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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

NOV 21 AM 8:13

IN RE:	)	Case No. 01-12266-SSM
	)	(As consolidated with 01-12267-SSM
PATINET OPERATING, INC., et al.,	)	01-12268-SSM and 01-12269-SSM)
)	
Debtor.	)	Chapter 7

RECEIVED-EPSC
 NOV 21 AM 10:00
 COMMISSION CLERK

NOTICE OF MOTION

YOU ARE HEREBY NOTIFIED that Gordon P. Peyton, Trustee in Bankruptcy, has filed the attached Application for Authority to Employ K. Stewart Evans, Jr. as Special Litigation Counsel for the Chapter 7 Trustee. A hearing will be held on December 2, 2003 at 10:00 a.m. If you object to this Motion, you or your counsel must file a written objection with the Court and serve a copy on the undersigned counsel.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then by November 25, 2003, you or your attorney must:

- File with the Court (United States Bankruptcy Court for the Eastern District of Virginia (Alexandria Division), 200 South Washington Street, P.O. Box 19247, Alexandria, VA 22320-9247), a written response with supporting memorandum as required by Local Bankruptcy Rule 9013-1(H). Unless a written response and

US _____
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 TH *ALAN* _____

H. Bradley Evans, Jr. (VSB #4733)
 REDMON, PEYTON & BRASWELL, L.L.P.
 510 King Street, Suite 301
 Alexandria, VA 22314
 (703) 684-2000
 Counsel to Gordon P. Peyton, Trustee

DOCUMENT NUMBER-DATE

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EPSC-COMMISSION CLERK

supporting memorandum are filed and served by the date specified, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing. If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above. You must also mail a copy to the persons listed below.

• Send a copy of any written response to the following persons:

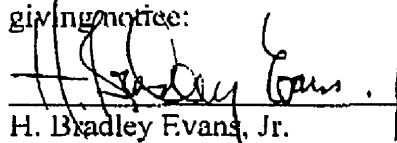
- H. Bradley Evans, Jr.
Redmon, Peyton & Braswell, LLP
510 King Street, Suite 301
Alexandria, VA 22314
(703) 684-5109 (fax)
- United States Trustee, Region 4
115 South Union Street, Suite 210
Alexandria, VA 22314

• Attend the hearing on December 2, 2003 at 10:00 a.m.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Date: November 10, 2003

Signature, name, address and telephone number of person giving notice:

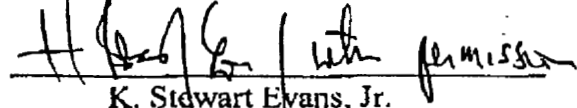


H. Bradley Evans, Jr.
Redmon, Peyton & Braswell, LLP
510 King Street, Suite 301
Alexandria, VA 22314
(703) 684-2000

Virginia State Bar No. 4733
Counsel for Gordon P. Peyton, Trustee in Bankruptcy

CERTIFICATE OF SERVICE

I do hereby certify that I have this 10th day of November, 2003, mailed a true copy of the foregoing Notice of Motion to the parties listed on the Application for Authority to Employ K. Stewart Evans, Jr. as Special Litigation Counsel for the Chapter 7 Trustee.


K. Stewart Evans, Jr.

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	
PATHNET OPERATING, INC.,	)	Case No. 01-12266-SSM
DEBTOR.	)	Chapter 7
In re:)	
PATHNET OPERATING OF VIRGINIA,	)	Case No. 01-12267-SSM
INC.,	)	Chapter 7
DEBTOR.)	
In re:)	
PATHNET FIBER EQUIPMENT, INC.,	)	Case No. 01-12268-SSM
DEBTOR.	)	Chapter 7
In re:)	
PATHNET REAL ESTATE, LLC,	)	Case No. 01-12269-SSM
DEBTOR.	)	Chapter 7

**APPLICATION FOR AUTHORITY
TO EMPLOY K. STEWART EVANS, JR. AS SPECIAL
LITIGATION COUNSEL FOR THE CHAPTER 7 TRUSTEE**

Gordon P. Peyton, Chapter 7 trustee (the "Trustee") of the bankruptcy Estates of Pathnet Operating, Inc. ("POI"), Pathnet Real Estate, L.L.C., Pathnet Fiber Equipment, LLC, and Pathnet Operating of Virginia, Inc. (collectively, the "Debtors"), pursuant to Section 327 of the United States Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, respectfully requests the Court to approve the employment of K. Stewart Evans, Jr. ("Mr. Evans") and his law firm, PEPPER HAMILTON LLP ("Pepper"), as special litigation counsel to the Trustee to represent the Trustee in the case of Peyton, Trustee v. 360networks (USA), Inc.

