

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11 – (Jointly Administered)
	)	Case No. 02-43558 (PCB)
GENUITY INC., et al.,)	
	)	Objections due by June 9, 2004
	)	By 4:00 PM Eastern Time
Debtors)	

Hearing Date: June 16, 2004

**NOTICE OF FILING SECOND APPLICATION BY AP SERVICES, LLC
FOR APPROVAL AND PAYMENT OF INCENTIVE FEES**

Notice is hereby given that AP Services, LLC (“APS”), by and through its attorneys, Dykema Gossett PLLC, has filed a second application for approval and payment of incentive fees (the “Second Application”).

You are required to file an objection, if any, on or before 4:00 p.m. on June 9, 2004. At the same time, you must also serve a copy of the response on APS’ undersigned counsel.

A HEARING WILL BE HELD on June 16, 2004 before the Honorable Prudence C. Beatty, U.S. Bankruptcy Judge, Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004.

Dated: May 25, 2004

DYKEMA GOSSETT PLLC
Attorneys for AP Services, LLC

By: /s/ Sheryl L. Toby
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
GENUITY INC., et al.,	)	Case No. 02-43558 (PCB)
)	
Debtors	)	Jointly Administered

**SECOND APPLICATION BY AP SERVICES, LLC
FOR APPROVAL AND PAYMENT OF INCENTIVE FEES**

AP Services, LLC (“APS”), makes this second application for approval and payment of incentive fees for professional services rendered and states:

Summary of Incentive Compensation Request

1. On November 27, 2002 (the “Petition Date”), the Debtors each filed voluntary petitions in before this court (the “Court”) for reorganization relief under Chapter 11 of 11 U.S.C. §101 et. Seq. (the “Bankruptcy Code”).

2. APS has served as crisis managers to the Debtors pursuant to an Order entered by this Court on March 20, 2003 (the “Retention Order”). The Retention Order approved the engagement letter between APS and the Debtors (the “Engagement Letter”). According to the terms of the Engagement Letter, the Debtors are authorized to a) compensate APS on an hourly basis for services rendered, b) reimburse APS for actual and necessary expenses incurred, and c) provide to APS an incentive fee (the “Incentive Fees”) whose terms are further described in the Engagement Letter.

3. On November 21, 2003, the Court confirmed the Debtors’ Joint Plan of Liquidation, As Modified (the “Plan”). On December 2, 2003, the Plan became effective. Pursuant to the Plan and the Liquidating Trust Agreement, dated as of December 2, 2003 (the “Trust Agreement”), among the Debtors and Meade Monger, as Liquidating Trustee (the

“Trustee”) of GLT Liquidating Trust (“GLT”). On December 2, 2003, the Debtors transferred substantially all of their assets to GLT. Pursuant to the Plan and the Trust Agreement, GLT is authorized to, among other things, wind down the Debtors’ estates, assert all claims held by the Debtors’ estates, and resolve all claims asserted by creditors against the Debtors’ estates. The activities of the Liquidating Trust are conducted by the Trustee, subject to the approval of an oversight committee (the “Oversight Committee”) consisting of certain entities appointed by the creditors of the Debtors’ estates.

4. Throughout the cases, APS has been paid hourly fees and reimbursed for expenses for each monthly period and has filed all related quarterly summaries of compensation and expenses fee statements as outlined in the Retention Order. Under the Retention Order, APS is required to file an application with the Court in order to receive the Incentive Fees from the Debtors.

5. Under the terms of the Engagement Letter, the Debtors agreed to pay APS Incentive Fees based on a formula. The formula for the Incentive Fees is directly tied to success on distributions to creditors. The calculation of Incentive Fees is based on the amount of distributions on the total amount of reserved claims. Hence, the amounts owed to APS under the Incentive Fee formula is easily calculated and is not subjective.

6. At this point in the case, the Incentive Fees to be earned by APS is based solely on percentage of distributions on allowed claims. APS would earn \$100,000 on each percentage point of distributions above 17.50% of allowed creditors’ claims (the “Allowed Creditors’ Claims” as defined in the Engagement Letter) with an additional \$125,000 to be earned and distributed upon close of the Debtors’ bankruptcy cases (when all distributions have been completed).

