

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: December 18, 2012
Hearing Time: 10:00 a.m.

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:
In re :
:
PATRIOT COAL CORPORATION, :
et al., :
:
Debtors. :
-----X

Chapter 11

Case No. 12-12900 (SCC)

(Jointly Administered)

OBJECTION OF THE UNITED STATES TRUSTEE TO FIRST INTERIM APPLICATIONS OF PROFESSIONALS FOR ALLOWANCE OF PAYMENT OF COMPENSATION AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES

TO THE HONORABLE SHELLEY C. CHAPMAN, BANKRUPTCY JUDGE:

Tracy Hope Davis, the United States Trustee for Region 2 (the "United States Trustee"), respectfully submits this objection to the first interim applications (each, the "Application" or "First Interim Application") for compensation and reimbursement of expenses submitted in the above-referenced cases by the following professionals (the "Retained Professionals") for the period up to September 30, 2012 (the "First Interim Period"):

<u>Professional Filing Interim Application</u>	<u>ECF No.</u>	<u>Fees Requested</u>	<u>Expenses Requested</u>
AP Services, LLC Advisor to the Debtors Period: July 9, 2012 through September 30, 2012 ¹	1589	\$1,702,143.15	\$108,040.00

¹ The retention of AP Services, LLC ("APS") to serve as the Debtors' restructuring advisors and to provide a Chief Restructuring Officer was filed pursuant to 11 U.S.C. § 363. (ECF Nos. 141, 371). The order approving the retention of APS (the "APS Retention Order") provides that "APS is not required to submit fee applications pursuant to Sections 330 and 331 of the Bankruptcy Code, but will instead submit monthly invoices to the Debtors, and the Debtors are hereby authorized to pay, in the ordinary course of business, all reasonable amounts invoiced by APS for fees and expenses." See Order (i) Authorizing the Debtors' Employment and Retention of AP Services, LLC and (ii) Designating Kenneth A. Hiltz as Chief Restructuring Officer, as of July 17, 2012. (ECF No. 371). The APS Retention Order further provides that the firm shall file quarterly reports of compensation earned. APS is in compliance with this requirement. (ECF No. 1589).

Blackstone Advisory Partners L.P. (" <u>Blackstone</u> ") Financial Advisor to the Debtors Period: July 9, 2012 through September 30, 2012	1591	\$4,489,838.71	\$14,367.97
Bowles Rice LLP (" <u>Bowles Rice</u> ") Special Counsel to the Debtors Period: July 9, 2012 through September 30, 2012	1590	\$289,722.60	\$0.00
Curtis, Mallet-Prevost, Colt & Mosle LLP (" <u>Curtis Mallet</u> ") Conflicts Counsel to the Debtors Period: July 9, 2012 through September 30, 2012	1587	\$87,462.45	\$693.75
Davis Polk & Wardwell LLP (" <u>Davis Polk</u> ") Counsel to the Debtors Period: July 9, 2012 through September 30, 2012	1588	\$8,145,882.50	\$272,375.68
Ernst & Young LLP (" <u>Ernst & Young</u> ") Independent Auditor Period: July 9, 2012 through September 30, 2012	1585	\$292,563.50	\$8,354.49
GCG, Inc. Administrative Agent for the Debtors Period: July 9, 2012 through September 30, 2012	1582	\$346,695.10	\$3,388.47
Jackson Kelly PLLC (" <u>Jackson Kelly</u> ") Special Counsel to the Debtors Period: July 9, 2012 through September 30, 2012	1592	\$239,458.98	\$21,919.09
Kramer Levin Naftalis & Frankel LLP (" <u>Kramer Levin</u> ") Counsel to the Official Committee of Unsecured Creditors Period: July 18, 2012 through September 30, 2012	1586	\$2,364,788.00	\$75,813.93
Steptoe & Johnson PLLC (" <u>Steptoe & Johnson</u> ") Special Counsel to the Debtors Period: August 1, 2012 through September 30, 2012	1593	\$86,172.90	\$2,931.31
Thompson Coburn LLP (" <u>Thompson Coburn</u> ") Special Counsel to the Debtors Period: July 9, 2012 through September 30, 2012	1579	\$94,952.25	\$1,696.74
TOTAL		\$18,139,680.14	\$509,581.43

JURISDICTION, VENUE, AND STATUTORY PREDICATES

1. This Court asserts jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1408, but on November 27, 2012, this court ordered pursuant to 28 U.S.C. § 1412

that venue of these cases be transferred to the United States Bankruptcy Court for the Eastern District of Missouri.²

2. The statutory predicates are Sections 330 and 331 of Title 11, United States Code (the “Bankruptcy Code”). This matter was initiated pursuant to Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), Administrative Order M-389, Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (the “Local Guidelines”), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330² (the “UST Guidelines,” together with the Local Guidelines and the Amended Guidelines, the “Guidelines”).

FACTUAL BACKGROUND

3. On July 9, 2012 (the “Petition Date”), the debtors, consisting of Patriot Coal Corporation and 98 of its affiliates (the “Debtors”), filed voluntary petitions for relief in this district under chapter 11 of title 11, United States Code (the “Bankruptcy Code”). (ECF No. 1).

4. According to the Declaration of Mark N. Schroeder, Senior Vice President and Chief Financial Officer of Patriot Coal, the Debtors, together with their non-debtor subsidiaries,

² There is some confusion about when the transfer to the Eastern District of Missouri was or will be effective. The Court’s November 27, 2012, order transferring venue to the United States Bankruptcy Court for the Eastern District of Missouri has not been stayed, and the Court did not retain jurisdiction over any pending matters or delay the effect of that order. See Transfer Opinion at 55 (“the Patriot chapter 11 cases shall be transferred to the United States Bankruptcy Court for the Eastern District of Missouri, in the interest of justice pursuant to 28 U.S.C. § 1412. IT IS SO ORDERED”). Compare In re Houghton Mifflin Harcourt Publ. Co., 474 B.R. 122, 139 (Bankr. S.D.N.Y. 2012) (transferring bankruptcy cases but delaying effect of transfer order until effective date of plan or three weeks from confirmation date, whichever was earlier). The Court’s docket does not reflect that the record has been transferred to the Missouri court or that the Missouri court has taken any actions to exercise its jurisdiction.

