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PROPOSED ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML
)	Jointly Administered
Debtors.)	
_____)	Hearing Date and Time: To Be Set

**AFFIDAVIT OF DIANNE DAVENPORT IN CONNECTION WITH
THE DEBTORS' MOTION FOR AN ORDER AUTHORIZING
PAYMENT OF PREPETITION WAGES, COMPENSATION
AND EMPLOYEE BENEFITS AND GRANTING RELATED RELIEF**

STATE OF TEXAS)
) ss.:
COUNTY OF TARRANT)

Dianne Davenport, being duly sworn, deposes and says, under the penalty of perjury:

1. I am the Vice President of Human Resources at Mirant Corporation (“Mirant”), located at 1155 Perimeter Center West, Atlanta, Georgia, one of the above-captioned Debtors (the “Debtors”).

2. Unless otherwise stated herein, I have personal knowledge of the facts stated herein.

3. I am filing this Affidavit in support of the Motion (the “Motion”) of Mirant Corporation and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, for entry of an Order Authorizing Payment of Prepetition Wages, Compensation and Employee Benefits and Granting Related Relief.

CATEGORIES OF PREPETITION EMPLOYEE OBLIGATIONS

A. Wages, Salaries, and Other Compensation

4. Substantially, all of the Debtors’ U.S. employees are employed centrally at Mirant Services, LLC (“Services”). Depending upon position and location, the Debtors’ employees are paid either weekly or bi-weekly in arrears, current through the date that is one week prior to the applicable pay day. The Debtors’ gross weekly payroll for all employees averages approximately \$4.9 million in the aggregate.¹ Approximately 3.0% of the Debtors’ payroll costs represent compensation paid to “Senior Executives”² with the remaining approximately 97% representing compensation to rank and file employees.³

¹ Included in the payroll amount is a cost of living allowance for certain employees who are relocated to metropolitan areas in the United States where the cost of living is higher than Atlanta. In each payroll period seven employees receive in the aggregate approximately \$15,000.

² Solely for the purposes of the Motion, a “Senior Executive” is defined as an employee (i) whose base compensation is equal to or in excess of \$180,000 in annual base salary and (ii) is an officer of Mirant Corporation or one of its major subsidiaries. The Debtors estimate that, as of the Petition Date, there are approximately 36 Senior Executives.

³ In addition to wages and salary, a material component of an employee’s compensation consists of paid vacation time. Employees receive between two to six weeks of paid vacation annually depending upon the employee’s position and length of service. Prior to the Petition Date, employees were permitted to receive cash in lieu of paid leave under certain circumstances. The Debtors intend to permit employees to continue to use accrued but unused vacation time in the

5. To alleviate hardship and undue stress on the Debtors' employees, on Monday, July 14, the Debtors issued a special payroll (the "Special Payroll") under which substantially all amounts owed to employees on account of accrued wages, salaries, and employee reimbursements were paid to the Debtors' employees by either the issuance of a payroll check, expense check or through direct deposit into the employees' bank accounts. Accordingly, with the exception of a limited number of payroll checks that may remain in float and certain accrued but unpaid overtime,⁴ the Debtors are current with respect to compensation due for prepetition services performed by the Debtors' employees. Except for a small portion of the Debtors' employees who are paid weekly, for most of the Debtors' employees, the Special Payroll represented six days of their accrued wages and compensation. Specifically, the Special Payroll consisted of \$4,406,810 on account of wages and salaries and \$248,860 on account of Employee Reimbursements as that term is defined herein. The Debtors recognize that while the vast majority of the Debtors' employees did not receive more than the \$4,650 that is afforded a priority under section 507(a) of the Bankruptcy Code on account of the Special Payroll arising from wages and salaries, approximately 32 employees received wages and salaries exceeding this statutory limitation.⁵ As soon as is reasonably practicable after the Debtors reconcile their payroll accounts, the Debtors will provide promptly to the United States Trustee a list identifying each employee who received salaries and wages post-petition greater than \$4,650 on account of services rendered prior to the Petition Date.

ordinary course; however, the Debtors will pay cash in lieu of paid leave only upon termination of an employee consistent with prior practice and applicable state law.

⁴ Approximately 86.6% of the Debtors' employees are paid through direct deposit.

⁵ For example, the base salary of Marce Fuller, President and Chief Executive Officer of Mirant Corporation, is \$800,000. Thus, Ms. Fuller received approximately \$18,461 on account of the

6. Although I believe that most payroll checks issued prepetition have been presented to, and honored by, the applicable drawee banks, I recognize that certain employees may fail to cash or deposit their paychecks in a timely manner. Accordingly, it is possible that some checks remain in float post-petition for which banks will not honor absent explicit authority and direction to do so. While I do not believe material amounts, if any, remain owing for past payroll periods, to the extent any such amounts remain owing, I submit that the administrative costs resulting from determining such information with precision substantially exceed any benefit to be gained from such exercise. As most Senior Executives are paid by direct deposit, substantially all checks in float represent compensation to rank and file employees. Accordingly, the Debtors request the authority to honor payroll checks, in float but not presented or otherwise honored timely for payment.⁶

7. Additionally, the Special Payroll was based upon the Debtors' estimate of amounts owed to employees on account of salaries and wages for the period associated with the Special Payroll (the "Special Payroll Period"). Because the Special Payroll was an estimate of amounts owed employees for the Special Payroll Period, certain employees may have received less than what they were actually owed for the Special Payroll Period. In large part, this is because certain employees worked overtime or additional shifts, and which additional pay associated with such overtime or additional shifts was not accounted for in the Special Payroll. Accordingly, the Debtors request authority to true up and pay such amounts owed on account of deficiencies in the Special Payroll.

issuance of the Special Payroll as it relates to salary. Ms. Fuller received \$25,549 in total Special Payroll including Employee Reimbursements.

⁶ To the extent any payroll checks are dishonored, the Debtors will issue new checks.

B. Incentive Compensation

8. Eligible employees⁷ are entitled to participate in the Mirant Corporation Omnibus Incentive Compensation Plan (the “Incentive Plan”). The objectives of the Incentive Plan are to optimize the profitability and growth of the Debtors through annual and long-term incentives which are consistent with the Debtors’ goals and which link the personal interests of the participating employees to those of the Debtors’ stockholders; i.e., to provide such employees with an incentive for excellence in individual performance; and to promote teamwork among participants. Additionally, the Incentive Plan is designed to provide flexibility to the Debtors in its ability to motivate, attract, and retain the services of participating employees who make significant contributions to the Debtors’ success and to allow employees to share in the success of the Debtors. The awards under the Incentive Plan are granted based upon certain performance measures relating to the financial success of the Debtors. The awards are targeted at the median of general industry incentive plans.

9. In prior years, with certain exceptions related to energy traders and marketers as discussed below, awards under the Incentive Plan were paid annually in March, on varying dates. In March, 2003, Mirant Corp. awarded and paid through Services for the 2002 Incentive Plan year, cash awards of \$30,825,695 in short term incentive awards to 2,688 employees, \$5,513,846 in long term incentives to 1637 employees, and \$6,800,000 in restricted stock paid to 39 employees.

