities, corporate, real estate, tax, litigation and employee benefits attorneys over the course of these cases to address the myriad of restructuring issues faced by the Debtors, including the CTA dispute. These attorneys worked closely with the Debtors' management and the other key constituencies in these cases to ensure that the Debtors' restructuring efforts moved forward expeditiously and, to the fullest extent possible, on a consensual basis with all of the Debtors' major stakeholders. Among the many activities relating to the Debtors' restructuring efforts, Jones Day assisted in the following significant matters: (a) negotiating and documenting a settlement agreement resolving more than \$300 million in claims asserted against the Debtors' estates by Blackstone Capital Partners II, Merchant Banking Fund L.P. and certain of its affiliates; (b) negotiating with the Creditors' Committee, the Debtors' largest bondholders, other key creditors and the indenture trustees regarding all aspects of the Plan, including the treatment of all classes of claims and interests and the settlement of the CTA dispute; (c) preparing the necessary Plan documentation, including the Disclosure Statement, the Plan, the numerous, voluminous exhibits to the Plan and many other corporate restructuring and securities documents needed to consummate the Restructuring Transactions; and (d) negotiating, conducting due diligence with respect to and documenting an exit financing facility (the "Exit Financing Facility") for the reorganized Debtors, as well as four series of new public notes issued pursuant to the Plan.

Jones Day assisted the Debtors in other, equally contentious aspects of the Debtors' chapter 11 cases, including many disputes with former owners of the Debtors' funeral home and cemetery businesses. Prior to the Petition Date, the Debtors entered into literally thousands of agreements in connection with their acquisition of funeral home, cemetery and related businesses.

These myriad agreements included purchase agreements, noncompetition agreements, consulting agreements, management agreements, employment agreements, leases and right of first refusal and option agreements. In addition, the Debtors frequently issued promissory notes and guaranties in connection with their acquisitions. Numerous former owners have filed proofs of claim, many of which are disputed in whole or in part in these cases. Numerous others objected to the Debtors' requests to reject the types of agreements described above. At the Court's recommendation, the Debtors, with Jones Day's assistance, obtained approval of, and have implemented, mandatory mediation procedures with respect to most of the former owner claims asserted in these cases. To date, the former owner claims mediation program has been highly successful in resolving, on a cost-effective basis, claims arising from noncompetition and consulting agreements, as well as other claims arising from the prepetition acquisition transactions described above.

As difficult and time-consuming as the former owner contract and claim matters have been, they have been only a subset of the contract and claims matters that have demanded the Debtors' and Jones Day's attention. Jones Day has been required to devote significant time and effort during these chapter 11 cases to the process of reviewing the Debtors' more than 10,000 executory contracts and unexpired leases. This review was a particularly difficult task in these cases not only because of the former owner issues discussed above, but also because of the number of Debtors, the number of locations at which they operate, the Debtors' historical acquisition program and other factors.

Jones Day also has assisted the Debtors in making significant progress in the claims process in these cases — a claims process involving more than 18,000 scheduled and filed claims. As of the date of this Application, the Debtors have filed motions seeking reduction, reclassification or disallowance of more than 6,000 of those claims, and the Court has entered orders approving the

reduction, reclassification or disallowance of approximately 5,000 claims in respect of those motions. Jones Day also has assisted the Debtors in objecting to an additional 3,400 directors and officers claims and resolving over half of the approximately 200 non-CTA secured claims. Jones Day has assisted the Debtors in making the claims process as efficient and cost-effective as possible by obtaining Court approval of, and implementing, the claims settlement program approved by the Court in December 1999, the alternative dispute resolution procedures approved by the Court in February 2000 and the former owner claims mediation program discussed above. To date, the Debtors have submitted approximately 600 disputed proofs of claim to the alternative dispute resolution procedures, and most of these have been resolved.

Jones Day also assisted the Debtors in the significant task of effectuating all steps that were necessary or appropriate under applicable corporate and tax law, as well as state, provincial and local regulations unique to the Debtors' industries, to effectuate the corporate restructuring required in connection with the Debtors' reorganization. This process was particularly challenging for the Debtors, in light of the nearly 1,000 separate entities involved in these chapter 11 cases and the Canadian Cases and the extensive state, provincial and local regulations that govern the Debtors' funeral home and cemetery businesses.

In addition, Jones Day assisted the Debtors in their efforts to sell assets that either were underperforming financially or were not anticipated to be part of the Debtors' core business operations going forward. In this regard, the Debtors offered for sale approximately 371 or 25% of their funeral home and cemetery locations pursuant to the asset disposition program approved by the Court in January 2000. This program has been particularly complex in light of the number of locations involved, the geographic dispersion of these locations throughout the United States and the state and territorial

regulatory issues, including trusting obligations, that affect the sale of funeral home and cemetery businesses. As of the date of this Application, the Debtors have realized gross sale proceeds of approximately \$100 million from 47 separate transactions under the asset disposition program.

During these cases, Jones Day also devoted significant time to, among other things, the following: (a) assisting in the preparation of the more than 800 sets of schedules of assets and liabilities, statements of financial affairs and other documents required by the Court or the United States trustee; (b) representing the Debtors in numerous adversary proceedings in this Court and ongoing litigation in other courts involving a wide variety of disputes; (c) addressing and resolving requests for relief from the automatic stay imposed by section 362 of the Bankruptcy Code; (d) responding to requests for the payment of administrative expenses pursuant to section 503 of the Bankruptcy Code; and (e) addressing numerous other bankruptcy, corporate and employee benefit issues that arose in the ordinary course of the Debtors' businesses during the pendency of these cases.

In sum, Jones Day's services in connection with the foregoing matters and the other matters described in this Application and Jones Day's prior interim fee applications demonstrate Jones Day's central role in enabling the Debtors to achieve their business and legal objectives in these cases. Jones Day believes that its efforts on these various matters were instrumental in: (a) achieving confirmation of the Plan; (b) accomplishing the Debtors' emergence from chapter 11; (c) addressing the numerous issues that arose in these cases efficiently and effectively, with minimal disruption to the Debtors' businesses; and (d) maximizing the value of the Debtors' estates for the direct benefit of the Debtors' stakeholders. Because of the substantial success that Jones Day helped bring to these cases, Jones Day submits that it is entitled to the interim and final allowance of the fees and reimbursement of the expenses requested herein.

## **BACKGROUND**

### **General**

1. On the Petition Date, 831 of the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On December 30, 1999, Debtor Neweol (Delaware), L.L.C. commenced its voluntary chapter 11 case. On May 29, 2001, Debtors HMP Acquisition, Inc., Memory Gardens, Inc. and OVC Association commenced their voluntary chapter 11 cases. On June 25, 2001, Debtor Loewen Financial Corporation commenced its voluntary chapter 11 case. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

2. Throughout the pendency of their chapter 11 cases, the Debtors continued in possession of their respective properties and operated and managed their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On June 11, 1999, the United States trustee for the District of Delaware (the "United States Trustee") appointed the Creditors' Committee, pursuant to section 1102 of the Bankruptcy Code. In accordance with the terms of the Plan, the Creditors' Committee was dissolved as of the Effective Date.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, Article XII of the Plan and Section III.J of the Confirmation Order. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **Jones Day's Retention**

5. On the Petition Date, the Debtors filed their Application for an Order Authorizing Them to Retain and Employ Jones, Day, Reavis & Pogue as Counsel, by which the

Debtors sought authority to retain and employ Jones Day as their counsel in these chapter 11 cases. Also on the Petition Date, an order (the "Retention Order") was entered in these cases authorizing the retention of Jones Day as the Debtors' counsel. A copy of the Retention Order is attached hereto as Exhibit A. Except for services provided in connection with the matter referred to below as the "NAFTA Proceeding,"<sup>2</sup> Jones Day has charged for its services in accordance with its ordinary and customary hourly rates in effect on the dates that services were rendered. These hourly rates are identical to those charged by Jones Day for similar services in other bankruptcy and nonbankruptcy matters.

