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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re **CFB LIQUIDATING CORPORATION, f/k/a CHICAGO FIRE BRICK CO., an Illinois Corporation, *et al.*,** **Debtors.**	Case No. 01-45483 RLE Chapter 11 Jointly Administered Hon. Roger L. Efremsky **MOTION OF FRANKGECKER LLP FOR AWARD OF FEE ENHANCEMENT RELATING TO SERVICES RENDERED AS SPECIAL COUNSEL TO CFB LIQUIDATING CORPORATION, F/K/A CHICAGO FIRE BRICK COMPANY *ET AL.*, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

FrankGecker LLP ("FG"), special counsel to CFB Liquidating Corporation, f/k/a Chicago Fire Brick Company ("CFB"), and WFB Liquidating Corporation, f/k/a Wellsville Fire Brick Company ("WFB" and, together with CFB, the "Active Debtors"), hereby submits its motion (the "Motion") for an award of a 100% fee enhancement in connection with the Amended Application of FrankGecker LLP for Interim Allowance and Payment of Compensation and Reimbursement of Expenses, Incurred as Special Counsel to CFB Liquidating Corporation, f/k/a Chicago Fire Brick Company, *et al.* (the "Application"), filed contemporaneously herewith. In support hereof, FG respectfully states as follows:

INTRODUCTION

Without question, a professional fee enhancement in a chapter 11 bankruptcy case constitutes extraordinary relief, reserved for extraordinary circumstances. However, the services rendered by FG's professionals, the circumstances under which those services have been rendered and the results achieved have also been extraordinary and warrant an enhancement of the fees awarded.

FG is one of only a handful of firms from across the country that specializes in asbestos-related bankruptcy cases, as well as asbestos-related trusts created pursuant to section 524(g) of the Bankruptcy Code. Section 524(g) of the Bankruptcy Code provides special provisions, including protections for settling insurers that enable companies facing asbestos-related liabilities to reorganize. However, because the Active Debtors ceased operations and sold their operating assets, certain of the requirements of section 524(g) could not be achieved in this case.

Nevertheless, due to FG's efforts, the Active Debtors are seeking confirmation of a plan that will provide recoveries in excess of $16 million and the implementation of an efficient claims mechanism to resolve uniformly the Asbestos Claims asserted against the Active Debtors. In its experience, FG believes that since the 1994 enactment of 11 U.S.C. § 524(g), confirmation of a liquidating Chapter 11 plan that resolves and pays millions of dollars of asbestos-related liabilities without the benefit of section 524(g) is an unprecedented accomplishment. *See* Declaration of Joseph

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D. Frank in Support of Motion of FrankGecker LLP For Award of Fee Enhancement Relating to Services Rendered as Special Counsel to CFB Liquidating Corporation, f/k/a Chicago Fire Brick Company, *et al.* (the "Frank Declaration"), at ¶ 13.

The attorneys of FG (i) have provided legal services to the Active Debtors at hourly rates significantly lower than their counterparts in other asbestos-related bankruptcy cases, (ii) have faced a substantial, persistent risk that no funds would be available to provide FG compensation for the hundreds of hours of professional services provided, and (iii) have been forced to wait over five years for any payment of interim compensation in these cases. In light of these circumstances and the results achieved by FG, which far exceed the results anticipated at the time of FG's retention, FG seeks a 100% fee enhancement for the services rendered during the five-year period covered in its Application.[1]

FACTUAL BACKGROUND

When it filed for bankruptcy protection on October 10, 2001, CFB faced over 20,000 asbestos-related personal injury claims ("Asbestos Claims") constituting millions of dollars in liability. Shortly thereafter, CFB, its parent, and affiliates (collectively, the National Refractories Debtors") sold their operating assets.

By 2006, the National Refractories Debtors, including CFB, had become administratively insolvent. On December 15, 2006, the National Refractories Debtors filed the Debtors' Motion for Order Authorizing (I) Pro-Rata Distribution on Account of Allowed Chapter 11 Expenses of Administration, (II) Dismissing Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105(A), 349(B) and 1112(B); and (III) Directing Post-Dismissal Service of Notice of Insurance-Related Claims (the "Dismissal Motion") [Case No. 01-45482, Docket No.1366]. The Dismissal Motion asked the Court to (i) pay the professionals and other administrative claimants and dismiss the cases, leaving creditors with

[1] The Application covers the time period from April 12, 2007 through July 31, 2012. FG does not seek an enhancement of the lodestar amounts with respect to any fees incurred on and after August 1, 2012.