10. In contrast to prior years, for 2003, in an effort to boost retention efforts related to the Debtors’ employee base during these troubling times, short-term incentives accruing under the Incentive Plan will be paid in two installments for eligible non-union

⁷ All employees are technically eligible to participate in the Incentive Plan, however, energy traders and marketers participate in their own incentive plan as described herein.

employees. The first installment (the “Mid-Year Payout”) becomes due and owing on September 12, 2003 and is based upon the individual employee’s performance at mid-year review. The Mid-Year Payout does not consider nor compensate the employee based upon the performance of the Debtors, and thus is anticipated to be only 24% of the payout under the Incentive Plan for 2003. The second installment under the Incentive Plan for 2003 which includes the other half of the individual component and the total corporate component, becomes due and owing in March, 2004. I estimate that the Mid-Year Payout will amount to \$7.8M to be paid to approximately 1600 non-union employees.⁸ I estimate that under the Incentive Plan, in March, 2004, an additional \$25M in short term incentive awards will be owed to approximately 1760 union and non-union employees, and \$15M in long-term incentives will be owed to approximately 1600 employees.

11. Payment of amounts owed under the Incentive Plan is crucial to maintaining the morale of the Debtors’ employees during these troubling times. I believe it is necessary and appropriate to obtain authority to pay such amounts as such payment will contribute greatly to the Debtors’ stabilization of operations and the Debtors’ ultimate success in their reorganization efforts as employee turnover will be reduced as employees will be properly incentivized. As is evident from the above numbers, the amounts the Debtors are seeking to pay are relatively small when compared with the loss of value that may ensue in the event that employees are not appropriately motivated to assist the Debtors through the initial stages of these cases due to the perception that employees have been treated unfairly. Accordingly, the Debtors seek authority to pay these amounts as they become due in the ordinary course as described herein.

⁸ Included in these amounts is approximately \$150,000 true-up for amounts owed to current employees from the prior year’s Incentive Plan.

C. 2002 Trading and Marketing Incentive Plan

12. Certain of the Debtors' energy traders and marketers also participate in the Commercial Trading and Marketing Incentive Plan (the "2002 Trading and Marketing Incentive Plan"), which is technically under the umbrella of the Incentive Plan.⁹ The 2002 Trading and Marketing Incentive Plan is designed to provide a market-based short-term incentive that compensates employees for incremental value creation as a result of their individual contributions to the growth and profitability of the Debtors. Incentive compensation under the current 2002 Trading and Marketing Incentive Plan is measured in three components including (i) a financial measure based on the individual's primary business entity; (ii) a financial measure based on the individual's secondary business entity; and (iii) an individual component. The individual component of the potential bonus that an eligible employee can earn under the 2002 Trading and Marketing Incentive Plan is uncapped, but the pool available for payment of bonuses under the 2002 Trading and Marketing Incentive Plan is limited to 5% of the value created by the participants. Pursuant to the terms of the plan, the first \$75,000 of a bonus earned and 30% of any amounts over \$75,000 is paid in cash as soon as practical after year end, typically at the beginning of March. The remaining 70% of any bonus earned is deferred and paid in six-month intervals of 50% in September of the year award earned and 50% in March of the following year. For example, an employee who is eligible for a \$90,000 bonus based upon year 2002's performance has or will receive cash payments of \$79,500 in March 2003, \$5,250 in September 2003, and \$5,250 in March 2004. Pursuant to the 2002 Trading and Marketing Incentive Plan, the Debtors have accrued approximately \$4,417,268 which is due to be paid on

⁹ Participants in the 2002 Trading and Marketing Incentive Plan are also eligible to participate in the Incentive Plan and thus are eligible for a bonus at the Mid-Year Payout under the Incentive Plan.

September 14, 2003 to approximately 43 eligible employees in amounts ranging from \$1,750 to \$848,750. The Debtors estimate that in March 2004, an additional \$4,417,268 will be paid under the 2002 Trading and Marketing Incentive Plan.

13. The Debtors' trading operations are critical and are integral to the success of the operations, and thus the employees who participate in these trading and marketing operations are invaluable to the success of the Debtors' reorganization efforts. All of the Debtors' trading operations are conducted through Mirant Americas Energy Marketing, L.P., a debtor in these chapter 11 cases. I believe it is necessary and appropriate to obtain authority to pay such amounts as any uncertainty as to whether employee expectations will be met in the short term will create great anxiety not only for the individual employees due these amounts, but among the employee base at large. I recognize that, while certain individual amounts to be paid may be significant, such amounts are relatively small when compared with the loss of value that may ensue in the event that employees are not appropriately motivated to assist the Debtors through the initial stages of these cases. Moreover, as the proposed payments are performance based, the individuals owed the largest amounts are among the Debtors' most valuable employees. Accordingly, the Debtors seek authority to pay these amounts as they become due in the ordinary course described herein under the 2002 Trading Marketing Incentive Plan.

D. Special Achievement Award Bonuses

14. To award certain employees for achievements that are beyond the normal scope of an employee's position, the Debtors prior to the Petition Date designed and implemented in the ordinary course of their businesses the Special Achievement Award Policy pursuant to which certain employees receive awards that are above and beyond any bonuses awarded under the 2002 Trading and Marketing Incentive Plan and Incentive Plan (the "Special Achievement Awards"). Considerations for determining whether a particular employee would

be eligible for a Special Achievement Award include, among other things, (a) whether the work performed by the employee was extraordinary and outside of the scope of the employee's normal job; (b) whether the award of the Special Achievement Award to the respective employee would violate internal equity within the group and/or team that is working on the particular special project; and (c) whether the award is consistent with earlier pay practices. Through July 11, 2003, the Debtors have awarded approximately 165 awards under the Special Achievement Award Policy totaling \$619,045 and ranging from \$75 to \$51,462 per award. These awards are granted to employees for outstanding performance in a variety of areas such as extraordinary support of asset sales, project leadership beyond the bounds of current job responsibilities, initiatives which save the enterprise considerable money, and the development of patents. I believe that not only is it critical to their employees' morale that Special Achievement Awards be allowed to continue in the ordinary course, but that that the payment of the Special Achievement Awards is integral to the overall success of the Debtors. I believe that the Debtors are current on all obligations under the Special Achievement Awards Plan, the Debtors respectfully request authority to pay any accrued but unpaid prepetition Special Achievement Awards and continue making awards under the Special Achievement Policy in the ordinary course of their business.