**Incorporation of Prior Fee Applications**

6. As identified on the cover sheet attached to this Application, Jones Day has filed 29 prior fee applications in these cases requesting interim allowance of fees and reimbursement of expenses for the Prior Interim Compensation Periods (collectively, the "Prior Applications"). In support of the final allowance of fees and reimbursement of expenses sought in this Application, Jones Day incorporates the Prior Applications herein by reference.

**The NAFTA Proceeding**

7. Prior to the Petition Date, Jones Day represented TLGI in the proceeding captioned The Loewen Group Inc. and Raymond L. Loewen v. United States (the "NAFTA Proceeding") that is pending before the Dispute Resolution Tribunal (the "NAFTA Tribunal") established under the North American Free Trade Agreement ("NAFTA"). Pursuant to the NAFTA

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<sup>2</sup> As described below, the Court has approved a contingent fee arrangement between Jones Day and the Debtors with respect to fees and expenses incurred in connection with the NAFTA Proceeding that provides for Jones Day's waiver of its hourly fees retroactive to December 1, 1999.

Proceeding, TLGI and co-claimant Raymond Loewen seek \$725 million in damages arising from alleged violations of certain provisions of NAFTA by the United States in connection with a 1995 judgment in the Mississippi state court action captioned O'Keefe v. The Loewen Group Inc. Jones Day continues to represent TLGI in the NAFTA Proceeding, which proceeded to a hearing on the merits in October 2001. The NAFTA Proceeding currently is suspended. The NAFTA Tribunal has established a briefing schedule on the issue of the tribunal's jurisdiction over the NAFTA Proceeding under which the briefing will be completed by May 10, 2002.

8. Because of the complexity and novelty of the issues raised by the NAFTA Proceeding, Jones Day lawyers have been required to devote a significant amount of time and resources to this matter. In light of the significant time and attention that the matter requires, the Debtors' efforts to conserve resources and the possibility of a large recovery by TLGI, Jones Day and the Debtors have negotiated a modified fee arrangement (the "Revised Fee Arrangement") that was approved by the Court on October 12, 2000.

9. As described in detail in the Debtors' Motion for an Order Approving Revised Fee Arrangement with Jones, Day, Reavis & Pogue for Services Rendered in Connection with NAFTA Proceeding (the "Revised Fee Arrangement Motion"), the Revised Fee Arrangement is a contingent fee agreement pursuant to which Jones Day, retroactive to December 1, 1999, will no longer charge the Debtors for services with respect to the NAFTA Proceeding on an hourly basis. Accordingly, this Application does not seek compensation for any time incurred after December 1, 1999 in connection with the NAFTA Proceeding.

10. The Revised Fee Arrangement provides further that the Debtors will pay for 100 percent of the expenses, including experts' fees (the "NAFTA Expenses"), incurred in connection

with the NAFTA Proceeding. In accordance with the procedures established by the Court under the Interim Compensation Orders (as defined below), Jones Day will submit the NAFTA Expenses to the Court for approval on a monthly basis, together with other fees and expenses incurred on behalf of the Debtors. Upon Court approval, TLGI will pay Jones Day each month's NAFTA Expenses in full (or in the amount approved by the Court). Pursuant to these procedures, Jones Day has included in this Application the NAFTA Expenses that it incurred during the Compensation Period.

### **RELIEF REQUESTED AND REASONS THEREFOR**

#### **Summary of Relief Requested**

11. Jones Day makes this Application pursuant to: (a) sections 330(a) and 331 of the Bankruptcy Code; (b) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); (c) the Court's Administrative Order, Pursuant to Sections 105(a) and 331 of the Bankruptcy Code, Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, entered on August 26, 1999 (the "First Interim Compensation Order") and modified by an order of this Court entered on December 12, 2000 (the "Second Interim Compensation Order");<sup>3</sup> (d) the applicable provisions of the Guidelines for Applications for Compensation and Reimbursement of Expenses of Professionals adopted by the Office of the United States Trustee (the "Guidelines"); (e) the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("the "Local Rules"); and (f) Section III.A.1.f.ii.A of the Plan and

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<sup>3</sup> The Second Interim Compensation Order provides for the submission of interim fee applications no earlier than 25 days after the end of the month for which payment is sought. Second Interim Compensation Order ¶ 3(a). To the extent required, Jones Day hereby requests leave from the Second Interim Compensation Order to file this Application less than 25 days after the end of the Compensation Period.

Section III.C.1.b.i of the Confirmation Order. Copies of the First Interim Compensation Order and the Second Interim Compensation Order (collectively, the "Interim Compensation Orders") are attached hereto collectively as Exhibit B.

12. Jones Day hereby seeks interim allowance of compensation and reimbursement of expenses for the Thirtieth Interim Compensation Period as follows:

a. Compensation in the amount of \$2,451,838.10 in connection with services rendered during the Thirtieth Interim Compensation Period. Jones Day has listed each of its professionals and paraprofessionals and the hourly rate for each during the Thirtieth Interim Compensation Period in the summary that, pursuant to Local Rule 2016-2(c)(ii), is appended to the front of this Application and incorporated herein by reference. Pursuant to Local Rule 2016-2(c)(ii), a summary of the total hours incurred and fees charged for each billing category during the Thirtieth Interim Compensation Period also is appended to the front of this Application. The time detail as to which compensation is requested during the Thirtieth Interim Compensation Period is attached hereto as Exhibit C and incorporated herein by reference.

b. Reimbursement of actual and necessary expenses of \$398,711.09 incurred in connection with Jones Day's services. Pursuant to Local Rule 2016-2(c)(ii), a summary of the expenses incurred during the Thirtieth Interim Compensation Period is appended to the front of this Application, and a detailed itemization of the expenses incurred during the Thirtieth Interim Compensation Period is attached hereto as Exhibit D and incorporated herein by reference.

13. In addition, Jones Day hereby seeks final allowance of compensation and reimbursement of expenses for the Combined Compensation Period as follows:

a. Compensation of \$32,120,878.80 in connection with services rendered during the Combined Compensation Period. Jones Day has listed each of its professionals and paraprofessionals and the hourly rate for each during each interim period of the Combined Compensation Period on the summaries attached hereto as Exhibit E to this Application. Summaries of the total hours incurred and fees charged for each billing category for each interim period of the Combined Compensation Period are set forth on Exhibit F to this Application. As noted above, the time detail as to which compensation is requested for the Thirtieth Interim Compensation Period is included in Exhibit C to this Application. The time detail as to which compensation is requested for each other period of the Combined Compensation Period was included in similar exhibits attached to each of the Prior Applications.

b. Reimbursement of actual and necessary expenses of \$3,061,452.49 in connection with Jones Day's services during the Combined Compensation Period. Jones Day has listed by category the expenses incurred during each interim period of the Combined Compensation Period on the summaries attached hereto as Exhibit G to this Application. A detailed itemization of the expenses incurred during the Thirtieth Interim Compensation Period is attached hereto as Exhibit D and incorporated herein by reference. Detailed itemizations of the expenses incurred during each other period of the Combined Compensation Period was included in similar exhibits attached to each of the Prior Applications.

c. Estimated Expenses of \$50,000.00 incurred during the Combined Compensation Period but not yet billed due to delays in the applicable billing cycle for such expenses (including filing fees, lien search costs and recordation and mortgage charges in connection with the implementation of the Exit Financing Facility). To the extent possible, Jones Day intends to provide detail itemizing the amount of certain of the Estimated Expenses (collectively, the "Itemized Expenses") at or prior to the entry of an order approving this Application (the "Final Fee Order"); however, despite Jones Day's best efforts, it is possible that invoices for certain of the Estimated Expenses may not be available until after the entry of the Final Fee Order, and these expenses thus may remain unliquidated at the time this Application is approved (collectively, the "Nonitemized Expenses"). Accordingly, Jones Day requests that Estimated Expenses in the amount of \$50,000.00 be approved pursuant to the Final Fee Order to be paid as follows, without further application to or order of the Court: (i) the Debtors will pay the Itemized Expenses upon approval of this Application and (ii) upon Jones Day's submission of a detailed invoice or invoices to the reorganized Debtors, the reorganized Debtors will pay any additional Nonitemized Expenses as they are itemized, provided that the Debtors maintain the right to contest the validity of any Nonitemized Expenses by filing an objection with the Court within 10 Business Days after receiving the applicable invoice. Jones Day hereby certifies that the Nonitemized Expenses, once itemized, will comply with Jones Day's expense policies set forth below.