11. Bradley Evans, Jr. (VSB #4733)
Redmon, Peyton & Braswell, L.L.P.
510 King Street, Suite 301
Alexandria, Virginia 22314
(703) 684-2000
Counsel to Gordon P. Peyton, Trustee

Adversary Proceeding 02-08294-SSM ("the Adversary") and in connection with 360's Objections to the Trustee's Motion to Sale Assets Free and Clear ("360's Claims"). In support of this Application, the Trustee states:

BACKGROUND

1. On April 2, 2001 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. In July, 2001, the cases were converted to Chapter 7. Thereafter, Gordon P. Peyton (the "Trustee") was appointed as Chapter 7 Trustee for the Debtors.

2. Nortel Networks Inc. ("Nortel Networks") and Cisco Systems Capital Corporation ("Cisco Systems") (together, the "Secured Lenders") hold liens on substantially all of the Debtors' assets. Shortly after the conversion of the cases, the Secured Lenders entered into an agreement with the Trustee in which they authorized the Trustee to use their cash collateral to pursue the recovery of assets and the sale of the Secured Lenders' collateral (the "Cash Collateral Agreement"). The Cash Collateral Agreement provided that a portion of the proceeds generated by the Trustee were set aside for nonpriority unsecured creditors. On September 20, 2001, the Court approved the Cash Collateral Agreement.

3. Since that time, the Trustee has brought considerable assets into the Estates through marketing and sale of property of the Estate, including but not limited to the sale of assets to Tri-State Generation and Transmission Association, Inc., and the settlement of the avoidance action against certain affiliates of these Debtors. Significant recoveries have been made in a large number of preference actions and others are pending.

4. On December 12, 2002, the Trustee filed the Adversary.

5. Thereafter, the Trustee filed his First Set of Interrogatories and production of documents on February 12, 2003 and the second set on March 11, 2003.

6. On March 15, 2003, the Trustee filed a Notice and Motion to Compel responses to his various Interrogatories. Thereafter, the parties agreed on a suspension of discovery with, as far as the Trustee was concerned, an effort to obtain a sale and then resolve the disposition of the proceeds thereafter.

7. The Trustee has filed and is now pending an application to sell the fiber optic route in question to FiberLink. Mr. Evans has been very active in the extended review of documents involving the Trustee's claims and 360's Claims, was instrumental in assisting in the preparation of the Declarations attached by William Smedburg, Daniel Gray and Shawn O'Donnell in support of the sale, and is otherwise more fully informed as to the nature and extent of 360's Claims and the Debtor's answers than is present counsel to the Trustee in this matter.

8. Present counsel, H. Bradley Evans, Jr., wishes to withdraw from the Adversary and 360's Claims issues for a number of reasons, notably those stated in the preceding paragraph.

9. The Trustee, in his business judgment, wishes to employ Mr. Evans as special litigation counsel pursuant to 11 U.S.C. § 327(e) for the purpose of assisting the Trustee and the Estates in conjunction with the Adversary and the 360's Objections to the Trustee's Motion to Sell Assets Free and Clear of Liens. The Trustee believes the hourly rates and the Summary of Charges for Ancillary Services set forth in Mr. Evans' attached Declaration, and the disbursement policies in the Amended Cash Collateral Agreement are reasonable and agrees to compensate Mr. Evans and Pepper according to those terms. The Secured Lenders, whose cash collateral will be used to compensate Mr. Evans and Pepper, agree to the Application.