E. Construction Incentive Plan

15. In 2003 the Debtors brought four newly constructed power generation facilities into commercial operation. Currently, the Debtors have one generation facility under construction. Because the costs associated with constructing a generation facility can reach upwards of \$500,000,000, it is extremely critical that construction of the generation facilities stays on schedule. Construction of a power generating facility can last three to four years. Delays in construction can have severe cash flow impacts on the Debtors. In an effort to

motivate the successful completion and operation of new construction projects, the Debtors' developed the Construction Incentive Plan. Incentives paid under the Construction Incentive Plan (the "Construction Incentives") are measured based upon (a) business development; (b) construction milestones; (c) actual project costs versus budgeted project costs; (d) safety and environmental record of the construction project and (e) the operational performance of the power plant. The majority of the Constructive Incentives accruing are based upon safety, environmental and operational performance of the power generating facility. The Construction Incentives are provided to eligible employees in lieu of participation in the individual component of the Incentive Plan. Thus, employees who are entitled to receive Construction Incentives will not be entitled to the Mid-Year Payout.

16. The employees that are eligible to receive Construction Incentives are critical to the success of the Debtors' construction projects. In the first six months of 2003, the Debtors paid \$687,734 to 20 employees in incentives under the Construction Incentive Plan. Although currently, the Debtors have little construction activity, the Debtors request the authority to continue making payments under the Constructive Incentive Plan in the ordinary course of their operations. Through September of 2003, should participating employees meet certain milestones, I anticipate the Debtors paying \$228,712 in Construction Incentives. I believe that the amounts to be paid under the Construction Incentive Plan are minimal when compared to the enormous costs associated with any potential delays in construction and respectfully request authority to continue making payments in the ordinary course.

F. Employee Retention Agreements

17. Recently, certain of the Debtors' employees' responsibilities have increased dramatically due to both internal and external factors, including, but not limited to, various regulatory investigations, class action lawsuits, audit and reaudit issues and increased

financial reporting requirements, resolution of which is essential to the Debtors' restructuring efforts. These circumstances have not only placed severe pressure on certain employees in the form of substantially increased workloads and work hours, but have also heightened the employees' concerns relating to job security. Prior to the Petition Date, in an effort to address these increased pressures and concerns, the Debtors entered into various retention agreements (the "Retention Agreements") with 67 employees of whom the Debtors judged as being individually and collectively critical to the Debtors' restructuring efforts (the "Valued Employees"). Recognizing the importance of retaining these Valued Employees to the ability of the Debtors to successfully manage through the adverse circumstances plaguing the business, the Retention Agreements generally provide for payments to be made to the Valued Employees at various intervals over a period of time depending upon the anticipated length of time such Valued Employees services are deemed necessary.

18. The Debtors seek interim approval to honor the Retention Agreements with respect to those amounts becoming due within fifty days after the Petition Date to employees other than Highly Compensated Employees (as defined below). The Debtors also seek a hearing to be held after formation of an official committee of unsecured creditors to consider approval of the Retention Agreements on a final basis. I believe that payments of such amounts are wholly appropriate given the "chaos" frequently associated with the initial stages of a chapter 11 case and the ensuing increased attention that these Valued Employees will be required to devote to the success of the Debtors' reorganization efforts during this critical time. Further, I believe that interim approval of the Retention Agreements with respect to those payments due within the next fifty days balances the needs of the Debtors to provide necessary certainty to their Valued Employees that such amounts that have been promised to them, and those that they will continue to earn by providing valuable services prospectively, will be paid,

with the need to allow the opportunity to any statutory committee of unsecured creditors appointed in these chapter 11 cases to become fully informed with respect to payments not due in the immediate term.¹⁰ The total aggregate amounts due under these Retention Agreements through September of 2005 is approximately \$8.7 million. The Debtors seek interim authority to pay to forty-two of the Valued Employees an aggregate amount of \$523,247 in amounts ranging from \$2,975 to \$39,000 per employee as they come due in the ordinary course of business pursuant to the terms of the Retention Agreements. Importantly, as stated the Debtors do not seek interim authority to pay amounts owing to those employees whose 2003 base compensation and actual bonus under with the Incentive Plan for 2002 or the 2002 Trading and Marketing Incentive Plan totaled \$200,000 or more (the “Highly Compensated Employees”).

G. Reimbursable Business Expenses

19. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors reimbursed employees for certain business expenses incurred in the scope of their employment. Based upon historical averages, approximately 700 employees incur expenses monthly aggregating on average \$850,000, relating to, among other things, business related travel expenses, business meals, relocation, car rentals and a variety of miscellaneous expenses (collectively, the “Reimbursable Expenses”).

20. All of the Reimbursable Expenses were incurred on the Debtors' behalf in connection with employment by the Debtors and in reliance upon the understanding that such expenses would be reimbursed (Reimbursable Expenses are paid by the Debtors through one of two accounts maintained by Services, depending upon whether they are paid through direct deposit or through the issuance of a check.) I estimate that, as of the Petition Date, the total

¹⁰ The Debtors intend to seek Court authority on a final basis to continue to make payments under the Retention Agreements to the Valued Employees.

amount owed is no more than \$64,000 of Reimbursable Expenses, with no one employee estimated to receive in excess of \$10,000. Although I believe the Debtors are current on prepetition Reimbursable Expenses, it is likely that a modest amount of Reimbursable Expenses remain owing due to the lag time between when an employee incurs an expense and when the employee submits a request for reimbursement. Accordingly, the Debtors seek to pay Reimbursable Expenses in the ordinary course of business.

H. Employee Benefits

21. In the ordinary course of their businesses, and as is customary for most large, multi-national companies, the Debtors have established various employee benefit plans and policies that provide eligible employees with medical, dental, prescription drugs, disability and life insurance, employee savings, and other similar benefits (collectively, the “Employee Benefits”). The Employee Benefits are generally described below.

(a) Employee Health Insurance Plans

22. An important element of the Employee Benefits is medical and similar health insurance (collectively, the “Health Benefits”). The Debtors maintain certain premium based insurance policies which offer a variety of health care options. The premiums are calculated annually and paid on a monthly basis for each participating employee at a predetermined rate.

23. The total monthly average cost¹¹ of the premium-based Health Benefits is approximately \$367,620 of which approximately \$313,530 is borne by the Debtors with the remainder paid by participating employees. The Debtors' monthly payments are typically made

¹¹ Included in the total average monthly cost of Health Benefits are payments on behalf of eligible retirees. The Debtors and the retiree share in the cost of the retiree’s Health Benefits depending upon the retiree’s age, location and length of service with the Debtors.

at the beginning of each month. I believe that the Debtors are current on all premium-based Health Benefit payments; however, to the extent that any premiums remain unpaid as of the Petition Date or any portion of the current month's payment may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay such amounts.

24. In addition to the amounts owed to premium-based insurers, the Debtors maintain several self-insured health plans (the “Self-Insured Plans”) administered by Blue Cross/Blue Shield, Capital Care, Aetna, Optimum, and United Healthcare (the “Self Insured Administrators”). Employees contribute to the cost of medical benefits, through direct payroll deductions that range from \$2.80 to \$80.18 per pay period depending upon various factors, including the location of an employee, plan selected and dependents covered.