14. In accordance with Section III.A.1.e.ii.A of the Plan and Section III.C.1.b.1 of the Confirmation Order, this Application seeks the allowance of compensation and reimbursement of expenses for the period on or prior to the Effective Date. Pursuant to Section IV.A of the Plan and

Section III.B.2 of the Confirmation Order, the reorganized Debtors are authorized to pay Jones Day's fees and expenses incurred for the period following the Effective Date, including the fees and expenses incurred in preparing and obtaining approval of this Application, without any further application to or approval by the Court. Accordingly, Jones Day does not request approval of its fees and expenses incurred in connection with this Application, but intends to seek payment of these amounts from the reorganized Debtors as previously authorized by the Court.

15. Jones Day has served this Application in accordance with the Confirmation Order, the Interim Compensation Orders and the Local Rules. Any objections to this Application must be in writing and filed with the Court and served upon the reorganized Debtors and Jones Day so as to be received no later than (a) 90 days after the Effective Date or (b) 30 days after the filing of this Application. If no timely objections are filed and served, Jones Day will request that Morris, Nichols, Arsht & Tunnell, the Debtors' Delaware counsel, file a certification of no objection, pursuant to the Court's Certification Procedures for Motions Filed on Negative Notice. The Court then may enter an order approving the compensation and reimbursement of expenses sought by the Application.

**Prior Fee Applications and Payments to Jones Day**

16. Prior to the Petition Date, the Debtors paid a retainer to Jones Day of \$1,775,000.00 (the "Retainer"). Jones Day has applied \$1,520,137.72 of the Retainer in satisfaction of fees and expenses incurred prior to the Petition Date. Jones Day is holding the remaining portion of the Retainer, \$254,862.28, as a postpetition retainer. Jones Day has included a provision in the proposed order accompanying this Application that would permit Jones Day to apply the remaining portion of the Retainer in partial satisfaction of the payment of fees and expenses that are allowed by the order.

17. Since the Petition Date, Jones Day has filed and served monthly applications for interim allowance of compensation and reimbursement of expenses (the "Prior Applications") as set forth on the schedule attached hereto as Exhibit H and incorporated herein by reference. The date of the Court's order approving each of the Prior Applications and the payments that Jones Day has received on account of the Prior Applications are set forth on Exhibit H. Jones Day has not received any other payments from any source for services rendered or to be rendered in connection with these chapter 11 cases.

### **SERVICES RENDERED BY JONES DAY**

18. As described in the attached Exhibit C, during the Thirtieth Interim Compensation Period, Jones Day professionals and paraprofessionals billed their time devoted to matters on behalf of the Debtors' estates to 23 distinct subject matter categories. Below is a summary of the activities performed by Jones Day professionals and paraprofessionals during the Thirtieth Interim Compensation Period, organized by project billing category. The descriptions of services performed during the prior Interim Compensation Periods are contained in the Prior Applications and the daily time records attached thereto.

#### **A. Case Administration — 49.90 hours — \$4,182.50**

19. Due to the size and number of the Debtors' bankruptcy cases, daily case administration matters necessarily required substantial services from Jones Day during the Thirtieth Interim Compensation Period. Jones Day professionals and paraprofessionals were involved in the following activities, among others, relating to the administration of these chapter 11 cases during the Thirtieth Interim Compensation Period:

- ! Conference calls with the Debtors' management and other professionals to discuss and review pending motions and applications, relief granted to various parties by the Court and other work in process.
- ! Systematic review and analysis of the pleadings filed during the Thirtieth Interim Compensation Period, incoming correspondence and other documents relating to these cases.
- ! Conducting a daily review of the Court's docket in these cases to identify newly filed pleadings and entered orders in order to remain current as to the status of these cases.
- ! Reviewing and commenting upon the monthly report prepared by the Monitor assigned in the Canadian Cases.

Jones Day believes that it has adopted procedures for the effective and efficient administration of these cases that have resulted in cost savings that inure to the direct benefit of the Debtors and their estates.

**B. Creditor Inquiries — .40 hours — \$80.00**

20. Jones Day lawyers devoted limited time during the Thirtieth Interim Compensation Period to responding to inquiries regarding the Debtors' plan of reorganization and the status of the Debtors' chapter 11 cases.

**C. Executory Contracts/Unexpired Leases — 52.70 hours — \$12,128.00**

21. In connection with implementing their long-term business plan, the Debtors continued the process of reviewing each of their executory contracts and unexpired leases. The Debtors' review of their executory contracts and unexpired leases is a particularly difficult task in these cases because of the number of Debtors, the number of locations at which they operate, the Debtors' historical acquisition program and other industry factors. For example, one or more of the Debtors are parties to hundreds of nonresidential real property leases in connection with the operation of funeral homes and cemeteries purchased under the Debtors' acquisition program.

22. During the Thirtieth Interim Compensation Period, Jones Day lawyers spent significant time continuing to assist the Debtors in the process of reviewing and analyzing, among other types of contracts, the large volume of unexpired leases of nonresidential real property, employment agreements, consulting agreements and other executory contracts and unexpired leases to which the Debtors are parties. In connection with this review process, Jones Day lawyers advised the Debtors regarding the appropriate treatment of these contracts under section 365 of the Bankruptcy Code and worked extensively with Yantek Consulting Group, the Debtors' executory contract consultant retained in these cases, with respect to the proposed assumption, assumption and assignment or rejection of approximately 4,000 contracts and leases pursuant to the Plan.

23. Jones Day lawyers devoted substantial time and effort to other executory contract matters pending in this Court, several of which were contested and others of which were resolved on a consensual or negotiated basis. The additional executory contract and unexpired lease matters on which Jones Day lawyers assisted the Debtors during the Thirtieth Interim Compensation Period included: (a) advising the Debtors regarding multiple motions to reject noncompetition, consulting and employment agreements with former owners of certain of the Debtors' businesses; (b) renegotiating the terms of certain executory contracts and unexpired leases to which the Debtors are party; (c) addressing the proposed assumption or rejection of leases with several vehicle and equipment lessors; (d) implementing a stipulation involving certain lease disputes with GE Capital Modular Space; and (e) addressing issues relating to the assumption, assumption and assignment or rejection of executory contracts and unexpired leases in connection with the Debtors' asset disposition program.

**D. Automatic Stay/Adequate Protection — 2.90 hours — \$694.00**

24. One or more of the Debtors are parties to hundreds of pending nonbankruptcy state and federal court actions. A number of the plaintiffs in these nonbankruptcy actions (the "Actions"), as well as parties seeking to commence Actions against the Debtors, have filed motions with the Court for relief from the automatic stay imposed by section 362 of the Bankruptcy Code. In addition, parties have filed motions for relief from stay to foreclose on assets or properties of the Debtors or to terminate contracts with the Debtors. During the Thirtieth Interim Compensation Period, Jones Day lawyers reviewed and analyzed the motions that were pending, advised the Debtors regarding appropriate responses and, in some instances, negotiated and drafted stipulations and agreed orders to resolve the motions. Specifically, Jones Day assisted the Debtors in: (a) negotiating the terms of, drafting and obtaining approval of a stipulation and agreed order resolving a motion for relief from the automatic stay filed by Levis J. St. Pierre; and (b) representing the Debtors in connection with a motion for relief from the automatic stay filed by the lead plaintiffs in the consolidated securities class action pending in the United States District Court for the Eastern District of Pennsylvania against certain former directors and officers of TLGI.