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only the right to serve complaints on an agent who would forward them to the National Refractories Debtors' insurance carriers.

At that time, FG represented the law firm of Kelley & Ferraro LLP in the National Refractories Debtors' bankruptcy cases and, in that capacity, engaged in discussions with certain of those insurance carriers. See Frank Declaration, ¶ 4. Recognizing that the Bankruptcy Code provides finality that may not be available outside of bankruptcy, some of the insurers initiated discussions regarding settlement that would include a buy-back of the insurance policies. *See* Frank Declaration, ¶ 4.

On January 4, 2007, the Court entered an order granting the Dismissal Motion and stating that the Court would enter orders dismissing the National Refractories' cases upon additional *ex parte* motions. *See* Order Granting Debtors' Motion for Order Authorizing (I) Pro-Rata Distribution on Account of Allowed Chapter 11 Expenses of Administration, (II) Dismissing Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105(A), 349(B) and 1112(B); and (III) Directing Post-Dismissal Service of Notice of Insurance-Related Claims (the "Dismissal Motion") [Case No. 01-45482, Docket No. 1369].

However, recognizing that remaining in bankruptcy to pursue these settlements was consistent with the best interests of their creditors, the Active Debtors elected not to dismiss their cases and instead, after consulting with insurers, creditors and the U.S. Trustee's office, sought to retain FG as special counsel. Specifically, FG was brought in to negotiate settlements with the Active Debtors' insurers and to confirm a chapter 11 plan. *See* Frank Declaration, ¶ 8. Because certain of the insurers had made preliminary settlement proposals, CFB and FG anticipated that settlements could be finalized and approved, and a plan confirmed, in a matter of months. *See* Frank Declaration, ¶ 8. Furthermore, CFB and FG anticipated that once the Court began to approve the negotiated settlements, a portion of the proceeds from those settlements would be available to fund the Active Debtors' ongoing and anticipated administrative expenses. *See* Frank Declaration, ¶ 9.

Following its retention, FG engaged in active settlement negotiations with Hartford Accident and Indemnity Company ("Hartford"), the Active Debtors' largest primary insurance carrier. Over

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the next year, FG and Hartford's counsel negotiated the final terms of a settlement and buyback agreement that provided a substantial recovery for CFB in excess of Hartford's remaining policy limits and provided various protections for Hartford. On October 15, 2008, CFB filed a motion to approve this settlement (the "Hartford Settlement Motion"). However, as this Court is aware, Judge Tchaikovsky denied the Hartford Settlement Motion, finding that the settlement would need to be part of a chapter 11 plan.

At the time of Judge Tchaikovsky's ruling, the Active Debtors possessed less than $10,000 in available funds, all of which were subsequently paid to the United States Trustee as quarterly fees pursuant to 28 U.S.C. § 1930. *See* Monthly Operating Report of CFB Liquidating Corporation f/k/a Chicago Fire Brick Company [Docket No. 235]; Monthly Operating Report of WFB Liquidating Corporation f/k/a Wellsville Fire Brick Company [Case No. 01-45484, Docket No. 123].

In addition, shortly after FG's retention, the Active Debtors sought to replace their general bankruptcy counsel with the firm of Liner Grode Stein Yankelevitz, Sunshine Regenstreif & Taylor LLP (the "Liner Firm"). At the time of its retention, the attorneys from the Liner Firm handling the representation of the Active Debtors included local bankruptcy attorneys George Kalickman and Matthew Borden and Los Angeles-based bankruptcy litigator Julia Brand. Each of these attorneys subsequently left the Liner Firm. *See* Frank Declaration, ¶ 10. As a result, FG was called upon to take a more comprehensive role in the Active Debtors' cases, all without the ability to obtain interim compensation or the reimbursement of its out-of-pocket expenses. *See* Frank Declaration, ¶ 10.

