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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
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DREIER LLP,	:	Case No. 08-15051 (SMB)
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	:	
Debtor.	:	
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FIRST INTERIM APPLICATION OF DIAMOND MCCARTHY LLP, COUNSEL FOR SHEILA M. GOWAN, THE CHAPTER 11 TRUSTEE, FOR ALLOWANCE OF INTERIM COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FOR THE PERIOD DECEMBER 30, 2008 THROUGH MARCH 31, 2009

To: THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Diamond McCarthy LLP (“DM”), counsel to Sheila M. Gowan (the “Trustee”), the chapter 11 Trustee of Dreier LLP (“Dreier LLP” or the “Debtor”), respectfully submits this first interim application (the “Application”) pursuant to sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”) for allowance and payment of compensation for professional fees and expenses incurred in connection with DM’s representation of the Trustee in this case for the period December 30, 2009 through March 31, 2009 (the “Compensation Period”), and in support of its Application, respectfully represents as follows:

SYNOPSIS

1. Prior to commencement of this chapter 11 case, Marc Dreier (“Dreier”) was the sole equity partner of Dreier LLP, a law firm with over 300 employees with offices in New York, Connecticut, and Pennsylvania. The firm’s principal office, located in New York City, occupied 10 floors of prime office space on Park Avenue.¹ All indications are that Dreier LLP’s attorneys and employees had no idea that Dreier was allegedly using Dreier LLP as an instrumentality to further his alleged criminal conduct.

2. As such, Dreier’s arrest on December 7, 2008 was akin to dropping a neutron bomb on Dreier LLP – all the trappings of an ostensibly thriving legal practice were intact, but all of the legal and support staff disappeared overnight, all ordinary business transactions were interrupted, law enforcement entered the premises to search for documents and other materials, and a court appointed Receiver (defined below) took over daily management of Dreier LLP while awaiting the appointment of a bankruptcy trustee. In these circumstances, stepping in to take charge of and stabilize the estate presented enormous challenges to the Trustee, her team of DM attorneys and her financial advisors.

3. Although much work remains to be done, significant progress was made during the Compensation Period to commence a wind-down of the Debtor’s operations, put in place processes to maximize value for the accounts receivables on the Debtor’s books and records, and negotiate agreements with the Debtor’s secured and unsecured creditors to allow the Trustee access to sufficient resources to complete her assigned duties. The following is a summary of what has been accomplished since the Trustee’s appointment with the integral assistance and involvement of DM:

¹ Marc Dreier was also the sole equity partner of several affiliated firms which together employed an additional 100 attorneys and other professionals.

- a. Negotiation of Cash Collateral Authority: DM aggressively negotiated with Wachovia Bank and the Creditors' Committee for cash collateral authority to maximize the value of the Debtor's estate. As part of those hard fought negotiations, DM professionals poured over countless cash collateral budgets, compiled and produced large amounts of data to both Wachovia and the Creditors' Committee, and attended scores of in-person and telephonic negotiation sessions with counsel for Wachovia and the Creditors' Committee to reach resolution. Absent those successful efforts to obtain authority for the Trustee to use cash collateral, accounts receivables would have been left uncollected, the remaining wind-down Dreier LLP employees put in place by the Receiver would have been unpaid, critical documents and electronic records would have been left unsecured, and the ability to bring avoidance actions could have been seriously harmed or lost entirely.

- b. Preservation of Accounts Receivables Value: On the Petition Date, the Debtor's books and records showed approximately \$21 million in billed but uncollected accounts receivables and an additional \$54.4 million in unbilled work in process. The Receiver took no action to bill or recover these receivables during the period that he was in charge of the estate. Accordingly, one of the first tasks confronting DM attorneys was to work closely with the Debtor's remaining accounting staff to expeditiously analyze, prepare, and send invoices to clients seeking immediate payment of over \$12 million in outstanding accounts receivable. In part as a result of those efforts, former clients paid a total of \$3.4 million (as of April 30, 2009) to the estate for pre-petition legal services.

- c. Rejection of Burdensome Office Leases: The Debtor was party to leases for thousands of square feet of office space in New York, Stamford, and Pittsburgh, and was the guarantor of affiliate office leases in California. The leases resulted in huge monthly expenses that the estate did not need to incur, and indeed could not pay. DM attorneys moved swiftly to reject each of the office leases to which the Debtor was a counter party and, in the process, saved the estate approximately \$1,000,000 in monthly rent expenses. DM attorneys also worked closely with the Dreier Receiver and the Chapter 7 Trustee to coordinate closure of all affiliate offices and rejection of related leases in California.

- d. Liquidation of Personal Property: DM professionals undertook an aggressive effort to liquidate the Debtor's furniture, fixtures, and equipment located in all offices. Those efforts resulted in the Trustee's retention of ClearBid Liquidators and the sale of the Debtor's assets, generating over \$400,000 in proceeds for the estate. By moving quickly to liquidate non-essential assets, DM assisted the Trustee in maximizing the return to the Debtor's estate while, at the same time, limiting exposure to the Debtor's landlords for continued occupancy of unnecessary and costly office space.

- e. Working with the Creditors' Committee: Throughout the Compensation Period, DM professionals met and spoke and coordinated with counsel for the Creditors' Committee on an almost daily basis concerning administration of the estate. Because of those efforts, disputes over the Trustee's administration of the estate have been virtually nonexistent, and the Trustee and the Creditors' Committee have reached agreement on virtually every significant matter that has been brought to the Court.