7. On March 8, 2004, APS filed an Application for Approval and Payment of Incentive Fees (“First Application” (D.I. 2065)). A hearing was held on May 11, 2004, at which the Court orally approved the First Application. In the First Application, APS applied for, and GLT was authorized to pay, a total of \$1,400,000 in Incentive Fees based upon cumulative cash distributions of \$745,638,189, made on December 2, 2003 and between December 3, 2003 and December 23, 2003 and as described in detail in the First Application.

8. On April 21, 2004, APS sent a letter to Kramer Levin Naftalis & Frankel LLP (“Kramer Levin”), Counsel to GLT, requesting that Kramer Levin seek approval from the Oversight Committee to pay APS additional Incentive Fees totaling \$100,000 based upon a distribution made on March 31, 2004 (letter to Kramer Levin attached hereto as Exhibit B). The Oversight Committee has reviewed this request and raised no objections. Pursuant to this Second Application for Approval and Payment of Incentive Fees (“Second Application”), APS is seeking payment of additional Incentive Fees of \$100,000.

9. APS acknowledges that, according to the Retention Order, Incentive Fees paid and payable are subject to application to and approval by this Court based on a “reasonableness” standard. By this Second Application, APS seeks approval of additional Incentive Fees totaling \$100,000 as calculated below.

Calculation of The Incentive Fees

10. Under the terms of the Engagement Letter, the Debtors agreed to pay APS Incentive Fees equal to the sum of the following.

- a. An Incentive Fee of \$500,000 will be paid if a distribution is made by November 30, 2003 and the distribution percentage is no less than 7.5% of the Allowed Creditors’ Claims. Even if the November 30, 2003 date is not met, the \$500,000

amount contemplated herein will be paid provided that the distribution percentage is greater than 14% of Allowed Creditors' Claims.

- b. An additional \$500,000 will be paid if a distribution percentage is no less than 14% of Allowed Creditors' Claims and the distribution is made by February 29, 2004.
- c. An additional \$125,000 will be paid once the cases are closed provided that aggregate distributions to creditors are no less than 17.5% of Allowed Creditors' Claims. **An additional \$100,000 will be paid for each percentage point of distribution percentage above 17.50% of Allowed Creditors' Claims. (“emphasis added”).**

11. By this application, APS seeks an Incentive Fee based on the provision that “An additional \$100,000 will be paid for each percentage point of distribution percentage above 17.50% of Allowed Creditors' Claims.” A cumulative cash distribution of \$745,638,189 consisting of a cash distribution of \$695,340,904 made on December 2, 2003, a cash distribution of \$50,597,285 made between December 3 and December 23, 2003, and a cash distribution of \$30,280,458 made on March 31, 2004 was made to creditors of the Debtors. This Second Application arises from the cash distribution of \$30,280,458 made on March 31, 2004.

12. The Creditors' Claims in these cases total \$3,324,074,559.¹

13. For purposes of calculating Incentive Fees, the distribution percentage is 23.4% of Allowed Creditors' Claims (\$776,218,647 divided by \$3,324,074,559).

¹ The creditors claims listed herein constitute the total reserved claims. The claim number could be reduced if claims are disallowed which may increase distributions to remaining creditors. The current calculation of claims consists of (i) Bank debt of \$1,677,248,349, (ii) Verizon Debt of \$1,169,116,458, (iii) BBN bonds of \$7,802,850 and (iv) allowed/reserved unsecured claims of \$469,906,902

14. As a result of the above cash distributions as a percentage of Allowed Creditors' Claims, the cumulative total Incentive Fees earned by APS is \$1,500,000 based upon the following:

- a. An Incentive Fee of \$500,000 based on a distribution percentage in excess of 7.5% of Allowed Creditors' Claims,
- b. An additional \$500,000 based on distributions made before February 29, 2004 and a distribution percentage in excess of 14% of Allowed Creditors' Claims and,
- c. An additional \$500,000 calculated as \$100,000 for each point of distribution percentage in excess of 17.5% of Allowed Creditors' Claims.

15. By this Second Application, APS seeks approval for payment of \$100,000 in Incentive Fees (\$1,500,000 total Incentive Fees earned less \$1,400,000 previously approved), consistent with the proposed form of the order attached hereto as Exhibit C.

16. As applied here in Paragraph 15, and as will be applied in any future applications, APS has subtracted the total amount of Incentive Fees previously approved from the total Incentive Fees earned under this simplified formula to arrive at an Additional Incentive Fee amount due.