³ The Bankruptcy Court for this district has adopted the UST Guidelines. See In re Brous, 370 B.R. 563, 569 at n.8 (Bankr. S.D.N.Y. 2007) and Administrative Order M-389, at 1.

are leading producers and marketers of coal in the United States, with operations and coal reserves in the Appalachia (Northern and Central) and Illinois Basin coal regions. Declaration of Mark N. Schroeder Pursuant to Local Bankruptcy Rule 1007 dated July 9, 2012 at ¶ 5. (ECF No. 4).

5. The Debtors remain in possession of their assets and continue to manage their business as debtors-in-possession pursuant to Bankruptcy Code Sections 1107(a) and 1108. To date, no trustee or examiner has been appointed in these Chapter 11 cases.

6. On July 18, 2012, the United States Trustee, pursuant to Section 1102(a)(1) of the Bankruptcy Code, appointed the official committee of unsecured creditors (the "Creditors' Committee"). (ECF No. 118).

7. On August 24, 2012, CompassPoint Partners, L.P., Frank Williams, and Eric Wagoner, and informal group of holders of common stock of Patriot (collectively, the "Interested Shareholders") filed a motion to appoint an equity committee in the Debtors' cases. (ECF No. 417). The United States Trustee objected to the Interested Shareholder's motion. (ECF No. 565). As of the date hereof, the Court has not held the hearing to consider that motion.

8. On August 2, 2012, the Court entered an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Monthly Compensation Order"). (ECF No. 262). According to the Monthly Compensation Order, professionals in these cases may be paid 80% of their fees and 100% of their expenses on a monthly basis by filing a monthly fee statement with the Court and serving the statement on certain parties. Id.

Extension of Exclusivity Period

9. On October 18, 2012, the Debtors filed a motion seeking the extension of the exclusivity period within which to file a plan of reorganization and solicit votes thereon (the “Exclusivity Motion”). (ECF No. 1398). In the Exclusivity Motion, the Debtors indicated that they had been engaged in discussions with the Creditors’ Committee and had made several formal and informal presentations to its advisors in an attempt to pave the road to a consensual plan of reorganization. Id. at ¶ 8. Moreover, the Debtors indicated that “further progress on the Debtors’ labor contracts and legacy labor liabilities is also necessary before a plan of reorganization can be filed” and the Debtors also had to “complete their work with various potential liquidity providers to secure adequate liquidity upon emergence from chapter 11.” Id. at ¶¶ 9-10.

10. On November 15, 2012, the Court entered an order extending the Debtors’ exclusive period to file a plan through and including May 5, 2013 and to solicit acceptance of such plan through and including July 4, 2013. (ECF No. 1575).

Operating Reports

11. The Debtors are current with the filing of monthly operating reports through October 31, 2012. (ECF No. 1584). Although the Debtors’ October 2012 report demonstrates that the Debtors presently have approximately to \$355 million of cash and cash equivalents on hand, the October monthly operating report also lists a net loss of approximately \$38 million. Id. The July, August, and September 2012 operating reports each list net losses of approximately \$135 million, \$30 million, and \$50 million, respectively. (ECF Nos. 474, 793, and 1500).

Transfer of Venue

12. Promptly after the Petition Date, the United Mine Workers of America (the “UMWA”) filed a motion to transfer these chapter 11 cases to the Southern District of West Virginia, in the interest of justice and for the convenience of the parties (the “UMWA Motion to Transfer Venue”). (ECF Nos. 116, 127). Various parties joined the UMWA Motion to Transfer Venue. On August 22, 2012, the United States Trustee filed a separate motion for entry of an order transferring the Debtors’ chapter 11 cases to a district where venue was proper (the “UST Transfer Motion”). (ECF No. 406, 407). The UST Transfer Motion sought transfer of these cases from the Southern District of New York to a district where venue is proper under the interest of justice prong of Section 1412 of Title 28 because the Debtors created non-operating entities on the eve of bankruptcy solely to achieve affiliate venue in the Southern District of New York. Id.

13. Various parties, including the Debtors and the Creditors’ Committee, filed objections to the motions seeking the transfer of venue. (ECF Nos. 424, 425).

14. On November 17, 2012, the Court issued a Memorandum Decision on Motions to Transfer Venue Pursuant to 28 U.S.C. § 1412 (the “Transfer Opinion”). (ECF No. 1629). In the Transfer Opinion, the Court held that, while no party disputed that Section 1408 of Title 28 had been “satisfied” in these cases, the Debtors’ cases had to be transferred from the Southern District of New York to the Eastern District of Missouri in the interest of justice pursuant to 28 U.S.C. § 1412. See Transfer Opinion at p. 34. The Court focused its decision on the creation of two non-operating Debtor affiliates on the eve of the bankruptcy filing in order to establish venue, and in so doing concluded:

Notwithstanding the absence of bad faith on the part of the Debtors in filing these cases in the Southern District of New York in literal compliance with section 1408, this Court cannot allow the Debtors' venue choice to stand, as to do so would elevate form over substance in way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system. Creating PCX and Patriot Beaver Dam solely for the purpose of establishing venue is not "the thing which the statute intended.

Id. at p. 38-39.

LEGAL STANDARDS

A. Reasonableness

15. Bankruptcy Code Section 330(a)(1) provides that:

After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, ... an examiner, ... or a professional person employed under section 327 or 1103 –

- (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, . . . professional person, or attorney and by any paraprofessional person employed by any such person; and
- (B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1)(A) and (B).

16. To determine reasonableness, Section 330(a)(3) of the Bankruptcy Code instructs that:

. . . 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.

11 U.S.C. § 330(a)(3).³

17. To determine “reasonable compensation,” bankruptcy courts in this district are guided by, among other things, the Guidelines. See In re Value City Holdings, Inc., 436 B.R. 300, 305 (Bankr. S.D.N.Y. 2010) (“In addition to conforming to the requirements of the Bankruptcy Code, requests for professional compensation must also conform with the Bankruptcy Rules, UST Fee Guidelines and the SDNY Guidelines.”) (footnotes omitted).

18. Section 330 requires the applicant to establish both reasonableness and benefit to the estate from the professional’s services. In re Lederman Enters., Inc., 997 F.2d 1321, 1323 (10th Cir. 1993). To be compensable, the professional’s services must have been necessary and beneficial to the estate or its creditors. In re Engel, 124 F.3d 567, 573 (3d Cir. 1997).

19. Each applicant bears the burden of proving the reasonableness of its fees and expenses sought. Zeisler & Zeisler, P.C. v. Prudential Ins. Co. (In re JLM, Inc.), 210 B.R. 19, 24

³ Bankruptcy Rule 2016 implements the standards set forth in Section 330 of the Bankruptcy Code:

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, the time expended and expenses incurred and (2) the amounts requested.