- f. Progress to Chapter 11 Plan: In addition to meeting regularly with the Creditors' Committee, during the Compensation Period, DM professionals met often with attorneys from the Office of the United States Attorney for the Southern District of New York and the Northeast Regional Office of the United States Securities and Exchange Commission to address issues relating to the complicated handling and division of estate assets between the Debtor's chapter 11 estate and the criminal forfeiture and restitution proceedings pursued by the government. These discussions are important to formulating a chapter 11 plan, particularly given the overlap between the creditors of the Debtor's estate and the crime victims who may participate in the restitution proceedings. While resolution of the issues has yet to be achieved, the parties continue to engage in a constructive dialogue.

- g. Commencement of Dreier Chapter 7 Case: During their early due diligence, the Trustee and DM learned that Marc Dreier granted significant pre-petition liens on estate assets. To preserve the ability to avoid those liens, the Trustee and DM professionals met with counsel for the Creditors' Committee, the chair of the Creditors' Committee,

Wachovia, the United States Government, and the United State Trustee's office and spearheaded the effort to coordinate the filing of an involuntary chapter 7 case for Marc Dreier, individually. DM professionals quickly prepared all of the necessary pleadings which were filed on January 26, 2009 – within 90 days after the transfers in question.

4. The above is a sampling of the myriad necessary tasks DM performed during the Compensation Period. A team of DM professionals worked virtually full-time on this chapter 11 case to meet the pressing issues that arose in the months immediately following the commencement of this case. DM and the Trustee's financial advisors provided those services for the benefit of the estate and its creditors even though there was no guarantee that they would be compensated. Indeed, even after voluntarily writing off over \$100,000 in fees and \$18,000 in expenses incurred during the Compensation Period, DM seeks immediate payment of only a portion of the fees that it incurred during the Compensation Period in order to ensure that the Trustee has sufficient funds to continue administration of this estate.

5. As discussed below, DM's charges for the services requested by the Trustee during the Compensation Period are reasonable. DM therefore respectfully requests the Court to grant this Application and allow interim compensation for professional services and reimbursement for expenses as described herein.

BACKGROUND

6. On December 4, 2008, in *United States of America v. Marc S. Dreier* ("Dreier"), Case No. 08 Mag. 2676 (JSR) (the "Criminal Case"), the United States Attorney for the Southern District of New York filed a criminal complaint charging Dreier with securities and wire fraud violations (and, in a superseding indictment, money laundering) and the case was assigned to

United States District Court Judge Jed S. Rakoff. Federal authorities arrested Dreier on December 7, 2008. Prior to his arrest, Dreier was the sole equity partner of Dreier LLP.

7. On December 8, 2008, in *SEC v. Dreier*, Case No. 08-civ-10617 (MGC) (the “SEC Case”), the United States Securities and Exchange Commission charged Dreier with violations of the securities laws by selling, and offering to sell, fictitious notes purportedly issued by a New York City-based real estate development company. Mark F. Pomerantz (the “Receiver”) was appointed as receiver of Dreier’s assets, including Dreier’s interests in the Debtor and certain of the Debtor’s affiliated entities, by United States District Judge Miriam Cedarbaum.

8. On December 16, 2008, (the “Petition Date”) the Receiver, on behalf of Dreier LLP, commenced a voluntary case under chapter 11 the Bankruptcy Code (the “LLP Chapter 11 Case”). In the absence of any effective management following Dreier’s arrest and incarceration, the Receiver operated the Debtor’s business and managed the Debtor’s assets pending appointment of a chapter 11 trustee.²

9. On December 30, 2008, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Trustee as the chapter 11 trustee for the Debtor’s estate, which appointment was approved by this Court on January 9, 2009. The Trustee has obtained a bond in the amount of \$2,000,000 satisfactory to the U.S. Trustee. Accordingly, the Trustee qualified in accordance with section 322 of the Bankruptcy Code and is now serving as chapter 11 trustee for the Debtor’s chapter 11 estate pursuant to section 1104 of the Bankruptcy Code.

² The Receivership was dissolved by order of the District Court dated April 3, 2009. The Receiver and his counsel were awarded \$1,518,042.64 in fees and expenses for work performed during the period December 10, 2008 through March 4, 2009, by order of the District Court dated April 22, 2009.

10. On January 8, 2009, the U.S. Trustee appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”) in the LLP Chapter 11 Case.

11. On January 26, 2009, with the consent of Judge Cedarbaum and other interested parties, the Trustee, together with other petitioning creditors, filed an involuntary chapter 7 petition against Dreier (the “Dreier Chapter 7 Case”). Both the LLP Chapter 11 Case and the Dreier Chapter 7 Case are pending before Stuart M. Bernstein, the Chief Bankruptcy Judge for the Southern District of New York.

12. Following extensive negotiations between the Trustee, the Creditors’ Committee, and Wachovia Bank, N.A. (“Wachovia”), on February 19, 2009, the Court entered the Stipulation and Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001 (1) Authorizing Trustee’s Use of Cash Collateral, (2) Providing Adequate Protection, and (3) Granting Related Relief [Dkt. No. 141] (the “First Cash Collateral Stipulation and Order”) setting forth terms by which the Debtor would be permitted to use Wachovia’s cash collateral through March 31, 2009. The First Cash Collateral Stipulation and Order, which governed the Trustee’s use of cash collateral through March 31, 2009, provides that up to \$450,000 of the Trustee’s counsel’s fees and expenses are carved out from Wachovia’s lien claims. Specifically, the Stipulation and Order provides that Wachovia’s liens:

[S]hall be subject to and subordinate to the following:

- (a) the fees and expenses of the Office of the United States Trustee and the Clerk of the United States Bankruptcy Court for the Southern District of New York;
- (b) the allowed professional fees and expenses incurred by the professionals retained by the Trustee in an amount not to exceed (i) \$150,000 per month for the allowed professional fees and expenses of the Trustee’s counsel; and (ii)

\$100,000 per month for the allowed professional fees and expenses of the Trustee's account/financial advisor before the use of cash collateral is terminated; and

- (c) the allowed professional fees and expenses incurred by the statutory committee of unsecured creditors in an amount not to exceed \$75,000 per month incurred before the use of cash collateral is terminated.

