

1 John Kennedy (SBN 156009)
LINER GRODE STEIN YANKELEVITZ
2 SUNSHINE REGENSTREIF & TAYLOR LLP
1100 Glendon Avenue, 14th Floor
3 Los Angeles, California 90024-3503
Telephone: (310) 500-3500
4 Facsimile: (310) 500-3501
(jkennedy@linerlaw.com)
5

Joseph D. Frank (IL Bar No. 6216085) *admitted pro hac vice*
6 Jeremy C. Kleinman (IL Bar No. 6270080) *admitted pro hac vice*
FRANKGECKER LLP
7 325 North LaSalle Street, Suite 625
Chicago, Illinois 60654
8 Telephone: (312) 276-1400
Facsimile: (312) 276-0035
9 (jfrank@fgllp.com)
(jkleinman@fgllp.com)
10

*Counsel for CFB Liquidating Corporation, f/k/a Chicago Fire
11 Brick Company, and WFB Liquidating Corporation, f/k/a
Wellsville Firebrick Company*
12

13 **IN THE UNITED STATES BANKRUPTCY COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 **In re**

17 **CFB LIQUIDATING CORPORATION,**
18 **f/k/a CHICAGO FIRE BRICK CO., an**
Illinois Corporation, et al.,

19 **Debtors.**

Case No. 01-45483 RLE

Chapter 11

Jointly Administered

Hon. Roger L. Efremsky

21 **DECLARATION OF JOSEPH D.**
22 **FRANK IN SUPPORT OF**
23 **MOTION OF FRANKGECKER**
24 **LLP FOR AWARD OF FEE**
25 **ENHANCEMENT RELATING**
26 **TO SERVICES RENDERED AS**
27 **SPECIAL COUNSEL TO CFB**
28 **LIQUIDATING CORPORATION,**
F/K/A CHICAGO FIRE BRICK
COMPANY ET AL.

1 I, Joseph D. Frank, declare as follows:

2 1. The following facts are within my personal knowledge unless otherwise stated. If
3 called to testify as a witness with regard to the statements set forth below, I could and would
4 competently testify thereto.

5 2. I am an attorney at law, duly licensed to practice *pro hac vice* before this Court in *In*
6 *re CFB Liquidating Corporation, f/k/a Chicago Fire Brick Company, an Illinois Corporation, et al.*,
7 Case No. 01-45483 RLE.

8 3. I am a partner in the law firm of FrankGecker LLP (“FG” or “Applicant”).

9 4. Beginning in 2005, FG provided legal services to the Cleveland law firm of Kelley &
10 Ferraro, LLP in connection with CFB’s bankruptcy case. In that capacity, FG discussed potential
11 settlements with Bradley Sharp, the appointed Responsible Person for CFB Liquidating Corp. f/k/a
12 Chicago Fire Brick Company (“CFB”) and WFB Liquidating Corp. f/k/a Wellsville Fire Brick
13 Company (“WFB” and, together with CFB, the “Active Debtors”), and counsel for certain of the
14 Active Debtors’ insurers. In the context of those discussions, certain insurers expressed interest in
15 pursuing insurance buy-back settlements with the Active Debtors.
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17 5. On May 11, 2007, CFB filed the Motion of CFB Liquidating Corp. for Authority to
18 Retain Frank/Gecker LLP as Special Counsel Pursuant to 11 U.S.C. § 327(c) and Declaration of
19 Joseph D. Frank [Docket No. 1404]. On May 25, 2007, CFB filed a Supplement to Motion of CFB
20 Liquidating Corp. for Authority to Retain Frank/Gecker LLP as Special Counsel Pursuant to 11
21 U.S.C. § 327(c) [Docket No. 1407] in order to clarify that FG had agreed that any compensation and
22 reimbursement of expenses paid to FG would not be paid from funds CFB held at that time. Rather,
23 FG would only seek compensation and reimbursement of expenses to be paid from funds recovered
24 by CFB after FG’s retention was approved. CFB anticipated such funds would only arise from the
25 monetization of CFB’s insurance.
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1 6. Because WFB had no liquid assets and no known asbestos-related liabilities, WFB
2 was not actively involved in discussions at the time FG was retained. FG was retained to represent
3 WFB in May, 2012 in order to include WFB in a chapter 11 plan with CFB that would resolve both
4 of the Active Debtors' bankruptcy cases.

5 7. On June 19, 2007, the Court entered an order authorizing CFB's retention of FG as its
6 special counsel [Docket No. 1412] (the "Retention Order"), retroactive to April 19, 2007, under the
7 provisions of Section 327(e) of the Bankruptcy Code.
8

9 8. At the time of FG's retention, CFB and FG anticipated that they would negotiate
10 finalized settlements with one or more of the Active Debtors' insurance carriers in a matter of months
11 and then pursue confirmation of a liquidating chapter 11 plan.