**E. Plan of Reorganization/Disclosure Statement — 2,041.30 hours — \$592,137.50**

25. As described above, a hearing to consider confirmation of the Plan (the "Confirmation Hearing") was held before the Court from November 27, 2001 through November 30, 2001 and continuing on December 4, 2001. On December 5, 2001, the Court entered

its order confirming the Plan. On January 2, 2002, the Plan became effective by its terms, and the reorganized Debtors emerged from bankruptcy.<sup>4</sup>

26. During the Thirtieth Interim Compensation Period, Jones Day played a central role in obtaining confirmation of the Plan and consummating the Restructuring Transactions contemplated by the Plan. In connection with confirmation of the Plan, Jones Day lawyers:

- (a) presented the Debtors' evidentiary case for confirmation;
- (b) presented argument in connection with motions filed by State Street Bank and Trust Company and Bankers Trust Company for the establishment of indemnity reserves under the Plan;
- (c) negotiated resolutions of, or presented argument in connection with, the approximately 28 objections to confirmation of the Plan;
- (d) prepared certifications electing the Debtors' treatment of non-CTA secured claims under the Plan;
- (e) negotiated a stipulation and agreed order regarding the procedure for addressing the approximately \$10 million dispute with the United States Trustee regarding the calculation of quarterly fees under 28 U.S.C. § 1930;
- (f) obtained orders approving certain modifications to the Plan;
- (g) obtained an order granting certain creditors authority to change their votes and accept the Plan; and
- (h) prepared, and negotiated with parties regarding, the form of order that ultimately was proposed to the Court to confirm the Plan.

27. Jones Day assisted the Debtors in the preparation of the numerous exhibits to the Plan and the Disclosure Statement with respect to, among many other matters, the Restructuring Transactions to be undertaken by the Debtors in connection with their reorganization. Jones Day lawyers also assisted the Debtors with the following plan-related issues and tasks during the Thirtieth Interim Compensation Period:

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<sup>4</sup> All but 23 of the Debtors emerged from bankruptcy on the Effective Date.

- ! advising the Debtors regarding numerous securities and tax law issues in relation to the plan of reorganization process;
- ! assisting the Debtors and their financial advisors in negotiating and drafting term sheets and definitive documents regarding the debt and equity securities to be issued under the Plan; and
- ! negotiating and drafting registration rights agreements governing the rights of persons or entities entitled to receive relatively large percentages of the outstanding shares of new common stock pursuant to distributions under the Plan.

28. Finally, Jones Day devoted significant time and effort to assisting the Debtors in connection with numerous matters in preparation for the Debtors' emergence from chapter 11 on the Effective Date, including those described elsewhere in this Application and the following:

- ! preparing the voluminous corporate and securities documents required in connection with consummation of the Restructuring Transactions;
- ! addressing the allocation of the reserve amounts for State Street under the Debtors' public notes and the fees and expenses of the principal CTA creditors and indenture trustees;
- ! advising the Debtors regarding the myriad Plan implementation issues arising during the Thirtieth Interim Compensation Period;
- ! advising the Debtors regarding disbursement issues and other post-Effective Date Plan implementation issues; and
- ! documenting the Debtors' disbursing agreement with Wells Fargo Bank, N.A., the Debtors' disbursing agent under the Plan.

**F. Use, Sale, Lease of Assets — 178.30 hours — \$31,198.00**

29. Prior to and since the commencement of these cases, the Debtors have been engaged in various stages of a substantial number of transactions involving certain assets of the Debtors. Some of these transactions involve the disposition of nonproductive or redundant assets or the acquisition of assets essential to the continued operation of one or more of the Debtors' funeral home or

cemetery business locations.<sup>5</sup> During the Thirtieth Interim Compensation Period, Jones Day continued to assist the Debtors in negotiating the terms of certain of these transactions and in seeking Court approval to enter into the transactions.

30. In particular, Jones Day assisted the Debtors in: (a) preparing documentation and necessary notices and filings with the Court regarding the purchase and sale of various assets; (b) addressing post-closing matters in connection with the sale by the Debtors to certain limited liability companies controlled by Craig R. Bush of the Debtors' economic interests in approximately 28 cemeteries in the State of Michigan; and (c) preparing a monthly summary, as required by the Court, of all of the transactions that qualify as "miscellaneous asset transactions" consummated during the preceding month.

**G. Cash Collateral/DIP Financing — 2,217.90 hours — \$492,187.70**

31. During the Thirtieth Interim Compensation Period, Jones Day devoted significant time and effort to assisting the Debtors with financing matters in connection with the Debtors' emergence from chapter 11. In particular, Jones Day devoted significant time and effort in this category to: (a) negotiating the terms of, and documenting, a \$75 million post-bankruptcy revolving credit facility (the "Exit Financing Facility") for the reorganized Debtors; (b) reviewing and analyzing numerous documents and issues in connection with the Exit Financing Facility; (c) conducting lien searches in preparation for the closing of the Exit Financing Facility; (d) facilitating the closing of the transactions contemplated by the Exit Financing Facility in connection with the Debtors' emergence from chapter 11

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<sup>5</sup> Time billed to this category by Jones Day professionals and paraprofessionals with respect to asset dispositions relates to assets that are being sold outside of the Debtors' asset disposition program described below.

on the Effective Date; and (e) negotiating the terms of, and preparing documentation regarding, the approximately \$655 million in public debt issued pursuant to the Plan.

**H. Claims Administration — 1,012.60 hours — \$196,286.20**

32. During the Thirtieth Interim Compensation Period, Jones Day lawyers continued to spend significant time and effort advising the Debtors regarding the claims process in these cases. Jones Day lawyers worked extensively with members of the claims teams established by the Debtors to continue to prepare omnibus objections to certain types of claims as well as identify claims more suitable for objection on an individualized basis.

33. In particular, Jones Day continued to be heavily involved in implementing the claims mediation process (the "Claims Mediation Process") approved by the Court for the resolution of unresolved claims arising from noncompetition and consulting agreements or from prepetition acquisition transactions. Jones Day lawyers and paraprofessionals prepared claims summaries for, reviewed and analyzed issues relating to, and prepared for and participated in claims mediation conferences scheduled with the Court-appointed mediator with respect to claims in the Claims Mediation Process.

34. Jones Day lawyers also devoted substantial effort to the preparation of objections to numerous former owner claims. Moreover, Jones Day assisted the Debtors in addressing the hundreds of responses by claimants to the Debtors' omnibus claims objections pending during the Thirtieth Interim Compensation Period.

35. Furthermore, Jones Day lawyers assisted the Debtors with respect to the following additional claims matters: (a) assisting the Debtors and their claims and noticing agent, Logan & Company, Inc. ("Logan"), in the ongoing claims administration process; (b) conducting research and preparing advice memoranda to the Debtors regarding numerous claims issues; (c) negotiating the terms

of, and drafting and obtaining Court approval of, motions for authority to enter into settlement agreements and stipulations and agreed orders resolving various claims; (d) conducting due diligence with respect to certain asserted secured claims; (e) preparing additional individual and omnibus objections to proofs of claim and identifying the proofs of claim to which objections should be filed; (f) obtaining Court approval of a stipulation and order resolving the \$9 million administrative expense claim asserted by Cemex Inc. in respect of a terminated transaction under the Debtors' asset disposition program, which settlement provided for a single \$150,000 payment by the Debtors; and (g) resolving the claims asserted by Thomas Hardy under an equity incentive agreement with the Debtors in connection with confirmation of the Plan.

36. In addition, Jones Day continued to advise the Debtors in connection with the implementation of the alternative dispute resolution procedures (the "ADR Procedures") that were approved by the Court in February 2000. Jones Day lawyers assisted the Debtors in monitoring the progress of claims through the various stages of the ADR Procedures and advised the Debtors regarding issues arising in the implementation of the procedures. Jones Day lawyers also assisted the Debtors in the identification of additional claims for possible submission to the ADR Procedures, as well as responding to the objections by certain claimants to the submission of their claims to the ADR Procedures.