First Cash Collateral Stipulation and Order, ¶10. As discussed below, through this Application DM seeks allowance of \$823,657.00 in fees and \$21,134.13 in expenses incurred during the Compensation Period, and an award of interim compensation for the first \$450,000 in fees and expenses incurred in representing the Trustee through March 31, 2009 pursuant to the First Cash Collateral Stipulation and Order.

DM RETENTION

13. On January 19, 2009, the Trustee filed a Notice of Presentment and Application Pursuant to Sections 327 and 330 of the Bankruptcy Code for Authorization to Retain Diamond McCarthy LLP as Counsel, *Nunc Pro Tunc* to December 30, 2008 (the "Retention Application"). On February 3, 2009, the Court entered an Order Pursuant to Sections 327 and 330 Authorizing the Retention of Diamond McCarthy LLP as Counsel for the Chapter 11 Trustee, *nunc pro tunc* to December 30, 2008.

COMPENSATION REQUESTED

14. This Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on April 19, 1995 (the "Local Guidelines") and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996 (the "UST Guidelines").

15. In connection with making this Application, and in recognition of the harm to the estate and its creditors caused by Dreier’s criminal conduct, DM voluntarily adjusted its fees and expenses consistent with the exercise of billing judgment. More particularly, DM has voluntarily reduced its fees by more than \$100,000, and written off expenses of more than \$18,000. After deducting those voluntary write-offs, DM attorneys and paraprofessionals expended a total of 2010.9 hours on the matters described in detail herein for which partial interim compensation is requested.

16. DM seeks allowance of interim compensation for professional services rendered to, or at the request of the Trustee during the Compensation Period, in the aggregate amount of \$823,657.00 (the “DM Compensation Period Fees”), and for reimbursement of expenses incurred in connection with the rendition of such services in the aggregate amount of \$21,134.13 (the “DM Compensation Period Expenses”).

17. Pursuant to the First Cash Collateral Stipulation and Order, DM seeks an award of partial payment of the DM Compensation Period Fees in amount of \$428,865.87, and full payment of the DM Compensation Period Expenses in the amount of \$21,134.13, for a total of \$450,000.00, as follows:

	Total Amount Incurred	Requested Interim Payment	Holdback
Professional Fees	\$823,657.00	\$428,865.87	\$394,791.13
Expenses	\$21,134.13	\$21,134.13	\$0.00
Total	\$844,791.13	\$450,000.00	\$394,791.13

DM makes this Application without prejudice to its rights to seek payment for the remainder of the reasonable and necessary fees incurred during the Compensation Period in the amount of \$394,791.13 (the “Holdback”) at a later date.

18. All services performed and expenses incurred by DM for which allowance is requested were performed or incurred for and on behalf of the Trustee and have been beneficial to the Debtor's estate. DM has made no agreements with the Trustee or any other person or entity for compensation or reimbursement. DM has not agreed to share compensation or reimbursement awarded in this chapter 11 case with any other person or entity.

19. As of the filing of this Application, DM has not received any payment for professional services rendered or for expenses incurred during the Compensation Period.

TIME AND EXPENSE RECORDS

20. As required by the Local Guidelines, a certification regarding compliance with same is attached hereto as Exhibit A.

21. Annexed hereto as Exhibit B is a schedule listing the DM professionals and paraprofessionals who have performed services in these chapter 11 cases during the Compensation Period, the capacities in which each such individual is employed by DM, the hourly billing rate charged by DM for services performed by such individual, the aggregate number of hours expended in this matter and fees billed therefore, and the year in which each professional was first licensed to practice law, if applicable.

22. Annexed hereto as Exhibit C is a schedule summarizing the categories of expenses for which DM is seeking reimbursement and the total amount for each such expense category for which DM is seeking reimbursement during the Compensation Period.

23. Annexed hereto as Exhibit D is a summary of DM's time records billed during the Compensation Period, including detail reflecting time recorded under various DM internal matter numbers.

24. Annexed hereto as Exhibit E is DM's detailed monthly time records reflecting the time spent by DM attorneys and paraprofessionals in connection with the prosecution of the Debtor's chapter 11 cases and related matters during the Compensation Period.

25. Annexed hereto as Exhibit F is a detailed listing of all expenses incurred in connection with the prosecution of the Debtors' chapter 11 cases and related matters during the Compensation Period.

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

DETAILED DESCRIPTION OF SERVICES

27. The following is a more detailed description of the professional services rendered by DM during the Compensation Period. This summary is organized in accordance with DM's internal accounting and billing systems, and in compliance with the U.S. Trustee Guidelines and the Local Guidelines. Although DM has made every effort to segregate its time by category, by virtue of constantly evolving developments in this case, there may be some unavoidable overlap of description. Accordingly, the Court is respectfully requested to consider the following discussion of services rendered in its entirety in evaluating the reasonableness of the fees requested by DM

A. Case Administration (Matter 11)³

28. When the Trustee's appointment was approved by this Court, this case had already been on file for over 3 weeks and daily administrative and operational matters were

³ Matter Numbers correspond to internal DM billing codes.

being handled by the Receiver. Moreover, even before this case was filed, the Receiver had taken steps to gather information about Dreier LLP's operations, secure physical assets, and commence the process of closing Dreier LLP's multiple offices. As a result, the Trustee and DM faced a significant "learning curve" to get up to speed in the early days of this case. Climbing that learning curve required extensive discussions and collaboration with the Receiver and the U.S. Government, the review of large volumes of documents and information concerning the Debtor's pre-petition law practice, and the establishment of systems and procedures to handle day-to-day operations of this high-profile case.