Under these difficult circumstances, FG and the Active Debtors have spent the last 42 months engaged in substantial efforts to reach new settlements with the Active Debtors' insurance carriers and to integrate those settlements into a consensual chapter 11 plan that provides for the orderly liquidation and payment of Asbestos Claims. As a result of these efforts, due to the expertise and

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experience of FG's attorneys, the Active Debtors now stand poised to confirm the Joint Chapter 11 Plan of CFB Liquidating Corporation f/k/a Chicago Fire Brick Company, and WFB Liquidating Corporation, f/k/a Wellsville Fire Brick Company, as Modified [Docket No. 421] (the "Plan") without the use of section 524(g). The Plan will provide over $16 million for creditors, with potential additional recoveries in excess of $2.5 million. In addition, the Plan provides for the implementation of a centralized Asbestos Claims resolution procedure that will:

(i) prevent a race to the courthouse among holders of Asbestos Claims;

(ii) efficiently resolve the Asbestos Claims asserted against the Active Debtors;

(iii) ensure that holders of Asbestos Claims who have suffered similar levels of illness will receive equivalent compensation; and

(iv) avoid a substantial portion of the expenses that all parties would incur if Asbestos Claims were litigated in state courts across the country.

A. Standards Governing Fee Enhancements Beyond the "Lodestar" Amount.

The Ninth Circuit Court of Appeals has recognized the propriety of professional fee enhancement under extraordinary circumstances. *See In re Manoa Finance Co.*, 853 F.2d 687, 692 (9th Cir.1988). In *Manoa Finance*, the Ninth Circuit recognized that the presumptive reasonableness of standard hourly rates can be overcome if two categories of "specific evidence" are presented. First, the fee applicant "must come forward with specific evidence showing why the results obtained were not reflected in either his standard hourly rate or the number of hours allowed." *Id.* Second, the applicant "must also show that the bonus is necessary to make the award commensurate with compensation for comparable non-bankruptcy services." *Id.*

In addition to the *Manoa Finance* factors, courts both inside and outside of the Ninth Circuit have determined that risk of nonpayment and delay of payment of compensation can provide the basis for a fee enhancement. In *In re One City Centre Associates*, 111 B.R. 872 (Bankr. E.D. Cal. 1990), the Court, after examining *Manoa Finance*, explained that "where an applicant establishes that without an adjustment for risk of nonpayment the applicant's client 'would have faced substantial

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difficulties in finding counsel in the local or other relevant market' and further that the market rate of compensation for that *class* of work is commensurate with the enhanced compensation sought by the applicant, the court may grant an enhancement based upon the element of risk of non-payment." *In re One City Centre Associates*, 111 B.R. 872 (1990), *quoting Hasbrouck v. Texaco, Inc.*, 879 F.3d 632, 636-37 (9th Cir. 1989); *Fadhl v. City and County of San Francisco*, 859 F.3d 649, 650 (9th Cir. 1988).

In attempting to devise an appropriate fee enhancement, courts have frequently used a lodestar multiplier. *See, e.g., In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming a 2.57 lodestar multiplier adopted by the district court based on results achieved); *In re Farah*, 141 B.R. 920, 924-25 (Bankr. W.D. Tex. 1992) (finding a 2.0 lodestar multiplier was necessary to recognize "the extraordinary contribution of counsel to the success of [the] case."); *In re Buckridge*, 367 B.R. 191, 206 (Bankr. C.D. Cal. 2007) (determining that a 1.75 lodestar multiplier was appropriate given the quality of representation at below market rates and the results achieved). In this case, use of a lodestar multiplier is warranted based on the exceptional results obtained, the cost of comparable legal services, the persistent risk of non-payment, the five-year delay in payment of any compensation, and the substantial cost savings that FG delivered to the Active Debtors' estates and creditors. Under these circumstances, FG seeks a lodestar multiplier of 2.0.

B. The Exceptional Results Obtained Are Not Reflected in FG's Customary Rates.

Exceptional results are those results that are out of the ordinary, unusual, or rare. *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 880 (11th Cir.1990); *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1302–04 (11th Cir.1988). The "results obtained" factor is one of the more significant factors in determining whether the circumstances of a case are so "exceptional and rare" as to warrant a fee enhancement. *See Farah*, 141 B.R. at 924-25, *citing Rose Pass Mines Inc. v. Howard*, 615 F.2d 1088, 1090 (5th Cir.1980).

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1. FG's efforts have produced substantial recoveries for holders of Asbestos Claims.

