



Group, LLC (“IMA Advisory”); International Management Associates Platinum Group, LLC (“Platinum I”); International Management Associates Emerald Fund, LLC (“Emerald Fund”); International Management Associates Taurus Fund, LLC (“Taurus Fund”); International Management Associates Growth & Income Fund, LLC (“Growth & Income Fund”); International Management Associates Sunset Fund, LLC (“Sunset Fund”); Platinum II Fund, LP (“Platinum II”); and Emerald II Fund, LP (“Emerald II”), the debtors herein (collectively, the “Debtors”).

This Application is filed pursuant to sections 503(b)(4), 543(c) (1) and (2), 330 and 331 of Title 11, United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, as issued by the U.S. Department of Justice on January 30, 1996 (the “U.S. Trustee Guidelines”).

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

In support of this Application, Kilpatrick Stockton respectfully shows this Court as follows:

### **BACKGROUND**

1. On February 17, 2006 (prior to the filing of the Debtors’ Bankruptcy Cases) , a Complaint was filed in the Superior Court of Fulton County, State of Georgia (the “State Court”), in a case styled Stephen Atwater, Letha L. Atwater, Atwater Family Partnership, Ltd., Stephen D. Atwater, Jr. Irrevocable Trust, Paris Detron Atwater Irrevocable Trust,

Diandre Tarell Atwater Irrevocable Trust, Malaysia Chantel Atwater Irrevocable Trust, CJT96 Holdings, Inc., Clyde Simmons, Terrell Lamar Davis, Roderick Smith, Ray Crockett, Crockett 39 Family Partners, Ltd., Blaine Bishop, and Al F. Smith, Plaintiffs, v. International Management Associates, LLC, International Management Associates Platinum Group, LLC, Platinum Group II, LP, International Management Associates Emerald Group, LLC, Kirk S. Wright, Nelson Keith Bond, and Fitz N. Harper, Jr., Defendants, Civil Action No. 2006-CV-112743 (the “State Court Litigation”).

2. On even date of the filing of the State Court Litigation, the State Court entered the Order Granting TRO and Appointment of Receiver (the “State Receivership Order”). Pursuant to the State Receivership Order, Williams F. Perkins was appointed as Receiver (the “State Receiver”). On February 17, 2006, the State Receiver retained Kilpatrick Stockton as his counsel.

3. Pursuant to the State Receivership Order, the State Receiver was authorized and empowered to, *inter alia*,

- ◆ Take immediate possession of and manage the assets of IMA, Platinum I, Emerald Fund, Platinum II, IMA Advisory, Grey Crest Partners, LLC, and Certainty Capital Management, LLC, and all other investment funds managed by IMA, including Taurus Fund, Growth & Income Fund, and the Sunset Fund, and to have broad authority to oversee all operations and financial affairs of these entities, including but not limited to:

- (a) The authority to hire investment fund managers, legal counsel, and other professional personnel;

- (b) To take possession of all tangible and intangible assets of these entities, including computers, telephones, books, ledgers, and financial records; and
- (c) To exercise control over all bank, money market, depository, checking, or other financial accounts, including the authority to stop payments on currently pending checks issued from these accounts.

4. On February 27, 2006, a Complaint was filed by the Securities and Exchange Commission (the “SEC”) in Civil Action No. 06-CV-0438 (the “Federal Action”) in the United States District Court for the Northern District of Georgia (the “District Court”). In the Federal Action, the SEC sought, *inter alia*, injunctive and other relief against Kirk S. Wright (“Wright”), IMA, IMA Advisory, Platinum I, Emerald Fund, Taurus Fund, Growth & Income Fund, Sunset Fund, Platinum II, and Emerald II (collectively, the “Federal Defendants”).

5. On February 27, 2006, the District Court entered in the Federal Action that certain Order to Show Cause, Temporary Restraining Order, Order Appointing Receiver, Order Prohibiting Destruction of Documents and Order Expediting Discovery (the “Federal Receivership Order”). As provided by the Federal Receivership Order, Williams F. Perkins was appointed receiver (the “Federal Receiver”) for the estates of the Federal Defendants (collectively, the “Receiver Estate”). The State Receiver and the Federal Receiver are hereinafter referred to as the Receiver.