Fed. R. Bankr. P. 2016(a).

(Bankr. 2d Cir. 1997); Value City, 436 B.R. at 305; In re CCT Commcn's, Inc., 2010 WL 3386947, No. *4 (Bankr. S.D.N.Y. 2010, Aug. 24, 2010); In re Northwest Airlines Corp., 382 B.R. 632, 645 (Bankr. S.D.N.Y. 2008) (citations omitted); In re Keene Corp., 205 B.R. 690, 695 (Bankr. S.D.N.Y. 1997). The professional's burden of proof to show entitlement to fees should "not be taken lightly, especially given that every dollar expended on legal fees results in a dollar less that is available for distribution to the creditors." In re Spanjer Bros., Inc., 191 B.R. 738, 747 (Bankr. N.D. Ill. 1996). To satisfy its burden, an applicant must justify its charges with detailed, specific, itemized documentation. In re Baker, 374 B.R. 489, 494 (Bankr. E.D.N.Y. 2007); In re Bennett Funding Group, 213 B.R. 234, 244 (Bankr. N.D.N.Y. 1997).

20. If an applicant fails to sustain its burden on reasonableness, a court may properly deny the application for compensation. In re Beverly Mfg. Corp., 841 F.2d 365 (11th Cir. 1988). Similarly, a court may reduce a professional's fees or expenses when they are disproportionate to the benefit to the estate, even if it already has approved the professional's retention under Sections 327 and 328 of the Bankruptcy Code. In re Taxman Clothing Co., 49 F.3d 310, 316 (7th Cir. 1995); Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253, 262-63 (3d Cir. 1995) (affirming lower court's denial of improperly documented and inadequately detailed expenses).

21. The Court has an independent burden to review fee applications "lest overreaching ... professionals drain [the estate] of wealth which by right should inure to the benefit of unsecured creditors." Keene Corp., 205 B.R. at 695 (quoting In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 844 (3d Cir. 1994)); CCT, 2010 WL 3386947, *4; Value City, 436 B.R. at 305. Accordingly, courts serve a vitally important gate-keeping role in enforcing the Code's requirements that only reasonable fees be approved and paid as well as maintaining public

confidence in the bankruptcy system itself. In re Temple Retirement Community, Inc., 97 B.R. 333, 337 (Bankr. W.D. Tex. 1989). “[T]he judiciary should retain control of fees, given the sensitivities they generate and the need to promote public confidence in the system.” In re Child World, Inc., 185 B.R. 14, 17 (Bankr. S.D.N.Y. 1995).

B. The United States Trustee’s Authority to Review and Comment Upon Applications for Compensation

22. The United States Trustee has the authority pursuant to 28 U.S.C. § 586, when appropriate, to review and object to fee applications:

(a) Each United States Trustee, within the region for which such United States Trustee is appointed, shall –

.....
(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11 by, whenever the United States Trustee considers it to be appropriate –

(A) (i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States Trustee except when circumstances warrant different treatment), applications for compensation and reimbursement under section 330 of title 11; and

(ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.

.....

28 U.S.C. § 586(a)(3)(A)(i)-(ii).

C. Interim Compensation

23. Interim fee awards are discretionary, and are subject to re-examination and adjustment during the course of the case. See In re Nana Daly’s Pub, Ltd., 67 B.R. 782,

787 (Bankr. E.D.N.Y. 1986) (“Any award of interim compensation is within the discretion of the court and will be considered based upon the circumstances of the particular case.”) (citing In re First Hartford Corp., 23 B.R. 729 (Bankr. S.D.N.Y. 1982) (bankruptcy judge deferred payment of interim compensation pending confirmation of debtor's plan of reorganization)); see also In re Fernandez, 441 B.R. 84, 98-99 (Bankr. S.D. Tex. 2010) (Because of the speculative nature of interim fee awards, they are “always subject to the court's reexamination and adjustment during the course of the case.”), aff'd BR 07-35173, 2011 WL 1404891 (S.D. Tex. Apr. 13, 2011) (citing Matter of Evangeline Refining Co., 890 F.2d 1312, 1321 (5th Cir. 1989)).

24. In particular, “whether interim allowances are awarded, and in what amounts, [are] questions left by Congress to the sound discretion of the bankruptcy court.” Id. Because the pending Applications are interim in nature, the timing of any payments is also within the parameters of the Court’s discretion. Barron, 73 B.R. at 814. Furthermore, the Court also has the discretion to defer ruling on any or all of the Applications, until the time for final applications is proper. In re ACT Mfg., Inc., 281 B.R. 468, 474 (Bankr. D. Mass. 2002).

25. Section 331 of the Bankruptcy Code incorporates the requirements of Section 330, and the standards are the same for interim and final awards of compensation. See Bennett Funding, 213 B.R. at 244. At the interim fee stage, “there is [no] legal entitlement to payment prior to the final fee award.” Child World, 185 B.R. at 17. Bankruptcy Code Section 331 “is permissive, nothing in that provision requires a court to grant an application for interim compensation.” Id. Thus, the statute “authorizes the award of interim compensation, but does not mandate it.” In re First Hartford Corp., 23 B.R. 729, 732 (Bankr. S.D.N.Y. 1982); see also

Barron, 73 B.R. at 814 (Congressional intent underlying Section 331 “was only to give officers of the estate an *opportunity* to apply for reimbursement.”).

26. Historically, the solvency of a bankruptcy estate has also weighed heavily in the judiciary’s exercise of discretion in fee matters. In particular, “where there are insufficient funds in the debtor’s estate to pay interim allowances, these allowances may be deferred until a time when unencumbered funds become available for payment.” First Hartford, 23 B.R. at 732 (due to lack of unencumbered assets, granting interim allowances, but deferring payment until confirmation of reorganization plan); Matter of Codesco, Inc., 15 B.R. 354, 356 (Bankr. S.D.N.Y. 1981) (payment deferred until unencumbered funds available for payment); In re National Buy-Rite, Inc., 10 B.R. 380, 381 (Bankr. N.D. Ga. 1981) (where the amount of administrative claims exceeds the value of estate assets, professionals are not entitled to immediate payment of interim compensation).