As discussed above, FG's work has led the Active Debtors to the threshold of confirming a Plan that will resolve and pay millions of dollars of liability arising from more than 20,000 Asbestos Claims. As all active participants in these cases are aware, these results have not come easily. In addition to renegotiating the proposed settlement with Hartford, negotiating with Bituminous Casualty Corporation ("Bituminous") and ACE Insurance Company ("ACE") and responding to concerns raised by the United States Trustee, the Active Debtors faced substantial opposition to their efforts to confirm a chapter 11 plan from Continental Casualty Company ("Continental"), one of the Active Debtors' primary insurance carriers, and, later, from Safety National Casualty Corporation ("Safety National"), the Active Debtors' excess carrier. In particular, Safety National objected to the Active Debtors' proposed settlements with Hartford, Bituminous and ACE on the basis that those settlements would improperly eliminate those insurers' duty to defend claims that, Safety National argued, if defended, might result in the Active Debtors never reaching the excess insurance provided by Safety National.

FG engaged in substantial efforts with Continental and Safety National to achieve innovative, feasible solutions that allayed the insurance carriers' concerns and cleared a path for confirmation of a plan that will pay Asbestos Claimants in part from the proceeds of policies issued by Continental and/or Safety National. *See* Plan, §§ 8.3, 9.1-9.5. The failure to achieve accord with either Continental or Safety National could have sunk the Active Debtors' Plan, the pending insurance settlements, and the ability to resolve these cases in a manner consistent with the interests of the creditors. Instead, the Active Debtors are poised to confirm a Plan that will yield results in excess of anyone's expectations. Accordingly, the results achieved in these cases rise to the level of exceptional.

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2. Dismissal would have adversely impacted Asbestos Claimants.

In addition, Asbestos Claimants have fared much better as a result of FG's efforts than they would have had these cases been dismissed. Dismissal of the Active Debtors' cases would have set off a race to the courthouse among Asbestos Claimants in state and/or federal courts across the country, incurring substantial expenses and obtaining potentially inconsistent results. The Active Debtors' insurance carriers would likely have asserted defenses to coverage, adding additional layers of litigation before payment could be made to Asbestos Claimants and imposing substantial costs upon all parties. In addition, Asbestos Claimants would have been exposed to a substantial risk of policy erosion that would have left some Asbestos Claimants with no recovery. Based upon the settlements incorporated into the Plan and the Trust Distribution Procedures to be employed to resolve Asbestos Claims, substantial portions of those expenses will be avoided and Asbestos Claimants will receive equitable treatment. It is beyond dispute that Asbestos Claimants have fared better because FG has helped the Active Debtors to keep their cases in bankruptcy and negotiate favorable settlements with their insurers. Although these results may have been more easily attainable if the Active Debtors had been able to utilize the insurer protections of section 524(g), the achievement of these results without those protections is extraordinary. *See* Frank Declaration, ¶ __.

C. FG's Hourly Rates are Significantly Less than Those of Other Firms Handling Asbestos-Related Bankruptcies.

In reviewing the reasonableness of an attorney's rate, the court is guided by the "prevailing market rates in the relevant community." *Blum v. Stenson,* 465 U.S. at 895, n.11. Asbestos-related bankruptcies are highly complex matters that require in-depth understanding of chapter 11 bankruptcies, insurance law principles, and the myriad unique factors present in mass-tort and asbestos litigation. As a result, FG is one of only a few firms across the country that specialize in the representation of committees of asbestos claimants who often work closely with debtors, and sometimes insurers, in the negotiation of chapter 11 plans addressing asbestos liabilities. The other

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CHICAGO, ILLINOIS 60654

firms that practice regularly in the field include Sheppard, Mullin, Richter & Hampton ("Sheppard Mullin"), counsel to the official committee of unsecured creditors in *In re Western Asbestos Co.*, 02-46284 (Bankr. N.D. Cal.) and counsel to the official committee of unsecured creditors in *In re Plant Insulation Company*, Case No. 09-31347-TC (Bankr. N.D. Cal); Caplin & Drysdale, Chartered ("Caplin & Drysdale"), counsel to the official committee of asbestos claimants in *In re Garlock Sealing Technologies, Case* No. 10-31607 (Bankr. W.D. N.C.), co- counsel to the official committee of unsecured creditors in *In re Plant Insulation Company* and similar representations in myriad other cases; and Stutzman, Bromberg, Esserman & Plifka, P.C., counsel to the official committee of asbestos claimants in *In re Asarco, LLC, et al.*, Case No 05-21207 (Bankr. S.D. Tex.) and counsel to committees and future claimants' representatives in myriad other cases. *See* Frank Declaration, ¶ 14.

