

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re: : Chapter 11  
: :  
MIDWAY GAMES INC., *et al.*,<sup>1</sup> : :  
: : Case No. 09-10465 (KG)  
Debtors. : (Jointly Administered)  
-----X

Objection Deadline: May 4, 2009 at 4:00 p.m. (EST)  
Hearing Date: Only in the Event of an Objection

**FIRST MONTHLY FEE APPLICATION OF DEWEY & LEBOEUF LLP  
AS SPECIAL COUNSEL TO THE BOARD OF DIRECTORS OF MIDWAY  
GAMES INC. FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES  
FOR THE PERIOD FEBRUARY 12, 2009 THROUGH FEBRUARY 28, 2009**

*Name of Applicant:* Dewey & LeBoeuf LLP  
*Authorized to Provide Professional Services to:* The Board of Directors of Midway Games Inc., et al.  
*Date of Retention:* March 10, 2009, *nunc pro tunc* to February 12, 2009  
*Period for which Compensation and Reimbursement is Sought:* February 12, 2009 through February 28, 2009  
*Amount of Compensation Sought as Actual, Reasonable, and Necessary:* \$48,930.50 (80% of Fees = \$39,144.40)  
*Amount of Expense Reimbursement Sought as Actual, Reasonable, and Necessary:* \$2,393.01

This is a:  Monthly  Quarterly  Final Application

The total time expended for preparation of this fee application is approximately 12.0 hours, and the corresponding compensation is not included herein but will be requested in a subsequent monthly application of Dewey & LeBoeuf LLP for compensation and reimbursement of expenses.

No prior fee applications have been filed by Dewey & LeBoeuf LLP in these cases.

<sup>1</sup> The Debtors are: Midway Games Inc., Midway Home Entertainment Inc., Midway Amusement Games, LLC, Midway Interactive Inc., Surreal Software Inc., Midway Studios - Austin Inc., Midway Studios - Los Angeles Inc., Midway Games West Inc., Midway Home Studios Inc., and Midway Sales Company, LLC.

**MIDWAY GAMES INC.  
SUMMARY OF FEES  
FOR THE PERIOD FEBRUARY 12 – FEBRUARY 28, 2009**

<b>Name of Timekeeper</b>	<b>Position, Number of Years in Position, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate</b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Kanner, F.	Partner since 1976, Member of NY Bar since 1969, Area of Expertise – Corporate Finance	\$875.00	26.90	\$23,537.50
Karcher, T.	Partner since 2007, Member of NY Bar since 2000, Member of NJ Bar since 1998, Area of Expertise – Business Solutions and Governance	\$750.00	12.30	\$9,225.00
Reinthal, R.	Partner since 1995, Member of NY Bar since 1974, Area of Expertise – Litigation	\$875.00	2.50	\$2,187.50
Lebwohl, A.	Associate, Member of NY Bar since 2008, Area of Expertise – Business Solutions and Governance	\$425.00	17.70	\$7,522.50
Jordan, B.	Law Clerk	\$385.00	7.00	\$2,695.00
Aaronson, H.	Paralegal	\$265.00	5.20	\$1,378.00
Saal, L.	Paralegal	\$225.00	10.60	\$2,385.00
<b>Grand Total:</b>			82.2	\$48,930.50

**MIDWAY GAMES TASK CODES**

<b>TASK CODE</b>	<b>TASK CATEGORY</b>	<b>TOTAL HOURS</b>	<b>TOTAL FEES</b>
B110	Case Administration	4.40	\$1,263.00
B160	Fee/Employment Applications	44.50	\$20,500.00
B260	Board of Directors Matters	23.20	\$18,592.50
B400	Bankruptcy-Related Advice	10.10	\$8,575.00
	<b>TOTALS</b>	<b>82.2</b>	<b>\$48,930.50</b>

**MIDWAY GAMES  
EXPENSE SUMMARY  
FEBRUARY 12-28, 2009**

<b>EXPENSE CATEGORY</b>	<b>SERVICE PROVIDER</b>	<b>TOTAL EXPENSES</b>
Reproduction	In house photocopying	\$14.00
Legal Research	Lexis	\$2,337.06
Online Legal Research		\$13.12
<b>TOTAL</b>		<b>\$2,364.18</b>

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	:	Case No. 09-10465 (KG)
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AS SPECIAL COUNSEL TO THE BOARD OF DIRECTORS OF MIDWAY  
GAMES INC. FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES  
FOR THE PERIOD FEBRUARY 12, 2009 THROUGH FEBRUARY 28, 2009**

This First Monthly Fee Application for Compensation and Reimbursement of Expenses (the "Fee Application") is filed by Dewey & LeBoeuf LLP ("D&L") requesting payment for services rendered and reimbursement of expenses incurred as special counsel ("Special Board Counsel") to the independent board of directors (the "Board") for Midway Games Inc., et al. (the "Debtors") for the period February 12, 2009 through and including February 28, 2009 (the "Application Period").