27. Similarly, courts have denied interim compensation where professionals have “yet to produce any cognizable and tangible results.” In re Hillsborough Holdings Corp., 125 B.R. 837, 840 (Bankr. M.D. Fla. 1991). Interim compensation has also been denied, and moratoriums on interim compensation imposed until, courts have been convinced the case is “moving towards a point of resolution.” In re UNR Indus., Inc., 72 B.R. 796, 799 (Bankr. N.D. Ill. 1987); see also In re General Coffee Corp., 39 B.R. 7, 8 (Bankr. S.D. Fla. 1984) (denying all interim compensation on grounds that allowances would be premature pending the resolution of Chapter 11 case).

OBJECTION

A. All Retained Professionals

28. By the First Interim Applications, the Retained Professionals seek allowance and payment of 100 percent of the compensation and reimbursement of 100 percent of the out-of-pocket expenses incurred during the First Interim Period. The United States Trustee respectfully requests a continued 20 percent deferral of payment, or “hold-back,” of fees or such other percentage as the Court deems just and proper.⁴ Given the current circumstances of these cases, the deferral of payment or imposition of a hold-back is justified.

29. To date, the Debtors have not filed a plan and disclosure statement and the Debtors have been suffering significant net losses since the Petition Date. The Debtors have obtained an extension of their exclusive period during which they may file a Chapter 11 plan until May 5, 2013. Whether a comprehensive plan can be negotiated and confirmed in these cases depends on many variables at this point. In the Exclusivity Motion, the Debtors acknowledged that “additional work and progress is necessary” to be in a position to propose a plan. See Exclusivity Motion at ¶¶ 9-10. In order to pave the road to confirmation, the Debtors have to, among other things, (a) continue to refine their business model to ensure the Debtors’ ability to compete in the industry, (b) implement specific restructuring initiatives, (c) address the Debtors’ labor and retiree obligations, (d) complete their work with various potential liquidity providers, and (e) develop a plan of reorganization after engaging in negotiations with the Creditors’ Committee and other constituencies and parties in interest in the cases. Id.

⁴ As set forth in Footnote 1, the terms governing fees in the APS Retention Order are different than terms set forth in the retention orders of the other Retained Professionals because APS’s retention is pursuant to 11 U.S.C. § 363 – not Sections 327 or 1103. Moreover, the APS Retention Order authorizes the Debtors to pay, in the ordinary course of business, all reasonable amounts invoiced by the firm for fees and expenses. Accordingly, no hold back is sought with respect to APS.

30. In addition, a review of the monthly operating reports filed to date reflects that the Debtors are suffering losses that, to date, aggregate in excess of \$250 million. See supra at ¶ 11. In fact, the Debtors report consolidated net losses for the month of October 2012 alone in the amount of \$38 million, and suffered net losses in every month since the Petition Date. See id.

31. In sum, the ultimate results and benefit to the estates for the services rendered by the Retained Professionals simply cannot be assessed at this time. It is undisputed that matters of importance to the Debtors' reorganization, including negotiations with the labor unions, lie ahead. Since those results are still unknown, the imposition of a uniform continued interim 20 percentage holdback is appropriate. In re Child World, Inc., 185 B.R. 14, 18 (Bankr. S.D.N.Y. 1995) (hold backs, while not mandated by statute, are commonly used by courts to moderate potentially excessive interim allowances and to offer an incentive for timely resolution of the case); see also In re Bank of New England Corp., 134 B.R. 450, 458-59 (Bankr D. Mass. 1991) (because of the difficulty in determining whether services were actual and necessary when reviewing interim applications, bankruptcy courts routinely require percentage reductions until the end of the case), affirmed, 142 B.R. 584 (D. Mass. 1992).

B. Blackstone Advisory Partners, L.P.

32. Blackstone seeks the allowance of \$4,489,838.71 in fees and reimbursement of out-of-pocket expenses in the amount of \$14,367.97 during the First Interim Period. The United States Trustee objects to \$5,714.04 in out-of-pocket expenses sought by the firm during the First Interim Period.

Weekend Car Service

33. Blackstone seeks to bill the estate for their professionals' roundtrip weekend car service charges. These charges, which amount to \$197.44 for the First Interim Period, are a part

of the firm's overhead and are not compensable by the estates. Further, they are not provided for under the Bankruptcy Code or the Guidelines. Accordingly, the United States Trustee objects to the reimbursement of expenses in the amount of \$197.44 related to weekend car service.

Meals

34. Pursuant to the Amended Guidelines, meal charges are reimbursable up to a maximum of \$20.00 per person if they are overtime meals after 8:00 p.m., provided that, if the professional dines before 8:00 p.m., the expense is reimbursable only if the professional returns to the office to work at least one and one half hours. Amended Guidelines, E(5). Daytime meals are not reimbursable unless the individual is participating, during the meal, in a necessary meeting respecting the case. In its Application, Blackstone charged the estates \$3,965.60 for a "client dinner with P. Hubbard & M. Suchmann, & 15 members of client management team in New York." This meal expense exceeds the \$20.00 per person limit by \$3,605.60. Accordingly, the United States Trustee requests that the Court disallow \$3,605.60 related to the aforementioned meal charge.

Publishing Services

35. In its Application, Blackstone charges \$1,911 for "publishing charges." No back-up documentation supporting these charges was provided with the Application. Accordingly, Blackstone has not met its burden of proof to show that this out-of-pocket expense reimbursement was actual and necessary and thus should be denied.

C. Curtis Mallet

36. Curtis Mallet seeks the allowance of \$87,462.45 in fees and reimbursement of out-of-pocket expenses in the amount of \$693.75 during the First Interim Period. The United States Trustee objects to the allowance of fees in the amount of \$13,807.50 and \$183.94 in out-

of-pocket expenses sought by the firm during the First Interim Period for the reasons set forth below.

1. **Fees**

Transitory Timekeepers

37. The United States Trustee has identified time entries by two Curtis Mallet's transitory timekeepers who each billed time to these cases during the First Interim Period. Specifically, of the nine Curtis Mallet's attorneys who billed during this period, two of them (P. Buenger and J. Zimmer) billed less than five hours during the period. Timekeepers who work on large matters for only a few hours are often referred to as "transitory timekeepers." These timekeepers often add little or no value to the work, and the need to explain a task to a transitory timekeeper often outweighs any benefit that is added. See In re Jefsaba, 172 B.R. 786, 806 (Bankr. E.D. Pa. 1994) (to avoid having the estates bear the cost of a firm's professional's learning curve, unless the applicant explains the value conferred by transitory timekeepers, their fees should be disallowed). Thus, absent satisfactory explanation, the United States Trustee requests that the Court reduce any compensation allowed to Curtis Mallet in the amount of \$1,236.50, which is the amount of fees generated by the two transitory timekeepers who are identified above.