25. After a claim has been filed with the Self-Insured Plan Administrators and processed, the Debtors, through the particular Self-Insured Plan Administrator, either (a) reimburse the employee for the cost of the services, or (b) pay the health benefits provider for services rendered to the employee (together, the “Self-Insured Claims”). Payments of the Self-Insured Claims are made by the Self Insured Plan Administrators who are reimbursed, on an as and when-needed basis, from the Services’ main disbursement account.

26. Ordinarily, there is a lag time between the time when an employee submits a claim and the time when a claim is paid by the various Self-Insured Plan Administrators (the “Pipeline Claims”). If the Debtors fail to pay any Self-Insured Claim, the employee is generally directly liable to the provider. Based upon an average of the most recent months prior to the Petition Date, the projected Self Insured Claims, including any Pipeline Claims, paid by the Debtors total in the aggregate approximately \$1,114,971 on a monthly basis.¹² Due to the

¹² Unpaid Self-Insured Claims, Pipeline Claims, or other health benefits include the claims of former employees, many of which have elected to continue coverage under COBRA. Solely for

historical lag in the payment of Pipeline Claims, the Debtors estimate that approximately \$2,242,587 of accrued but unpaid Pipeline Claims remain owing as of the Petition Date. By this motion, the Debtors seek authorization to continue paying the Pipeline Claims and the Self Insured Claims in the ordinary course.¹³

(b) Employee Life Insurance

27. The Debtors provide all of their eligible full-time employees with fully funded life insurance. The amount of the benefit is based upon a multiple of the employee's base compensation up to a maximum benefit of \$500,000.¹⁴ The Debtors make monthly payments of approximately \$66,141 on account of such insurance.¹⁵ I believe that the Debtors are current on all such payments; however, to the extent that any premiums remain unpaid as of the Petition Date or any portion of the current month's payment may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay those amounts.

(c) Dental Coverage

28. The Debtors' employees are eligible for dental insurance coverage which cost is shared by both the participating employee and the Debtors. The premiums are calculated

the purposes of paying Self-Insured Claims and Pipeline Claims, the Debtors submit that it is appropriate to include the claims of former employees.

¹³ In conjunction with the Debtors' Self-Insured Plans, the Debtors maintain a stop-loss insurance policy with Reliastar Life Insurance Company that limits the Debtors' liability under each respective Self-Insured Plan to \$150,000 for each covered employee or such employee's dependent. On a monthly basis, the Debtors pay \$43,000 on account of such stop-loss insurance policy.

¹⁴ If an employee's coverage level exceeded \$500,000 as of April 1, 2001, the employee is a member of a grandfathered class of employees and may retain the level of coverage in effect on that date. The Debtors' estimate that 4% of employees are grandfathered in at a higher level.

¹⁵ Included in the total average monthly cost of Life Insurance are payments on behalf of eligible retirees. The Debtors bear the entire cost of the retiree's Life Insurance depending upon the retiree's age, location and length of service with the Debtors.

annually and paid monthly in arrears for each participating employee at a predetermined rate. The total monthly average cost of the Dental Benefits is approximately \$141,758 of which approximately \$122,458 is borne by the Debtors with the remainder paid by the participating employees.¹⁶ I believe that the Debtors are current on all Dental Benefit payments; however, to the extent that any premiums remain unpaid as of the Petition Date or any portion of the current month's payment may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay such amounts.

(d) Long Term Disability Insurance

29. The Debtors provide certain of their employees benefits under a long-term disability insurance program (the "LTD Benefits"). The LTD Benefits are 60% to 65% (depending upon the employee's location) of the employee's monthly earnings less any deductible sources of income. The total monthly average cost of the LTD Benefits is approximately \$52,431, of which approximately \$37,867 is borne by the Debtors with the remainder paid by the participating employees. The Debtors' monthly payments are made typically in arrears. I believe that the Debtors are current on all LTD Benefit payments; however, to the extent that any premiums remain unpaid as of the Petition Date or any portion of the current month's payment may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay such amounts.

(e) Business Travel Accident Insurance; Employee Assistance Plan; and Vision Care

30. The Debtors provide their employees business travel insurance (the "BTA Benefits"), benefits under an Employee Assistance Plan (the "EAP Benefits"), and benefits under

¹⁶ Included in the total average monthly cost of Dental Benefits are payments on behalf of eligible retirees. The Debtors and the retiree share in the cost of the retiree Dental Benefits depending upon the retiree's age, location and length of service with the Debtors.

a Vision Care Plan (the “Vision Care Benefits,” and collectively with the BTA Benefits and EAP Benefits, the “Miscellaneous Benefits”). The total monthly average cost of the Miscellaneous Benefits is approximately \$10,130 all of which is borne by the Debtors. The Debtors’ monthly payments are made typically in arrears. I believe that they are current on all Miscellaneous Benefit payments; however, to the extent that any premiums remain unpaid as of the Petition Date or any portion of the current month’s payment may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay such amounts.

I. Additional Welfare Plans

31. The Debtors’ employees are also eligible to participate in a number of group welfare plans, the cost of which is borne fully by the employees. These plans include Contributory Life Insurance, Enhanced Vision Care, Accidental Death and Dismemberment Plan, Accident and Sickness Insurance and a Flexible Medical Spending and/or Dependent Care Account. The Debtors deduct amounts owing for each of these additional welfare plans directly from each employee’s paycheck and forward such amounts to the various third party providers on behalf of the employees.

J. Withholdings From Employee Paychecks

32. The Debtors deduct certain amounts from their employees’ paychecks for the payment of the employee portion of health and welfare insurance premiums, college bound funds, flexible medical spending amounts, 401(k) deductions, and other miscellaneous amounts (collectively, the “Employee Deductions”). The Employee Deductions comprise property of the Debtors’ employees. The Employee Deductions are forwarded by the Debtors to appropriate third-party recipients at varying times.

33. The Debtors also may be in possession of various other withholdings, such as payroll taxes, social security, garnishments, child support payments, etc. (together with the

Employee Deductions, the “Deductions”). It is likely that funds have been deducted from employee wages but have not yet been forwarded to the appropriate third-party recipients. Deductions total approximately \$10.25 million per month. The Debtors seek authority to forward the Deductions to the appropriate parties.¹⁷

K. 401(k) Contributions

34. The Debtors offer all eligible employees¹⁸ an opportunity to participate in a 401(k) plan (the “Non-Union 401(k) Plan”). Under the 401(k) Plan, the Debtors' eligible employees may contribute anywhere from 1-30% of base pay through before-tax and/or after-tax payroll deduction. The Debtors have established a modest and limited matching program to induce all employees to participate in this valuable savings opportunity (the “Non-Union Matching Obligation”). An employee's entitlement to receive the Non-Union Matching Obligation vests over time. The Non-Union Matching Obligation is 75% of the first 6% of wages an employee contributes to the 401(k) Plan, which is usually satisfied on each applicable pay date.

