

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: May 2, 2001  
HEARING TIME: 3:00 p.m.

In re	)	Chapter 11
MEDICAL RESOURCES, INC., <u>et al.</u> ,	)	Case No. 00-11446 (PCB)
Debtors.	)	(Jointly Administered)
	)	
	)	
	)	

APPLICATION OF WILLKIE FARR & GALLAGHER,  
AS ATTORNEYS FOR DEBTORS AND DEBTORS IN  
POSSESSION FOR FINAL ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED FROM  
APRIL 7, 2000 THROUGH FEBRUARY 8, 2001, INCLUSIVE

TO THE HONORABLE PRUDENCE C. BEATTY,  
UNITED STATES BANKRUPTCY JUDGE:

Willkie Farr & Gallagher (“WF&G”), attorneys for the above-captioned debtors and debtors in possession (the “Debtors”), as and for its application (the “Application”) for final allowance of compensation for professional services rendered and reimbursement of expenses incurred from (i) April 7, 2000 through July 31, 2000 (the “First Application Period”)<sup>1</sup>; (ii) August 1, 2000 through November 30, 2000 (the “Second Application Period”)<sup>2</sup>; and (iii) December 1, 2000 through February 8, 2001 (the “Third Application Period”, and together with

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<sup>1</sup> On October 26, 2000, the Court entered an order authorizing and approving on an interim basis 70% of the fees and 100% of the expenses requested during the First Application Period. This Application seeks final allowance of the interim approval and allowance of the 30% of the fees held back at that time.

<sup>2</sup> On December 29, 2000, WF&G filed its application (the “Second Application”) for the Second Application Period seeking fees in the amount of \$507,128.50 and expenses in the amount of \$41,839.49. A hearing has never been held with respect to the Second Application. This Application seeks final allowance of the fees and expenses sought in the Second Application.

the First Application Period and the Second Application Period, the “Application Periods”), respectfully represents:

### OVERVIEW

1. In April 2000, Medical Resources, Inc. (“MRI”) filed a petition for relief under chapter 11 as a means of restructuring its balance sheet and resolving significant securities law litigation cases then pending against it. Less than a year later, MRI emerged from chapter 11 having completely de-levered its balance sheet by converting approximately \$110 million of institutional and litigation debt and preferred equity into common equity. Moreover, MRI was able to use the chapter 11 process to fully resolve and settle more than six significant securities lawsuits pending against it, any one of which might have taken years and untold millions of dollars to resolve outside of chapter 11. From MRI’s perspective, the chapter 11 process succeeded in providing it with the “fresh start” it desperately needed and richly deserved. In MRI’s view, it could not have achieved this “fresh start” without the able and constant assistance of WF&G.

### INTRODUCTION

2. By this Application and pursuant to section 330 of the Bankruptcy Code, and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), WF&G requests that this Court authorize a final allowance of compensation for professional services WF&G rendered to the Debtors and reimbursement of actual and necessary expenses WF&G incurred in connection with the rendition of such professional services during: (a) the First Application Period in the amount of \$707,866.50 as to fees (of this amount, approximately \$495,506.55 representing 70% of the total request was awarded on an interim basis on October 26, 2000) and

approximately \$52,662.50 as to expenses (100% was awarded on an interim basis on October 26, 2000); (b) during the Second Application Period in the amount of \$507,128.50 as to fees and \$41,839.49 as to expenses; and (c) during the Third Application Period in the amount of \$353,618.50 as to fees and \$16,530.21 as to expenses.

3. By way of introduction, throughout the Application Periods WF&G assisted the Debtors in obtaining this Court's confirmation of the Debtors' Plan (as defined herein) and litigating and settling several of the critical claims which had been an impediment to moving these cases forward. WF&G's requested final allowance of compensation for services rendered (which services were performed with due regard to the role for which WF&G was retained) and reimbursement for expenses incurred reflects the requisite time, skill and effort expended towards the goals of: (a) moving the Debtors through the chapter 11 process without undue delay; (b) managing the significant, multi-party litigation spawned by the Chapter 11 plan process; (c) assisting MRI in its financial restructuring; and (d) assisting MRI in emerging from chapter 11 as a viable, ongoing and profitable business. Based upon its success in first litigating but ultimately negotiating acceptable settlements with each of the litigants, MRI, with significant assistance from WF&G, has been able to confirm and consummate its plan of reorganization.