B. Asset Analysis and Recovery (Matter 12)

29. Other than its fixed assets (furniture, fixtures, and equipment) and affirmative litigation claims, the Debtor's primary assets consist of accounts receivables for legal work performed for clients prior to the Petition Date (the "Accounts Receivable"). The Accounts Receivable fall within one of three types: (i) hourly fee engagements; (ii) contingency fee engagements; and (iii) bankruptcy engagements. With respect to hourly fee engagements, the Debtor employed a "pre-bill" system whereby client bills were prepared by the accounting department, delivered to the billing attorney for review and mark-up, returned to the accounting department for revisions and, ultimately, sent back to the billing partner for delivery to the client. This process often took several weeks or longer to complete, and there were many "special circumstances" where billing was handled differently for certain clients. The Debtor typically did not issue monthly bills for contingency and bankruptcy fee engagements, but instead billed the client at the conclusion of the engagement.

Hourly Fee Receivables

30. At the time of the Trustee's appointment on December 30, 2008, hourly fee engagement bills for the months of November 2008 and December 2008 (to the extent the Dreier attorneys billed time that month) had neither been reviewed by the billing attorneys (almost all of whom had left the Firm practically immediately after Dreier's arrest and prior to the appointment of the Trustee) nor mailed to clients. The Trustee and DM were thus faced with the immediate and substantial task of learning the Debtor's pre-petition billing systems, preparing bills for all unbilled hourly fee engagements, and responding to literally hundreds of telephone calls, electronic mail messages, and letters from former clients and their newly retained counsel concerning disputes about the bills they had received.

31. Responding to those inquiries required DM attorneys to extensively research the client's billing arrangements, including interviewing, on multiple occasions, former Dreier LLP attorneys and Dreier. In an effort to streamline the process of resolving disputed hourly fee receivables, the Trustee asked DM to prepare and file papers seeking to establish protocols for the settlement of accounts receivables. DM prepared and filed those papers on February 27, 2009, and on March 13, 2009 the Court entered an order approving those protocols.

Contingency Fee Receivables

32. Counsel also spent substantial time in analyzing and handling the Debtor's interests in several significant contingency fee engagements. Specifically, the Trustee asked DM to (1) identify all contingency fee cases that were handled by Debtor at the time of the filing (the Debtor had no centrally located file identifying the status of all such cases); (2) to the extent possible, locate and analyze all related contingency fee agreements; (3) contact the client to confirm that they had retained successor counsel to substitute for Dreier LLP; (4) contact that

new counsel (in most cases, former lawyers of the Debtor) to protect the Debtor's rights in any recovery, and arrange for the filing of substitution of counsel papers; and (5) monitor the status of the various contingency cases to insure that the Debtor's interests are protected. Several of these contingency fee receivables have required DM attorneys to devote particular attention and time to ensure that the Debtor's interests are protected, including:

a. Judith Regan litigation: The Debtor represented Judith Regan in 2007 in litigation against HarperCollins and its corporate parent, News Corporation. Shortly after the Debtor filed that litigation on her behalf, Regan terminated the Debtor (and co-counsel) without cause in an attempt to defeat their right to a contingency fee, and then entered into a substantial settlement of all of her claims against defendants. The Debtor thereafter sued Ms. Regan to collect the full amount of its contingency fee interest, and that case was pending on the Petition Date (the "Regan Litigation"). Following Dreier's arrest, Ms. Regan moved to dismiss the Regan Litigation, and also sought sanctions against the Debtor arising from the Debtor's alleged pre-petition breach of a confidentiality agreement with Ms. Regan. DM attorneys have spent a significant amount of time responding to Ms. Regan's motions and representing the Trustee in protecting the Debtor's significant interests in the Regan Litigation.

b. Argentine bond litigation. Pre-petition, Dreier LLP represented approximately 500 plaintiffs in cases pending in the Southern District of New York arising out of the government of Argentina's default on bonds. Judgments in favor of the plaintiffs had been entered in virtually all of the cases, but the government of Argentina has thus far refused to acknowledge or satisfy those judgments. If the judgments are ultimately satisfied, the Debtor will recognize significant value for its contingency fee interests in those cases. DM counsel has thus spent substantial time in in-person and telephonic discussions with Argentine co-counsel,

and potential new counsel, trying to devise a mechanism to secure the rights of Dreier LLP clients to appropriate representation as well as secure the right of the Debtor to compensation for its substantial work in the litigation prior to the Petition Date.⁴

Bankruptcy Fee Receivables

33. DM attorneys also spent substantial time on cases in which the Debtor was counsel to clients involved in other bankruptcy cases. Not unlike the activity with respect to contingency fee matters, DM first had to identify all cases in which the Debtor had acted as counsel in bankruptcy matters. At least one of those cases, *In re The 1031 Tax Group, LLC, et al.*, has presented significant challenges to the Trustee and DM requiring multiple conferences with counsel for *The 1031 Tax Group* and the former Dreier partners responsible for the representation, as well as the development of a thorough fact based understanding of the underlying representation. As with the contingency fee matters, DM had to follow up with successor counsel in all cases to insure that clients' rights were fully protected. DM also spent substantial time to insure that the Debtor's rights to its fees are fully protected.