6. Pursuant to the Federal Receivership Order, the Receiver was authorized and empowered to, *inter alia*,

- ◆ take custody, control and possession of all the funds, property, premises, leases, and other assets of, or in the possession, or under the direct or indirect control of the Receiver Estate;
- ◆ sell, rent, lease or otherwise hypothecate or dispose of the assets of the Receiver Estate;
- ◆ make such payments and disbursements from the funds so taken into his custody, control and possession or thereafter received, and to incur such expenses as may be necessary or advisable in the ordinary course of business in discharging the duties of the Receiver;
- ◆ engage and employ others, including but not limited to consultants, attorneys, accountants, experts and employees of a firm owned by the Receiver, to assist him in his duties, except that any payment to others for their services shall be subject to Court approval; and
- ◆ to take any action which could be taken by the officers, directors, partners and trustees of the Receiver Estate.

7. On February 27, 2006, Kilpatrick Stockton was retained as counsel for the Federal Receiver, to represent him and to perform legal services on his behalf.

8. On March 7, 2006, the State Court entered the Order Terminating Receivership (the "Dissolution Order"). Pursuant to the Dissolution Order, all assets of the Defendants over which the Receiver had taken custody or control and the obligations owed to the Receiver as set forth in prior Orders of the State Court, were transferred and assigned to the Receiver Estate in the Federal Action.

9. On March 10, 2006, the District Court entered that certain Order Granting Preliminary Injunction, Freezing Assets, Appointing a Receiver and Ordering Other Ancillary Relief (the “Receiver Order”). Pursuant to the Receiver Order (i) the appointment of William F. Perkins as Receiver was extended and (ii) the scope of the Receiver Estate was broadened.

10. On March 16, 2006, voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) were filed for each of the Debtors herein. The Debtors’ ten (10) related chapter 11 cases (collectively, the “Bankruptcy Cases”) are jointly administered, for procedural purposes, pursuant to this Court’s Order entered March 24, 2006.

11. On March 24, 2006, this Court entered an Order approving the retention of Kilpatrick Stockton as counsel to the Debtors (the “Bankruptcy Counsel Order”). Pursuant to the Bankruptcy Counsel Order, Kilpatrick Stockton was retained as counsel for the Debtors in the Bankruptcy Cases, *nunc pro tunc*, effective March 16, 2006.

12. On April 11, 2006, the Court ordered the appointment of a chapter 11 trustee in the Bankruptcy Cases and on April 20, 2006, the United States Trustee appointed William F. Perkins as Trustee in the Debtors’ Bankruptcy Cases.

13. On April 28, 2006, the Trustee filed his application to retain Kilpatrick Stockton as his counsel (the “Retention Application”).

14. The professional services for which the Debtors/Trustee employed Kilpatrick Stockton include, but are not limited to:

- ◆ preparing and reviewing all necessary and appropriate applications, motions, draft orders, other pleadings, notices, responses and various documents in the

Bankruptcy Cases and reviewing and analyzing documents on behalf of the Trustee;

- ◆ representing the Trustee in hearings and other judicial proceedings in connection with all applications, motions or complaints and other similar matters;
- ◆ counseling the Trustee in connection with the formulation, preparation, negotiation and execution of the sale and bidding process, including the bidding procedures, asset purchase agreement, sale motion and any other matters necessary for the sale of substantially all of the Debtors' assets;
- ◆ taking such legal action as is necessary to protect and preserve the property of the estate; and
- ◆ performing such other legal services incident to and necessary in the performance of its duties as counsel for the Trustee.

15. On May 3, 2006, the Court entered the Order approving the Retention Application (the "Retention Order"). Pursuant to the Retention Order, the Trustee was authorized to employ Kilpatrick Stockton as his counsel in these jointly-administered Bankruptcy Cases.

### **GENERAL**

16. In this Application, Kilpatrick Stockton seeks, as an administrative expense, the allowance and payment of compensation as follows:

(a) Compensation in the sum of \$219,583.00 for professional services rendered and \$4,055.54 in payment of itemized charges and expenses incurred, for a total of \$223,638.54 in compensation sought herein for services rendered for the period beginning

February 17, 2006, through and including March 15, 2006, which services include those performed in conjunction with the State and Federal Receiverships which preceded the filing of these Bankruptcy Cases (the “Pre-Petition Period”). Such compensation is payable as an administrative expense pursuant to 11 U.S.C. §§ 503(b)(4) and 543(1) and (2);

(b) Compensation in the sum of \$549,749.00 for professional services rendered as counsel for the Debtors and Trustee in the Debtors’ Bankruptcy Cases and \$42,594.53 in payment of itemized charges and expenses incurred, for a total of \$592,343.53 in compensation sought herein for professional services rendered during the period beginning March 16, 2006, through and including July 31, 2006 (the “Post-Petition Period”); and

(c) The total sum of \$769,332.00 for professional services rendered during the combined Pre-Petition Period and the Post-Petition Period (hereinafter collectively referred to as the “Application Period”), and \$46,650.07 in payment of itemized charges and other expenses incurred during such period, for a total sum of \$815,982.07 sought herein for the period covered by this Application.