35. Separately, the Debtors offer all eligible employees who participate in collective bargaining agreements (the “Union Employees”) an opportunity to participate in a 401(k) plan (the “Union 401(k) Plan”). Under the Union 401(k) Plan, the Debtors' eligible Union Employees may contribute anywhere from 1-30% of base pay through before-tax and/or after-tax payroll deduction, depending upon the collective bargaining units of which the

¹⁷ In the event the Court is not prepared to grant the relief requested hereby, the Debtors reserve the right to assert and establish that such funds have been held in constructive trust.

¹⁸ An employee is eligible to participate in the Plan if the employee is a regular full-time employee or regular part-time employee of the Debtors. An employee is not eligible to participate in the Plan if they are classified as (i) a leased employee; (ii) subject to a collective bargaining agreement (unless the employee's participation is agreed upon); (iii) an independent contractor; or (iv) a temporary employee.

employee is a participant. Similar to the Debtor's non-collective bargaining unit employees, the Debtors have established a modest and limited matching program to induce all Union Employees to participate in this valuable savings opportunity (the "Union Matching Obligation" and collectively with the Non-Union Matching Obligation, the "Matching Obligations"). An employee's entitlement to receive the Union Matching Obligation vests over time. The Union Matching Obligation and eligibility to participate in the Union Matching Obligation varies with each collective bargaining unit and includes for certain Union Employees, 75% of the first 6% of wages an employee contributes to the 401(k) Plan, for others, 40% of the first 6% of wages an employee contributes to the 401(k) Plan, for others, 100% of the first 4% of wages an employee contributes to the 401(k) Plan, and for others, 50% of the first 6% of wages an employee contributes to the 401(k) Plan, which is usually satisfied on each applicable pay date.

36. On a monthly average, the Debtors pay on account of Matching Obligations approximately \$510,500. The Debtors estimate that, as of the Petition Date, the total amounts that will be owing on account of Matching Obligations will be less than \$255,520. The Debtors submit that it is essential for the morale and maintenance of trust of the employees that necessary steps are taken to protect such employees' 401(k) plans, including Matching Obligations. Accordingly, to the extent that any portion of the Matching Obligations may be considered the payment of prepetition claims, the Debtors seek authority to pay such amounts.¹⁹

¹⁹ In addition, at the conclusion of each plan year, the Debtors perform a discrimination analysis. If the Debtors fail the discrimination test, the Debtors must return all or a portion of the contributions typically to certain highly compensated employees or lose the tax benefit of the Plan. The Debtors seek to continue their 401(k) plans in the ordinary course, including making such retrospective adjustments as and when necessary.

L. Supplemental Benefit Plan

37. Certain of the Debtors' employees participate in a supplemental benefit plan (the "Supplemental Benefit Plan") which is designed to provide certain retirement and other deferred compensation benefits for a select group of management or highly compensated employees which are not otherwise payable or cannot otherwise be provided under the Pension Plan and 401(k) Plan as a result of certain limitations on these plans and to compensate for lost benefits resulting from the employees' participation in the Deferred Compensation Plan. As of the Petition Date, the Debtors estimate potential liabilities resulting from accrual of obligations under the Supplemental Benefit Plan of approximately \$550,000 (the "Supplemental Benefits") representing amounts owed to 112 employees. Payment of Supplemental Benefits becomes due only upon either voluntary or involuntary termination or upon death or disability of the participating employee. The Debtors submit that it is essential for the morale and maintenance of trust of the employees that necessary steps are taken to protect the payment of Supplemental Benefits, particularly with respect to the Debtors' non-Highly Compensated Employees during the initial stages of these cases. Accordingly, the Debtors seek to be authorized, but not directed on an interim basis, until a final hearing may be held after the formation of an official committee of unsecured creditors, to continue making payments as they arise under the Supplemental Benefit Plan for all employees except Highly Compensated Employees. The portion of the Supplemental Benefits owing to non-Highly Compensated Employees totals approximately \$40,988. Notably, the Debtors do not request that the Court authorize payment of Supplemental Benefits to any former employees of the Debtors, but rather only employees that are employed by the Debtors as of the Petition Date.

M. Pension Plan

38. Certain of the Debtors' employees including both rank and file employees and senior executives²⁰ participate in a pension plan (the "Pension Plan") pursuant to which the Debtors contribute funds to a trust that distributes a pension to the participating employees at different levels at various retirement dates. For the year 2003, on a quarterly basis, as part of the annual minimum funding requirements under the Pension Plan, the Debtors contribute \$1,886,916 to the trust for funding the Pension Plan (the "Quarterly Pension Plan Contribution") based upon estimates of the annual funding requirements.²¹ As of the Petition Date, the Debtors owe approximately \$1,886,916 on account of the Quarterly Pension Plan Contributions.

39. Further, on an annual basis, in September, the Debtors true-up the required annual minimum funding requirements for the prior plan year under the Pension Plan. The Debtors estimate that they will be required to make a true-up payment on or before September 15, 2003 in the amount of \$4,667,649 for the 2002 plan year (the "Pension True-up" and collectively, with the Quarterly Pension Plan Contributions, the "Pension Plan Contributions"). The Debtors submit that it is essential for the morale and maintenance of trust of the employees that necessary steps are taken to protect such employees' Pension Plan. Accordingly, the Debtors seek authority to pay the Pension Plan Contributions as they come due in the ordinary course.

40. Nonpayment of the Pension Contributions could potentially have a debilitating affect on the Debtors' reorganization efforts. Specifically, under section 302 of the

²⁰ Generally, employees that are eligible to participate in the Pension Plan are those that were employed by the Debtors prior to April 1, 2000.

²¹ For the years 2004 through 2007, the Debtors estimate contributions on account of the Pension Plan of \$19 million, \$18 million, \$20 million and \$30 million, respectively.

Employee Retirement Income Security Act of 1974, as amended (the “ERISA”) and section 412 of the Internal Revenue Code of 1986, as amended (the “IRC “) each of Debtors are under common control (for purposes of the discussion of the Pension Plan, the “Controlled Group Members”) and have joint and several liability for Pension Plan Contributions. If the payment of the Pension Contributions are not made, the consequences include the following:

- a) The Pension Plan would fail to meet the minimum funding standard under section 412 of the IRC. The Pension Benefit Guaranty Corporation (the “PBGC”) would then have grounds to institute proceedings to involuntarily terminate the Pension Plan under section 4042(a)(1) of ERISA, resulting in immediate liability under section 4062 of ERISA of the Controlled Group Members to the PBGC for unfunded benefit liabilities under the Pension Plan. Under section 4068 of ERISA, on the date of such plan termination, a lien would arise on the Controlled Group Members in favor of the PBGC for such unfunded benefit liabilities (plus interest) in an amount not exceeding 30 percent of the collective net worth of the Controlled Group Members;
- b) Interest would accrue on the unpaid Pension Contributions under section 412(m) of the IRC and section 302(e) of ERISA;
- c) If the amount of the cumulative unpaid Pension Contributions exceed \$1 million, a lien would arise on the Controlled Group Members under section 412(n) of the IRC and section 302(f) of ERISA in an amount equal to the aggregated unpaid Pension Contributions and any other required payments (including interest) and, within 10 days of the date of such lien, notice of such event to the PBGC would be required under section 302(f)(4) of ERISA and section 412(n)(4) of the IRC;
- d) The unpaid Pension Contributions would give rise to an accumulated funding deficiency under section 412 of the IRC and section 302 of ERISA which, if existing as of the end of the plan year, would result in an excise tax under section 4971 of the IRC (initially 10%) on the amount of such accumulated funding deficiency (with such excise tax increasing to 100% if not timely corrected);

- e) Notification to the PBGC of a reportable event under section 4043 of ERISA would be required if the Pension Contributions are not made by the 30th day after their due date; and
- f) A notice to participants under section 101(d) of ERISA would be required if the Pension Contributions are not made by the 60th day after their due date.

