

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

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:
In re : Chapter 11
:
MF GLOBAL HOLDINGS LTD., *et al.*, : Case No. 11-15059 (MG)
:
: (Jointly Administered)
Debtors. :
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**OMNIBUS RESPONSE TO THE OBJECTION OF THE UNITED STATES TRUSTEE
REGARDING APPLICATIONS FOR INTERIM COMPENSATION**

Morrison & Foerster LLP (“**M&F**”), bankruptcy counsel to Louis J. Freeh (the “**Trustee**”), the chapter 11 trustee of the above-captioned debtors (the “**Debtors**”), Pepper Hamilton LLP (“**Pepper**”), for itself as special counsel to the Trustee and on behalf of Freeh Group International Solutions, LLC (“**FGIS**”), accountants to the Trustee, and Freeh Sporkin & Sullivan, LLP (“**FSS**”, and together with M&F, Pepper, and FGIS, “**Respondents**”), investigative counsel to the Trustee, hereby provide the following response and additional information (the “**Response**”) with respect to the *Objection of the United States Trustee Regarding First and Second Interim Fee Applications for Compensation and Reimbursement of Expenses* (the “**Objection**”) (Docket No. 940) filed by the Office of the United States Trustee (the “**UST**”) to the first and second interim fee applications of Respondents (the “**Applications**”) (Docket Nos. 776, 798, 799, 800, 889, 893, 895 and 897) covering the period from November 28, 2011 through September 30, 2012 (the “**Fee Period**”). In support of the Response, Respondents respectfully state as follows:

STATUTORY STANDARD AND BURDEN OF PROOF

1. Section 330 of the Bankruptcy Code provides that “the court may award to a trustee ... or a professional person employed under section 327 or 1103 . . . reasonable

compensation for actual, necessary services rendered by the trustee, ... professional person, or attorney . . . ; and . . . reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1).

In the Second Circuit, the “necessary” standard in section 330 is given broad interpretation. *In re Kohl*, 421 B.R. 115, 125 (Bankr. S.D.N.Y. 2009). Services are “necessary” if they benefit the estate. *Id.* (citing *In re Keene Corp.*, 205 B.R. 690, 695 (Bankr. S.D.N.Y. 1997)). The test considers whether the services provided were “reasonably likely to benefit the estate.” *Id.* The test is objective, considering the services that a reasonable lawyer would have performed in the same circumstances. *Id.* (citing *In re Ames Dept. Stores, Inc.*, 76 F.3d 66, 72 (2d Cir. 1996)). Generally, if the services rendered were reasonably likely to benefit the estate, they should be compensable. *Ames Dep’t Stores*, 76 F.3d at 72. Where there is an actual benefit to the estate, the services are clearly necessary and compensable under section 330(a)(1)(A) of the Bankruptcy Code. *See Keene Corp.*, 205 B.R. at 695.

2. The applicant bears the burden of proof on its claim for compensation. *See, e.g., Houlihan Lokey Howard & Zukin Capital v. High River Ltd. P’Ship*, 369 B.R. 111, 115 (S.D.N.Y. 2007) (citing *Keene Corp.*, 205 B.R. at 695). However, “[a] party opposing a fee application must carry the burden of explaining what therein is unreasonable or, at least, what would be reasonable under the circumstances. Absent such evidence by the objectant, the opposition fails.” *In re Blackwood Assocs., L.P.*, 165 B.R. 108, 112 (Bankr. E.D.N.Y. 1994).

3. Because courts reviewing fee applications have the benefit of perfect hindsight, caution should be exercised to ensure that attorneys are not penalized for prosecuting actions that were reasonable at the time. *See In re The Korea Chosun Daily Times, Inc.*, 337 B.R. 758, 767 (Bankr. E.D.N.Y. 2005) (observing that while courts must exclude excessive and unnecessary expenditures of time when reviewing fee applications, courts “must not penalize attorneys by

viewing the efforts of counsel with the benefit of ‘20/20 hindsight’”). As Judge Bernstein opined, “[a] decision reasonable at first may turn out wrong in the end. The test is an objective one, and considers what services a reasonable lawyer or legal firm would have performed in the same circumstances.” *In re CCT Communications, Inc.*, 2010 WL 3386947, at *10 (Bankr. S.D.N.Y. Aug. 24, 2010); *Keene Corp.*, 205 B.R. at 696; *see also In re Cenargo Int’l, PLC*, 294 B.R. 571, 595-96 (Bankr. S.D.N.Y. 2003):

The appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity or project should be disallowed only where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive. . . . Thus, section 330(a)’s “benefit” and “necessary” criteria do not require a professional to be 100% successful. They are satisfied if a reasonable attorney would have believed at the time that a particular service would benefit the estate, taking into consideration the chances of success and the reasonably-projected attendant costs.