17. In support of this Application, the following exhibits are attached hereto and incorporated herein by reference:

(a) Exhibit A - Charts that summarize the total number of hours worked by each Kilpatrick Stockton professional and each professional’s hourly billing rate during the period covered by this Application.

(b) Exhibit B -- Kilpatrick Stockton’s billing statements for professional services rendered during the Application Period, which statements detail the services rendered and itemized charges and expenses incurred by Kilpatrick Stockton. The itemized

charges and expenses are also discussed in the subsection of this Application entitled Itemized Charges and Other Expenses.

18. The billing rates, time expended, and fees generated are set forth on Exhibit A and in the billing statements attached hereto as composite Exhibit B. In the billing statements, the professional services rendered by Kilpatrick Stockton during the Application Period are allocated pursuant to the U. S. Trustee Guidelines. The billing statements also contain a summary of the itemized charges and other expenses incurred during the respective billing periods.

19. Kilpatrick Stockton respectfully submits that the services rendered and the itemized charges and other expenses incurred by Kilpatrick Stockton in connection with the matters for which is was retained were necessary to the protection and preservation of the Receivership and bankruptcy estates.

#### **COMPENSATION PAID AND ITS SOURCES**

20. To date, Kilpatrick Stockton has received no compensation for the professional services rendered and itemized charges and expenses sought in this Application. Thus, Kilpatrick Stockton has performed services on behalf of these estates and their predecessor estates without compensation since February 17, 2006.

21. Kilpatrick Stockton respectfully submits that this is its first application for the award of interim compensation. No previous application for the relief sought herein has been made.

## **REQUESTED RELIEF**

22. In this Application, Kilpatrick Stockton seeks interim allowance of compensation for 2,517.80 hours of professional services rendered during the Application Period, which time represents a total value of \$769,332.00, and itemized charges and actual and necessary expenses incurred in the sum of \$46,650.07, for a total of \$815,982.07 in compensation sought herein.

23. In accordance with Rule 2016(a) of the Bankruptcy Rules and section 504 of the Bankruptcy Code, there is no agreement or understanding between Kilpatrick Stockton and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in this case.

24. Kilpatrick Stockton is a disinterested person and does not hold or represent an interest adverse to the interests of the estate with respect to matters for which Kilpatrick Stockton was employed. Kilpatrick Stockton's connections with parties in interest in the Debtor's Chapter 11 cases, or their respective attorneys and accountants are described in the Affidavit of Dennis S. Meir (the "Meir Affidavit"), annexed as Exhibit "A" to the Retention Application. Pursuant to the Meir Affidavit, Kilpatrick Stockton holds no interests adverse to the Debtors, the Debtors' estates, any creditor of the Debtors, the U.S. Trustee or any person employed by the Office of the U.S. Trustee in this district, or any other party in interest herein or their respective attorneys and accountants that would cause Kilpatrick Stockton not to be considered a "disinterested person," as such term is defined in section 101(14) of the Bankruptcy Code and as required by section 1103(b) of the Bankruptcy Code.

## **PRELIMINARY STATEMENT**

25. The work performed by Kilpatrick Stockton during these cases and the predecessor receivership cases has involved numerous and complex issues, as more specifically enumerated in this Application and the exhibits attached hereto including, but not limited to:

- ◆ Providing the Receiver and the Chapter 11 Trustee with legal advice with respect to his powers, rights and duties;
- ◆ Taking such legal action as is necessary to protect and conserve property of the receivership and bankruptcy estates;
- ◆ Initiating such actions as are deemed necessary to enhance recoveries for creditors and investors; and
- ◆ Performing such other legal services incident to and necessary in fulfilling its duties as counsel for the Receiver and Trustee.

26. The results of Kilpatrick Stockton's efforts in this regard, where determinable at this juncture, are set forth hereinbelow.