C. Asset Disposition (Matter 13)

34. In addition to its interests in the Accounts Receivable, the Debtor also maintained numerous operating and escrow accounts that required significant DM attorney time to analyze. The Debtor also owned large amounts of furniture, fixtures, and equipment in its New York and Stamford, CT offices that had to be liquidated. Following is a summary of the services DM provided to the Trustee with respect to the analysis and disposition of these two sets of assets.

⁴ Those efforts ultimately were successful, and the Trustee's motion seeking Court approval to execute a substitution agreement that will preserve the estate's significant interest in those cases is currently pending.

35. The Debtor's Escrow Accounts: As an operating law firm, Dreier LLP maintained several escrow accounts for the deposit of client funds. Through investigations conducted prior to and after Dreier's arrest, it now appears that Dreier directed that funds in some of those escrow accounts be transferred to other accounts that he controlled. Even before her official appointment, the Trustee and DM were contacted by former Dreier LLP clients seeking return of funds that they maintained had been deposited into those escrow accounts. One of those former clients, DiNoto Real Estate Investments, Inc., filed a motion seeking to compel the Trustee to return \$200,000 that they had deposited pre-petition in a Dreier LLP escrow account. Responding to those inquiries, the DiNoto motion, and a proceeding initiated by the Trustee to return certain clearly identifiable and segregated escrow funds required DM to undertake a significant factual and legal analysis of the manner in which Dreier LLP's escrow accounts were handled pre-petition.

36. Furniture, Fixtures and Equipment: Prior to the Petition Date, Dreier LLP had three law offices located in New York, NY, Stamford, CT, and Pittsburgh, PA. Virtually all the furniture and fixtures (including computers and telephone systems) were owned by the Debtor. Shortly after her appointment, the Trustee determined that those offices should be quickly closed and their contents liquidated. As discussed in connection with matter 16 below, the Trustee retained ClearBid as liquidator, and DM spent substantial time working with ClearBid in preparation for the auction and on related matters, including dealing with matters related to a superseding indictment filed by the government in the Dreier criminal case on the eve of the ClearBid auction which raised issues regarding the Debtor's ownership of the assets that ClearBid was engaged to liquidate.

D. Claims Administration and Objections (Matter 14)

37. The Trustee and DM realized early in the case that, due to expiration of the Debtor's claims made malpractice policy, it would be necessary to establish an early claims bar date to require all former Dreier LLP clients to present any malpractice claims before the policy expired. DM professionals thus quickly prepared the necessary papers asking the Court to establish a March 31 bar date for all claims, and oversaw worldwide publication and service of the resulting Bar Date Order.

E. Retention of Professionals (Matter 16)

38. Shortly after appointment, the Trustee directed DM to prepare the necessary motion papers seeking permission for her to hire DM as her counsel in the LLP Chapter 11 Case. DM prepared the appropriate retention application and related papers seeking authorization for the Trustee to retain DM as her counsel pursuant to sections 327 and 330 of the Bankruptcy Code *nunc pro tunc* to December 30, 2008 [Dkt. No. 57] (the "DM Retention Application"). The DM Retention Application was filed on January 19, 2009. On February 3, 2009, the Court granted the DM Retention Application and entered an order approving the retention of Applicant as counsel for the Trustee, *nunc pro tunc* to December 30, 2009 [Dkt. No. 84].

39. Shortly after being formally retained as her counsel, the Trustee asked DM to assist her in identifying and retaining financial advisors. Thereafter, DM and the Trustee conducted multiple interviews of prospective financial advisors. Ultimately, the Trustee elected to engage Development Specialists, Inc. ("DSI") as her financial advisor, and thereafter asked DM to prepare the necessary papers to obtain formal authorization for her to retain DSI. DM prepared those papers, which were filed on February 17, 2009 [Dkt. No. 129] (the "DSI Retention Application"). On February 25, 2009, the Court granted the DSI Retention

Application and entered an order approving the retention of DSI as counsel for the chapter 11 Trustee, *nunc pro tunc* to February 2, 2009.

40. In February, the Trustee determined that it was necessary to liquidate substantially all of the Debtors' furniture and fixtures at its New York and Stamford offices that were not being directly used in wind-down activities. The Trustee asked DM to assist her in identifying and interviewing liquidators who would be appropriate for that task. DM attorneys conducted several such interviews, and held discussions with both the Creditors' Committee and Wachovia concerning selection of an appropriate liquidator. Ultimately, the Trustee elected to engage ClearBid Capital ("ClearBid") as her sales agent/auctioneer to liquidate the Debtor's personal property, and asked DM to prepare the necessary papers seeking authorization to formally retain ClearBid. DM prepared and filed the necessary papers on March 3, 2009, and negotiated extensively with the US Trustee to resolve her concerns about the same. Ultimately, the Court entered an order on March 20, 2009, authorizing the Trustee to retain ClearBid.

F. Cash Collateral/DIP (Matter 18)

41. Even prior to the Petition Date, the United States Government had seized many Dreier LLP assets that were allegedly purchased with proceeds from Marc Dreier's alleged crimes, in large part with funds deposited in Dreier LLP escrow and operating accounts. Those seizures left the Trustee with very few fixed assets that could be liquidated to generate immediate cash to operate the estate. Moreover, Wachovia was Dreier LLP's primary pre-petition lender and, through pre-petition security agreements, held floating liens over essentially all of the Debtor's cash, accounts receivable, and personal property. The only way the Trustee could obtain funds to continue collecting accounts receivables, to commence wind-down

operations of the Debtor's various offices, and to pay other expenses necessary to administer the estate was to obtain cash collateral authority from Wachovia.