4. Respondents submit that, except as otherwise noted herein, the Applications are sufficient to establish the reasonableness of their requested compensation and expenses and satisfy the *United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* effective January 30, 1996 (the “**Guidelines**”). Set forth below are additional disclosures and information that rebut or respond to each of the points raised in the Objection.

GENERAL RESPONSES

5. With over \$41 billion in assets at the time of filing, the Debtors (together with MF Global Inc., the subject of a SIPA proceeding pending before this Court) were part of the largest “megacase” in 2011 and the eighth-largest in U.S. history. The Debtors’ cases involve a variety of complex issues, sophisticated financial transactions, a multitude of legal and financial issues, and a number of parties located all over the world. In fact, the Trustee has filed more than 100

claims on behalf of the Debtors totaling over \$3 billion against at least 10 different affiliates, who are in liquidation or administration proceedings throughout the world. The mammoth effort required by the Trustee to recover on those claims is made more difficult by incomplete records and often conflicting laws that govern the various proceedings. A consolidated effort by the Trustee's various professionals is the only efficient way to maximize value for creditors and parties in interest. In addition, the Trustee, with the coordinated assistance of Respondents and the other retained professionals in these cases, has been conducting an investigation into the collapse of the MF Global worldwide enterprise as part of his statutory duties under section 1106 of the Bankruptcy Code.

6. Although every effort has been made to streamline and separate the work performed by the Trustee's various professionals, as is the case with any complex bankruptcy case, there is invariably some degree of necessary overlap required for the efficient administration of the estate. This is because the issues faced often involve a variety of work streams and the need to ensure coordination in the overall case strategy. As Judge Bernstein said in *CCT Communications*:

[i]n particular, the early stages of a chapter 11 case are often chaotic, require the performance of multiple tasks in a compressed time frame, and hence, necessitate frequent communication among lawyers in the same firm, between the lawyers and the client, and where required, between general and special counsel. Furthermore, lawyers inevitably meet and confer during the entire case regarding what must be done. The debtor decided to engage both general and special counsel in this case, and communication and coordination between two sets of counsel is as necessary as it is inevitable.

2010 WL 3386947, at *10.

7. Respondents understand, and take seriously, their obligation to provide complete and accurate time records sufficient to enable the Court to ascertain the reasonableness of the

fees being requested, and spend a great deal of (unbilled) time ensuring that time entries are both succinct and adequately descriptive in order to facilitate the Court's review. Respondents, however, believe that, with respect to certain categories of the UST's fee objections, the UST has exceeded the Guidelines and applied them in an unexplained, draconian manner -- and on occasion in violation thereof -- thereby placing form over function. Indeed, Respondents submit that, in large part, the reasonableness of the fees incurred by Respondents during the Fee Period speaks for itself.

8. In light of the extraordinary strides made during the Debtors' chapter 11 cases to date, Respondents submit that the fees and expenses requested in the Applications were incurred in connection with services that provided a clear benefit to the Trustee, the Debtors' creditors and parties in interest. Respondents further submit that their Applications, including the time records appended thereto, provide sufficient information to ascertain the reasonableness of the fees for which Respondents seek allowance.

9. Respondents note that as part of their efforts to minimize the costs to the Debtors' estates, Respondents have staffed these cases as efficiently as possible. Moreover, Respondents believe that all time billed provided a direct benefit to the Debtors' estates in that it was incurred in the furtherance of the Trustee's fiduciary obligations pursuant to sections 1106 and 1107 of the Bankruptcy Code.

10. The UST requests that "until the Debtors are able to establish that the estates are not, and will not be, administratively insolvent, the Court only authorize interim allowance of fees and expenses and defer any payments thereon until further order of the Court." (Objection at ¶48). Respondents submit that funds are likely to come in to the Debtors' estates from several sources prior to December 31, 2012, including: (i) a tax refund of in excess of \$21 million from

the Internal Revenue Service; (ii) a distribution of \$3.75 million from the liquidation of a foreign affiliate of the Debtors; and (iii) in excess of \$30 million as a result of the settlement of various claims of the Debtors against other affiliates throughout the world. Once sufficient funds come into the estates, Respondents request that they be authorized to receive 50% of their requested fees (with the balance of their fees to be paid upon further order of the Court) and 100% of their agreed expenses, as set forth below. Accordingly, Respondents request that the Court overrule the Objection except as otherwise agreed to herein, approve the Applications on an interim basis, and allow the payment of 50% of Respondents' fees and 100% of Respondents' agreed expenses upon notice to the Court, the UST, and the Committee that the Trustee has recovered sufficient funds to pay such amounts.