## **SUMMARY OF PROFESSIONAL SERVICES RENDERED DURING THE PRE-PETITION PERIOD**

27. During the Pre-Petition Period, Kilpatrick Stockton expended 571.70 hours in the performance of its duties as counsel for William F. Perkins in his capacity as State Receiver and Federal Receiver in the State Court Litigation and the Federal Action, respectively. The services rendered by Kilpatrick Stockton during the Pre-Petition Period have been numerous and complex. In particular, during the Pre-Petition Period, the principals and professionals of Kilpatrick Stockton:

- ◆ Rendered legal advice regarding the Receiver's duties, rights and obligations in the State Court Litigation and the Federal Action;
- ◆ Assisted the Receiver in the investigation of the acts, conduct, assets, liabilities, and financial condition of the Defendants, and the operation of the Defendants' businesses;
- ◆ Assisted in the identification, impound and disposition of certain of the Defendants' assets;
- ◆ Drafted, presented and defended motions and related pleadings;
- ◆ Researched issues regarding, *inter alia*, receivership law, discovery, subpoenas directed to financial institutions, and fraudulent transfer matters;
- ◆ Conducted interviews of witnesses and key parties to these proceedings;
- ◆ Met with representatives of the SEC, the FBI, other governmental agencies, the U.S. Attorney's Office, counsel for various parties, and Officers of the Court;
- ◆ Conducted an extensive investigation and tracing of assets, including the preliminary valuation of same;
- ◆ Examined the status of pending real estate ventures and reviewed bid solicitations in connection therewith;
- ◆ Drafted the bankruptcy petitions, first-days pleadings and related documents for the Bankruptcy Cases;
- ◆ Reviewed proceedings filed in other jurisdictions;
- ◆ Implemented the successful seizure of holdings in various depository and brokerage accounts;

- ◆ Negotiated the release of equity interest in certain real and personal property;
- ◆ Effectuated the recording of *Lis Pendens* on real property in various States; and
- ◆ Performed such other legal services incident to and necessary to the fulfillment of its duties as counsel for the Receiver.

28. Kilpatrick Stockton respectfully submits that the services rendered and the itemized charges and other expenses incurred by Kilpatrick Stockton during the Pre-Petition Period were necessary to the representation of the Receiver and to the protection and preservation of the Receivership Estates.

**SUMMARY OF PROFESSIONAL SERVICES  
RENDERED DURING THE POST-PETITION PERIOD**

29. During the Post-Petition Period, Kilpatrick Stockton expended **1,946.10** hours in the performance of its duties as counsel for William F. Perkins in his capacity as Trustee in the Debtors' jointly-administered Chapter 11 cases. A schedule of the work performed by Kilpatrick Stockton during the Application Period, itemized in accordance with its task-specific categories, is as follows:

**B100. Asset Analysis and Recovery**

**217.60 Hours**

30. During the Application Period, Kilpatrick Stockton:
- ◆ Analyzed theories of recovery from third parties and former insiders of the Debtors;
  - ◆ Researched and reviewed issues regarding liens and security interests asserted against estate assets;

- ◆ Drafted the Chapter 11 Trustee’s Emergency Motion for Authorization to Use Property of the Estate and the Declaration in Support of same;
- ◆ Considered issues regarding stalking horse bids for estate assets;
- ◆ Analyzed asset classifications and potential asset recoveries;
- ◆ Prepared and prosecuted complaints for the recovery of property of the estate; and
- ◆ Drafted the Chapter 11 Trustee’s (i) Motion to Approve Procedures for the Sale of Miscellaneous Assets Pursuant to Sections 363, 102 and 105 of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Miscellaneous Asset Sale Procedures”); and (ii) Motion for Order Pursuant to Section 363 of the Bankruptcy Code Authorizing the Sale of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances and Interests (the “Asset Sale Motion”).

31. On May 31, 2006, the Court entered the Order granting the Asset Sale Motion (the “Asset Sale Order”). Pursuant to the Asset Sale Order, the underlying assets of the estate were marketed during the months of June and July 2006 and sold via the Court-approved auction held on July 29, 2006 (the “Auction”). The net proceeds of the Auction are estimated to be approximately \$1.6 million to \$1.7 million, subject to certain adjustments at the time of closing on real property. An additional \$178,000 in proceeds is also anticipated to be realized from other assets which were recently sold or are the subject of a pending sale.

32. Also pending before the Court is the Chapter 11 Trustee’s Emergency Motion for Order Authorizing and Approving: (A) Sale and Bidding Procedures Governing Submission of Bids to Purchase the Membership Interests of IMA Real Estate Fund, LLC in GTO Hollywood

LLC, GTO Lake Arrowhead LLC and GTO Manchester LLC; (B) A Membership Interest Sale and Purchase Agreement to be Used in Connection with Solicitation of Bids; (C) Movant's Entry Into a Break-Up Fee Arrangement; and (D) In Conjunction with the Foregoing, the Trustee's Agreement With, and Release of, the GTO Released Parties and (E) Granting Other Related Relief (the "Membership Interest Sale Motion").