41. The failure to pay the Pension Contributions as they come due in the ordinary course could result in an involuntary termination of the Pension Plan by the PBGC, which in turn would result in a significant liability to the Controlled Group Members.²² In addition, interest, administrative burden and penalties could be imposed on the Controlled Group Members.

N. Profit Sharing Contribution

42. Non-collective bargaining unit employees who are eligible to participate in the 401(k) plans, but not eligible to participate in the Pension Plan may be eligible for a profit sharing contribution from the Debtors in the form of cash invested in accordance with the individual employee's investment allocation (the "Non-Collective Bargaining Unit Employee Profit Sharing Contributions") each quarter equal to 3% of the employee's eligible compensation for that quarter and, at the Debtors' discretion, may be eligible for an additional annual Non-Collective Bargaining Unit Employee Profit Sharing Contribution ranging from 0% to 7% of the employee's eligible annual compensation, again, invested in accordance with the individual

²² The liability that would arise as a result of the termination of the Pension Plan far exceeds the expense of paying the Pension Contributions as they come due in the ordinary course during these chapter 11 cases.

employee's investment allocation.²³ On a quarterly basis, the Debtors contribute approximately \$750,000 for Non-Collective Bargaining Unit Profit Sharing Contributions²⁴.

43. Collective bargaining unit employees who participate in a defined benefit plan may be eligible for an annual discretionary profit sharing contribution from the Debtors (the "Collective Bargaining Unit Employee Profit Sharing Contribution" and collectively with the Non-Collective Bargaining Unit Employee Profit Sharing Contribution, the "Employee Profit Sharing Contribution"). For the year ended December 31, 2002, the Collective Bargaining Unit Employee Profit Sharing Contribution was \$57,155. The Debtors submit that it is essential for the morale and maintenance of trust of the employees that necessary steps are taken to protect such employees' Profit Sharing Contributions. Accordingly, the Debtors seek authority to pay the Profit Sharing Contributions in the ordinary course.

O. Severance Plan

44. As part of the benefits package offered to each of the Debtors' eligible non-collective bargaining unit employees, the Debtors maintain a severance plan, subject to ERISA (the "Basic Severance Plan"). Non-collective bargaining unit employees who lose their jobs involuntarily while the Debtors' Basic Severance Plan is in effect receive certain basic severance benefits as described herein. Additionally, employees who agree to sign a waiver and release of claims against the Debtors receive enhanced severance benefits under an enhanced severance plan, subject to ERISA, along with certain other non-severance benefits (the

²³ For the year ended December 31, 2002, the annual discretionary contribution was \$1,007,927.

²⁴ The Non-Collective Bargaining Unit Profit Sharing Contribution was paid on June 30, 2003 in the amount of \$650,000.

“Enhanced Severance Plan” and collectively with the Basic Severance Plan, the “Severance Plans”²⁵).

45. Under the Basic Severance Plan, eligible employees receive four weeks straight time pay; one month company-paid medical coverage via COBRA for employees and dependents currently enrolled in the Debtors’ medical plan and who elect COBRA medical coverage; three months company-paid access to the Employee Assistance Program (“EAP”) via COBRA for employees who elect COBRA EAP coverage and outplacement assistance.

46. Under the Enhanced Severance Plan, eligible employees receive an additional four weeks straight time pay, plus, additional severance pay based on years of service; the cash equivalent of six months of medical and life insurance premiums; additional months of access to COBRA coverage up to a total of 36 months based on years of service; extended stock option treatment; payment of incentive awards and bonuses accrued and/or owed pursuant to the respective employee’s incentive compensation plan and/or Retention Agreement, as the case may be; and with respect to those employees who were relocated in the six months prior to their termination, relocation expenses associated with relocating to their original location. In particular, eligible employees who are severed between the Petition Date and the end of 2003 would receive their actual bonus payment under the Incentive Plan, prorated based on the number of months they worked in 2003, paid in March 2004 when short-term incentive awards are paid to active employees. Severed employees who are eligible for bonuses under the 2002 Trading and Marketing Incentive Plan, as previously discussed herein, however, would be paid this compensation according to the published guidelines at the same time as active employees.

²⁵ The Severance Plans are part of a limited window severance plan that is intended to benefit those eligible employees who are terminated on or between March 4, 2002 and December 31, 2003.

Finally, stock options for severed employees would continue to vest and could be exercised through March 31, 2004.²⁶

47. The Debtors submit that it is essential for the morale and maintenance of trust of the employees that necessary steps are taken to protect the Severance Plans, particularly with respect to the Debtors' rank and file employees during the initial stages of these cases. Accordingly, the Debtors seek to be authorized, but not directed on an interim basis, to continue making payments as they arise under the Severance Plans for all employees except Highly Compensated Employees. I believe that obtaining authority at this early stage of the chapter 11 cases to continue making payments under the Severance Plans to all employees except the Highly Compensated Employees, balances the need of the Debtors to allay their employees' fears relating to the bankruptcy filing and protect the Debtors against costly employee lawsuits, with allowing the opportunity for any statutory committee of unsecured creditors appointed in these chapter 11 cases to form and become organized, thus providing any committee a role in any ultimate determination of the application of the Severance Plans to the Highly Compensated Employees.

P. Workers' Compensation

48. In the ordinary course of business, the Debtors maintain workers' compensation coverage under which they are liable to current and former employees. The Debtors' ordinary expenses for workers' compensation include claim expenses, for which there is no insurance coverage as they fall within the insurance deductible, insurance premiums, tax assessments and certain administrative and claims processing costs (collectively, the "Workers' Compensation Obligations").

²⁶ The granting of stock options is not included in the plan document for the Enhanced Severance Plan and thus may not be subject to ERISA.

49. Currently, the Debtors purchase premium-based workers' compensation insurance from The Travelers Indemnity Company and The Phoenix Insurance Company (collectively known as "Travelers") and with Liberty Mutual (for the District of Columbia risks). The Debtors also participate in the monopolistic state fund in Washington State, which requires quarterly payments. These workers' compensation insurance programs require an audit upon expiration of the plan.²⁷ The Debtors' workers' compensation insurance with Travelers has a per incident deductible of \$500,000 per accident and per person for a disease and an annual aggregate deductible of \$1.895 million. To secure the Debtors' obligations under the workers' compensation insurance the Debtors have posted a letter of credit with Travelers in the amount of \$880,000. No letter of credit is required under the Liberty Mutual arrangement. I believe that their current workers' compensation insurance program is extremely competitive resulting in substantial costs savings to the Debtors. This is a direct result of the Debtors' excellent history paying premiums, good safety record and superior resolution of claims, which has been excellent to date, all factors in computing the Debtors' premium amounts. Accordingly, I believe that it is in the best interests of their estates to continue their current workers' compensation program.