Billing for Matters Outside of Scope of Employment

38. The United States Trustee objects to \$10,176.50 in compensation requested by Curtis Mallet which falls outside of the scope of the firm's employment. Curtis Mallet was retained by Order of the Court dated August 2, 2012 ("Curtis Mallet Retention Order"). (ECF No. 266). The Curtis Mallet Retention Order provided that the firm was authorized to render various services "in connection with matters where Davis Polk has an actual or potential conflict

of interest.” See Curtis Mallet Retention Order at p. 3. The Curtis Mallet Retention Order further stated that the firm “shall provide timely disclosures identifying any matters where Davis Polk or the Debtors’ other counsel determines that an actual or potential conflict of interest exists, and that such matters should appropriately be handled by Curtis.” Id. On or about October 12, 2012, Curtis Mallet filed a supplemental declaration disclosing that “since filing the Original Declaration, Curtis has represented the Debtors in connection with the rejection of various agreements and equipment leases with the following counterparties: Deutsche Bank Securities Inc., Macquarie Corporate & Asset Funding, Inc., SG Equipment Finance and Siemens Financial Services.” ECF No. 1214, p. 3. Curtis did not file any further supplemental declarations after October 12, 2012.

39. Attached hereto as Exhibit 3 are Curtis Mallet’s time records that show professionals performing services that appear to be outside of the scope for which Curtis Mallet was retained. As evidenced by the annexed time records, Curtis Mallet’s attorneys and paralegals billed close to 20 hours – for a total of \$10,176.50 in fees – reviewing documents related to the motions to transfer venue and preparing for and attending the hearing with respect to the venue motions. The venue motions were objected to and defended by Davis Polk. Accordingly, absent explanation, the United States Trustee objects to \$10,176.50 in fees that Curtis Mallet’s professionals incurred with respect to the transfer of venue issues as they appear to be outside the scope of the firm’s retention.

Review of Invoices in Preparation of Fee Application

40. While the United States Trustee acknowledges the allowance of a reasonable amount of time for fee application preparation under the Bankruptcy Code, the fees related to such task should be limited to the preparation of the actual fee application, and should not

encompass the review and correction of bills and response to the Fee Committee or other parties in interest to inquiries or objections raised with respect to the fee applications. Said differently, the Bankruptcy Code does not give professionals carte blanche to charge debtors' estates for unreasonable fees to prepare fee applications. As the court in In re Computer Learning Ctrs., Inc., 285 B.R. 191, 219-220 (Bankr. E.D. Va. 2002) held:

[T]his does not mean that every aspect of preparing a fee application is compensable. In re CF & I Fabricators of Utah, Inc., 131 B.R. 474, 483-88 (Bankr. D. Utah 1991) carefully reviews the billing process and analyzes each aspect for purposes of compensation under 11 U.S.C. §330. It holds that those portions of the billing process common to billing both bankruptcy clients and non-bankruptcy clients are not compensable under §330 because they are part of the professional's overhead. They are not separately charged to non-bankruptcy clients and no additional effort is required to complete them for a bankruptcy client. For example, maintaining time records does not require additional effort. Lawyers and accountants maintain the same time records in a non-bankruptcy matter as in bankruptcy matters. Nor do lawyers or accountants charge for preparing their bills. Bills must be prepared in non-bankruptcy matters as well as bankruptcy matters. There may be some additional effort in putting the time records into the format required by the court. For example, the court requires time records to be maintained chronologically by task. While this may sometimes differ from the format of a non-bankruptcy bill, the additional effort is not generally significant if the records are initially properly set-up. Time records are almost universally maintained on computers with software that shows multiple formats, one of which will usually satisfy the bankruptcy requirements. "A computer billing package used by a professional that does not retrieve information in a format compatible with bankruptcy requirements and requires revisions to rectify the inadequacies, is not a deficiency the estate should pay for. This is especially true for professionals who regularly practice in this court and regularly prepare fee applications. Only those aspects of preparing a bankruptcy fee application that require additional-not merely different-efforts are compensable under §330(a)(6).

In re Computer Learning Ctrs., Inc., 285 B.R. at 219-220 (citations omitted); see also In re Mesa Air Group Inc., 449 B.R. 441, 445 (Bankr. S.D. N.Y. 2011) (quoting CCT, 2010 WL 3386947,

*9) ("[T]he review and editing of time records – as opposed to fee applications – is not

compensable.”). Accordingly, billing a debtor’s estate for time spent reviewing the firm’s time entries to ensure compliance with the guidelines and handling administrative matters in connection with billing for the engagement is not compensable.

41. By its Application, Curtis Mallet seeks to bill the estate the sum of \$4,267.35 in the Project Category “CMPO Monthly Billing Statement.” Inclusive in the time expended by Curtis Mallet’s professionals preparing the retention application, are time entries, amounting to \$2,394.50, related to the review of invoices to ensure compliance with the Guidelines. As set forth above, these services are part of Curtis Mallet’s overhead and are not compensable by the Debtors’ estates. See CCT, 2010 WL 3386947, at *9 (reviewing and editing time records is not compensable).

42. Annexed hereto as Exhibit 4 is a copy of Curtis Mallet’s time records containing marked to indicate the time entries in the Project Category “CMPO Monthly Billing Statements” that the United States Trustee finds objectionable. The total amount of these time entries is approximately \$2,394.50; and the United States Trustee requests that the Court reduce Curtis Mallet’s fees by that amount.

2. Expenses

43. As reimbursement for its expenses, Curtis Mallet seeks to bill the estates \$183.94 for “word processing.” Word processing, however, is “a clerical service regardless of who performs it.” Bennett Funding, 213 B.R. at 428; UST Guidelines, 4(b)(5)(vii). As an overhead expense, word processing cannot be billed to the client. Accordingly, the United States Trustee requests that Curtis Mallet’s reimbursement for \$183.44 in word-processing charges be denied.

D. Davis Polk

44. Davis Polk seeks the allowance of \$8,145,882.50 in fees and reimbursement of out-of-pocket expenses in the amount of \$272,375.68 during the First Interim Period. In addition to the objection set forth above in Sections A and B supra, the United States Trustee objects to the allowance of fees in the amount of \$367,817.40 and out-of-pocket expenses in the amount of \$1,365.23 sought by the firm during the First Interim Period for the reasons set forth below.