**JURISDICTION**

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> The Debtors are: Midway Games Inc., Midway Home Entertainment Inc., Midway Amusement Games, LLC, Midway Interactive Inc., Surreal Software Inc., Midway Studios - Austin Inc., Midway Studios - Los Angeles Inc., Midway Games West Inc., Midway Home Studios Inc., and Midway Sales Company, LLC.

## BACKGROUND

2. On February 12, 2009 (the "Petition Date"), the above-captioned Debtors filed voluntary petitions under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. By order dated March 10, 2009 [Docket No. 145] (the "Approval Order"), this Court approved the Debtors' Application, dated February 20, 2009 (the "Employment Application"), for entry of an Order (I) to Retain and Employ Dewey & LeBoeuf LLP as Special Board Counsel *nunc pro tunc* to the Petition Date and (II) Granting Certain Related Relief.

4. D&L is a nationally recognized law firm with extensive experience and expertise in corporate governance, restructuring, and reorganization under the Bankruptcy Code.

5. Presently, the attorneys having primary day-to-day responsibility for representation of these cases are Frederick W. Kanner, Richard W. Reinthaler, and Timothy Q. Karcher. D&L has drawn and will draw upon the knowledge and skills of other firm attorneys to provide services as the needs arise.

6. Pursuant to the Approval Order, in accordance with section 327(e) of the Bankruptcy Code, the Debtors received authorization to employ and retain D&L as Special Counsel to the independent members of the post-petition Board on the terms set forth in the Employment Application, effective as of February 12, 2009.

7. The Approval Order further stipulates that D&L shall be compensated by the Debtors in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Local Rules of the United States Bankruptcy Court for the District of

Delaware (the "Local Rules"), and such procedures as may be fixed by order of this Court.

### **RELIEF REQUESTED**

8. D&L submits this Fee Application pursuant to § 330 and § 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals dated March 9, 2009 [Docket No. 139] (the "Administrative Order"), and Local Rule 2016-2. By this Fee Application, D&L seeks interim allowance of compensation for actual and necessary professional services rendered in the amount of \$48,930.50 (less a 20% holdback as provided in the Administrative Order) for the Application Period, and seeks payment of \$39,144.40 in accordance with the terms of the Administrative Order. D&L also seeks reimbursement of actual expenses incurred in the amount of \$2,364.18.

### **SUMMARY OF FEES**

9. The total number of hours expended by D&L professionals and paraprofessionals in performing professional services for the Board during the Application Period was 82.2 hours, at a blended billing rate of \$595.26 per hour. The value of these services has been computed at the rates D&L customarily charges for similar services provided to other clients.

10. A detailed chronological itemization of the services rendered by each attorney and paraprofessional, calculated by tenths of an hour and categorized in accordance with the appropriate task code, is attached hereto as Exhibit A. Specifically, the services rendered by D&L during the Application Period included, without limitation, the following:

- (a) Case Administration (Task Code B110): D&L provided professional services in connection with preparation and revisions to certain pleadings, motions and applications and filing of same with the Bankruptcy Court.

**Total Hours: 4.4**                      **Total Fees: \$1,263.00**

- (b) Fee/Employment Applications (Task Code B160): D&L provided professional services to the Board in connection with the preparation and filing of the Employment Application and affidavit in support thereof. In connection with the Employment Application, and as detailed therein, D&L performed a comprehensive conflicts search. In addition, D&L conducted legal research for precedent regarding the retention of independent board counsel in chapter 11 cases. D&L also assisted in the preparation of motions to appear *pro hac vice*.

**Total Hours: 44.5**                      **Total Fees: \$20,500.00**

- (c) Board of Directors Matters (Task Code B260): During the Application Period, D&L provided advice to the Board concerning its duties, as well as advised regarding recommendations and decisions by the Board. For example, during the Application Period, the Board's Compensation Committee met and conferred regarding an employee incentive plan proposed by the Debtors and D&L provided counsel to the Board in connection therewith. In addition, during the Application Period, certain discovery requests and a notice of deposition were served on the Board in connection with the Debtors' motion to use Cash Collateral and D&L provided professional services to the Board in connection therewith.