**I. Court Hearings — 21.20 hours — \$6,266.00**

37. Jones Day's activities during the Thirtieth Interim Compensation Period included preparation for, and participation in, hearings before this Court on a variety of matters described elsewhere in this Application. In particular, Jones Day lawyers devoted time to preparing argument for and attending the Court's omnibus hearing held on December 20, 2001.

**J. General Corporate/Real Estate — 69.70 hours — \$19,946.00**

38. During the Thirtieth Interim Compensation Period, Jones Day lawyers advised the Debtors on a variety of general corporate and real estate issues, including the following:

- ! advising the Debtors with respect to general corporate governance matters both during the remaining pendency of these chapter 11 cases and following emergence from chapter 11;
- ! advising the Debtors with respect to a wide variety of securities law matters, including the preparation of public filings with the Securities and Exchange Commission;
- ! advising the Debtors with respect to stock option plans to be implemented in connection with consummation of the Plan; and
- ! preparing intercompany loan agreements, board resolutions and other documents for use by the Debtors.

**K. Schedules/SOFAs/U.S. Trustee Reports — 3.30 hours — \$837.00**

39. During the Thirtieth Interim Compensation Period, Jones Day devoted limited time to advising the Debtors with respect to United States Trustee reporting requirements.

**L. Employee Matters — 143.30 hours — \$31,984.00**

40. During the Thirtieth Interim Compensation Period, Jones Day lawyers advised the Debtors regarding a number of employee- and labor-related issues, including the following:

- ! obtaining a Court order directing Firststar Bank, N.A., as trustee, to transfer approximately \$6.5 million in "rabbi trust" assets to the reorganized Debtors on the effective date of the Plan;
- ! advising the Debtors regarding the withdrawal from multi-employer bargaining units with respect to certain Chicago-area funeral home businesses;
- ! negotiating the terms of a preparing a settlement agreement in connection with an age discrimination lawsuit commenced after the Petition Date by Patrick Landrith and two other former employees in an Illinois federal court;

- ! developing strategies with respect to labor relations matters across the United States;
- ! the Debtors' objections to, and arbitrations under the ADR Procedures regarding, certain claims being asserted by the Teamsters Local 727 and affiliated entities;
- ! the Debtors' efforts to renegotiate their contractual arrangements with certain of their employees and consultants; and
- ! drafting employment agreements and indemnification agreements for use by the Debtors.

**M. Tax Advice — 322.60 hours — \$98,953.00**

41. Jones Day lawyers devoted time in this category to advising the Debtors regarding a wide range of domestic and international tax issues potentially affecting the Debtors, including key tax issues bearing on the Debtors' restructuring efforts. Jones Day lawyers also devoted significant time and effort to reviewing and analyzing the federal and state tax implications of the Debtors' corporate consolidation efforts and the implementation of, and distributions pursuant to, the Plan. Furthermore, Jones Day advised the Debtors in connection with:

- ! the IRS's ongoing audit of the Debtors' tax returns for certain prepetition tax years;
- ! potential escheat claims of taxing authorities for unclaimed property;
- ! the application of the tax laws of Michigan and other jurisdictions to asset dispositions being conducted by the Debtors; and
- ! obtaining certificates of good standing and other qualifications necessary to consummate the Restructuring Transactions.

**N. Litigation/Adversary Proceedings — 788.40 hours — \$182,188.00**

42. Much of Jones Day's time in this category was devoted to various contested matters in this Court, as well as the continued representation of the Debtors in adversary proceedings in

this Court, or lawsuits or proceedings in other forums, commenced by or against the Debtors seeking to recover on asserted claims or to obtain injunctive or declaratory relief. Other disputes were resolved consensually before adversary proceedings were commenced.

43. Substantial litigation matters to which Jones Day devoted time during the Thirtieth Interim Compensation Period include: (a) representing the Debtors in connection with the approximately 35 adversary proceeding complaints filed on May 31, 2001; (b) representing the Debtors in connection with the arbitration of their dispute with the Hughes family regarding the boundaries of certain Texas cemetery property owned by the Debtors; (c) preparing a reply brief in support of the Debtor's cross-motion for summary judgment in a \$13.5 million preference adversary proceeding commenced by the Debtors against Cornerstone Family Services, Inc. ("Cornerstone"), Lawrence Miller and William Shane; (d) representing the Debtors in connection with their ongoing purchase price adjustment dispute with Cornerstone arising out of the parties' March 1999 purchase transaction with respect to cemeteries and funeral homes in the Northeastern United States; (e) representing the Debtors in connection with the adversary proceeding commenced by Thomas E. Hoffmeyer and certain other individuals for a declaratory judgment regarding the plaintiffs' asserted entitlement to an approximately \$7 million secured claim against the Debtors; (f) representing the Debtors in an adversary proceeding commenced by William Eldridge asserting certain trespass claims with respect to one of the Michigan cemetery properties in which the Debtors formerly held economic interests; (g) negotiating, and seeking and obtaining Court approval of, a settlement agreement resolving a lawsuit commenced by the Debtors against the Johnson Companies and certain affiliated parties; and (h) representing the Debtors in a number of additional nonbankruptcy litigation matters. Furthermore,

Jones Day lawyers continued to represent the Debtors at various stages of the proceedings with respect to a substantial number of the claims that have been included in the ADR Procedures.

**O. Regulatory and Trust Fund Matters — 35.80 hours — \$8,591.50**

44. Prior to the Petition Date, the Debtors concluded that continued good relations with the federal, state, provincial and municipal agencies that regulate the Debtors' funeral home and cemetery businesses would be critical to the success of these reorganization cases. During the Thirtieth Interim Compensation Period, Jones Day continued to work with the Debtors and these regulatory agencies to maintain open communications regarding these cases and the operation of the Debtors' businesses as debtors in possession. In particular, Jones Day assisted the Debtors by addressing specific regulatory issues raised by the State of Georgia with respect to ongoing trust account audits and by the State of Illinois with respect to trust accounting issues. In connection with the Illinois inquiry, Jones Day reviewed and analyzed Illinois law governing perpetual care trust funds.

**P. Professional Retention/Fee Issues — 25.10 hours — \$4,600.90**

45. Jones Day devoted time during the Thirtieth Interim Compensation Period to advising the Debtors regarding the retention of, and the fee applications filed by, certain of the Debtors' other professionals in these cases. Jones Day also devoted time to preparation of a supplemental disclosure regarding Jones Day's representation of parties in interest in matters unrelated to these chapter 11 cases.

**Q. Fee Application Preparation — 343.30 hours — \$66,133.40**

46. During the Thirtieth Interim Compensation Period, Jones Day devoted time to the preparation of their monthly applications for allowance of compensation and reimbursement of expenses for the months of August, September, October and November 2001. Jones Day

professionals and paraprofessionals spent substantial time and effort ensuring that these fee applications and the fee and expense detail submitted in connection therewith complied with the Bankruptcy Rules, the Local Rules and the Guidelines.

**R. Asset Disposition Program — 824.40 hours — \$164,832.90**

47. As the Court is aware, as part of the implementation of their strategic business plan, the Debtors undertook their asset disposition program (the "Disposition Program"), pursuant to which they have offered or are offering for sale approximately 371 of their funeral home and cemetery locations in packages or by individual locations. Jones Day lawyers and paraprofessionals have worked extensively with the Debtors and Dresdner Kleinwort Wasserstein, f/k/a Wasserstein Perella & Co., Inc. ("Wasserstein"), the Debtors' financial advisors, in connection with virtually all aspects of the Disposition Program. As noted above, the Disposition Program is particularly complex in light of the number of locations involved, the geographic dispersion of these locations throughout the United States and the state and territorial regulatory issues, including trusting obligations, that affect the sale of funeral home and cemetery businesses. As of the date of this Application, the Disposition Program has generated gross sale proceeds of approximately \$100 million.