Fee Enhancements Often Required by Restructuring Firms

17. Fee Enhancements for lawyers and accountants are rarely sought and rarely granted. However, APS is neither a law firm nor an accounting firm. On the contrary, APS among other things is a firm that specializes in supplying senior executives on an interim basis to financially troubled companies. Unlike law firms and accounting firms, success fees are a normal part of compensation for firms such as turnaround firms, management restructure consulting firms, and investment banking firms. As the bankruptcy court for the Southern District of Ohio

held, *In re Cardinal Indus., Inc.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (Chapter 11 operating trustee awarded a fee of \$2.1 million plus a success fee of 50,000 shares of stock):

[P]erformance-based or success-factor bonuses are a normal part of compensation arrangements for management restructure consultants and ... such bonuses generally far exceed the time value of the consultant's services on a lodestar basis. Indeed, the time value component is referred to as the base salary, apparently payable to the consultant even if success is not achieved.

In re Cardinal Indus., Inc., 151 B.R. at 847

18. As the accompanying Declaration of Meade Monger shows, APS (as well as other turnaround firms) regularly receive success fees from both inside and outside of bankruptcy cases. When Congress passed the Bankruptcy Reform Act of 1978, it decided to remove the “spirit of frugality” as a factor in bankruptcy professional fees. The standard is now the cost of comparable services in a non-bankruptcy setting.

19. Other reported decisions awarding success fees to firms that were not law firms or accounting firms include *Kaufman v. S and C Corp.*, 171 B.R. 38 (S.D. Texas 1994) (management company that operated hotel entitled to a success fee of \$212,417 for fiscal year 1992); *In re Intelogic Trace, Inc.*, 188 B.R. 557 (Bankr. W.D. Texas 1995) (awarding consultant a success fee of \$77,500 based on a percentage of the sale price of debtor's assets plus hourly fees of \$24,880 based on a rate of \$200 per hour); *In the matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 841 F.2d 789 (7th Cir. 1988) (investment banking firm awarded \$1 million success fee).

20. Success fees are a normal part of compensation for firms such as turnaround firms, management restructure consulting firms, and investment banking firms. Therefore, this court should approve APS' request for payment of additional Incentive Fees for professional services rendered in the amount of \$100,000.

Jurisdiction

21. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O). The statutory bases for the relief requested herein are sections 105(a) and 365 of title 11 of the United States Code (the “Bankruptcy Code”).

Relief Requested

22. By this Second Application, APS seeks approval of the Court for the allowance of \$100,000 in additional Incentive Fees, which is applied for under the terms of the Engagement Letter and the Retention Order.

No Prior Request

23. No prior Motion for the relief requested herein has been made to this or any other Court.

Notice

24. Notice of this Application has been given to (i) the Office of the United States Trustee, (ii) counsel to GLT and (iii) all other parties appearing on master service list attached to the proof of service filed concurrently with this application.

WHEREFORE, APS seeks an order consistent with the attached Proposed Order granting the relief requested herein.

Dated: May 25, 2004

DYKEMA GOSSETT PLLC
Attorneys for AP Services, LLC

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EXHIBIT A
(Declaration of Meade Monger)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
)	
GENUITY INC., et al.,	)	Case No. 02-43558 (PCB)
)	
Debtors	)	Jointly Administered

**DECLARATION OF MEADE MONGER IN SUPPORT OF
THE APPLICATION BY AP SERVICES, LLC
FOR APPROVAL AND PAYMENT OF INCENTIVE FEES**

MEADE MONGER makes this declaration pursuant to 28 U.S.C. sec. 1746, and states:

1. I am associated with AP Services, LLC (“APS”), which has as its principal place of business 2000 Town Center Drive, Suite 2400, Southfield, MI 48075. APS specializes in, among other things, supplying senior executives on an interim basis to financially troubled companies. APS is an affiliate of AlixPartners, LLC, AlixPartners Ltd., AlixPartners GmbH and AlixPartners S.r.l., (herein collectively “AlixPartners”), internationally recognized restructuring and turnaround advisory and consulting firms; The System Advisory Group, an information technology consulting firm; Partnership Services, LLC, a company that provides temporary employees; and the Questor entities, which are private equity funds. I am a principal of AlixPartners, LLC.

2. I submit this Declaration in support of the second application (the “Second Application”) by APS for approval and payment of Incentive Fees. I have personal knowledge of the facts recited herein, and, if called as a witness, I am competent to testify thereto.