#### BACKGROUND

4. On April 7, 2000 (the "Petition Date"), MRI and MRI - Madison Resources, Inc., one of MRI's affiliates (together, the "Debtors"), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continued in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

These chapter 11 cases were consolidated for procedural purposes only and are being jointly administered pursuant to an order of this Court.

5. No creditors' committee was appointed by the United States Trustee. Prior to the Petition Date, the holders of three tranches of the Debtors' privately placed Senior Notes in the aggregate face amount of \$75,000,000 (the "Senior Notes") organized and were active throughout the Chapter 11 cases. No trustee or examiner was appointed.

6. MRI is primarily a holding and management company which owns, manages or controls, directly or indirectly, in excess of one hundred subsidiaries, affiliated partnerships and joint ventures (collectively, the "Affiliates," and with MRI, the "Company") engaged in the business of operating and managing fixed-site outpatient diagnostic imaging centers (individually, a "Center" and collectively, the "Centers") in the United States. The primary assets of MRI are the equity interests in the Affiliates. Each of the Centers is owned, managed or controlled directly by an Affiliate. The Company employs approximately 1,200 employees.

7. Under the terms of its Third Amended Joint Plan of Reorganization filed on November 6, 2000 (as amended and re-filed on January 24, 2001, the "Plan"), the Company converted 100% of its non-ordinary course unsecured debt into equity.<sup>3</sup> The elimination of more than \$100 million in debt has allowed MRI to emerge from chapter 11 with a rationalized balance sheet which will permit it to operate profitably outside of chapter 11. By order dated February 8, 2000 (the "Confirmation Order"), this Court confirmed the Plan.

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<sup>3</sup> The terms of the Plan also call for the dissolution of MRI-Madison Resources, Inc. and the distribution of its assets in accordance with the rules of absolute priority.

8. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges," dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of these cases and this Final Application is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are Sections 330 and 331 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

#### THE DEBTORS' RETENTION OF WF&G

9. By order dated April 11, 2000, this Court approved, on an interim basis, the Debtor's retention of WF&G pursuant to section 327(a) of the Bankruptcy Code, to provide such legal services as are necessary and requested by the Debtors in furtherance of the Debtors' chapter 11 cases, including, without limitation, bankruptcy, real estate, corporate, tax and litigation services. By order dated June 15, 2000, the Debtors' retention of WF&G was approved on a final basis.

#### PRIOR FEE APPLICATIONS AND INTERIM AWARDS

10. By order, dated October 26, 2000 (the "October 26 Order"), this Court approved WF&G's amended application for interim allowance of compensation for services rendered and reimbursement of expenses incurred from April 7, 2000 through July 31, 2000, inclusive (the "First Application"). Pursuant to such order, the Debtors were authorized to and did pay WF&G \$495,506.55 in fees, equivalent to 70% of the \$707,866.50 in fees sought by WF&G, and 100% of the \$52,662.50 in expenses sought under the First Application. Although WF&G has received payment of the fees and expenses authorized by the Court pursuant to the October 26 Order, such payment was interim and remains subject to final allowance.

11. WF&G has received no payment or promise of payment for the services rendered in these cases, other than payment of compensation pursuant to the October 26 Order. WF&G filed its second application for interim allowance of compensation for services rendered and reimbursement of expenses incurred from August 1, 2000 through November 30, 2000, inclusive (the "Second Application") on December 29, 2000. A hearing on the Second Application has not been scheduled before this Court. No agreement or understanding exists between WF&G and any other entity for the sharing of compensation to be received for services rendered in or in connection with these cases. See Affidavit of Matthew A. Feldman, Esq., annexed hereto as Exhibit A.

12. WF&G hereby certifies that the Debtors have received, reviewed and approved this Application for the final allowance of compensation and reimbursement of expenses incurred during the Third Application Period and previously approved the applications related to the First Application Period and Second Application Period.