1. Fees

Transitory Timekeepers

45. The United States Trustee has identified time entries by nine Davis Polk's transitory timekeepers who worked on these cases during the First Interim Period. Specifically, of the 83 attorneys at Davis Polk who billed for their services during the First Interim Period, nine attorneys billed less than five hours. Absent satisfactory explanation, the United States Trustee requests that the Court reduce the compensation allowed to Davis Polk in the amount of \$17,927.00, which is the amount of fees generated by the nine transitory timekeepers.

Summer Associates

46. By its Application, Davis Polk seeks \$22,254.50 of time billed to summer associates. However, courts have previously held that time billed by summer associates, interns, and law clerks is not compensable. In re New Boston Coke Corp., 299 B.R. 432, 442 (Bankr. D. Mich. 2003) (denying compensation for all attorney and para-professional time for the work of summer associates and law clerks). Such compensation should be viewed as a part of the firm's overhead which should not be charged to the estate. In re ACT Mfg., 281 B.R. at 485 (“[T]he time spent by certain types of individuals should ordinarily not be included in a fee application. This includes time spent by non-paid interns, summer associates, and staff whose salaries can

ordinarily be viewed as part of a firm's overhead compensated via the rates of the firm's professionals and paraprofessionals.”); see also In re Chemtura, Hr’g Sept. 29, 2009, Tr. at 38. (“[S]ummer associate time is, in essence, an investment in a firm's marketing program . . . [a]nd we're not going to approve summer associate time in a case on my watch.”). Accordingly, the United States Trustee requests that the Court reduce the compensation awarded to Davis Polk by \$22,254.40 related to work performed by summer associates.

Administrative and Clerical Tasks

47. Davis Polk seeks to charge the estate fees in the amount of \$2,530.50 for 24.1 hours of work performed by three “Document clerks.” The time entries indicate that the three timekeepers spent their time “prepar[ing] distributions” for various attorneys. These tasks are administrative and clerical in nature and should be viewed as part of the firm’s overhead. Accordingly, the United States Trustee seeks a reduction in fees to be awarded to Davis Polk in the amount of \$2,530.50.

Preparation of Fee Applications

48. By its Application, Davis Polk seeks to bill the estate the sum of \$169,317 in the Project Category “Davis Polk Retention and Fee Issues.” Inclusive in the time expended by Davis Polk’s professionals preparing the retention application are time records, amounting to \$75,105.00 in fees, related to time spent reviewing invoices to ensure compliance with the Guidelines as well as dealing with administrative tasks such as establishing task codes, coordinating billing matters with the accounting/billing department, and communicating internally to ensure the accuracy of time entries. As set forth above, these services are part of Davis Polk’s overhead and are not compensable by the Debtors’ estates. See CCT, 2010 WL 3386947, at *9 (reviewing and editing time records is not compensable).

49. Annexed hereto as Exhibit 1 and Exhibit 5 are copies of Davis Polk's time records containing marked to indicate the time entries in the Project Category "Davis Polk Retention and Fee Issues" that the United States Trustee finds objectionable. The total amount of these time entries is approximately \$75,105.50. The United States Trustee requests that the Court reduce Davis Polk's fees by that amount.

Vague Time Entries

50. Time entries may not be vague. Davis Polk has the burden of proving the reasonableness of their fee requests; accordingly, they must provide specific and detailed time records. To that end, the UST Guidelines require:

Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference.

See UST Guidelines, (b)(4)(v).

51. In order to enable the Court to determine whether a professional's time spent on a task is reasonable, time entries must be specific and the records must clearly identify each discrete task billed. Baker, 374 B.R. at 495 ("The records must be detailed enough to enable a Court to determine whether the attorneys are claiming compensation for hours that are 'redundant, excessive, or otherwise unnecessary.'"); see also In re Bennett Funding Group, 213 B.R. at 244 ("In cases where the time entry is too vague or insufficient to allow for a fair evaluation of the work done and the reasonableness and necessity for such work, the court should disallow compensation for such services."). Such vague entries "make a fair evaluation of the work done and the reasonableness and necessity for the work extremely difficult, if not impossible." In re Hudson, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007).

52. The time entries submitted should allow the Court and a reviewer to determine what services were performed and “the legal issues involved, the difficulties of the issues, and the resolution or results obtained.” Id. References to telephone calls that do not clearly identify the parties in a call and the subject matter discussed, the legal issues covered in a memoranda of law, the subject and recipient of an e-mail, and a description of documents reviewed are all examples of vague time entries that make the evaluation of the work done and the reasonableness of fees sought in connection with such work impossible. See id.; In re CCT Commc’ns, Inc., 2010 WL 3386947, *7 (disallowing time entries referring to telephone calls and emails without identifying the subject matter of the call or email, referring to preparation of draft letters without identifying the subject matter, and referring to vague description such as “work on fee application” or “attention to Vlahos’s request”); In re Fibermark, Inc., 349 B.R. 385, 396-97 (Bankr. D. Vt. 2006); In re Hirsch, 2008 WL 5234057, *7 (Bankr. E.D.N.Y. December 11, 2009) (“Entries that contain such vague characterization of the services performed as ‘meeting with,’ ‘conversations with,’ ‘review materials or docket,’ and ‘draft correspondence to’ fail to adequately describe the services provided and are routinely disallowed.”).

53. Davis Polk’s Application includes various impermissible vague time entries in the Project Categories “Asset Disposition” and “Automatic Stay/Litigation”⁸ which, among other things, do not permit a reviewer to determine what the timekeepers worked on and whether the services were necessary or reasonable. Annexed hereto as Exhibit 1 and Exhibit 6 are copies of

⁸ Davis Polk’s Application contains 14 Project Categories. In order to facilitate the fee application review process and to comply with the UST Guidelines, the United States Trustee requests that on a going-forward basis Davis Polk’s project categories include separate task codes for, among other services: retention issues, preparation of fee applications, attendance at hearings, attendance at internal meetings or meetings with the debtors’ representative, attendance at meetings with the committee, automatic stay issues, litigation (and to the extent that a litigation is extensive, a separate project category should be implemented for that particular litigation and/or contested matter).

examples of time records submitted by Davis Polk marked with the annotations “V” or “vague” to highlight vague and/or lumped time entries. By way of example only, the time entries include many hours to perform vague tasks such as “research regarding asset dispositions,” “review and revise memo regarding 363 sale,” “review cases regarding sale of assets,” “conduct legal research regarding litigation issues,” and “call with G. Moody regarding Court papers.” Given the multitude of timekeepers billing to these cases and the various issues that are present, the requirement that Davis Polk’s time entries comply with the Guidelines and provide specificity is crucial in order to avoid the potential of duplication of work and to ensure that the time spent on a specific task was necessary and reasonable.