48. During the Thirtieth Interim Compensation Period, Jones Day lawyers actively assisted the Debtors and Wasserstein in the continued implementation of the Disposition Program. Specifically, Jones Day continued to work with Wasserstein in assisting the Debtors in selecting bids for the properties included in the Disposition Program. Jones Day lawyers assisted the Debtors with respect to negotiations, due diligence and closing matters in relation to approximately 16 different dispositions that were in progress during the Thirtieth Interim Compensation Period. Jones Day also was heavily involved in all other aspects of these transactions, including documentation and obtaining

Court approval of the transactions. In all, these 16 transactions involve the disposition of approximately 89 funeral home and cemetery properties.

49. In addition, Jones Day lawyers assisted the Debtors with the following matters relating to the Disposition Program:

- ! preparing motions for approval of three Disposition Program transactions;
- ! responding to objections of interested parties to the Debtors' motions for approval of Disposition Program transactions;
- ! preparing asset purchase agreements, schedules and exhibits thereto and other documentation of the sale transactions;
- ! addressing issues raised by cemetery and funeral home regulatory authorities with respect to the sale transactions;
- ! reviewing hundreds of leases, employment agreements and other contracts to which the Debtors selling their assets under the Disposition Program are party to determine whether to assume, assume and assign or reject those leases and contracts in connection with Disposition Program transactions;
- ! advising the Debtors regarding state and local sales, use and transfer tax issues having an impact on transactions under the Disposition Program;
- ! managing four disposition closings involving 11 funeral home and cemetery locations; and
- ! coordinating two disposition auctions that resulted in an aggregate purchase price increase of \$3,315,000, or 301% of the initial stalking horse bids.

**S. Corporate Consolidation — 2,979.90 hours — \$487,370.50**

50. During the Thirtieth Interim Compensation Period, Jones Day lawyers devoted significant time and effort to completing the process of examining the regulatory, corporate and bankruptcy issues that would arise in connection with, and implementing, a corporate consolidation to simplify significantly the Debtors' current corporate structure. In all, the consolidation implemented as of the Petition Date reduced the number of affiliates of the reorganized company from more than 1,000

to approximately 200. In this regard, Jones Day lawyers worked with the Debtors to implement their consolidation plans in a manner that resulted in optimal federal, state and local tax treatment. Jones Day lawyers also advised the Debtors extensively regarding the merger and other corporate law requirements for the various jurisdictions bearing on the Debtors' corporate consolidation plan.

51. Jones Day also assisted the Debtors with respect to other matters bearing on the consolidation of the Debtors' corporate structure. Jones Day lawyers assisted the Debtors in gathering, analyzing and preparing the appropriate documentation to permit them to continue to conduct business as properly licensed entities in the states in which they intend to continue operations. Jones Day lawyers also reviewed the laws of various states regarding transfers of real estate and other assets within those states. In addition, Jones Day lawyers completed the drafting of merger agreements, articles and plans of merger, constituent documents and all other necessary documentation to consummate the consolidation process in connection with emergence from chapter 11. Moreover, Jones Day advised and assisted the Debtors in implementing the international aspects of the corporate consolidation process.

**T. Labor Negotiations and Advice — New York — 14.50 hours — \$4,504.00**

52. During the Thirtieth Interim Compensation Period, Jones Day continued to advise the Debtors with respect to labor and employment issues arising at certain of the Debtors' businesses operating in the State of New York. During the Thirtieth Interim Compensation Period, among other things, Jones Day lawyers conducted negotiations with a local affiliate of the Teamsters Union regarding entry into a collective bargaining agreement with respect to the Wagner Funeral Home and advised the Debtors regarding other New York labor relations matters.

**U. Des Plaines, City of v. Lauterberg & Oehler — 6.40 hours — \$2,816.00**

53. During the Thirtieth Interim Compensation Period, Jones Day represented the Debtors in connection with a condemnation action commenced by the City of Des Plaines, Illinois with respect to one of the Debtors' properties. Jones Day devoted time to reviewing and analyzing, and advising the Debtors regarding, issues arising in connection with this action.

**V. Trademark Application — 34.30 hours — \$8,003.00**

54. During the Thirtieth Interim Compensation Period, Jones Day lawyers devoted time to researching, reviewing and analyzing trademark issues, and reserving new trademarks and service marks, in the United States and Canada on behalf of the Debtors. Jones Day also provided legal advice to the Debtors regarding the development of the reorganized Debtors' new website.

**EXPENSES INCURRED BY JONES DAY**

55. Section 330 of the Bankruptcy Code authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a chapter 11 case. Accordingly, Jones Day seeks reimbursement for expenses ("Expenses") incurred in rendering services to the Debtors during the Thirtieth Interim Compensation Period and the Combined Compensation Period. The total amount of the Expenses is (a) \$398,711.09 for the Thirtieth Interim Compensation Period, as detailed in the attached Exhibit D; (b) \$3,061,452.49 for the Combined Compensation Period, as detailed in the attached Exhibit D for the Thirtieth Interim Compensation Period and in similar exhibits to the Prior Applications; and (c) \$50,000.00 in Estimated Expenses, as described above.

56. Jones Day maintains the following policies with respect to Expenses:

- ! No amortization of the cost of any investment, equipment or capital outlay is included in the Expenses. In addition, for those items or services that Jones Day justifiably purchased or contracted from a third party (such as outside

copy services), Jones Day seeks reimbursement only for the exact amount billed to Jones Day by the third party vendor and paid by Jones Day to the third party vendor.

- ! Photocopying by Jones Day was charged at \$.15 per page in accordance with the Court's prior rulings from the bench. To the extent practicable, Jones Day utilized less expensive, outside copying services.
- ! Telecopying by Jones Day was charged at \$.50 per page for local and \$1.00 per page for long distance outgoing transmissions. The long distance charge incorporates the telephone charge so that the estate is not billed twice for the telephone access on telecopies. No charge was imposed for incoming telecopies.
- ! Meals charged to the Debtors either: (a) were associated with out-of-town travel and generally did not exceed \$50 per person per day; or (b) were associated with meetings at Jones Day with the Debtors, the Creditors' Committee or other interested parties and their respective professionals.
- ! Local mileage was charged at the prevailing rate allowed by the IRS for tax deductions for mileage.
- ! Computer-assisted legal research was used only when time pressures rendered it impracticable to conduct such research manually or where the use of such computer services was determined to be more cost-efficient. Computer-assisted research is billed on a per-search and/or per-minute basis, depending upon the provider. Jones Day used computer research in the following instances in connection with certain internal legal memoranda and in preparation of pleadings filed with the Court:
  - case law research regarding particularly important issues; and
  - shepardization of cases cited in pleadings filed with the Court.

With computer assistance, the total shepardization and research time was greatly reduced. To complete this shepardizing and research manually would have taken significantly more lawyer or paraprofessional time, resulting in a greater cost to the Debtors' estates.

*Adjustments to Fees and Expenses*

57. Consistent with its own internal policies and to comply with the "reasonableness" requirements of section 330 of the Bankruptcy Code, Jones Day has reviewed its monthly service descriptions and expense detail and has determined that certain fees and Expenses should not be charged to the Debtors. This Application reflects these adjustments. The adjustments Jones Day has made result from: (a) the reduction (or elimination) of time in a lawyer's or paraprofessional's time entry when the time charged for the particular services exceeded the amount of time that, in Jones Day's estimation, it should have taken the lawyer or the paraprofessional to render such services; (b) the deletion of charges for duplicative or nonproductive services; (c) the elimination of fees for services provided by those professionals and paraprofessionals who incurred less than \$500 in fees during the Thirtieth Interim Compensation Period; and (d) the reduction of fees related to nonworking travel time by 50 percent.<sup>6</sup>

58. In total, for the Thirtieth Interim Compensation Period, Jones Day reviewed the service descriptions and expense detail that are included in Exhibits C and D, respectively, to this Application and determined that \$47,820.50 in fees (of which \$35,918.00 reflects a 50 percent reduction for nonworking travel time in accordance with the Local Rules) and \$26,930.84 in expenses should not be charged to the Debtors. Consequently, Jones Day's fee and expense payment request set forth in this Application for the Thirtieth Interim Compensation Period reflects a total adjustment of \$74,751.34. Similarly, for the Combined Compensation Period, Jones Day has voluntarily written off

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<sup>6</sup> Local Rule 2016-2(d)(viii) permits professionals to recover 50 percent of regular hourly rates in connection with time billed for travel where no work is performed. Jones Day does not seek to recover any fees related to nonworking travel time for Prior Interim Compensation Periods as to which Prior Applications were submitted before this local rule went into effect.