42. The Trustee directed DM to commence negotiations with Wachovia for the immediate use of cash collateral. DM, working with the Trustee and DSI, prepared a 3 month cash collateral budget and used that budget as a basis to commence discussions with Wachovia. The Trustee's negotiations with Wachovia lasted several weeks, and were made more complex and difficult by virtue of Wachovia's refusal to allow cash collateral to be used for any tasks that did not directly result in a benefit to Wachovia, *i.e.*, that would preserve its security. Ultimately, after weeks of intense negotiations, the Trustee, Wachovia, and the Creditors' Committee signed the First Cash Collateral Stipulation and Order which was ultimately approved by the Court. Under the authority granted by that Stipulation and Order, the Trustee was able to substantially close the Debtor's offices and operations, liquidate much of the Debtor's personal property, and continue the process of collecting Accounts Receivables. Absent DM's efforts in negotiating Wachovia's agreement to allow the use of cash collateral, this case most likely would have been converted to a chapter 7 liquidation.

G. Schedules/Statements (Matter 19)

43. The sudden demise of the Debtor due to Dreier's alleged fraud and the related criminal proceedings, made the preparation of the Schedules and Statement of Financial Affairs (the "SOFAs") a particularly difficult task. For example, the U.S. Government had obtained preliminary orders of seizure against certain assets which appeared to have been acquired, at least in part, with Dreier LLP funds. Analyzing those assets and accurately recording them on the Debtor's SOFAs required substantial efforts from both DM and the Trustee's financial advisors, DSI. There were also hundreds of millions of dollars in transfers of estate property to

third parties in the relevant chapter 5 avoidance action look-back periods which required DM and DSI to expend significant amounts of time ensuring that those transfers were accurately and appropriately identified on the SOFAs.

H. Executory Contracts/Leases (Matter 20)

44. On the Petition Date, the Debtor was party to real estate leases for offices in New York, Stamford, CT and Pittsburgh, PA. The New York lease *alone* represented an expense of over \$800,000 per month in rent obligations for which the Debtor had little or no cash to pay. Accordingly, rejecting those leases and negotiating an orderly withdrawal from the leased space was a critical task to be performed early in this case. DM attorneys negotiated at length with the Debtor's landlords to quickly exit the leased premises, and worked out arrangements to ensure that the Debtor's chapter 11 estate would not have to satisfy any resulting rejection or administrative expense claims until after confirmation of a chapter 11 plan.

45. DM attorneys also prepared papers to reject the Debtor's leases of office equipment such as fax machines and copiers. On February 23, 2009, DM filed the Trustee's motion seeking rejection of those equipment leases and, on March 13, 2009, the Court granted the rejection *nunc pro tunc* to January 14, 2009.

I. Relief from Stay (Matter 22)

46. DM professionals researched and responded to Daimler Chrysler's lift stay motion seeking Court authority to repossess a vehicle leased by one of Dreier's associates, which was ultimately resolved by stipulation.

J. Business Operations (Matter 23)

47. In the immediate aftermath of the filing, many business operations required immediate attention by the Trustee for which she regularly requested DM's assistance. For example, during the Compensation Period DM:

- Communicated with former employees regarding their ongoing obligations to the Debtor, their personal and client files, compensation, access issues, malpractice coverage, health coverage and billing issues;
- Communicated with former clients and or their counsel regarding files and access to files;
- Advised the Trustee concerning issues relating to malpractice coverage, including understanding the relevant provisions of the policy, providing notice regarding malpractice coverage to former employees; placing the insurer on notice of potential malpractice claims; and communicated with representatives of the insurer, its counsel and the Debtor's insurance broker;
- Addressed a host of issues relating to the California offices of Debtor affiliates which, although not directly controlled by the Debtor, were parties to office leases that had been guaranteed by Dreier LLP and whose operating expenses were funded in part by Dreier LLP;
- Developed responses for inquiries from former Dreier LLP clients for audit letter responses, and from various corporate services to the Debtor regarding third parties;
- Advised the Trustee concerning whether lawyers on the Debtor's skeleton staff could be deemed engaged in the practice of law;
- Advised the Trustee concerning appropriate handling of the Debtor's computerized accounting systems and requests from former Dreier LLP attorneys for access to same;
- Advised the Trustee and the Debtor's remaining staff concerning a myriad of issues relating to file maintenance (both files in storage and files on premises); personnel, payroll and health insurance issues.

K. Meeting of Creditors (Matter 27)

48. DM represented the Trustee at the January 8, 2009 organizational meeting of creditors conducted by the office of the United States Trustee. DM also represented the Trustee

at the 341 Meeting of Creditors on March 9, 2009 at which the Trustee, while under oath, responded to questions by the Assistant United States Trustee as well as creditors.

49. During the days following the formation of the Creditors Committee, DM held numerous meetings with the counsel for the Creditors' Committee, as well as the Chair of the Creditors' Committee, concerning the general financial history of the Debtor, plans for the wind-down of Dreier LLP, and the Trustee's intentions with respect to the bankruptcy process. In addition to those in-person meetings, DM had scores of telephone conversations with counsel for the Creditors' Committee, and responded to numerous requests for information from the Creditors' Committee, including complying with formal written requests which required the Trustee to produce extensive documentation. DM consulted with Creditors' Committee counsel and, in some instances, the Committee Chair, in connection with all important legal issues which have arisen in the case and, where appropriate, has attempted to obtain the support of the Creditors' Committee for all significant decisions made by the Trustee in this case.