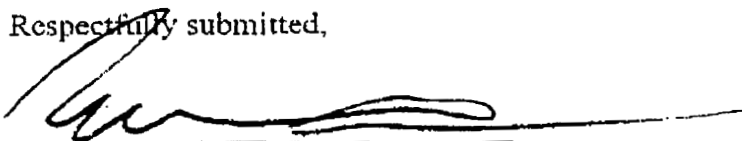
10. To the best of the Trustee's knowledge, Mr. Evans does not have any actual or potential conflict of interest with the Estates. (Mr. Evans's Declaration to that effect is attached).

11. Subject to Court approval, the Trustee intends to compensate Mr. Evans and Pepper at the hourly rates set out in Mr. Evans' Declaration and to reimburse Mr. Evans and Pepper for expenses at the rates set out in Mr. Evans' Declaration and in the same manner that other professionals employed by the Trustee have been compensated in this case, as outlined in the Amended Cash Collateral Agreement approved by the Court on December 17, 2002. On a monthly basis, Mr. Evans will mail a copy of its invoice to the Trustee, the United States Trustee, Nortel Networks, and Cisco Systems. Ten days after receipt of the invoice, if no objection is received, the Trustee may pay Mr. Evans from the cash collateral account (and Mr. Evans may treat same as income) 75% of the month's billing plus 100% of the costs expended. All fees and expenses of Mr. Evans shall be subject to approval upon applications filed with the Court approximately every ninety days.

CONCLUSION

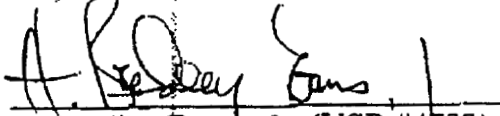
WHEREFORE, the Trustee respectfully requests that the Court enter an order granting the relief requested herein, and such other and further relief as the Court considers appropriate.

Respectfully submitted,



Gordon P. Peyton (VSB #5155)
 Redmon, Peyton & Braswell, L.L.P.
 510 King Street, Suite 301
 Alexandria, Virginia 22314
 (703) 684-2000
 Chapter 7 Trustee

REDMON, PEYTON & BRASWELL, L.L.P.

By: 
 H. Bradley Evans, Jr. (VSB #4733)
 510 King Street, Suite 301
 Alexandria, VA 22314
 (703) 684-2000
 Counsel to Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Authority to Employ K. Stewart Evans, Jr. as Special Litigation Counsel for the Chapter 7 Trustee was served by first class mail on November 18, 2003 upon the following:

Stephen H. Nelson, Esquire
Cline, Williams, Right, Johnson &
Oldfather, LLP
1900 U.S. Bank Building
233 South 13th Street
Lincoln, Nebraska 68508

Philip C. Baxa, Esquire
Troutman Sanders
Bank of America Center
1111 East Main Street
Richmond, Virginia 23219

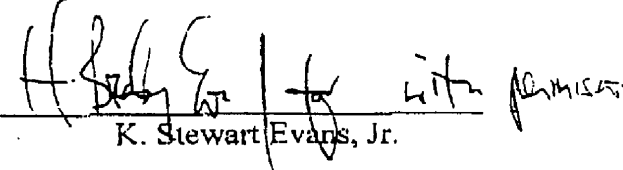
Jack Frankel, Esquire
U.S. Trustee's Office
115 S. Union Street, Suite 210
Alexandria, Virginia 22314

Tom W. Davidson, Esquire
Aiken Gump Strauss Hauer & Feld, LLP
1676 International Drive, Penthouse
McLean, Virginia 22102

R. Timothy Bryan, Esquire
Piper Rudnick, LLP
1775 Wiehle Avenue
Reston, Virginia 20190

Cecily A. Dumas, Esquire
Friedman Dumas & Springwater, LLP
One Maritime Plaza, Suite 2475
San Francisco, California 94111

and the attached list of creditors.