(a) \$1,225,281.00 of time charges (including \$846,779.35 of time charges relating to nonworking travel) and (b) expenses aggregating \$257,864.58.

### **RELEVANT LEGAL STANDARDS**

59. The professional services rendered by Jones Day during the Combined Compensation Period, including the Thirtieth Interim Compensation Period, required a high degree of professional competence and expertise so that the numerous issues requiring evaluation and response by the Debtors could be addressed with skill and dispatch. The provision of such services, therefore, has required the expenditure of substantial time and effort. Jones Day submits that the services rendered to the Debtors were performed efficiently, effectively and economically and that the results obtained have provided a significant benefit to the Debtors' estates and creditors.

#### **Standards for Allowance of Compensation**

60. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, for the payment of:

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

To grant a request for compensation pursuant to section 330 of the Bankruptcy Code, a court must find that the request is reasonable. The reasonableness of a compensation request is determined by taking into account the nature, extent and value of the services provided by the professional and the cost of comparable services in nonbankruptcy contexts. See Zolfo Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 258 (3d Cir. 1995); In re Busy Beaver Building Ctr., Inc., 19 F.3d 833, 849 (3d Cir.

1994). In the "market-driven approach" to compensation requests adopted by the Third Circuit, the primary focus of the inquiry is the cost of comparable services in nonbankruptcy contexts. See Zolfo Cooper, 50 F.3d at 258; see also Busy Beaver, 19 F.3d at 849-50 (recognizing that Congress intended as a matter of policy that bankruptcy practitioners should be compensated at the same rates as nonbankruptcy practitioners in order to attract and retain top caliber attorneys to the practice of bankruptcy law); In re Fine Paper Antitrust Litig., 751 F.2d 562, 583 (3d Cir. 1984) ("The value of an attorney's time generally is reflected in his normal billing rate."). This market-based approach permits flexibility in billing arrangements. Although the "lodestar" method (hourly rate multiplied by hours worked) is currently the most widely utilized method for compensation arrangements,<sup>7</sup> the Third Circuit recognizes that, if the market were to dictate some other form of compensation arrangement, section 330 of the Bankruptcy Code is flexible enough to accommodate requests for compensation on that basis. See Busy Beaver, 19 F.3d at 849 n.21, 856. Regardless of the manner in which compensation is calculated, however, "the baseline rule is for firms to receive their customary rates." Zolfo Cooper, 50 F.3d at 259.

61. The legislative history of section 330 of the Bankruptcy Code explains the need to provide for compensation comparable to other nonbankruptcy legal services:

The effect of [section 330] is to overrule . . . cases that require fees to be determined based on notions of conservation of the estate and economy of administration. If [those] cases were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who

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<sup>7</sup> Jones Day has utilized the lodestar method for calculating its compensation requests submitted in this Application. The strong presumption is that the lodestar product is reasonable under section 330 of the Bankruptcy Code. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986); In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991).

enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 329-30 (1977); see also 124 Cong. Rec. S17,408 (daily ed. Oct. 6, 1978). 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. H11,091-92 (daily ed. Sept. 28, 1978) (statement of Rep. Edwards) (emphasis added); see also Busy Beaver, 19 F.3d at 849-50 & n.22 (extensively addressing the legislative history of section 330 of the Bankruptcy Code); In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Serv. Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988).

62. Except as described above with respect to services provided in connection with the NAFTA Proceeding, the rates charged by Jones Day in this Application are the same rates charged by the Firm for comparable nonbankruptcy services, and application of the foregoing criteria amply justifies the compensation and expense reimbursement requested herein. Moreover, Jones Day's fees are not unusual given the complexity and size of the Debtors' chapter 11 cases, and they are commensurate with fees that Jones Day has been awarded in other chapter 11 cases and that other attorneys of comparable experience and expertise charge on a regular basis in chapter 11 cases. Jones Day's lodestar calculation is based upon hourly rates that are well within the range of rates that are charged by comparable firms in other large bankruptcy cases. Accordingly, Jones Day's lodestar calculation is reasonable under section 330 of the Bankruptcy Code. See Drexel Burnham Lambert, 133 B.R. at 22.

63. It is well accepted that rehabilitation rather than liquidation is in the national interest. The services of professionals such as Jones Day are necessary ingredients in fostering that national policy. Jones Day submits that its services contributed substantial benefit to the Debtors' estates and creditors and have furthered the Debtors' ultimate restructuring goals.

64. During the Thirtieth Interim Compensation Period and the Combined Compensation Period, Jones Day was required to furnish extensive services that often fully occupied the time of its attorneys, frequently to the preclusion of other Firm matters and clients. If these were not cases under the Bankruptcy Code, Jones Day would charge its client, and expect to receive on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally examined in bankruptcy cases, and based upon the factors

to be considered in accordance with sections 330 and 331 of the Bankruptcy Code, the results that were achieved fully substantiate charges in the amount requested.

**Standards for Allowance of Expenses**

65. Sections 330(a)(1)(B) of the Bankruptcy Code permits reimbursement for actual, necessary expenses. See Zolfo Cooper, 50 F.3d at 258. As noted above, Jones Day has already reviewed the Expenses comprehensively and eliminated those Expenses for the Compensation Period that it deemed "not necessary." Accordingly, those Expenses for which reimbursement is sought in this Application satisfy the standards set forth in section 330(a)(1)(B) of the Bankruptcy Code, the Guidelines and the Local Rules.

**SERVICES RENDERED BY JONES DAY  
ON BEHALF OF NONDEBTOR AFFILIATES**

66. As set forth in the Fifth Supplemental Disclosure With Respect to Application of Debtors and Debtors in Possession for an Order Authorizing Them to Retain and Employ Jones, Day, Reavis & Pogue as Counsel (the "Fifth Supplemental Disclosure") filed by Jones Day on or about October 31, 2000, Jones Day is representing Security Plan Industrial Insurance Company, f/k/a Security Industrial Insurance Company ("Security Industrial"), a nondebtor insurance affiliate of the Debtors, in certain litigation matters.

67. Prior to the Petition Date, Jones Day's fees and expenses incurred in connection with its representation of nondebtor affiliates of the Debtors were paid through the Loewen companies' centralized cash management system. Consequently, either TLGI or LGII paid these fees and expenses on behalf of these affiliates and then was reimbursed by the affiliates for these payments through adjustments in the applicable intercompany accounts. Since the Petition Date, the cash

management systems of the Debtors' nondebtor affiliates have become freestanding and are no longer integrated with the Debtors' centralized cash management system. Accordingly, Jones Day's postpetition fees and expenses incurred in connection with its representation of Security Industrial have been and will be paid directly by Security Industrial. Therefore, these postpetition fees and expenses are not being paid through the Debtors' postpetition cash management system.

68. Because Security Industrial is not a Debtor in these chapter 11 cases, Jones Day's postpetition representation of these entities is not within the scope of Jones Day's retention as counsel to the Debtors under the Retention Order. Jones Day indicated in the Fifth Supplemental Disclosure that it would provide the Court with the following information in respect of the representations of Security Industrial: (a) a general description of all postpetition services rendered by Jones Day on behalf of Security Industrial; (b) the amounts of fees and expenses incurred in connection with these services; and (c) the amounts of all payments received by Jones Day on account of such fees and expenses. This information is set forth below for the services rendered during the Thirtieth Interim Compensation Period.