#### SUMMARY OF SERVICES RENDERED

13. Recitation of each and every item of professional services that WF&G performed would unduly burden the Court. Hence, the following summary highlights the major areas to which WF&G devoted substantial time and attention during the Third Application Period. The full breadth of WF&G's services are reflected in WF&G's annexed time records.

- **Case Administration** WF&G has worked hard to contribute to the efficient administration of these cases. WF&G has also worked to seek to resolve disputes consensually without the need for judicial intervention. In addition, WF&G has actively sought to establish an efficient working relationship with Court personnel and the Clerk's office. WF&G has maintained a positive working relationship with the counsel for the holders of the Senior Notes and counsel for DVI, leading to the expeditious and

consensual resolution of many issues that have arisen in these cases between these parties. Moreover, counsel was able to maintain professional working relationships with each of the litigants' counsel in these cases. Numerous meetings with each of the important constituents or their professionals were held, and a substantial volume of data and documents were supplied to them on a regular basis. WF&G also has assisted in responding to the inquiries from vendors, and other parties in interest regarding particular problems and issues which confront them. WF&G has also assisted MRI in filing required monthly operating reports.

- **Plan and Disclosure Statement.** During the Third Application Period, WF&G undertook the significant task of assisting the Debtors in their solicitation of votes to accept or reject the Plan and ultimately, in obtaining confirmation of the Plan. WF&G worked diligently in conjunction with the parties-in-interest in these cases to ensure an orderly and proper solicitation. Upon completion of the solicitation, WF&G assisted the Debtors in the calculation of votes. WF&G spent a great deal of time and effort in its preparation for the hearing to consider confirmation of the Plan. This preparation included the drafting and re-drafting of the Order Confirming Debtors' Third Amended Joint Plan of Reorganization (as signed and entered by the Court on February 8, 2001, the "Confirmation Order"), several affidavits in support of confirmation, the memorandum of law in support of confirmation and other related documents. In connection with securing this Court's approval of the Confirmation Order, WF&G amended and re-filed the Debtors' Plan, and filed a motion in support of the same. WF&G spent significant time continuing the process of negotiating with certain parties asserting litigation claims against MRI (the "Litigation Claimants") to ensure that the conditions necessary to confirmation were met. WF&G negotiated the consensual resolution of several objections to confirmation of the Plan and drafted pleadings with respect to the same.
- **Adversary Proceedings.** Throughout the Third Application Period, WF&G expended a great deal of time and energy assisting MRI in negotiating favorable settlements with each of the Litigation Claimants. With the exception of one agreement, each of the settlement agreements proposed by the Debtors were approved by the Court. The settlement agreement proposed by the Debtors in connection with its ongoing litigation with Messrs. Farrell and Fields received several objections. WF&G assisted the Debtors in obtaining a resolution of such objections, through the drafting of pleadings and extensive negotiations, thereby leading to the Court's approval of the settlement by order entered on January 17, 2001. On February 2, 2001, WF&G filed a motion seeking approval of a settlement agreement by and between MRI and Ronald W. Ash. Significant effort was expended by WF&G in reaching the settlement in this final outstanding litigation.

- **Retentions.** During the Final Period, WF&G continued its assistance with the retentions of (a) Lazard Freres & Co. LLC (“Lazard”), as financial advisors; (b) Arthur Andersen LLP (“Arthur Andersen”), to perform audit and accounting services; and (c) Montgomery, McCracken, Walker & Rhoads (“MMW&R”), as special counsel. Subsequent to the objection of the Office of the United States Trustee (the “UST”) to the retention of Lazard, WF&G assisted in the negotiations between Lazard and the UST which lead to a consensual resolution of the objection of the UST. WF&G participated in a hearing on the relief sought in the Lazard retention motion on December 14, 2000, which hearing was adjourned to January 11, 2001, and the retention of Lazard was approved by the Court at such hearing. On January 11, 2000, the Debtors filed an application for the retention of Arthur Andersen, which application was approved by an order of this Court entered on February 7, 2001. The order granting the application to employ MMW&R was entered on December 1, 2000.
- **Claims.** WF&G assisted the Debtors in analyzing and reconciling each of the claims filed in these cases. Throughout the Third Application Period, WF&G has negotiated, on the Debtors’ behalf, consensual resolutions to many such claims.