SPECIFIC RESPONSES

I. M&F

11. The UST objected to the allowance of \$879,260 in fees and \$176,193.02 in expenses. After significant negotiations with the UST, M&F has agreed to reduce its fee request by a total of \$210,000. With respect to expenses, M&F provided the UST with information and documentation sufficient to resolve the expense objection in its entirety. In the event this Court has similar issues with respect to M&F's fees and expenses as raised by the UST, the following are M&F's responses to the Objection as if M&F and the UST had not reached a settlement.

12. It is noted at the outset that, as a matter of public interest, *after* M&F had already begun working for the Trustee, M&F agreed to a 10% discount of their normal billing rates. M&F, along with the Trustee and several of his other professionals, agreed to the discount to address concerns of potential overlap and to reduce costs to the estates at a time where there was a belief that customers would not eventually be paid in full. In total, M&F has foregone \$1,197,357.03 in fees (\$632,354.38 for the first interim period and \$565,002.65 for the second

interim period). M&F also wrote off time for “transitory timekeepers,” or those who billed less than 5 hours during each interim period, totaling more than \$50,000. These writeoffs for transitory time are even more generous in light of Judge Chapman’s recent pronouncement that the transitory timekeeper rule should not apply to partners or other senior attorneys who, in light of their experience and expertise, can provide legal advice that materially benefits the estate in a relatively brief period of time.¹

13. Despite these substantial voluntary fee reductions, in the interest of avoiding delay and the unnecessary expense to the Debtors’ estates that would result if M&F were to engage in a detailed review and analysis of the backup documentation regarding certain of the UST’s specific fee and expense objections, M&F is willing to reduce its requested fees and expenses by an aggregate amount of \$119,560.08 (\$119,135 in fees and \$425.08 in expenses), as set forth in more detail below.²

a. Fees of Associate Not Yet Admitted

14. The UST requests a reduction of \$37,672 with respect to certain services rendered by a first year associate who had passed the bar but was awaiting admission. The requested reduction represents the difference between the hourly rate of the first year associate (\$380/hour) and the hourly rate of M&F’s highest billing paralegal (\$295/hour). Although M&F disagrees with the UST that an associate who has passed the bar and is awaiting the ministerial process of being sworn in should be required to bill at a lower rate, under the specific circumstances here, M&F agrees to the requested reduction.

¹ See Transcript from Hearing at 6:12-9:1, *In re Ambac Financial Group, Inc.*, Case No. 10-15973 (SCC) (Bankr. S.D.N.Y. Nov. 27, 2012), annexed hereto as **Exhibit 1**.

² To the extent the proposed reductions are not acceptable to the UST, M&F reserves its right to contest any additional reductions recommended by the UST at the hearing to approve the Applications.

b. Billing for Matters Outside the Scope of Employment

15. Cash Collateral Report (Docket No. 451). The UST requests a reduction of \$37,624 for services performed in connection with the preparation of this report. M&F believes that the requested fees are reasonable and the UST has misconstrued the nature of the Cash Collateral Report. The Cash Collateral Report was a tracing exercise undertaken pursuant to order of this Court to determine the origin of the Debtors' cash collateral. As the Cash Collateral Report states on page 2, "[t]he purpose of the exercise was to determine whether these cash inflows [into the Debtors' JPMorgan bank account] represented any of the "missing" cash of the customers of MFGI." Cash Collateral Report at 2. The Cash Collateral Report was not an investigation of JPMorgan or any other banks, as it did not examine their acts or conduct, nor did it require M&F to be adverse to JPMorgan. The Cash Collateral Report examined witnesses of the Debtors, multiple bank accounts held by the Debtors and MFGI, the bank statements associated with those accounts, and other data to analyze the flow of funds into and out of the Debtors' primary funding account, which happened to be at JPMorgan. In no way was the relationship between M&F and JPMorgan compromised. Therefore, M&F does not believe that any reduction in this category is warranted.

16. Other Categories. The UST requests a reduction of \$150,000 for services which were purportedly outside the scope of M&F's retention and duplicative of services performed by the Trustee's other professionals. M&F does not believe there was unnecessary duplication of efforts. Rather, M&F coordinated its efforts with special counsel on matters that crossed over between bankruptcy and other discrete areas. These are extremely complex cases and efficiency requires that many parties, across a variety of areas of expertise, weigh in and provide input. *See CCT Communications*, 2010 WL 3386947, at *10. As the other professionals were not retained to work on bankruptcy matters, it was necessary for M&F to work with them to provide

bankruptcy expertise. In addition, Covington was not retained until April 2012 to work on insurance matters and therefore could not have duplicated efforts with M&F prior to their retention, when the majority of M&F's time on insurance matters was rendered.