54. With respect to the category “Asset Disposition,” Davis Polk seeks fees in the total amount of \$184,842.⁹ Of those fees, time entries related to approximately one-third of the fees are vague – or approximately \$61,000. With respect to the time entries “Automatic Stay/Litigation,” approximately one-fourth of those time entries are vague – or \$785,000. Because Davis Polk has failed to prepare these entries in compliance with the UST Fee Guidelines, the United States Trustee requests that the Court reduce the compensation requested by 30% of the objectionable time entries, by approximately \$250,000.

2. Expenses

Meals

55. Davis Polk charges the estates for meals that exceed the \$20 per person maximum set forth in the Guidelines. Accordingly, the United States Trustee requests that the expense

⁹ Because the time entries attached to the Davis Polk Application fail to list the amount charged for the services underlined in the exhibits, the United States Trustee is only able to estimate the amounts for which Davis Polk seeks compensation that are objectionable.

reimbursement for meals be disallowed in the amount of \$576.27 – the amount by which the meals exceed the cap.

Weekend Car Service and Meals

56. Davis Polk seeks to bill the estate for its professionals' weekend car service charges and for weekend meals. The charges that could be identified from the information provided in support of this reimbursement request total \$657. See Exhibit 7. As set in Paragraph 38 above, these charges are a part of the firm's overhead and are not compensable by the estates. Further, they are not provided for under the Bankruptcy Code or the Guidelines. Accordingly, the United States Trustee requests that the Court deny \$657 related to their professionals' weekend car service and related meals.

Supplies

57. Davis Polk seeks to impose on the estates its overhead costs for its office supplies. In fact, in the back-up detail for expenses provided, Davis Polk seeks \$131.96 for "Supplies-internal" incurred on July 31, 2012. Absent explanation, these charges should be denied. See Fibermark, 349. B.R. at 400 (holding that a "professional's overhead will be denied reimbursement categorically," while including "office supplies" among overhead charges).

E. GCG, Inc.

58. GCG, Inc. seeks the allowance of \$346,695.10 in fees and reimbursement of out-of-pocket expenses in the amount of \$3,388.47 during the First Interim Period. The United States Trustee objects to the allowance of fees in the amount of \$5,952.50 and \$1,333.39 in out-of-pocket expenses sought by the firm during the First Interim Period for the reasons set forth below.

3. **Fees**

Transitory Timekeepers

59. The United States Trustee has identified time entries by nine GCG, Inc.'s transitory timekeepers who worked on these cases during the First Interim Period. Specifically, of the 27 timekeepers from GCG, Inc. who billed during this period, nine of them billed less than five hours to the file.¹⁰ Absent satisfactory explanation, the United States Trustee requests that the Court reduce the compensation allowed to GCG., Inc. in the amount of \$3,258.60, which is the amount of fees generated by the nine transitory timekeepers.

Review of Invoices in Preparation of Fee Application

60. By its Application, GCG, Inc. seeks to bill the estate the sum of \$3,873.00 in the Project Category "Fee Application Preparation." Inclusive in the time expended by GCG, Inc.'s professionals preparing the retention application are the time records, amounting to \$2,013.90 in fees, that reflect the review of invoices to ensure compliance with the Guidelines. As set forth above, these services are part of GCG, Inc.'s overhead and are not compensable by the Debtors' estates. See CCT, 2010 WL 3386947, at *9 (reviewing and editing time records is not compensable).

61. Annexed hereto as Exhibit 8 is a copy of GCG, Inc.'s time records marked to indicate the time entries in the Project Category "Fee Application Preparation" that the United States Trustee finds objectionable. The total amount of these time entries is approximately \$2,013.90. The United States Trustee requests that the Court reduce GCG, Inc.'s fees by that amount.

¹⁰ The timekeepers are: P. Leathem, E. Vrato, A. Vassallo, S. Bryan, K. Greenbaum, H. Montgomery, P. Aversano, C. Leperides, and M. Posa.

Time Spent With Respect to Project Management

62. GCG, Inc.'s timekeepers billed a total of 3.4 hours – at a cost of \$680.00 in fees – for project category “Section 327 Project Management.” All entries in this project category as “multiple correspondence with GCG working team members to ensure projects/tasks are being completed timely and accurately.” The United States Trustee objects to the allowance of fees related to these entries on the grounds that they are vague and lumped. Moreover, the time entries are also objectionable as they appear to relate to the firm’s internal administration and coordination of the engagement, which is overhead and non-compensable. In the Application, GCG, Inc. further describes these entries as relating to “project staffing, assigned tasks to various team members, and managed projects. . . .” Absent further explanation, the United States Trustee requests a reduction in fees awarded to GCG, Inc. in the sum of \$680.00.

4. **Expenses**

63. In the Application, GCG, Inc. seeks reimbursement of expenses in the total amount of \$1,333.39 related to car services from a timekeeper’s home to the office. These charges do not comply with the Guidelines and should be denied.

F. Kramer Levin

64. Kramer Levin seeks the allowance of \$2,364,788 in fees and reimbursement of out-of-pocket expenses in the amount of \$75,813.93 during the First Interim Period. In addition to the objection set forth in Sections A and B above, the United States Trustee objects to the allowance of fees in the amount of \$39,623.00 sought by the firm during the First Interim Period for the reasons set forth below.

1. Fees

Review of Invoices in Preparation of Fee Application

65. By its Application, Kramer Levin seeks to bill the estate the aggregate sum of \$24,501.00 in the Project Category “KM Monthly Fee Statements.” Inclusive in the time expended by Kramer Levin’s professionals preparing the retention application are time records, amounting to \$19,884.50, which reflect time spent by professionals at the firm reviewing invoices to ensure compliance with the Guidelines. As set forth above, these services are part of Kramer Levin’s overhead and are not compensable by the Debtors’ estates. See CCT, 2010 WL 3386947, at *9 (reviewing and editing time records is not compensable).