12 9. CFB and FG anticipated that, following the approval of one or more insurance
13 settlement buyback agreements, CFB would have sufficient funds available to make an interim
14 distribution of compensation to FG upon appropriate court order and to fund completion of a chapter
15 11 plan.
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17 10. Shortly after FG's retention, the Active Debtors sought to replace their general
18 bankruptcy counsel with the firm of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor
19 LLP (the "Liner Firm"). At the time of the Liner Firm's retention, the attorneys handling the
20 representation of the Active Debtors included local bankruptcy attorneys George Kalickman and
21 Matthew Borden and Los Angeles-based bankruptcy litigator Julia Brand. Each of these
22 attorneys subsequently left the Liner Firm. As a result, CFB looked to FG to take a more
23 comprehensive role in the Active Debtors' cases, all without the ability to obtain interim
24 compensation or the reimbursement of its out-of-pocket expenses.
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26 11. For the past 10 years, I and other professionals of FG have been involved with
27 asbestos-related bankruptcy cases and I am well familiar with the provisions of section 524(g) of the
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1 United States Bankruptcy Code (the “Bankruptcy Code”), a subsection of section 524 of the
2 Bankruptcy Code that was added by amendment in 1994 to provide a means for resolving present and
3 future asbestos liabilities of chapter 11 debtors.

4 12. I have been involved in not fewer than 21 asbestos-related bankruptcy cases, including
5 the Active Debtors’ cases, representing debtors, trustees, official and unofficial committees of
6 asbestos claimants, individual claimants, post-confirmation asbestos trusts, and trust advisory
7 committees involved in the operation of post-confirmation asbestos trusts. These cases have involved
8 recoveries approaching \$5 billion, made available to present and future asbestos claimants. Eight of
9 the cases in which I had a significant pre-confirmation role resulted in chapter 11 plans confirmed
10 pursuant to section 524(g) of the Bankruptcy Code.

11 13. In my experience, since the inclusion of section 524(g) of the Bankruptcy Code in
12 1994, the confirmation of a chapter 11 plan without the protections of section 524(g) that (i)
13 monetizes the debtor’s insurance assets for the benefit of its asbestos creditors, and (ii) establishes a
14 centralized, efficient claim resolution mechanism to liquidate and pay asbestos liabilities, is an
15 unprecedented accomplishment.
16

17 14. In connection with my retention in asbestos-related bankruptcy cases, I have become
18 familiar with the attorneys providing services across the nation in these cases. In my experience, I
19 have found that due to the highly complex nature of the issues unique to asbestos and mass-tort
20 related bankruptcy cases and the need for law firms representing debtors and/or committees of
21 asbestos claimants to be free from insurance-company related conflicts, only a handful of firms
22 actively participate in asbestos-related bankruptcy cases across the country. In addition to FG, these
23 firms include: Sheppard Mullin, Richter & Hampton (“Sheppard Mullin”), which served as counsel
24 to the official committee of unsecured creditors in *In re Western Asbestos Co.*, 02-46284 (Bankr.
25 N.D. Cal.) and co-counsel to the official committee of unsecured creditors in *In re Plant Insulation*
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1 *Company*, Case No. 09-31347-TC (Bankr. N.D. Cal); Caplin & Drysdale, Chartered (“Caplin &
2 Drysdale”), which served as counsel to the official committee of asbestos claimants in *In re Garlock*
3 *Sealing Technologies*, Case No. 10-31607 (Bankr. W.D. N.C.), co-counsel to the official committee
4 of unsecured creditors in *In re Plant Insulation Company* and myriad other cases; and Stutzman,
5 Bromberg, Esserman & Plifka, P.C., which served as counsel to the official committee of asbestos
6 claimants in *In re Asarco, LLC, et al.*, Case No 05-21207 (Bankr. S.D. Tex.) and counsel to *ad hoc*
7 committees and future claimants’ representatives in myriad other cases.
8