Notwithstanding the foregoing, M&F agrees to a reduction of \$30,000 (20% of the UST's requested reduction) as an accommodation.

c. Vague and Lumped Time Entries

17. The UST requests a reduction of \$471,000 for purported vague and lumped time entries. M&F disputes the characterization of a number of the UST's objections in this category, including multiple entries listed as "lumped" where the timekeeper billed 30 minutes or less on the task, and entries listed as "vague" where the timekeeper included the person with whom they were communicating and the subject matter of the communication. M&F could spend the time and effort to correct the time entries in this category but agrees to a reduction of \$47,000 in lieu of doing that work.

d. Total Hours in Description Does Not Equal Hours Billed

18. The UST requests a reduction of \$3,210 in connection with certain time entries where the total amount requested does not match the hours in the description. M&F agrees to the requested reduction.

e. No Benefit to the Estate

19. Marston Retention. The UST requests a reduction of \$700 for services performed in connection with the preparation of a certain professional's retention application. M&F agrees to the requested reduction.

20. Bonus. The UST requests a reduction of \$150,000 for services performed in connection with an executive retention program, which purportedly provided no benefit to the

estate.³ Case law provides for disallowance not because an action proved to be improvident with 20/20 hindsight, but “only where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken that activity or project or where the time devoted was excessive.” *Cenargo Int’l.*, 294 B.R. at 595-96. M&F consulted extensively with the UST on this issue, participating in meetings, as well as preparing presentations for the UST. It cannot be the case that the UST objects to all of the time associated with the “bonus” issue when a portion of that time was spent discussing the issue with the UST.⁴ M&F did the necessary research, prepared presentations and completed the diligence that “a reasonable lawyer or legal firm would have performed in the same circumstances.” *CCT Communications*, 2010 WL 3386947 at *5. Such research became even more important when the Trustee was required to answer questions regarding bonuses for executives under oath in front of Congress. The Trustee had to make an informed decision prior to testifying under oath that he would not pay bonuses to executives.

21. Additionally, a significant number of the time entries objected to by the UST do not concern the “bonus” issue but rather the *Motion for Interim and Final Orders (i) Authorizing, but not Requiring, the Trustee to Pay Prepetition Employee Compensation and Benefits Obligations; and (ii) Confirming that the Trustee is Able to Continue Certain Ordinary-Course Benefits Programs* (Docket No. 511) (the “**Employee Motion**”), which was filed on March 2, 2012, as part of the chapter 11 filing of MF Global Holdings USA, Inc.⁵ As a result of the foregoing, M&F does not agree to any reduction on the “bonus” issue.

³ As noted below, not all of these services actually were performed in connection with the retention program.

⁴ On April 9, 2012, M. Hager and B. Miller both have entries regarding “preparation for a meeting with the UST Trustee regarding employee compensation and potential retention program . . .” In addition, in time entries prior to April 9, 2012, there are entries discussing the preparation of materials for a meeting with the UST.

⁵ As an example, on March 15, 2012, Laura Guido entered “Prepare, file and coordinate service of notice of presentment of supplemental interim order regarding employee compensation and benefits programs (.4).” In its Objection, the UST states that “In fact, no bonus motion has been filed.” (Objection at ¶98). Clearly, this entry cannot relate to the UST’s alleged “bonus” objection if it is referring to *the filing* of an order. A substantial number of the time entries surrounding Ms. Guido’s entry concern the Employee Motion.

f. Non-Matched Entries

22. The UST requests a reduction of \$553 for certain non-matched time entries.

M&F agrees to the requested reduction.

g. Expenses

23. The following are M&F's responses to the UST's expense-related objections.

24. Online Research. In response to paragraph 101 of the Objection, M&F provided the UST with a detailed account of the online research expenses incurred during the first interim period, including the date and timekeeper for each research expense. Accordingly, M&F seeks reimbursement of the requested amount of \$66,660.35 for online research expenses incurred during the first interim period.

25. Transportation. In response to paragraph 102 of the Objection, M&F provided the UST with a detailed account of transportation and travel expenses, which included the identity of the timekeeper and the time the transportation expense was incurred. Accordingly, M&F seeks reimbursement of the entire amount requested for transportation and travel.

26. Professional Services. In response to paragraph 103 of the Objection, M&F provided the UST with a detailed account of the documentation supporting the requested amount of \$38,855.95 for "Queen's Counsel Fees." Accordingly, M&F seeks reimbursement of the entire requested amount for these expenses.