L. Non-Bankruptcy Litigation (Matter 30)

50. During the Compensation Period, DM professionals attended to various non-bankruptcy litigation matters on behalf of the Trustee. The most time-consuming matter was Civil Action No. 103251/08, *Dreier LLP and Redniss & Associates LLC v. Judith Regan*, in New York Supreme Court (N.Y. County) (the "Regan Case"). As earlier stated, the Regan Case is a fee collection dispute begun by Dreier LLP prior to the bankruptcy. Dreier LLP and Redniss & Associates LLC ("Redniss") represented Judith Regan in an employment and defamation dispute against HarperCollins, Inc., and other defendants pursuant to a contingency fee agreement. Ms. Regan terminated Dreier LLP and Redniss shortly before settling her claims. She then refused to pay Dreier LLP and Redniss based on the contingency fee agreed to in their engagement letter.

Dreier LLP and Redniss alleged in the Regan Case that they were entitled to enforce the contingency fee agreement or to a *quantum meruit* award equal to the amount due under the contingency fee agreement.

51. Diamond McCarthy also incurred time representing the Trustee with respect to a variety of additional non-bankruptcy litigation matters, including: (i) the formal withdrawal from the representation of former Dreier LLP clients; (ii) correspondence with malpractice liability insurers; (iii) substitutions of counsel; (iv) research regarding the collectability of contingency fee awards despite the bankruptcy of Dreier LLP; (v) attendance to and analysis of fee recovery actions (in addition to the Regan Case) begun prior to the bankruptcy of Dreier LLP; a Second Circuit appeal involving Dreier LLP (*In re Kalikow*); (vi) analysis of the strength of contingency fee matters previously litigated by Dreier LLP; and (vii) responding to government and civil subpoenas.

M. Pre-Petition Security Interests (Matter 32)

52. In connection with ongoing negotiations with Wachovia concerning the use of cash collateral, DM assisted and advised the Trustee in analyzing whether Wachovia's asserted security interests had been properly perfected. To that end, DM analyzed the various credit agreements, security agreements, letter of credit application and related security agreement and UCC filings and consulted with the Creditors' Committee. DM also undertook a factual investigation of Wachovia's assertions, including reviewing the Debtor's bank account statements to confirm that cash was held at the same Wachovia entity that was the lender to the Debtor. The results of these DM investigations and analyses were instrumental in allowing the Trustee to negotiate the First Cash Collateral Stipulation and Order with Wachovia.⁵

⁵ The First Cash Collateral Stipulation and Order allowed the estate to spend up to \$50,000 to investigate Wachovia's lien claims during the Compensation Period. As reflected on

N. Forfeiture (Matter 36)

53. DM professionals advised the Trustee on issues related to the United States Government seizure and efforts to forfeit property which it claims was purchased with the proceeds of Dreier's alleged crimes, including many assets that would otherwise be property of the Dreier LLP chapter 11 estate. This analysis became even more critical when the Government issued a superseding indictment which purported to forfeit *all* of Dreier LLP assets, including each asset currently being administered under this Court's chapter 11 jurisdiction. DM professionals thoroughly researched applicable law and prepared a letter brief to the three judge panel (consisting of U.S. District Court Judges for the Southern District of New York Jed S. Rakoff and Miriam Cedarbaum and Chief Bankruptcy Judge for the Southern District of New York, Stuart M. Bernstein) that was convened to consider the impact of the superseding indictment on these chapter 11 proceedings, the result of which was the Government's confirmation on the record that it was not seeking forfeiture of all of Dreier LLP's assets, including receivables, auction proceeds, and the proceeds from any chapter 5 avoidance actions recoveries.

STANDARDS FOR ALLOWANCE OF COMPENSATION

54. Diamond McCarthy submits that for the reasons set forth in detail above, the professional services rendered by DM on behalf of the Trustee and in the interest of Debtor during the First Interim Period were necessary and reasonable.

55. Section 330 of the Bankruptcy Code authorizes compensation for reimbursement of expenses of professionals in cases arising under the Bankruptcy Code and provides, in pertinent part, as follows:

Exhibit D hereto, DM billed the Trustee \$12,362.00 in fees during the Compensation Period on this task.

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to section 326, 328 and 329, the court may reward to ... a professional person employed under section 327 or 1103

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

(B) reimbursement of actual, necessary expenses.

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

- the time spent on such services;
- the rates charged for such services;
- whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- whether the compensation is reasonable based on the customary compensation charged by comparable skilled practitioners in cases other than cases under this title.

11 U.S.C. §330(a).

57. In considering an application for compensation made by a professional, the initial inquiry is whether the services for which compensation are sought were necessary. *See, e.g., In re Keene Corp.*, 205 B.R. 690,696 (S.D.N.Y. 1997); *In re Harshbarger*, 205 B.R. 109 (S.D. Ohio

1996); *In re Lederman Enterprises, Inc.*, 997 F.2d 1321 (10th Cir. 1993); *In re International Coins & Currency, Inc.*, 22 B.R. 127 (D. Vt. 1982). The term “necessary services” has been interpreted by the majority of courts, including this Court, to signify services that were reasonably likely to, or resulted in, a benefit to the estate. *In re Lederman Enterprises, Inc.*, 997 F.2d 1321, 1323 (10th Cir. 1993); *In re Engel*, 190 B.R. 206, 209 (Bankr. S.D.N.Y. 1995); *In re Keene Corp.*, 205 B.R. at 696, *quoting* 3 Collier on Bankruptcy ¶330.03[3], at 330-26 (“the services at issue must at least provide the estate with ‘an opportunity commensurate with cost’ to be compellable.”)