**Total Hours: 23.2**                      **Total Fees: \$17,615.00**



- (d) Bankruptcy-Related Advice (Task Code B400): During the Application Period, D&L reviewed pleadings and provided legal advice to the Board on matters relating to the Debtors' chapter 11 proceedings. D&L coordinated with Debtors' counsel to avoid duplication of services and maximize the efficacy of its advice to the Board regarding the bankruptcy process.

**Total Hours: 10.1**

**Total Fees: \$8,575.00**

**ACTUAL AND NECESSARY COSTS AND EXPENSES INCURRED**

11. D&L seeks reimbursement of expenses in the amount of \$2,364.18. A complete breakdown of these expenses is reflected in Exhibit A. In accordance with Local Rule 2016-2, D&L charges \$.10 per page for photocopying, computer-assisted legal research is billed at actual cost, and outgoing facsimile transmission charges are billed at \$1.00 per page, with no charges for incoming transmissions. D&L reserves the right to request, in subsequent fee applications, reimbursement of any additional expenses incurred during the Application Period, as such expenses may not have been included in this Fee Application.

**COMPLIANCE WITH THE BANKRUPTCY CODE,  
THE BANKRUPTCY RULES AND LOCAL RULES**

12. In accordance with Local Rule 2016-2, a summary schedule of hours and fees for each attorney and paraprofessional, and a summary schedule of hours and fees categorized by task code are set forth in the attachments to this Fee Application.

13. Section 331 of the Bankruptcy Code provides for interim compensation of 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.*

§ 330(a)(1). Section 330 of the Bankruptcy Code also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded . . . the court shall 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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

*Id.* § 330(a)(3).

14. In the instant case, D&L respectfully submits the professional services for which it seeks compensation and the expenditures for which it seeks reimbursement in this Fee Application were necessary for and beneficial to the Board, and by extension, the Debtors’ orderly administration of their estates. Moreover, the services performed were consistent with the Employment Application and affidavits submitted in support thereof. D&L worked assiduously to anticipate or respond to the Board’s needs and assist in the

chapter 11 process, without duplication of services. Where appropriate, D&L utilized associates and paraprofessionals to perform services to the Board. Indeed, of the 82.2 hours expended on this matter during the Application Period, 40.5 hours were expended by associates and paraprofessionals. Such services and expenditures were necessary to and in the best interests of the Debtors' estates and creditors. D&L further submits the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Board, and by extension, the Debtors, their estates, and all parties-in-interest. Accordingly, D&L submits that the professional services rendered and expenses incurred were actual and necessary and that the compensation sought is reasonable and in accordance with the requirements of § 330 of the Bankruptcy Code.

15. Every effort has been made by D&L to categorize daily time entries in accordance with the correct task code. However, in some instances, services overlap between task codes. Thus, some services may appear under more than one code, although in no instance is a specific time entry recorded more than once.

16. The undersigned has reviewed the requirements of Local Rule 2016-2 and submits that this Fee Application complies with Local Rule 2016-2.

17. No agreement or understanding exists between D&L and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with these cases.

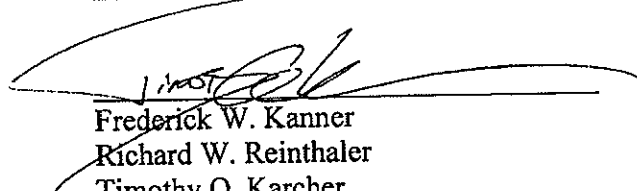
**NOTICE**

18. As required by the Administrative Order, a copy of this Fee Application has been served upon the (i) Debtors, (ii) Counsel for the Debtors, (iii) Counsel for the Committee (as defined in the Administrative Order), (iv) Counsel for the Lender (as defined in the Administrative Order), and (v) the Office of the United States Trustee. Notice of this Fee Application was served upon all parties requesting notice pursuant to Bankruptcy Rule 2002.

**WHEREFORE** D&L respectfully requests that this Court: (i) approve this First Monthly Interim Fee Application for services rendered and expenses incurred for the Application Period; and (ii) enter an order granting any other and further relief as the Court deems proper and just.

Dated: April 14, 2009

**DEWEY & LEBŒUF LLP**

  
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*Special Board Counsel*