27. Meals. In response to paragraphs 104 and 105 of the Objection, M&F provided the UST with billing details related to the objections to certain meals during the first interim period including: (i) the timekeeper for the individual meals highlighted on Exhibit 2 to the Objection and (ii) the authorizing attorney and number of participants for business meals. M&F, however, identified certain meals that exceeded \$20.00. Accordingly, M&F agrees to reduce its request for reimbursement of overtime meals during the first interim period by \$1.86. In

response to paragraph 106 of the Objection, M&F provided the UST with the date, name of authorizing attorney, and number of participants for business meal expenses incurred during the second interim period. M&F has determined that \$72.73 was billed in error and agrees to reduce its reimbursement request by this amount. The remainder of the meals listed in the second interim period are overtime meals for individuals; each meal is listed on the respective monthly invoice attached to M&F's second interim fee application and properly reflects the date and timekeeper. The majority of the individual meals do not exceed \$20.00. M&F, however, identified certain meals that exceeded \$20.00. Accordingly, M&F agrees to reduce its request for reimbursement of overtime meals during the second interim period by \$350.49.

28. Airfare. In response to paragraph 107 of the Objection, M&F provided the UST with a detailed account of the airfare expenses incurred -- including copies of the airfare tickets -- and confirmed that it is not seeking reimbursement for luxury airfare but rather coach-class fare.

29. Photocopies. In response to paragraph 108 of the Objection, M&F confirms that photocopies during the second interim period were billed at a rate of \$.10 per page, and seeks reimbursement of the requested amount of \$45,884.20.

h. Conclusion

30. Based on the foregoing, M&F submits that an aggregate reduction of \$119,560.08 is appropriate, particularly in light of the voluntary fee and expense reductions already taken by M&F. Accordingly, M&F seeks an award of interim compensation for the Fee Period in the amount of \$10,621,790.12, and reimbursement for expenses for the Fee Period in the amount of \$356,599.70.

31. M&F respectfully requests that the Court enter an order (a) approving interim compensation in the sum of \$10,621,790.12 and interim reimbursement of expenses in the sum

of \$356,599.70, (b) allowing the payment of 50% of the approved interim compensation and 100% of the approved interim expenses after notice to the Court, the UST and the Committee that the Trustee has recovered sufficient funds to pay such amounts, and (c) granting to M&F such other and further relief as the Court may deem proper.

II. Pepper

32. Pursuant to the Objection, the UST objects to interim allowance of \$140,944.95 of the \$1,639,468.80 in fees sought by Pepper, and \$35,137.68 of the \$60,247.19 in expenses claimed by Pepper. Pepper was contacted by the UST in late September, 2012 about concerns the UST had with Pepper's first interim application. To address those concerns, Pepper immediately undertook a significant effort to provide information and additional details to the UST. That information was provided to the UST on October 5, 2012. Notwithstanding that fact, the UST has raised the same issues in the Objection. While the UST's objections are in large measure either unfounded or have been addressed by the supplemental information filed by Pepper, Pepper has agreed to reduce its fee request in certain respects as noted below. Additionally, Pepper notes that in preparing its first and second interim fee applications, Pepper (i) billed for the time of its professionals at a 10% discount from its 2011 hourly rates; (ii) did not increase its rates to 2012 rates for any of its professionals for services performed during 2012, and (iii) took voluntary pre-billing write-offs totaling \$122,592.58 for the periods at issue here.

| UST ISSUE | FEE APP | FEE REDUCTION SOUGHT BY UST | VOLUNTARY FEE REDUCTION BY PEPPER |
|--|----------------|------------------------------------|--|
| VAGUE & LUMPED ENTRIES | FIRST | \$66,300.00 | \$223.20 |
| WORK OUTSIDE SCOPE OF RETENTION | FIRST | \$66,000.00 | \$12,992.30 |
| PREPARATION OF FEE APPLICATION | FIRST | \$6,269.95 | \$4,966.20 |
| LIBRARIAN RESEARCH | FIRST | \$670.95 | \$670.95 |
| STAFFING INEFFICIENCIES | FIRST | \$280.15 | \$280.15 |
| BENEFIT TO THE ESTATE – REVIEWING PROCEDURES | SECOND | \$1,423.90 | \$1,270.45 |
| TOTAL | | \$140,944.95 | \$20,403.25 |

a. Vague and Lumped

33. With few exceptions, Pepper believes that the time entries contained in its first interim application adequately describe the services performed. Indeed, in most instances the time entries that the UST complains are “vague” when read in isolation are clearly understandable to any reasonable reader when viewed in context in the application. For example, many of the entries that the UST complains are “vague” in Task Code B110 are for time spent participating in a teleconference that the Trustee holds once a week with key professionals, typically lasting approximately one hour, to review the status of pending matters and objectives for the coming week, and to ensure that he and his key professionals are efficiently kept informed about the myriad issues being handled in these cases. It would of

course not be appropriate to provide detail in a time entry regarding the many topics covered in such a call. A time entry that reads “participate in weekly organization call with L. Freeh and professionals,” or “Trustee’s professionals call to review assignments” to describe a professional’s participation in that weekly call is hardly vague. Moreover, the Objection is internally inconsistent. The UST has not raised any concerns with time entries of other professionals that contain substantially similar detail for the same conference calls objected to as vague in the Pepper fee applications. See *e.g.*, FTI Consulting, Inc.’s 12/5/11 time entries stating “Participate in conference call with management and Counsel regarding workstreams.”⁶