69. Jones Day represents Security Industrial in several putative class actions filed in various Louisiana and Georgia federal and state courts alleging racial discrimination in the sale of certain insurance policies. Nine cases were commenced against Security Industrial prior to the Thirtieth Interim Compensation Period and have been consolidated by the Judicial Panel on Multidistrict Litigation in the United States District Court for the Eastern District of Louisiana: Alexander v. Security Industrial Ins. Co.; Beverly v. Union National Life Ins. Co.; Cothran v. Security Industrial Ins. Co.; Smith v. Security Industrial Ins. Co.; Sutherland v. United Ins. Co. of America; Frank v. Union National Life Ins. Co.; Prince v. United Insurance Co. of America; Fletcher v. United Insurance Co. of America; and Jackson

v. Security Plan Life Insurance Co. In four of these cases, Beverly, Sutherland, Prince and Fletcher, the plaintiffs originally commenced the proceedings in Louisiana federal courts asserting claims under 42 U.S.C. §§ 1981 and 1982. Four other cases, Alexander, Cothran, Smith and Frank, were filed in Louisiana state courts alleging very similar claims under various provisions of Louisiana law. The Jackson case was commenced during November 2000 in the United States District Court for the District of Georgia. Security Industrial removed each of the Alexander, Cothran, Smith and Frank cases to federal courts in Louisiana. As described below, final approval of a class-action settlement in a tenth case pending in Louisiana state court, Hall v. Security Plan Life Insurance Co., in February 2002 has resolved the claims against Security Industrial in these nine cases.

70. Unitrin, Inc., a defendant in the Beverly, Cothran and Sutherland cases, filed a motion with the Judicial Panel on Multidistrict Litigation ("MDL") near the end of September 2000 to transfer those cases and other cases involving Unitrin to the Eastern District of Louisiana for coordinated pretrial proceedings. The Alexander, Fletcher, Frank, Prince and Smith cases were noticed as "tag-along" cases for consolidation under the MDL proceeding. The MDL panel held a hearing on and granted Unitrin's motion prior to the Thirtieth Interim Compensation Period. Accordingly, each of the cases commenced in Louisiana have been transferred to the Eastern District of Louisiana. Subsequent to the Thirtieth Interim Compensation Period, the Jackson case also was transferred as a "tag-along" case to the Eastern District of Louisiana.

71. A tenth class-action case, Hall v. Security Plan Life Insurance Co., has been filed against Security Industrial in state court in Ascension Parish, Louisiana (the "Louisiana State Court"), alleging discrimination claims similar to the claims alleged in the nine consolidated federal cases. Security Industrial has engaged in settlement discussions with the attorneys representing the Hall

plaintiffs and recently entered into a proposed class action settlement that will provide agreed-upon amounts of compensation to class members in exchange for a release of all pending or future claims they may have against Security Industrial, including the race discrimination claims at issue in the nine pending federal class action lawsuits. In October 2001, the parties involved in the negotiations submitted a settlement agreement to the Louisiana State Court and requested that the court give preliminary approval to the class action settlement and authorize the parties to provide notice of the settlement to class members. On October 15, 2001, the Louisiana State Court gave preliminary approval to the Hall settlement, certified a class for settlement purposes only and authorized the parties to provide notice of the settlement to potential class members. The parties provided notice of the settlement to class members by mail, newspaper and radio. On January 9, 2002, the Louisiana State Court held an evidentiary hearing to determine whether to give final approval to the class-action settlement as fair, reasonable and adequate. The court heard testimony from the class representative, the plaintiffs' counsel, representatives of Security Industrial and others about the fairness of the settlement. While certain plaintiffs filed objections to the settlement, those objections were resolved prior to the hearing and no other objections to the settlement were entered. On February 1, 2002, the Louisiana State Court entered an order giving final approval to the class-action settlement. This settlement will resolve the claims in the Hall case, as well as the claims against Security Industrial in the cases that are subject to the MDL proceeding in the federal court in Louisiana.

72. The services provided to Security Industrial by Jones Day during the Thirtieth Interim Compensation Period constituted general litigation services relating to these cases filed against Security Industrial, including the following:

! reviewing the pleadings filed in the lawsuits;

- ! consulting with Louisiana counsel and other parties in developing case strategies;
- ! reviewing and analyzing issues and advising Security Industrial regarding certain strategic matters relating to the cases against Security Industrial;
- ! participating in meetings and negotiations with the plaintiffs' counsel concerning the cases against Security Industrial; and
- ! preparing for the January 9, 2002 fairness hearing and approval of class-action settlement in Hall v. Security Plan Life Ins. Co.

73. During the Thirtieth Interim Compensation Period, Jones Day professionals and paraprofessionals devoted 71.20 hours to these matters for Security Industrial and, in connection with those services, incurred legal fees in the amount of \$22,718.00 and expenses in the amount of \$668.94. Simultaneously with the filing of this Application, Jones Day submitted an invoice to Security Industrial for these legal fees and expenses. A copy of the summary page of this invoice is attached hereto as Exhibit I.

#### **NOTICE**

74. No trustee or examiner has been appointed in these chapter 11 cases. Pursuant to the Second Interim Compensation Order and the Confirmation Order, notice of this Application has been given to (a) the Debtors, (b) the United States Trustee, (c) the co-chairs of the Creditors' Committee, (d) counsel to the Creditors' Committee, (e) counsel to First Union National Bank and (f) all parties that have filed requests for notices of pleadings in these cases; provided, however, that only the Notice Parties (as such term is defined in the Second Interim Compensation Order) have been served with a copy of this Application and its exhibits. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

## CONCLUSION

75. Except as described above with respect to services provided in connection with the NAFTA Proceeding, the fees and Expenses requested herein by Jones Day are based on its ordinary and customary hourly rates and disbursement charges during the Thirtieth Interim Compensation Period for work performed for other clients on both bankruptcy- and nonbankruptcy-related matters.

### Available Funds

76. Based on the financial information provided by the Debtors to date, Jones Day believes that the reorganized Debtors have sufficient cash on hand to pay the fees and Expenses requested herein immediately upon their approval by the Court.

### Review by the Debtors

77. The reorganized Debtors have been provided with a copy of this Application. As of the date hereof, the reorganized Debtors have not reviewed or approved the Application.

### No Sharing of Compensation

78. No agreement or understanding exists between Jones Day or any third person for the sharing of compensation, except as permitted by section 504(b) of the Bankruptcy Code and Bankruptcy Rule 2016 with respect to sharing of compensation between and among partners in Jones Day. All the services for which compensation is requested in this Application were rendered at the request of and solely on behalf of the Debtors.

79. All of the services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Debtors, and not on behalf of any other entity.

The Certification of Charles M. Oellermann in accordance with the Guidelines and the Local Rules is attached hereto as Exhibit J.

WHEREFORE, Jones Day respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit K: (i) granting this Application; (ii) allowing on an interim basis compensation of \$2,451,838.10 for services rendered by Jones Day in connection with these chapter 11 cases during the Thirtieth Interim Compensation Period; (iii) allowing on an interim basis reimbursement of Expenses of \$398,711.09 incurred in connection with Jones Day's services during the Thirtieth Interim Compensation Period; (iv) allowing on a final basis compensation of \$32,120,878.80 for services rendered by Jones Day in connection with these chapter 11 cases during the Combined Compensation Period; (v) allowing on a final basis reimbursement of Expenses of \$3,061,452.49 incurred in connection with Jones Day's services during the Combined Compensation Period; (vi) allowing on a final basis \$50,000.00 of Estimated Expenses, subject to the terms and procedures described herein; (vii) authorizing and directing the Debtors to pay to Jones Day (A) the unpaid balance of all approved fees and Expenses, plus (B) the Estimated Expenses, after application of the remaining portions of the Retainer, on the terms described herein; and (viii) granting such other and further relief as the Court may deem proper.

Dated: February 28, 2002

Respectfully submitted,

/s/ Charles M. Oellermann

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