33. Pursuant to the Membership Interest Sale Motion, the membership interests of IMA Real Estate Fund, LLC in three real estate development projects located in or around Los Angeles, California (the "Membership Interests"), will be sold in auction to the highest qualified bidder. It is anticipated that the sale of the Membership Interests will result in net proceeds of not less than \$4.5 million. The auction for the sale of the Membership Interests is scheduled for September 14, 2006.

**B110. Asset Disposition**

**168.70 Hours**

34. During the Application Period, Kilpatrick Stockton:
- ◆ Conferred on frequent occasions with representatives of the United States Attorney, FBI, SEC, U.S. Trustee and other governmental agencies;
  - ◆ Analyzed procedural issues regarding the turnover to the estate of certain real property;
  - ◆ Drafted Quit Claim Deeds for the conveyance of same;
  - ◆ Conferred with certain parties and their counsel and drafted letter agreements with respect to same;
  - ◆ Considered issues regarding Miscellaneous Asset Sale Procedures;

- ◆ Drafted the Membership Interest Purchase and Sale Agreement; and
- ◆ Drafted the Membership Interest Sale Motion.

**B120. Business Operations**

**3.90 Hours**

35. During the Application Period, Kilpatrick Stockton:

- ◆ Reviewed real property lease agreements;
- ◆ Communicated with certain lessors regarding the Debtors' unexpired leases;
- ◆ Drafted the Motion to Reject Unexpired Leases of Nonresidential Real Property; and
- ◆ Reviewed the Debtors' income statements and Monthly Operating Reports.

**B130. Case Administration**

**397.40 Hours**

36. During the Application Period, Kilpatrick Stockton:

- ◆ Prepared and finalized the filing of the Debtors' petitions, first-day motions, and proposed orders;
- ◆ Analyzed issues regarding the appointment of a Chapter 11 trustee;
- ◆ Monitored systematically the calendar of scheduled hearings and response filing deadlines in the Chapter 11 cases and the related proceedings;
- ◆ Reviewed pleadings and other documents with respect to the Debtors' Bankruptcy Cases;
- ◆ Responded to inquiries from creditors and investors regarding administrative items, procedural issues and the status of the Chapter 11 proceeding;

- ◆ Drafted the Debtor's Schedules of Assets and Liabilities;
- ◆ Prepared for and attended the 341 Meeting of Creditors;
- ◆ Reviewed deposition transcripts and prepared abstracts of same; and
- ◆ Attended the bond hearing of Kirk S. Wright.

**B140. Claims Administration**

**26.40 Hours**

37. During the Application Period, Kilpatrick Stockton:

- ◆ Researched issues regarding constructive trusts, perfection of security interests, and mechanic's liens;
- ◆ Drafted preliminarily the Motion to establish a proof of claim bar date and the proposed form of notice regarding the same; and
- ◆ Reviewed proofs of claim and the proof of claim registers.

**B160. Employment and Fee Applications**

**69.50 Hours**

38. During the Application Period, Kilpatrick Stockton:

- ◆ Drafted Kilpatrick Stockton's Retention Applications and related documents;
- ◆ Prepared the Applications to Employ (i) Hays Financial Consulting, LLC as Financial Consultants and Accountants to the Debtors; (ii) Kroll Associates, Inc. as asset investigators; and (iii) Auction Management Corporation as auctioneer of certain real property of the Debtors; and

- ◆ Conferred with parties in interest regarding the retention of specialized professionals to represent the estate in asset location and recovery efforts and negotiations regarding same.

39. Time expended by Kilpatrick Stockton during the Application Period and allocated to this task category also includes the review of time detail and expense disbursement records, and the preparation of Kilpatrick Stockton's billing statements. Kilpatrick Stockton's time under this task category was necessary primarily to ensure that Kilpatrick Stockton's fees and expenses in connection with these Chapter 11 cases are appropriately detailed in its billing statements and that such statements are prepared in compliance with the U.S. Trustee Guidelines, as well as certain Bankruptcy Code and Bankruptcy Rule requirements.

**B170. Employment and Fee Objections**

**0.10 Hours**

40. During the Application Period, Kilpatrick Stockton:

- ◆ Reviewed the U.S. Trustee's objection to the Hays Financial Consultants' retention application.