34. Nonetheless, Pepper has revised the entries to which the UST has objected to further describe the task performed and to break out the time for any inadvertently lumped entries. Pepper provided those revised time entries to the UST on October 5, 2012, and publicly filed those revised time entries in these cases on December 17, 2012 (Docket No. 947).⁷ With the exception of one time entry in the amount of \$223.20 for .4 hours on January 4, 2012 that was inadvertently billed to these estates and erroneously included in Pepper’s first interim fee application at Task Code B110 for “Weekly update telephone call with Rothschild and Management,” no reduction from Pepper’s fee requests is warranted on account of the time entries marked by the UST as “vague” or “lumped.”

b. Outside Scope

35. The activities objected to as purportedly outside the scope of Pepper’s retention were undertaken by Pepper early in these cases in its role as proposed lead bankruptcy counsel. Many of these activities were time sensitive and needed to be attended to promptly. These

⁶ Pepper is not suggesting that FTI’s time entries are inadequate. To the contrary, they are informative and appropriate, as the UST’s decision not to object to them suggests.

⁷ Pepper has not included revised time entries with respect to the “Investigations” category listed under Task Code B261 because the public filings were redacted so that confidential details concerning Pepper’s investigation, including potential targets, was not publicly disclosed. Unredacted copies were provided to the UST and will be provided to the Court.

activities were consistent with the role assigned to Pepper at the time, provided a clear benefit to the chapter 11 estates and were important to the administration of the cases and the Trustee's discharge of his duties. Ultimately, all of the tasks undertaken by Pepper provided a benefit to the estates, are consistent with actions undertaken by professionals in cases of this size and complexity, and are compensable.

36. The Objection also specifically objects to time entries pertaining to insurance matters as being outside the scope of Pepper's retention. This objection is unfounded. Pepper's services concerning insurance issues are largely subsumed by the foregoing comments: *i.e.*, shortly after being brought into these cases, Pepper addressed insurance issues as one component of the tasks assigned to Pepper by the Trustee. Pepper was specifically authorized to handle insurance issues on behalf of the Trustee in the Order approving Pepper's retention (which was entered after extensive discussion with the UST), which covered "insurance matters affecting the estates including off-shore captive insurance company, directors and officers insurance and errors and omissions insurance." Accordingly, Pepper's role with respect to insurance issues was not as limited as the Objection alleges. Moreover, Pepper has not requested compensation for insurance advice provided to the Trustee after Covington & Burling LLP took over responsibility for most insurance issues. Pepper has agreed, however, to reduce its fee request by \$12,992.30 on account of services relating to (i) \$2,310.20 for preparation of the case management order (Task Code B110), (ii) \$930.60 billed to work on the Schedules and Statement of Financial Affairs (Task Code B111), (iii) \$4,491.90 for reviewing and summarizing pleadings (Task Code B113), (iv) \$3,227.40 for work related to retention of other professionals (Task Code B170.1), (v) \$223.2 for work on SEC compliance issues (Task Code B210); (vi) \$1,809.00 for three apparently duplicate time entries in Task Code B261.

c. Fee Preparation

37. As set forth in the Objection, the UST believes that time spent in preparing a fee application is compensable where the amount of compensation sought for that time does not exceed 5% of the total compensation sought in the fee application. *See*, Objection, ¶¶59, 79. Here, the total fees sought for preparation of the fee application is less than 1% of the total fees sought in the application and the entries to which the UST objects pertain to such preparation. Although the Objection refers to certain time entries as overhead, by the UST's own standard the preparation of fee applications is compensable in these cases. With regard to the first interim fee application, the UST complains that "approximately \$6,269.95 in fees was spent reviewing invoices to ensure compliance with the Guidelines." Objection at ¶ 116. A review of the time records identified by the UST, however, reveals that only \$4,966.20 of the entries relate to review and editing of time entries for inclusion in Pepper's fee application. The remaining \$1,303.75 of entries relate to time spent gathering data to comply with the Trustee's periodic reporting obligations under the Cash Collateral Order regarding accrued but unpaid fees of the various estate professionals. While Pepper believes that the \$4,966.20 is compensable and reserves the right to seek compensation for such fees in a final fee application in these cases, Pepper will reduce its interim fee request by \$4,966.20 on account of such entries.