K. Stewart Evans, Jr.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re:)	
)	
PATHNET OPERATING, INC.,	)	Case No. 01-12266-SSM
DEBTOR.	)	Chapter 7
_____)	
In re:)	
)	
PATHNET OPERATING OF VIRGINIA,	)	Case No. 01-12267-SSM
INC.,	)	Chapter 7
DEBTOR.)	
_____)	
In re:)	
)	
PATHNET FIBER EQUIPMENT, INC.,	)	Case No. 01-12268-SSM
DEBTOR.	)	Chapter 7
_____)	
In re:)	
)	
PATHNET REAL ESTATE, LLC,	)	Case No. 01-12269-SSM
DEBTOR.	)	Chapter 7
_____)	

**DECLARATION OF K. STEWART EVANS, JR. PURSUANT TO
11 U.S.C. § 327(e) AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2014(a) IN SUPPORT OF APPLICATION FOR
AUTHORITY TO EMPLOY K. STEWART EVANS, JR. AS
SPECIAL LITIGATION COUNSEL FOR THE CHAPTER 7 TRUSTEE**

K. Stewart Evans, Jr., under penalty of perjury, declare:

1. I am a partner in the firm of PEPPER HAMILTON LLP ("Pepper"), a law firm with offices in the District of Columbia and I am admitted to practice before the United States Bankruptcy Court for the Eastern District of Virginia, the United States District Court for the Eastern District of Virginia, and other state and federal courts;

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PEPPER HAMILTON

003

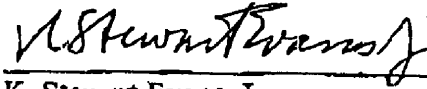
2. I am duly authorized to submit this declaration on behalf of the Firm in support of the application of Gordon Peyton, the Chapter 7 Trustee (the "Trustee") of Pathnet Operating Inc. and the other above-captioned debtors (collectively, the "Debtors"), for authorization to employ me as special litigation counsel to the Trustee in these Chapter 7 cases, including Adversary Proceeding No. 02-08294-SSM and in compliance with Section 327(e) of the Bankruptcy Code, as well as to provide the disclosures required under Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.

3. My hourly rate is \$420.00; the hourly rate of Greta Brake, a Senior Paralegal is \$160.00; and the hourly rate of Miran Dalley, Document Clerk is \$35.00. If it becomes necessary for other Pepper attorneys, paralegals, and/or personnel to work on these matters, the hourly rates for Pepper partners range from \$225.00 to \$550.00, for associates from \$150.00 to \$250.00, for paralegals/legal assistants from \$55.00 to \$170.00, and for Document Clerks and Librarians from \$25.00 to \$100.00. Pepper reviews and adjusts its hourly rates periodically and normally adjusts them effective January 1 of each year. Pepper bills for expenses monthly, examples of which are listed on the attached "Summary of Charges for Ancillary Services." (Some disbursements are not always available on a current basis and may require supplemental statements);

4. Unless otherwise stated in this declaration, I have personal knowledge of the facts set forth herein. To the extent that any information disclosed in my declaration requires amendment or modification as additional information becomes available to me, a supplemental declaration will be submitted to the Court reflecting such amended or modified information.

5. I, and other attorneys at my firm, have represented and are representing Cisco Capital Systems, a secured lender in these bankruptcy cases. These matters are on-going.

6. Neither I nor my firm hold or represent any interest adverse to the Debtors' estates with respect to the matters for which the special litigation counsel is to be employed by the Trustee.



K. Stewart Evans, Jr.

November 14, 2003

PEPPER HAMILTON LLP
SUMMARY OF CHARGES FOR ANCILLARY SERVICES

This schedule summarizes the manner in which the firm currently determines the amount billed to clients for the most frequently used ancillary services provided by the firm or obtained for the client from outside vendors. The amounts set forth in this schedule, like the rates of our lawyers, change from time to time.