9 15. In connection with FG’s Amended Application of FrankGecker LLP for Interim
10 Allowance and Payment of Compensation and Reimbursement of Expenses Incurred as Special
11 Counsel to CFB Liquidating Corporation, f/k/a Chicago Fire Brick Company *et al.*, (the
12 “Application”) and its Motion for Award of Fee Enhancement Relating to Services Rendered as
13 Special Counsel to CFB Liquidating Corporation f/k/a Chicago Fire Brick Company, *et al.*, I and the
14 other professionals of FG reviewed the dockets of recent asbestos-related bankruptcy cases, both
15 inside and outside of the Northern District of California, the retention motions seeking to approve the
16 retention of various professionals and the fee applications filed by professionals in those cases. One
17 of the cases I reviewed was *In re Plant Insulation Company*, Case No. 09-31347-TC (Bankr. N.D.
18 Cal). As set forth above, Sheppard Mullin and Caplin & Drysdale served as co-counsel to the official
19 committee of asbestos claimants in that case. In addition, Jones Day represented the debtors as
20 bankruptcy counsel and Morgan, Lewis Bockius, LLP represented the Debtors as special insurance
21 counsel.
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24 16. The various applications for retention and/or compensation in the *Plant Insulation*
25 case, reflect the following:

- 26 a. Lead counsel for the debtor in *Plant Insulation* has charged between \$775 (at
27 case commencement) and \$825 per hour, while the two attorneys working
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1 with lead counsel on the *Plant Insulation* case currently bill at \$650 per hour
2 and \$575 per hour, respectively. Lead counsel at Sheppard Mullin,
3 representing the committee of unsecured creditors, all of whom have asbestos-
4 related claims in *Plant Insulation*, has charged between \$755 (at case
5 commencement) and \$830 (current), with secondary counsel billing at \$615 (at
6 case commencement) and \$670 (current);

- 7
- 8 b. Lead counsel for Caplin & Drysdale, co-counsel to the committee of unsecured
9 creditors, has charged between \$840 (when retained in 2009) and \$935
10 (current).
- 11 c. Morgan Lewis was retained pursuant to a contingent fee arrangement that
12 provided for reimbursement of expenses and a contingent fee recovery of 20%
13 of recoveries from Plant Insulation's insurance carriers up to \$50 million,
14 whether through litigation, settlement, or coverage-in-place agreement, with
15 additional fees payable based on recoveries in excess of \$50 million.
- 16
- 17 d. For the period between June 1, 2012 and June 30, 2012, the blended rates
18 (excluding paralegals and legal support) for Caplin & Drysdale and Sheppard
19 Mullin were \$771.51 and \$597.59, respectively, while the blended rate for
20 Jones Day for the time period between February 1, 2012 and May 31, 2012
21 was \$743.96.

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23 17. In addition, I reviewed the docket, retention motion and fee applications filed in *In re*
24 *Asarco, LLC, et al.*, Case No 05-21207 (Bankr. S.D. Tex.). The Official Committee of Unsecured
25 Creditors for the Subsidiary Debtors appointed in that case was comprised of Asbestos Claimants and
26 represented by the law firm of Stutzman, Bromberg, Esserman & Plifka, P.C. ("Stutzman"). As of
27 the time FG was retained in CFB's case, lead counsel for Stutzman charged \$675 per hour and the
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1 two attorneys serving as secondary counsel charged \$475 and \$525. By early 2010, lead counsel
2 charged \$725 per hour and secondary counsel charged \$525 and \$550, respectively.

3 18. Finally, I reviewed the docket, retention motions and fee applications filed in the
4 *Garlock Sealing Technologies, Inc.* bankruptcy case, another bankruptcy case known to me to
5 involve substantial asbestos liabilities. In that case, one of the attorneys from Caplin & Drysdale
6 retained as counsel to the committee of asbestos creditors currently charges \$1,000 per hour for his
7 services. In addition, no fewer than six different attorneys have provided services to the Asbestos
8 Claimants' Committee at legal rates higher than my current rate, and no fewer than sixteen different
9 attorneys provided legal services at rates higher than the current rate of Mr. Jeremy Kleinman, the
10 attorney who has served as second counsel throughout this engagement.

12 19. Based on my research and knowledge of the fees charged by the various law firms that
13 participate in asbestos-related bankruptcy cases, I believe the customary hourly rates charged by FG
14 are well below market rates for professionals of similar experience and expertise.

16 20. In deciding whether to accept new engagements, the professionals at FG consider the
17 ability of a potential client to timely pay for the legal services rendered. FG will generally not
18 undertake a substantial, prolonged risk of non-payment without either obtaining a retainer as security,
19 or, under appropriate circumstances, entering into a contingent fee agreement.

21 21. Contingent fee arrangements are somewhat common in Asbestos-related insurance
22 litigation, especially where a debtor does not have adequate funds to make timely, interim payments
23 to professionals. Based on my experience, contingent fees can range between 20% and 50% of
24 recoveries, based on various factors present in the case.

25 22. From time to time, FG has entered into contingent fee agreements with clients. In a
26 recent case, FG was retained by a chapter 7 trustee with Bankruptcy Court approval on a 50%