d. Librarian, Staffing Inefficiencies, and Benefit to the Estate

38. Pepper believes that the services evidenced by the time entries objected to in paragraphs 117-119 of the Objection (for which the Trustee seeks an aggregate reduction of \$951.10) were necessary and compensable and, in fact, saved the estate money. Nonetheless, given the modest amounts involved in the context of Pepper's aggregate interim fee applications, Pepper will reduce its interim fee request by \$951.10 on account of such entries. The two time entries identified in paragraph 120 of the Objection for paralegal Rebecca Hudson, which were

for the EFC filing of pleadings with the Court and total \$153.45, and are unquestionably compensable. While Pepper believes the remaining \$1,270.45 in time entries listed in paragraph 120 of the Objection are properly compensable, in light of the amount involved it will not press its entitlement to such fees and will reduce its interim fee request by that amount.

e. Expenses

39. The UST objects to Pepper’s expenses in part because no back-up information was provided to support them. This is incorrect. On October 5, Pepper sent the UST detailed documentation for its expenses, and indicated in certain instances that the requested expense reimbursement would be reduced as provided below.

| UST ISSUE (EXPENSES) | FEE APP | EXPENSE REDUCTION SOUGHT BY UST | VOLUNTARY EXPENSE REDUCTION BY PEPPER |
|---------------------------------|----------------|--|--|
| COPYING | FIRST | \$6,568.00 | \$935.97 |
| MEALS | FIRST | \$294.00 | \$254.33 |
| TRAVEL AND TRANSPORTATION | FIRST | \$28,275.68 | \$436.00 |
| TOTAL | | \$35,137.68 | \$1,626.30 |

f. Copying

40. Pepper consents to reducing the duplicating rate to \$.10 per page for black and white copies. Pepper has provided documentation to the UST demonstrating that its interim applications only seek reimbursement of Pepper’s actual cost of \$.95 per page regarding color photocopies, which color copies consisted of charges incurred in copying (i) the MFG organizational chart in color, and (ii) a PowerPoint presentation that needed to be in color in order to discern the distinctions in slides. Based upon the reduction of the duplicating rate to

\$.10 per page for black and white copies, Pepper has agreed to lower its expense request for duplicating by \$935.97.

g. Meals

41. Pepper previously provided backup documentation in its correspondence to the UST dated October 5, 2012 and such documentation will be provided to the Court as requested at the hearing on the applications. In accordance with the documentation, Pepper submits that its expense request pertaining to the meals should be reduced in the amount of \$254.33.

h. Travel and Transportation Expenses

42. Contrary to the assertion in the Objection, Pepper provided the UST with backup documentation for travel and local transportation expenses on October 5, 2012 in response to the UST's informal request for that information. Pepper has not received any request for further backup on those expenses. Moreover, except for the agreed reductions, the Objection is unfounded. For example, the UST objects to train travel in "business class." However, the minimum level of Acela and Metroliner train travel (the principal means of train travel between New York, Wilmington and Washington D.C.) is designated by Amtrak as "business class." Also, the UST objects to the charge for two round trip flights from Detroit to New York by the Pepper attorneys who handled the hearing on the motion to dismiss the WARN complaint, notwithstanding that those fares were coach fares. As set forth in its October 5 response to the UST, Pepper has agreed to lower its expense request by \$436 pertaining to Amtrak tickets purchased by J. Del Raso on 11/29/11 and 11/30/11.

43. Based on the foregoing, Pepper submits that an aggregate reduction of \$22,029.55 is appropriate, particularly in light of the voluntary fee and expense reductions already taken by Pepper. Accordingly, Pepper proposes to seek final compensation for the Fee Period in the

amount of \$1,619,065.55, and reimbursement for expenses for the Fee Period in the amount of \$58,620.89.

44. Pepper respectfully requests that the Court enter an order (a) approving interim compensation in the sum of \$1,619,065.55 and interim reimbursement of expenses in the sum of \$58,620.89, (b) allowing the payment of 50% of the approved interim compensation and 100% of the approved interim expenses after notice to the Court, the UST and the Committee that the Trustee has recovered sufficient funds to pay such amounts, and (c) granting to Pepper such other and further relief as the Court may deem proper.