ACTUAL DESCRIPTION OF SERVICE	BASIS OF CHARGE	CURRENT CHARGE	DESCRIPTION ON INVOICE
Communications			
Long Distance Calls	Per Call	Standard Rates	Telephone
Calls from Cellular Phones	Per Invoice	Vendor Invoice	Telephone
Fax: Incoming	No Charge	No Charge	n/a
Outgoing	Per Page	\$1.00	Telecopy Charge
Copies			
Photocopy:			Duplicating & Reproductions
Internal Service	Per Page	\$.20	
Outside Service	Per Invoice	Vendor Invoice	
Filings/Delivery/Services			
Filings, Recording Fees	Set by Courts	Court Receipt	Filing Fees
Filing/Courier/Messenger Service:	Per Invoice	Vendor Invoice	Filing/Courier/Messenger Service
Regular Service	Per Invoice	Vendor Invoice	
Special Service	Per Invoice	Vendor Invoice	
Non-Local	Per Invoice	Vendor Invoice	
Outside Service	Per Invoice	Vendor Invoice	
Process Service:			Process Service
Local	Per Invoice	Vendor Invoice	
Non-Local	Per Invoice	Vendor Invoice	
Non-Local /Outside Service	Per Invoice	Vendor Invoice	
Requiring Sheriff	Per Invoice	Vendor Invoice	
Publication of Legal Notices	Set by Publication for County	Vendor Invoice	Advertising & Publishing
Criminal / Asset Reports	Per Invoice	Vendor Invoice	Reports
Certificates of Good Standing	Set by Courts	Court Receipt	Certificates
Postage	Destination / Weight	Postage Cost	Postage
Overnight Mail Services	Per Delivery	Vendor Invoice	Messenger Service
Research / Data Management			
Online Database (LEXIS, NEXIS, WESTLAW, etc.)	Per Hour or Transaction	Vendor Invoice	Database Research
Document Retrieval	Per Invoice	Vendor Invoice	Reference Service

ACTUAL DESCRIPTION OF SERVICE	BASIS OF CHARGE	CURRENT CHARGE	DESCRIPTION ON INVOICE
Inter-Library Loans	Borrowing Fee	Vendor Invoice	Reference Service
Computer Tax Preparation	Pro Rata Portion of Invoice	Vendor Invoice	Computer Tax Preparation
Travel			
Travel -- Non-Auto (Coach Class ticket unless otherwise agreed)	Per Invoice	Vendor Invoice	Travel Expense
Auto: Personal Vehicle	Per Actual Mile	\$.36	Travel Expense
Rental of Vehicle	Per Invoice	Vendor Invoice	
Taxi or Public Transportation / Parking	Per Invoice	Vendor Invoice	Local Transportation
Meals and Lodging	Per Invoice	Vendor Invoice	Meals or Travel Expense
Other			
Outside Professional Services	Per Invoice	Vendor Invoice	Professional Fees & Expenses
Depositions and Transcripts	Per Invoice	Vendor Invoice	Reporting Services
Notary Fees	Per Seal / by State	Varies by State	Notary Fees
Witness Fees	Set by Courts	Various	Witness Fees
Expert Witness Fees	Per Agreem't with Witness and Client	Vendor Invoice	Expert Witness Fees

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Mr. Evans is to be engaged, and it appearing that the employment is necessary and would be in the best interest of the estates, it is therefore

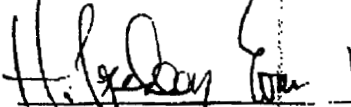
ADJUDGED, ORDERED AND DECREED that the employment of Mr. Evans and his law firm on the terms stated in the Application filed herein be, and hereby is, approved, with its compensation to be provided in accordance with the Application, subject to final determination after notice and a hearing pursuant to Section 330 of the United States Bankruptcy Code.

Pursuant to Rule 9022-1(B) of the rules of this Court, the Clerk is directed to furnish copies hereof to: the United States Trustee, 115 S. Union Street, #210, Alexandria, Virginia, 22314; Gordon P. Peyton, P.O. Box 25456, Alexandria, Virginia, 22313-5456; and K. Stewart Evans, Jr., Pepper Hamilton, LLP, 1600 14th Street, NW, 5th Floor, Washington, DC 20005.

It is so ORDERED this _____ day of _____, 2003.

Stephen S. Mitchell
United States Bankruptcy Judge

I ASK FOR THIS:



H. Bradley Evans, Jr. (VSB #4733)
Redmon, Peyton & Braswell, L.L.P.
510 King Street, Suite 301
Alexandria, Virginia 22314
(703) 684-2000
Counsel to Gordon P. Peyton, Trustee

SEEN AND APPROVED:

United States Trustee
115 S. Union Street, #210
Alexandria, VA 22314