Throughout the last five years, FG's customary hourly rates have been significantly lower than those charged by attorneys at other firms. *See* Frank Declaration, ¶¶ 14-19. The majority of services rendered by FG in this case have been provided by two attorneys: lead counsel, Joseph Frank, who charged hourly rates between $500.00 and $675.00, and Jeremy Kleinman, who charged between $310.00 and $375.00.

According to FG's research, professionals retained in recent asbestos-related bankruptcies including *In re Garlock Sealing Technologies*, *In re Asarco, LLC*, and *In re Western Asbestos Co.* and *Plant Insulation Company*, as either debtor's lead counsel or lead counsel to an official committee of asbestos claimants, routinely charge as much as $1,000 per hour. *See* Frank Declaration, ¶ ¶ 16-18.[2] In the *Garlock Sealing Technologies* case, six different attorneys provided services to the Asbestos Claimants' Committee at legal rates higher than the current rate for Mr. Frank, and sixteen different attorneys provided legal services at rates higher than the current rate of Mr. Kleinman. *See* Frank Declaration, ¶18.

[2] To the extent necessary, FG will supplement its filings with applications filed in other cases to demonstrate the fees charged.

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On a local level, the debtor in *In re Plant Insulation Company*, Case No. 09-31347-TC (Bankr. N.D. Cal.), retained the law firm of Jones Day as counsel in its asbestos bankruptcy case. Peter Benvenutti, lead counsel for the debtor in *Plant Insulation* has charged between $775 (at case commencement) and $825 per hour, while the two attorneys working with Mr. Benvenutti on the *Plant Insulation* case currently bill at $650 per hour and $575 per hour, respectively. *See* Frank Declaration, ¶16. Similarly, lead counsel from Sheppard Mullin representing the committee of unsecured creditors appointed in *Plant Insulation* has charged between $755 (at case commencement) and $830 (current), and co-counsel Caplin & Drysdale's attorney has charged between $840 (when retained in 2010) and $935 (current) *See* Frank Declaration, ¶16.

Furthermore, a survey of blended rates among these professionals confirms that the services provided by FG are below market. As set forth in the Application, FG's blended hourly rate (excluding paralegals) was $442.11. In the *Plant Insulation* case, for the period between June 1, 2012 and June 30, 2012, the blended rates (excluding paralegals and legal support) for Caplin & Drysdale and Sheppard Mullin were $771.51 and $597.59, respectively, while the blended rate for Jones Day for the time period between February 1, 2012 and May 31, 2012 was $743.96. *See* Frank Declaration, at ¶16.

D. FG Has Faced Substantial Risk of Nonpayment During its Retention.

Risk of non-payment is also a factor that may be given weight in awarding a fee enhancement. *In re D.W.G.K. Restaurants,* 106 B.R. 194, 197 (Bankr.S.D.Cal.1989) citing *Pennsylvania v. Delaware Valley Citizen's Council for Clean Air*, 483 U.S. 711, 731 (1987). However, before an adjustment for risk of non-payment is appropriate, there must be evidence upon which to base a finding that "without risk enhancement [a party] would have faced substantial difficulties in finding counsel in the local or other relevant market" and further, that the enhancement sought reflects "the difference in treatment of contingent fee cases *as a class*, rather than . . . . the 'riskiness of any

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particular case.' *Id.* (*emphasis in original*). *See also Hasbrouck v. Texaco, Inc.*, 879 F.3d 632, 636 (9th Cir. 1989).

Over the last 42 months, FG has negotiated new settlements with the Active Debtors' insurance carriers, drafted the Plan and disclosure statement, and negotiated the documents governing the orderly liquidation and resolution of Asbestos Claims proposed in the Plan. Throughout this time period, the Active Debtors have lacked any significant available funds from which to pay their professionals, imposing a substantial, persistent risk that no funds would be available to compensate FG for its services.