3. On March 20, 2003, this Court entered an order authorizing the Debtors to employ and retain APS as an independent contractor to provide temporary employees to perform


management and administration services *nunc pro tunc* to January 8, 2003. I was a member of the engagement team that worked on the Debtors' cases.

4. The services of APS were important to the effective administration of the estate and recovery of value to certain parties in interest. Namely, APS' services in these cases were essential in maximizing the Allowed Creditors' Claims as defined in the Engagement Letter and the Second Application.¹ The distributions made with respect to the Allowed Creditors' Claims are the basis for the Incentive Fees sought herein.

5. In addition to time charges, success fees are a normal part of compensation for firms such as turnaround firms and management restructure consulting firms. Prior to accepting the engagement with the Debtors, AlixPartners priced the engagement, negotiated the success fee as part of its total compensation package, and took the success fee into account in accepting the work from the Debtors in a busy market.

¹ Certain capitalized terms are defined in the Application and incorporated by reference herein.

I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.


Meade A. Monger

Dated: May 25, 2004

EXHIBIT B
(Request Letter to Kramer Levin)

April 21, 2004

Mr. David M. Feldman, Esq.
 Kramer Levin Naftalis & Frankel LLP
 919 Third Avenue
 New York, NY 10022

Dear David:

I am sending this letter as a request for you to seek approval of the third payment of AP Services, LLC's success fee from the Oversight Committee. To date, the Oversight Committee has approved success fees of \$1.4 million based upon the December 2, 2003 and December 23, 2003 distributions. Based upon the March 31, 2004 distribution, additional success fees of \$100,000 have been earned.

We have filed a fee application in the Bankruptcy Court seeking approval of the previously approved \$1.4 million. This fee application is scheduled for hearing on May 11, 2004. Subject to the approval of the Oversight Committee, we intend to file another fee application seeking approval of this \$100,000.

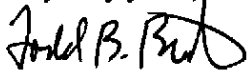
The table below presents the calculation of the AP Services, LLC's success fee per the terms of our agreement, using the "reserved claims" methodology described in my December 9th letter.

Cash Distributions to Unsecured Creditors, December 2, 2003	\$695,340,904
Cash Distributions to Unsecured Creditors, December 3-23, 2003	\$50,597,285
Cash Distributions to Unsecured Creditors, March 31, 2004	<u>\$30,280,458</u>
Cumulative Cash Distributions	\$776,218,647
Bank Claim	\$1,677,248,349
Verizon Debt	\$1,169,116,458
BBN Bonds	\$7,802,850
Allowed/Reserved Unsecured Claims	<u>\$469,906,902</u>
Total Unsecured Claims	\$3,324,074,559
Cumulative Distribution Percentage	23.4%
AlixPartners Success Fee:	
Distribution in Excess of 7.5%	\$500,000
Distribution in Excess of 14%	\$500,000
\$100,000 for Each % Point Over 17.5%	<u>\$500,000</u>
Cumulative Success Fee	\$1,500,000
Less: Previously Approved	(\$1,400,000)
Success Fee Due	\$100,000

APServices_{LLC}

Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Todd B. Brents". The signature is written in a cursive style with a large, stylized initial "T".

Todd B. Brents
AP Services, LLC

cc: Meade A. Monger

EXHIBIT C
(Proposed Form of the Order)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
)	
GENUITY INC., et al.,	)	Case No. 02-43558 (PCB)
)	
Debtors	)	Jointly Administered

**ORDER GRANTING SECOND APPLICATION BY AP SERVICES, LLC
FOR ALLOWANCE OF INCENTIVE FEES**

Upon the second application of AP Services, LLC (“APS”) for allowance of incentive compensation (the “Second Application”), as more fully set forth in the Second Application; and the matter having come to be heard before the Honorable Prudence Carter Beatty, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on the sixteenth day of June, 2004; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and consideration of all of the facts and circumstances in these cases; and upon the record set forth in open court; and it being determined to be in the best interests of the estate, and sufficient cause appearing therefore, it is

ORDERED, that the Second Application is granted; and it is further

ORDERED, that GLT Liquidating Trust is hereby authorized to pay to APS an additional Incentive Fee of \$100,000; and it is further

ORDERED, that the requirement under Local Bankr. R. 9013-1(b) for the service and filing of a separate memorandum of law is satisfied by the Application.

Dated: New York, New York

_____, 2004

The Honorable Prudence C. Beatty
United States Bankruptcy Court Judge