50. The Debtors' monthly payment on account of their premium based workers' compensation insurance is approximately \$49,000. I believe that the Debtors are current on all such payments; however, in the unlikely event that the Debtors have amounts owing due to prepetition workers' compensation obligations or to the extent that a portion of the

²⁷ Prior to maintaining a policy with Travelers and Liberty Mutual, the Debtors maintained a policy with American Protection Insurance Company and OneBeacon under which certain employee workers' compensation claims are currently being processed.

current payments may be characterized as prepetition obligations, the Debtors seek authority to pay such amounts.²⁸

51. Because workers' compensation claims typically have a long payout period, liability will be ongoing for claims relating to injuries that occurred prior to the Petition Date. As of the Petition Date, the Debtors estimate based upon current case assessments that the total amount of prepetition Workers' Compensation Obligations that the Debtors will ultimately be obligated to pay in the form of deductibles will aggregate approximately \$700,000.

52. In some states, if the Debtors fail to pay the Workers' Compensation Obligations in a timely manner, then the applicable state agency may intervene, pay the workers' compensation obligation, and assert a priority claim against the Debtors for reimbursement, penalties and/or assessments. In addition, some applicable state agencies may challenge the Debtors' authority to continue to do business for failure to remain current on workers' compensation claims. Accordingly, the Debtors seek authority to honor their Workers' Compensation Obligations in the ordinary course.

Q. Administrative Service Providers

53. As is customary in the case of most large companies in the ordinary course of their business, the Debtors utilize certain service providers, including health maintenance organization, medical and dental plan and 401(k) administrators (the "Administrative Service Providers"). The continued support of the Administrative Service Providers are crucial to the Debtors' ability to maintain accurate and meaningful books and records, including, but not limited to, books and records reflecting the Debtors' Employee Benefit obligations. The total monthly average cost of services provided to the Debtors by the Administrative Service

²⁸ The Debtors do not herein seek authority to pay amounts owing due to retrospective adjustments.

Providers is approximately \$105,000. I believe that the Debtors are current with respect to amounts owing to Administrative Service Providers; however, to the extent that any such amounts remain unpaid or may be characterized as a prepetition obligation, the Debtors seek to be authorized, but not directed, to pay such amounts.

R. Expatriate Policy

54. In the ordinary course of their businesses, certain of the Debtors' employees are transferred overseas to work in foreign countries on behalf of the Debtors. To facilitate this process, the Debtors maintain an expatriate policy (the "Expatriate Policy") that provides for various benefits to these expatriated employees (the "Expatriated Employees") to ease the burdens associated with the Expatriated Employee and his or her family being relocated overseas. Pursuant to the Expatriate Policy, in addition to the typical benefits enjoyed by domestic full time employees, the Debtors provide to Expatriated Employees, among other things, payment of relocation expenses, cross-cultural orientation and foreign language training, a goods and services differential based upon the cost of living of the particular country, foreign housing costs, utilities allowance, education allowance to cover the cost of the Expatriated Employee's dependent's children's education, an incidental allowance equal to one month base pay, family vehicle differential allowance, payment of personal property and liability insurance, tax equalization benefits, and annual home leave allowance. Currently, the Debtors have eleven Expatriated Employees who are covered by the Expatriate Policy. As of the Petition Date, the Debtors owed approximately \$130,000 on account of the Expatriate Policy with no one employee owed more than \$25,000 (the "Expatriate Costs").²⁹ The Debtors seek authority to

²⁹ Included in the Expatriate Costs may be an \$1100 service charge for certain of the Expatriated Employees that represents amounts owed to Cendant Mobility Corporation ("Cendant"), which is a third party provider of relocation services. The Debtors seek authority to pay these amounts owed to Cendant as well.

maintain the Expatriate Policy, pay Expatriate Costs accrued as of the Petition Date and continue making payments under the Expatriate Policy in the ordinary course to Expatriated Employees.

S. Relocation Program

55. In the ordinary course of their businesses, the Debtors provide certain benefits pursuant to a relocation program (the “Relocation Program”) to employees (the “Relocated Employees”) who move at the Debtors’ request. The benefits pursuant to the Relocation Program vary depending upon whether the employee is a homeowner. Pursuant to the Relocation Program, the Debtors provide to Relocated Employees, among other things, reimbursement for house hunting expenses, miscellaneous expense allowance ranging from one-half to one-month’s salary, home sale assistance and loss protection (homeowners only), payment of lease cancellation costs (renters only), shipment and storage of household goods, assistance to employees’ spouses in career transitioning. These amounts are intended to reimburse the Relocated Employee with respect to expenses associated with the relocation. Currently, thirty of the Debtors’ employees are participating in the Relocation Program (the “Relocation Costs”). I believe that the Debtors are substantially current on all Relocation Costs as of the Petition Date.³⁰ The Debtors seek authority to maintain the Relocation Program, pay remaining Relocation Costs accrued as of the Petition Date and continue making payments under the Relocation Program in the ordinary course to Relocated Employees.

T. Temporary Relocation Program

56. In the ordinary course of their businesses, the Debtors provide certain benefits pursuant to a temporary relocation program (the “Temporary Relocation Program”) to employees (the “Temporarily Relocated Employees”) who are temporarily relocated more than

³⁰ Included in the Relocation Costs may be a \$700 service charge for certain of the Relocated Employees that represents amounts owed to Cendant, a third party provider of relocation services.

fifty miles from their home for a minimum 12-month assignment. Pursuant to the Temporary Relocation Program, the Debtors provide to Temporarily Relocated Employees, among other things, reimbursement for house hunting expenses, shipment and storage of household goods, assistance to employees' spouses in career transitioning, and a monthly lump sum based upon 25% of the employee's salary, and costs associated with relocating at the conclusion of the assignment. These amounts are intended to reimburse the Temporarily Relocated Employee with respect to expenses associated with the temporary relocation (the "Temporary Relocation Costs"). Currently, seven of the Debtors' employees are participating in the Temporary Relocation Program. On a monthly average, the Debtors pay \$12,120 on account of the monthly lump sums based upon 25% of the employee's salary. The Debtors believe that they are substantially current on all Relocation Costs as of the Petition Date. The Debtors seek authority to maintain the Temporary Relocation Program, pay remaining Temporary Relocation Costs accrued as of the Petition Date and continue making payments under the Temporary Relocation Program in the ordinary course to Temporarily Relocated Employees.