In most cases, law firms such as FG will not undertake a substantial, prolonged risk of non-payment without either obtaining a retainer as security, or, under appropriate circumstances, entering into a contingent fee agreement. *See* Frank Declaration, ¶ 20. Without funds to pay counsel to pursue their claims against their insurance carriers, had FG not continued to represent the Active Debtors, the Active Debtors would have had few alternatives either inside or outside of bankruptcy other than to enter into a contingent fee arrangement, yielding fees of anywhere from 20% to 50% of the Active Debtors' insurance recoveries. *See* Frank Declaration, ¶¶ 21-22.

Evidence of the use of such agreements in asbestos-related bankruptcies can be found in the *Plant Insulation* case. In that case, the debtor retained the law firm of Morgan Lewis & Bockius, LLP ("Morgan Lewis") as its special insurance litigation counsel and entered into a court-approved contingency fee arrangement that provides, *inter alia*, payment of 20% compensation from the first $50 million of insurance coverage settled, plus reimbursement of expenses, with additional compensation contemplated for recoveries beyond that threshold. *See In re Plant Insulation Company*, Case No. 09-31347 (Bankr. N.D. Cal.), Docket No. 41, Ex. 1 and 129. Although the insurance recoveries in *Plant Insulation* far exceed those achieved in this case, as discussed above,

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the achievement of these settlements without resort to the insurer protections of section 524(g) of the Bankruptcy Code, has imposed a much greater challenge.

Assuming, *arguendo*, that the settlements negotiated by FG, several of which are for amounts in excess of remaining coverage limits, could have been achieved by alternative counsel, even a 20% contingency fee would yield compensation in excess of $3.2 million, without including separately billed work to confirm a Plan. However, in light of the fact that the Active Debtors even lacked funds from which to reimburse expenses, it is likely that he contingent fee percentage would have been much higher than 20%. Accordingly, as contemplated by *Manoa Finance*, a bonus is necessary to "make the award commensurate with compensation for comparable non-bankruptcy services." *Manoa Finance*, 853 F.2d at 692.

E. FG's Ability to Obtain Interim Compensation Has Been Substantially Delayed.

A substantial delay of payment, on its own, may also justify a fee enhancement. The Ninth Circuit, both before and after *Manoa Finance*, has confirmed the propriety of adjusting the lodestar to account for an excessive delay of payment. *See D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1384 (9th Cir.1990) (to account for delay in payment from time of billing to time of award, the Court may augment an award based on historical billing rates, plus interest for the delay, or adjust the award by using current billing rates). Such an award is firmly within the Court's discretion. *Jordan v. Multnomah*, 815 F.2d 1258, 1263 n. 7 (9th Cir. 1987). *See also In re Commercial Consortium of Cal.*, 135 B.R. 120 (Bankr. C.D. Cal.1991) (bankruptcy court enhanced an attorney's fee award for delay in payment).

Because the Active Debtors have lacked funds from which FG can be paid, FG has had to wait over five years for allowance and payment of compensation in these cases. Although delay is a frequent element of the representation of a debtor in bankruptcy, it is the absence of any means of interim compensation and/or reimbursement of out-of-pocket expenses that differentiates these cases from most chapter 11 bankruptcy cases. *See Commercial Consortium*, 135 B.R at 127 ("Interim fee

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applications are supposed to help avoid undue delays in payment. When delay has nevertheless occurred, counsel should not have to bear the full brunt of the resulting financial impact."). Although the Court in *Commercial Consortium* attempted to account for the delay by using current, rather than historical billing rates, here, the other factors discussed above demonstrate that, under the totality of the circumstances, a more significant enhancement is warranted.

CONCLUSION

In this case, FG undertook all of the burdens of a contingent fee arrangement, chief among them the uncertainty and lengthy delay of payment, but did not receive the substantial benefits associated with a contingency arrangement. Nevertheless, FG has achieved remarkable results that will provide substantial recoveries for thousands of individuals suffering from asbestos-related illnesses. For the reasons stated above, FG believes a 2.0 lodestar multiplier is appropriate with respect to the compensation sought in the Application.

WHEREFORE, FG respectfully requests that this Court enter an Order:

A. Applying, as a fee enhancement, a lodestar multiplier of 2.0 to the fees sought in the Application;

B. Authorizing the Active Debtors and/or the Liquidating Trust to pay the fee enhancement when funds become available and without further order of Court; and

C. Granting such other relief as the Court deems just and equitable.

Dated: August 9, 2012

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/s/ Joseph D. Frank

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