66. Annexed hereto as Exhibit 2 and Exhibit 9 are copies of Kramer Levin’s time records containing marked to indicate the time entries in the Project Category “KL Monthly Fee Statements” that the United States Trustee finds objectionable. The total dollar amount related to these time entries is approximately \$19,884.50. The United States Trustee requests that the Court reduce Kramer Levin’s fees by that amount.

Vagueness Related to Research

67. Kramer Levin seeks a total of approximately \$44,700 for services in connection with researching environmental issues and drafting and revising a memo providing an overview of environmental issues. See objectionable vague time entries highlighted in Exhibit 10 attached hereto.

68. As set forth above, in order to enable the Court to determine whether a professional’s time spent on a task is reasonable, time entries must be specific and the records must clearly identify each discrete task billed. See UST Guidelines, (b)(4)(v); Baker, 374 B.R. at 495; see also In re Bennett Funding Group, 213 B.R. at 244. Kramer Levin has the burden of

proof to show that the fees it requests are reasonable under Section 330 of the Bankruptcy Code. See Howard & Zukin Capital, 360 B.R. at 114. However, as Exhibit 10 reflects, many of the time entries in the “Environmental Issues” Project Category only refer to the tasks performed as “research environmental issues” and “draft environmental overview memo.” See Fibermark, 349 B.R. at 397 (noting that time spent researching or analyzing abstract legal issues is inherently non-compensable from bankruptcy estate, and research on basic principles of bankruptcy law is likewise non-compensable).

69. Absent explanation, the United States Trustee requests that the Court reduce Kramer Levin’s fees by approximately \$13,500, related to the vague time entries identified in Exhibit 10.

Clerical and Administrative Tasks

70. When determining whether requested fees are reasonable, courts consider, among other things, the professional’s expertise or skills. See, e.g., In re Fibermark, Inc., 349 B.R. at 396-97 (“The Court specifically considers where the task at hand could have been performed competently by a less experienced professional at a lower cost to the estate. Whether it is reasonable for a certain professional to complete a task is to be determined by the level and skill reasonably required for the task.”).

71. Accordingly, many courts have taken the position that tasks which are clerical in nature and that are appropriate for office staff – which is considered part of a professional’s overhead – may not be billed to the estate. Id.; see also In re Tan, Lie Hung & Mountain States Invs., LLC, 413 B.R. 851, 862 (Bankr. D. Or. 2009) (holding that reductions were warranted in compensation sought by Chapter 11 trustee’s attorneys based upon their improper billing, at paralegal rates, for clerical tasks such as compiling and processing data for the electronic filing

of various motions and other documents); In re Hudson, 364 B.R. at 881 (holding that photocopying, organizing documents, and assembling exhibits constituted clerical tasks included in the firm’s overhead).

72. The United States Trustee objects to \$3,789.50 in fees incurred by several Kramer Levin attorneys who performed the following tasks that appear clerical in nature:

Date	Timekeeper	Time Description	Project Category	Fees
7/19/12	Wong, Anita (2011 Associate)	Coordinate opening of new client matter numbers and email KL working group (.8)	Case Administration	\$388.00
7/21/12	Wong, Anita (2011 Associate)	Coordinate creation of working group list and macros (.6)	Case Administration	\$291.00
7/22/12	Wong, Anita (2011 Associate)	Coordinate revision of macros and working group list (.5)	Case Administration	\$242.50
7/23/12	Wong, Anita (2011 Associate)	Various emails with H. Vanaria regarding client matter numbers, electronic document drives, contact list, attendance list and other team coordination matters	Case Administration	\$242.50
7/24/12	Wolf, Benjamin (2011 Associate)	Emails with A. Wong, A. Yerramalli, H. Vanaria & technology services regarding contact list, email macros, etc. (.3)	Case Administration	\$145.50
7/24/12	Wong, Anita (2011 Associate)	Emails with A. Yerramalli, B. Wolf, H. Vanaria & technology services regarding contact list, email macros, etc. (2.1)	Case Administration	\$1,018.50
7/25/12	Wolf, Benjamin (2011 Associate)	Emails with technology services, H. Vanaria, A. Wong regarding contact list, email macros, etc. updates (.5)	Case Administration	\$242.50
7/25/12	Wong, Anita (2011 Associate)	Emails with technology services, B. Wolf, and H. Vanaria regarding revising contact lists, email macros, and v-cards (.5)	Case Administration	\$242.50
7/31/12	Caton, Amy (Partner)	Prepare schedules for meeting time (.3)	Case Administration	\$240.00
8/17/12	Hunter, Vanaria (Paralegal)	Coordinate visitor registration for B. Wolf (.5)	Case Administration	\$155.00
8/27/12	Wong, Anita (2011 Associate)	Exchange emails and calls with M. McConnell re: expenses	Case Administration	\$145.50
9/6/12	Wong, Anita (2011 Associate)	Coordinate with IT team to update macros (.2)	Case Administration	\$109.00
9/13/12	Wong, Anita (2011 Associate)	Update PCX working group list (.1); emails with IT team and Mesirow team re: email delivery issues (.5)	Case Administration	\$327.00
TOTAL				\$3,789.50

Duplicative Time Entries

73. The United States Trustee objects to the following time entries as they appear duplicative:

- 9/11/12 – O’Neill P. Bradley – “Prepare for and attend venue hearing” – 3.2 hours (\$2,528.00)
- 9/11/12 – O’Neill P. Bradley – “Prepare for and attend venue hearing” – 3.1 hours (\$2,449.00)

74. Section 330 of the Bankruptcy Code allows a bankruptcy court to award a professional person “reasonable compensation” for services performed. 11 U.S.C. § 330(a)(1). The statute itself makes clear that courts may not award compensation for duplicative services. See 11 U.S.C. § 330(a)(4)(A)(I) (“[T]he court should not allow compensation for – (I) unnecessary duplication of services.”). Accordingly, absent explanation, the United States Trustee seeks a reduction in fees of \$2,449.00.

G. No Objection

75. The United States Trustee does not have any objection to the following Applications: APS, Bowles Rice, Ernst & Young, Jackson Kelly, Steptoe & Johnson, and Thompson Coburn.

CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order (i) reducing the fees allowed to the Retained Professionals by the amounts set forth herein, (ii) reducing the reimbursement of expenses to the Retained Professionals by the amounts set

forth herein, and (iii) granting such other relief as is just.

Dated: New York, New York
December 11, 2012

Respectfully submitted,
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By /s/ Elisabetta G. Gasparini

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