**B190. Litigation General**

**21.30 Hours**

41. During the Application Period, Kilpatrick Stockton:

- ◆ Researched issues regarding fraudulent conveyance and other avoidance actions, as well as other potential causes of action;
- ◆ Drafted complaints for declaratory judgment and the recovery and turnover of property of the estate;

- ◆ Propounded discovery and directed the issuance and service of subpoenas;
- ◆ Reviewed produced documents; and
- ◆ Attended the status conference hearing in the case styled David Laird, et al. v. International Management Associates, et al., Superior Court of Fulton County, State of Georgia, Civil Action No. 2006-cv-113068.

**B330. Discovery-General**

**830.20 Hours**

42. During the Application Period, Kilpatrick Stockton:
- ◆ Reviewed voluminous documents recovered from the Debtors;
  - ◆ Drafted Motions for Rule 2004 Examination of certain parties;
  - ◆ Prepared for and drafted discovery;
  - ◆ Reviewed responses to and cataloged discovery;
  - ◆ Analyzed documents produced by various parties, including Ashland Partners and parties to that certain litigation case styled Crown Financial, LLC v. International Management Associates Platinum Group, LLC, International Management Associates, LLC, Sean Kirk Wright, Lloyd G. Geddes, and Oncology Hematology Centers of Atlanta, P.C., Superior Court of Fulton County, State of Georgia, Civil Action No. 2005-cv-109785; and
  - ◆ Prepared for and represented the Debtors in the Rule 2004 examination of key parties, including Messrs. Boyd and Harper and Ms. Wright.

**B390. Preparation for and Attendance  
at Court Hearings**

**31.50 Hours**

43. During the Application Period, Kilpatrick Stockton:
- ◆ Prepared for and attended the hearing on the first-day motions, and all hearings and Status Conferences held in these jointly administered Chapter 11 cases, as well as the bond revocation hearing of Kirk S. Wright.

**B500. Legal Research**

**179.50 Hours**

44. During the Application Period, Kilpatrick Stockton:
- ◆ Researched and reviewed UCC financing statements;
  - ◆ Reviewed corporate governance records;
  - ◆ Analyzed issues regarding the turnover of property by a custodian pursuant to Section 543;
  - ◆ Researched issues regarding service as a chapter 11 trustee; and
  - ◆ Researched and considered issues regarding potential third-party causes of action.

**COMPLIANCE WITH APPLICABLE LAWS AND RULES  
REGARDING FEE AND EXPENSE APPLICATIONS**

45. Task-Code Categories: Kilpatrick Stockton's records of time detail have been allocated in accordance with the Project Billing Format recommended in the U. S. Trustee Guidelines. Where appropriate, Kilpatrick Stockton has further allocated its time entries into additional task code categories that are specific to the Debtors' Chapter 11 cases.

46. Time Entry Format: Kilpatrick Stockton's time entries contain information regarding the billing party providing services, a narrative summary of the work performed, and an itemization (in one-tenth hour increments) of the number of hours expended in performing such services. Additionally, each time entry reflects the amount of compensation requested in connection with such time entry.

47. Chronology: Kilpatrick Stockton's time entries are arranged in chronological order under the appropriate project category.

### **ITEMIZED CHARGES AND OTHER EXPENSES**

48. In this Application, Kilpatrick Stockton is seeking \$46,650.07 in reimbursement for itemized charges and other expenses incurred in its duties as counsel for the Trustee. Kilpatrick Stockton respectfully submits that the itemized charges and other expenses incurred by Kilpatrick Stockton were necessary to the performance of its duties and that such items are in accordance with the requirements set forth in the U. S. Trustee Guidelines. The itemized charges and other expenses are reported on Exhibit B, the billing statements.

49. Kilpatrick Stockton's billing statements set forth the total cost for certain expedited mailings. The charges incurred by Kilpatrick Stockton in the performance of its duties were necessary at the time such charges were incurred; delivery/expedited mailings were utilized to submit time-sensitive materials to parties to these proceedings. Where possible, Kilpatrick Stockton has utilized electronic mail and other means to transmit data expeditiously and cost effectively.

50. Kilpatrick Stockton's billing statements include a charge for long distance telephone calls made in connection with representation of the Trustee (including long distance telephone calls placed in conjunction with outgoing facsimile transmissions).