U. Military Leave

57. The Debtors maintain a military leave policy (the "Military Leave Policy") in compliance with and in addition to the Uniform Services Employment and Reemployment Rights Act of 1994 under which various employees who are called into service by the United States military receive continued compensation while performing active duty services. Pursuant to the Military Leave Policy, employees on military leave receive differential pay for the difference between their base pay received from the Debtors and the base military pay for a period of up to twelve months. Further, eligible employees are entitled to continue participating in certain benefit programs offered by the Debtors including among other things, continued pro-rata participation in the Incentive Compensation Plan. Currently, five of the Debtors' employees

are receiving benefits under the Military Leave Policy in the amount of approximately \$8,927.13 per month (the “Military Leave Costs”). The Debtors request authority to continue making payments to eligible employees under the Military Leave Policy in the ordinary course of their businesses.³¹

V. Employment Referral Policy

58. The Debtors provide a formal in-house process for referral of applicants for open positions (the “Employee Referral Policy”). Under the Employee Referral Policy, current employees are eligible for monetary awards if they refer applicants that are subsequently hired by the Debtors and who, among other things, meet the criteria for satisfactory performance at the end of a six-month probationary period. These awards range between \$800 and \$1500 per referred employee depending upon the status of the eligible employee. The Debtors estimate that as of the Petition Date approximately \$7,500 has accrued but has not yet come due under the Employee Referral Policy (the “Referral Awards”). Because referrals by current employees are one of the best sources for recruiting qualified new employees without the need to pay outside recruiters at substantially higher costs, the Debtors request authority to maintain the Employee Referral Policy and continue paying Referral Awards in the ordinary course under such policy as they come due.

W. Tuition

59. The Debtors provide their eligible employees with tuition reimbursements in amounts up to \$5,250 per employee per year. Such tuition reimbursements are paid to an eligible employee upon successfully completing the reimbursable course. During 2002, the Debtors paid approximately \$126,771 in eligible tuition reimbursement. As of the Petition Date,

³¹ Amounts accrued as of the Petition Date on account of the Military Leave Policy are otherwise accounted for herein.

for 2003, the Debtors have paid approximately \$95,000 in tuition reimbursement. The Debtors anticipate that they will pay a similar amount to eligible employees during the remainder of the year. The Debtors request authority to pay all amounts accrued but unpaid for tuition reimbursement as they become due in the ordinary course.

X. Miscellaneous

60. The Debtors may determine that there are additional de minimis prepetition obligations, which have not been identified in the motion. The Debtors, however, may learn of such amounts subsequent to the date hereof. Accordingly, the Debtors request authority to pay any such additional obligations up to an aggregate amount of \$150,000 upon five (5) business days' prior written notice to counsel to any statutory creditors' committee appointed herein and the Office of the United States Trustee, setting forth the nature and amount of the additional obligation sought to be paid. If an objection is interposed within such five-day period, the Debtors will be required to seek authority from this Court to make such payment. The Debtors also reserve their rights to seek authority from the Court to pay any obligations in excess of the aforementioned cap.

NECESSITY OF PAYING PREPETITION EMPLOYEE OBLIGATIONS

61. Absent prompt payment of amounts owed in connection with the Prepetition Employee Obligations, it is likely that employee morale and support will be impaired. As many of the Debtors' employees rely on the timely receipt of their paychecks and/or reimbursement for expenses, any delay in paying amounts owed in respect of the Prepetition Employee Obligations could cause such employees serious hardship. Any such deterioration in employee morale and welfare at this critical time undoubtedly will have a devastating impact on the value of the Debtors' assets and businesses.

62. The Debtors' inability to pay the outstanding Prepetition Employee Obligations will cause employees to endure significant stress, hardship and suffering. The effect of this disruption in employee morale will likely cause significant disruption to run throughout the enterprise. Many employees simply live from paycheck to paycheck and rely exclusively on receiving their full compensation to pay their daily living expenses. Furthermore, many employees rely on their employee benefits, such as Health Benefits, without which they would be forced to pay for or go without insurance coverage for themselves and their families. As a result, these employees will be exposed to significant financial and health related problems if the Debtors are not permitted to honor the unpaid Prepetition Employee Obligations. If these employees unilaterally terminate their employment for failure to receive the compensation set forth herein, which is a very real possibility given the state of today's competitive employment market, the Debtors' ability to maintain and preserve the value of their estates may be forever lost.

63. Granting the authority to continue making payments under the Debtors' Severance Plans clearly confers a benefit on the Debtors' estates in that such continuation enhances the ability of the Debtors to retain employees, who without the Severance Plans in effect, may be incentivized to pursue other employment opportunities for fear that they may be terminated at any time, left without a current income and means to support themselves while simultaneously attempting to obtain new employment. The continuation of the Severance Plans is integral to maintaining the morale of the Debtors' employees, preventing lawsuits against the Debtors maintained by employees, and thus is integral to the success of the Debtors' operations.

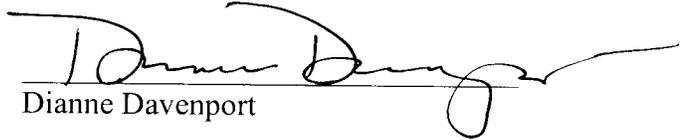
64. The Debtors also believe that payment of Retention Bonuses to Valued Employees as they arise under the Retention Agreements is key to the Debtors' efforts to retain their Valued Employees. The Valued Employees confer valuable services integral to the success

of Debtors' operations and business, and thus the payment of Retention Bonuses to the Valued Employees would be entitled to administrative expense priority under section 507(a)(1) of the Bankruptcy Code.

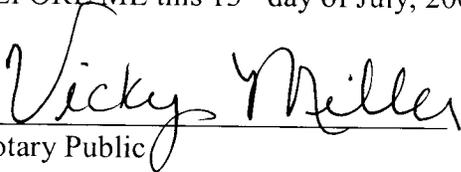
65. Amounts withheld by the Debtors from employees' paychecks represent, in many cases, employee earnings specifically designated by employees or, in the case of garnishments, by judicial authorities, to be deducted from employee paychecks and paid accordingly. The failure to make these payments will result in hardship to certain employees. The Debtors expect to be inundated with a multitude of inquiries from garnishors and other designated recipients regarding the Debtors' failure to submit, among other things, taxes, child support and alimony payments which are not the Debtors' property, but rather have been withheld from employee paychecks. Moreover, if the Debtors are unable to remit certain of these amounts, the employees could face legal action and/or imprisonment.

66. The Debtors' employees are an essential component of a successful reorganization. Any deterioration in employee morale and welfare at this critical time undoubtedly would have a devastating impact on the Debtors, the value of their assets and businesses, and ultimately, the Debtors' ability to reorganize. Accordingly, the relief sought hereby is in the best interests of the Debtors' estate and creditors, and will allow the Debtors to continue to operate their businesses with minimal disruption and proceed with the important task of stabilizing their operations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


Dianne Davenport

SUBSCRIBED AND SWORN TO
BEFORE ME this 13th day of July, 2003.


Notary Public