58. In calculating whether the fees sought are reasonable, Courts determine the lodestar amount. See, *Pennsylvania v. Delaware Valley Citizen’s Council For Clean Air*, 483 U.S. 711, at 725-26 (1987); *In re United States Football League v. National Football League*, 887 F. 2d 408, 413 (2d Cir. 1989), cert. denied 493 U.S. 1071 (1990); *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) (“It is now well settled that the ‘lodestar’ method of fee calculation ... is the method to be used to determine a ‘reasonable’ attorney fee in all the federal courts, including the bankruptcy courts.”); *In re Matter of Cena’s Fine Furniture, Inc.*, 109 B.R. 575, 581 (E.D.N.Y. 1990). The lodestar amount represents “the number of hours reasonably worked on a case multiplied by a reasonable hourly rate.” *Wells v. Bowen*, 855 F. 2d 37, 43 (2d Cir. 1988).

59. In determining the proper allowance of compensation for professionals, a court generally looks to: (a) the time and labor required; (b) the novelty and difficulty of questions involved; (c) the professionals’ requisite skills; (d) customary fees for the services rendered; (e) whether the fee is fixed or contingent; (f) the results obtained; (g) the nature and length of the professional relationship; (h) awards in similar cases; and (i) the standing, ability and expertise

of the professionals seeking compensation. See, e.g., *In the Matter of Cena's Fine Furniture, Inc.*, 109, B.R. 575, 580-581 (E.D.N.Y. 1990); *In re Wonder Corp of America*, 82 B.R. 186, 191 (D. Conn. 1988). As discussed below, a review of these factors demonstrates that DM should be awarded the interim compensation requested.

Time and Labor Required

60. The time and labor required to represent the Trustee and the interests of Debtor during the Compensation Period have been significant. The matters handled by DM and the efforts undertaken by DM in the representation of the Trustee and Debtor are fully set forth above in the time entries annexed hereto.

Skills Requisite to Perform Legal Services, Experience, Reputation and Ability of Diamond McCarthy

61. DM called upon the expertise of attorneys in various practice areas to assist in representing the Trustee. The depth and experience of DM's legal expertise, combined with its ability to staff this engagement efficiently, has brought significant value and results to the Debtor's chapter 11 estate.

The Customary Fee

62. The billing rates for DM attorneys who have worked on this engagement are consistent with – and in some cases substantially *lower* – than rates charged by other New York law firms with similar chapter 11 experience and expertise. The compensation DM seeks is not unusual or extraordinary given the size and complexity of Debtor's business, the benefits conferred on the Debtor's estate, and the time expended. Allowance of compensation in the amount requested would result in a blended hourly rate for attorneys of \$440.37 (based on 1,807.1 recorded attorney hours at DM regular billing rates in effect at the time of the performance of services). The rates DM charged for the services rendered by its professionals

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

Whether Fee is Fixed or Contingent

63. DM bills the Trustee on an hourly basis and seeks payment of those hourly fees contingent upon approval by the Court.

Results Obtained

64. As discussed above, DM's advice and representation during the Compensation Period allowed the Trustee to reach an agreement with Wachovia for the use of cash collateral, all the while acting swiftly and efficiently to stabilize the winding-down of the Debtor's operations, effect an orderly termination of the Debtor's remaining employees, and recognize value for the Accounts Receivables. Those results were by no means guaranteed at the outset of this chapter 11 case, when it looked like conversion to a chapter 7 liquidation was very likely due to the Debtor's inability to use its cash on hand.

Nature and Length of Professional Relationship

65. DM has represented the Trustee from their retention in December 2008 through the current date.

Awards in Similar Cases

66. The compensation DM seeks herein is comparable to the fees and expenses awarded to debtors' and trustees' counsel in numerous other chapter 11 cases by this and other bankruptcy courts.

Professional Standing, Ability and Expertise of Diamond McCarthy Attorneys

67. DM compiled a team of senior bankruptcy and bankruptcy litigation attorneys to oversee this engagement, and has used the resources of associate attorneys where appropriate to increase efficiency and reduce costs. DM has a national and international reputation for representing the trustees of liquidating trusts and foreign liquidators in chapter 11 cases that involve the intersection of criminal and bankruptcy law. For example, DM was counsel to the joint liquidators of certain offshore funds in the Bayou Hedge Fund Group chapter 11 case in New York which involved a \$450 million Ponzi scheme that employed a fictitious accounting firm to audit the funds' financial statements and conceal investor losses. DM is currently counsel to the Court-appointed trustee of the liquidating trust in the USA Commercial Mortgage Company chapter 11 case in the pursuit of scores of avoidance actions arising out of a massive mortgage fraud and Ponzi scheme in Nevada, California and Arizona. DM is also currently counsel to the Cayman Island Joint Official Liquidators in the Parmalat multidistrict litigations pending before U.S. District Court Judge for the Southern District of New York, Louis A. Kaplan, pursuing claims against several entities arising out of what *The Wall Street Journal* described as the "biggest corporate fraud in Europe".

MEMORANDUM OF LAW

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

NOTICE

69. Notice of this Application has been given in accordance with the Guidelines. The Trustee submits that such notice is adequate and sufficient.

CONCLUSION

WHEREFORE Diamond McCarthy respectfully requests entry of an order: (i) allowing \$823,657.00 in fees for professional services rendered by DM during the Compensation Period; (ii) awarding DM interim compensation in the amount of \$428,865.87 in fees for professional services rendered during the Compensation Period; (iii) allowing and awarding reimbursement for actual and necessary expenses incurred by DM during the Compensation Period in the amount of \$21,134.13; and (iv) granting DM such other and further relief as is just.

Dated: July 10, 2009
New York, New York

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