51. Internal photocopies in this case are billed at the rate of \$.15 per page. Where applicable, outside photocopies have been billed at Kilpatrick Stockton's cost for same. Kilpatrick Stockton's costs for photocopies are not incorporated into its hourly billing rates; thus, Kilpatrick Stockton bills its clients separately for copying charges. Receipts for various itemized charges and other expenses are not attached to this Application. Copies of same, however, are available to parties in interest upon request.

#### **THE TWELVE FACTOR TEST**

52. The compensation requested herein is allowable pursuant to §§ 330, 331, 503(b)(4), 543(c)(1) and (2), Rule 2016 of the Bankruptcy Rules, and the twelve factor test (the "Johnson factors") set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). The Johnson factors and their applicability in this case are as follows:

(1) Time and Labor Required: Kilpatrick Stockton has expended **2,517.80** hours in performing services as counsel for the Trustee and/or Receiver during the period covered by this Application. A summary of the billing rates of the various attorneys, paralegals, and other personnel who have performed services is attached hereto as Exhibit A. Kilpatrick Stockton's billing statements that detail the expenditure of that time is attached hereto as Exhibit B.

(2) Novelty and Difficulty of Questions Presented: The work performed by Kilpatrick Stockton as counsel for the Trustee has involved issues of varying

complexity as further described herein and also as set forth in substantial detail in the attached billing statements.

(3) Skill Requisite to Perform Professional Services: The Trustee selected Kilpatrick Stockton as his counsel because Kilpatrick Stockton's professionals possess substantial expertise and experience in bankruptcy and related fields and are well-qualified to perform professional services for, and to represent the interests of, the Trustee.

(4) Preclusion of Other Employment Due to Acceptance of the Cases: Attorneys and paraprofessionals of Kilpatrick Stockton have devoted a substantial amount of time and resources to this case, to the possible preclusion of involvement in other matters.

(5) Customary Fees for the Type of Services Rendered: Kilpatrick Stockton believes that the fees requested and the hourly rates set forth herein are consistent with fees typically charged for the type of services rendered in cases of this magnitude and complexity. The hourly rates charged by Kilpatrick Stockton in this Application are comparable to the rates that Kilpatrick Stockton would charge to a non-bankruptcy client for work of a similar nature and complexity.

(6) Whether the Fee is Fixed or Contingent: Pursuant to section 330(a) of the Bankruptcy Code, Kilpatrick Stockton's fee is subject to Court approval, but is not otherwise contingent.

(7) Time Limitations Imposed by the Client or Other Circumstances: Certain deadlines have been applicable herein pursuant to Court order and various provisions of the Bankruptcy Code and Bankruptcy Rules.

(8) The Amount Involved and Results Obtained: The Debtors' Chapter 11 Bankruptcy Cases are complex bankruptcy cases involving allegations of insider misconduct, malfeasance, and misappropriation of many millions of dollars. Kilpatrick Stockton has played an instrumental role in these jointly-administered cases including, among other things, (i) identifying, locating and securing the assets of the receivership and bankruptcy estates; (ii) the liquidation of the assets of the estates; (iii) obtaining approval by the Court for the disposition of assets; (iv) the marketing for and execution of the Asset Sale; (v) the preparation and prosecution of certain litigation seeking the turnover and recovery of assets of the estates; and (vi) the investigation and analysis of potential claims against third parties which are expected to provide substantial recovery to the estate.

(9) The Experience, Reputation, and Ability of the Professional: Kilpatrick Stockton has extensive experience in bankruptcy matters. Its reputation and ability are well known to the bankruptcy bar and to the Court.

(10) Undesirability of the Case: This factor is inapplicable to the Debtor's Chapter 11 cases.

(11) Nature and Length of Professional Relationship with the Client: Kilpatrick Stockton was employed by the Trustee to render bankruptcy advice and to serve as his counsel in the Debtors' Chapter 11 cases. Prior to the commencement of the subject Bankruptcy Cases, Kilpatrick Stockton served as counsel to Mr. Perkins in his capacity as Court-Appointed Receiver in the State Court Litigation and the Federal Action. Kilpatrick Stockton has performed services in numerous prior

engagements in which Mr. Perkins and/or W.G. Hay & Associates, LLC have been involved in various capacities.

(12) Awards in Similar Cases: Kilpatrick Stockton believes that its fee application is in keeping with similar applications for compensation and reimbursement by counsel in similar cases in other bankruptcy courts.

**THE REQUESTED COMPENSATION  
SHOULD BE ALLOWED**

53. The compensation and reimbursement of expenses requested by Kilpatrick Stockton for services rendered to Mr. Perkins pre-petition in his capacities as a state court and federal court receiver should be allowed pursuant to 11 U.S.C. § 543(c)(1) and (2) and 11 U.S.C. § 503(b)(4) based upon the factors analyzed below.