14. As highlighted above, during the Third Application Period, WF&G provided extensive services to facilitate the Debtors' discharge of their administrative duties as debtors in possession and otherwise move these cases to confirmation. Moreover, WF&G has provided day-to-day legal advice respecting the ordinary course operation of MRI’s businesses. All of these services have ensured the efficient administration of the Debtors' chapter 11 cases and compliance with the requirements of the Bankruptcy Code.

#### THE APPLICATION

15. By this Application and pursuant to section 330 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), WF&G requests that this Court authorize a final allowance of: (a) compensation for professional services WF&G rendered for the Debtors during all of the Application Periods, in the amount of \$1,566,613.50 and (b) the reimbursement of actual and necessary expenses WF&G incurred in connection with

the rendition of such professional services for the Debtors in the amount of \$111,032.20 (together, the “Final Allowance”). Of the Final Allowance, the sum of \$495,506.55 already has been awarded and paid as interim compensation and \$52,662.50 already awarded and paid as interim reimbursement of expenses, leaving a net amount of unpaid compensation in the sum of \$1,071,106.95 and a net amount of unpaid expenses in the sum of \$58,369.70.

16. This request for a Final Allowance includes: (a) the sum of \$495,506.55 already awarded and paid as interim compensation and \$52,662.50 already awarded and paid as interim reimbursement of expenses pursuant to the October 26 Order; (b) \$212,359.95 of fees held-back pursuant to the October 26 Order; (c) compensation for services rendered and reimbursement of expenses incurred during the Second Application Period in the respective amounts of \$507,128.50 and \$41,839.49; and (d) compensation for services rendered and reimbursement of expenses incurred during the Third Application Period in the respective amounts of \$351,618.50 and \$16,530.21.

17. The professional services and related expenses for which WF&G requests final allowance of compensation, and the related expenses for which WF&G seeks reimbursement, were rendered and incurred in connection with these cases and in discharge of WF&G's professional responsibilities as attorneys for the Debtors in their chapter 11 cases. WF&G's services have been substantial, necessary, and beneficial to the Debtors, their estates, their creditors, and other parties in interest. The variety and complexity of the issues involved in these cases and the need to act or respond on an expedited basis to those issues have required substantial time on a daily basis, sometimes requiring night and weekend work.

18. WF&G maintains written records of the time expended by attorneys and paraprofessionals in the rendition of professional services to the Debtors. Such time records are made contemporaneously with the rendition of such services by the person rendering such services. A copy of the daily time records for the Third Application Period, broken down by matter listing the name of the attorney or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services, is annexed hereto as Exhibit B. Similar information for the First and Second Application Periods was annexed to the First and Second Applications as Exhibit B.

19. For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit C is a list of the attorneys and paraprofessionals who have worked on those matters during the Third Application Period, the aggregate time expended by each individual during the Third Application Period, his or her hourly billing rate during the Final Period, and the amount of WF&G's fees attributable to each individual. Additionally, annexed hereto as part of Exhibit C is a list of all the matters for which services were rendered and the aggregate amount of hours and fees expended for each of those matters. Similar information for the First and Second Application Periods was annexed to the First and Second Applications as Exhibit C.

20. WF&G also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested during the Third Application Period is annexed hereto as Exhibit D. Similar schedules setting for the categories of expenses and amount for which reimbursement was requested during the First and Second Application Periods was annexed to the First and Second Applications as Exhibit D.

21. Pursuant to the administrative order regarding guidelines for fees and disbursements for professionals in bankruptcy cases, dated June 20, 1991 (the “Administrative Order”), WF&G recorded its services rendered and disbursements incurred on different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during an application period. A certification pursuant to the Administrative Order is annexed hereto as Exhibit E.

WF&G HAS RECEIVED COMPENSATION FROM NON-DEBTOR SUBSIDIARIES

22. During the Third Application Period, WF&G performed services for certain of MRI’s non-filed subsidiaries. As compensation for those services, WF&G was paid approximately \$4,375.40 for fees earned during this period. The services performed were wholly unrelated to MRI’s chapter 11 case.