54. Specifically, section 543(c)(1) provides that the Court shall protect all entities, such as Kilpatrick Stockton, to which a custodian, such as Mr. Perkins, has become obligated. Section 543(c)(2) provides that the Court shall provide for the payment of reasonable compensation for services rendered and costs incurred by a pre-petition custodian such as Mr. Perkins. Section 503(b)(3)(E) in turn provides for the allowance of the actual and necessary expenses of a pre-petition custodian such as Mr. Perkins who has been superseded under section 543 and for compensation of the services of such custodian. As to entities such as Kilpatrick Stockton, Section 503(b)(4) provides for the allowance of reasonable compensation for professional services rendered by an attorney of an entity whose expense is allowable under section 503(b)(3)(E). Consequently, Kilpatrick Stockton's fees and costs incurred for services rendered to Mr. Perkins pre-petition in his capacities as a state and federal court receiver are allowable as an administrative expense of the IMA estates.

55. Section 331 of the Bankruptcy Code provides for the award of compensation to professionals and incorporates the substantive standards of section 330 of the Bankruptcy Code to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 of the Bankruptcy Code provides that a court may award a professional employed under section 327 of the Bankruptcy Code "reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses." Id. 11 U.S.C. § 330(a)(1). Section 330 of the Bankruptcy Code also sets forth the criteria for awarding compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded, the court should consider the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Id. 11 U.S.C. § 330(a)(3).

56. In the instant case, Kilpatrick Stockton respectfully submits that the services for which it seeks compensation in this Application were necessary for and beneficial to the Trustee's and the Receiver's efforts in the Debtors' jointly-administered Chapter 11 and predecessor cases. The services rendered by Kilpatrick Stockton were necessary, reasonable, and beneficial, and were consistently performed in a timely manner commensurate with the complexity, importance, and nature of the issues involved. Accordingly, approval of the compensation sought herein is warranted. Kilpatrick Stockton further submits that the

compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Trustee, the Debtors' estates, and all parties in interest.

**WHEREFORE**, Kilpatrick Stockton respectfully requests that this Court enter an Order:

(a) approving this Application;

(b) granting approval of compensation to Kilpatrick Stockton in the amount of \$219,583.00 for professional services rendered and \$4,055.54 in payment of itemized charges and other expenses incurred, for a total sum of \$223,638.54 in professional fees and expenses awarded for services rendered during the Pre-Petition Period of February 17, 2006, through and including March 15, 2006;

(c) granting approval of compensation to Kilpatrick Stockton in the amount of \$549,749.00 for professional services rendered and \$42,594.53 in payment of itemized charges and other expenses incurred, for a total sum of \$592,343.53 in professional fees and expenses awarded for services rendered during the Post-Petition Period of March 16, 2006, through and including July 31, 2006;

(d) authorizing and directing payments, as an administrative expense, to Kilpatrick Stockton in the sum of \$769,332.00 for professional services rendered and \$46,650.07 for itemized charges and other expenses incurred, for a total sum of \$815,982.07 in professional fees and expenses awarded for services rendered during the Application Period of February 17, 2006, through and including July 31, 2006;

(e) granting such other and further relief as this Court may deem just and proper under the circumstances.

DATED: August 31, 2006.

Respectfully submitted,

/s/ John W. Mills, III

Dennis S. Meir, GA Bar No. 501100

John W. Mills, III, GA Bar No. 509705

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*Counsel for William F. Perkins, the Trustee*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of August, 2006, I caused true and correct copies of the foregoing **Application For Interim Allowance Of Compensation And Payment Of Itemized Charges And Expenses To Kilpatrick Stockton LLP** to be served upon the parties listed on Exhibit 1 attached hereto, via electronic mail or United States Mail (as indicated thereon) with adequate, first-class postage affixed thereto.

Dated: August 31, 2006.

/s/ John W. Mills, III

John W. Mills, III (GA Bar No. 509705)

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*Attorneys for William F. Perkins, the Trustee*

**Exhibit 1**

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Office of United States Trustee  
Attn: Leroy Culton, Esq.  
362 Richard B. Russell Building  
75 Spring Street, SW  
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c/o William F. Perkins  
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U.S. Securities and Exchange Commission  
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**Via United States Mail**

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Norcross, GA 30071

**Via United States Mail**

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Atlanta, GA 30308