WF&G'S REQUEST FOR FINAL COMPENSATION

23. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor's attorney:

reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title . . . .

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

24. WF&G respectfully submits that its request for final allowance of compensation is reasonable. The services rendered by WF&G, as highlighted above, required substantial time and effort, much of which occurred under extreme pressure and during nights and weekends.

25. The services rendered by WF&G during the Third Application Period were performed diligently. In many instances, WF&G has been able to successfully resolve disputes without the need to resort to the Court. When necessary, WF&G actively represented MRI's interests before the Court and, through litigation or settlement, substantially furthered the MRI's reorganization efforts.

26. During the Third Application Period, WF&G encountered certain novel and complex legal issues, often requiring extensive research and drafting. WF&G brought to bear legal expertise in many areas, including without limitation, bankruptcy, corporate tax, litigation and real estate. WF&G attorneys have rendered advice in all of these areas with skill and great dispatch.

27. The services rendered to the Debtors by WF&G during the Third Application Period required an aggregate expenditure of 1,067.70 recorded hours of the time of attorneys and paraprofessionals. Exhibit C sets forth a list of such individuals, the aggregate amount of time expended by each and the current hourly billing rate for each. The fair and reasonable value of the services rendered and recorded by WF&G to the Debtors during the Third Application Period is set forth in Exhibit B and summarized above.

## DISBURSEMENTS

28. WF&G incurred actual and necessary out-of-pocket expenses during the Third Application Period, in connection with the rendition of the professional services described above, in the amounts set forth in Exhibit D.<sup>4</sup> By this Application, WF&G respectfully requests allowance of such reimbursement in full.

29. The disbursements for which WF&G seeks reimbursement include the following:

- a. Duplicating - Charged at \$0.15 per page, based upon the cost of supplies. The charge per page includes a charge for maintaining the duplicating facilities;
- b. Telecommunications - Long distance calls are billed at actual cost. Outgoing domestic facsimile transmittals are billed at \$0.75 per page, while there is no charge for incoming facsimiles. This rate is based upon costs incurred by WF&G for machine maintenance, phone line rental and supplies used in operating the fax machine;
- c. Computer Research Charges - WF&G's practice is to bill clients for LEXIS and Westlaw research at actual cost, which does not include amortization for maintenance and equipment;
- d. Overtime Expenses - WF&G's practice is to allow any attorney working later than 8:00 p.m. and any legal assistants working later than 7:30 p.m. to charge a working meal to the appropriate client. The meal charge is limited to \$20 per person;
- e. Local Car Service - WF&G's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after 8:00 p.m.; and
- f. Delivery Services - WF&G's practice is to charge postal, overnight delivery and courier services at actual cost.

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<sup>4</sup> WF&G's standard practice is to treat certain expenses as having been incurred when such obligations are recorded and reflected as payable in WF&G's accounting system.

30. WF&G has voluntarily excluded its “word processing” charges, which are not part of its normal overhead in the amount of \$626.00, from its request for reimbursement of expenses.

PROCEDURE

31. WF&G will provide notice of this Application to the United States Trustee for the Southern District of New York and otherwise in accordance with the Bankruptcy Code, the Bankruptcy Rules, all applicable Local Bankruptcy Rules and any applicable orders of this Court.

CONCLUSION

WHEREFORE, WF&G respectfully requests that this Court enter an order awarding WF&G:

(a) a final allowance of compensation for professional services rendered from April 7, 2000 through February 8, 2001, inclusive, in the aggregate amount of \$1,566,613.50, less \$495,506.55 previously awarded and paid, for a net amount due for services rendered in the amount of \$1,071,106.95;

(b) a final allowance of reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the amount of \$111,032.20, less \$52,662.50 previously awarded and paid, for a net amount due of \$58,369.70; and

(c) such other and further relief as may be just or proper.

Dated: New York, New York  
April 2, 2001

WILLKIE FARR & GALLAGHER  
Applicant

By: /s/Matthew A. Feldman  
Matthew A. Feldman (MF- 8961)

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