III. FGIS

a. Benefit to the Estate

45. FGIS submits that the time spent pertaining to the entries objected to in paragraphs 66-68 of the Objection were either reasonably likely to benefit the estates or provided an actual benefit to the estates and are therefore compensable. These cases are extremely complex, involve numerous sophisticated issues and a variety of constituents with different issues and competing agendas. Given the complexity of issues and the speed with which the issues need to be addressed, the Trustee is often faced with significant time constraints that frequently require a prompt but comprehensive response, which is best achieved through coordination among the Trustee and his professionals. For example, given the size and the notoriety of the cases, as well as the pending SIPA proceeding of MFGI, the Trustee quickly determined that it was important to keep abreast of news reports regarding these cases. In fact, on certain occasions, the first hint of an issue, particularly with regard to MFGI, was gleaned from media articles and press releases. In order to be in a position to quickly respond to these issues and properly communicate with the creditors of the estates, the Trustee relied upon FGIS to review, filter and report upon significant media articles to the Trustee and coordinate with the

Trustee media requests for responses. These actions are generally reflected in FGIS's time detail as review of media and press articles.

b. Vague Entries

46. FGIS believes that these entries provided sufficient information regarding the tasks undertaken and complied with section 330 of the Bankruptcy Code. Nevertheless, FGIS has provided revised entries to the UST. A copy of the revised time entries, as provided to the UST, has been publicly filed on the docket in these cases on December 17, 2012 (Docket No. 949). FGIS has not received a response from the UST regarding the revised entries.

c. Expenses

47. Pursuant to the Objection, the UST objects to the FGIS request for reimbursement of expenses in the first interim fee application based on the fact that the first interim fee application did not contain a comprehensive itemization of expenses. In response thereto, supplemental information regarding the expenses sought in the first interim fee application has been publicly filed on the docket in these cases on December 17, 2012 (Docket No. 949). FGIS will also provide the UST with information responsive to the remainder of its information requests set forth in the Objection regarding the expenses requested in the second interim fee application.

48. Based on the foregoing, FGIS submits that no reduction is required or appropriate, particularly in light of the voluntary fee and expense reductions already taken by FGIS. Accordingly, FGIS proposes to seek final compensation for the Fee Period in the amount of \$1,033,080.75, and reimbursement for expenses for the Fee Period in the amount of \$35,676.19.

49. FGIS respectfully requests that the Court enter an order (a) approving interim compensation in the sum of \$1,033,080.75 and interim reimbursement of expenses in the sum of \$35,676.19, (b) allowing the payment of 50% of the approved interim compensation and 100%

of the approved interim expenses after notice to the Court, the UST and the Committee that the Trustee has recovered sufficient funds to pay such amounts, and (c) granting to FGIS such other and further relief as the Court may deem proper.

IV. FSS

a. Objection by UST Overstates Fees and Expenses Sought by FSS

50. The UST appears to have made an arithmetical error in calculating the aggregate amount of fees to be allowed and expenses to be reimbursed to FSS. The UST Objection claims that FSS is seeking an allowance of fees aggregating \$2,794,009.50 and reimbursement of expenses aggregating \$386,422.10 for the periods covered by the first and second interim fee applications. In fact, FSS in its fee applications seeks \$1,626,111.00 in aggregate fees and \$194,034.84 in aggregate expenses. Moreover, after taking into account the adjustments that FSS indicated to the UST it is willing to make with respect to the FSS fee applications, including those outlined below, the aggregate amount of fees FSS is seeking is \$1,616,621.00 and the aggregate amount of expenses FSS is seeking to have reimbursed is \$193,010.38.

b. Services Before the Effective Date of Retention

51. FSS has agreed to eliminate the request for fees on account of services rendered prior to the effective date, including those set forth in the entries in paragraph 76 of the Objection. The UST Objection correctly noted that FSS was seeking \$9,490.00 in fees for matters billed between November 20, 2011 and November 27, 2011. Curiously, the Objection only identifies entries that total \$7,735.00, and then paragraph 76 of the Objection concludes with the statement that the UST is objecting to \$3,250.00 of FSS fees. FSS acknowledges that it mistakenly included time entries for work it performed prior to November 28, 2011 in its first interim fee application. Accordingly, FSS agrees to reduce its fee application by the amount of \$9,490.00, which is the full value for the time recorded prior to November 28, 2011.

c. Billing for Retention of FGIS

52. In the interests of efficiency and given their familiarity with, and relationship with FGIS, FSS provided certain assistance in the drafting of FGIS's retention application, the briefs filed in response to the UST's objection to the retention, and the negotiation of the ultimate resolution of the objection. FSS submits that this time, which comes to only \$7,530, is compensable.

d. Vague Entries

53. FSS believes that the entries identified by the UST provide sufficient information regarding the tasks undertaken and complied with section 330 of the Bankruptcy Code. Nevertheless, FSS has provided revised entries to the UST. A copy of the revised time entries, as provided to the UST, has been publicly filed on the docket in these cases on December 17, 2017 (Docket No. 950). FSS has not received a response from the UST regarding the revised entries.

e. Fee Preparation

54. In the Second Interim Application, FSS seeks compensation of \$47,240 for the preparation of its fee applications in these cases. The UST asserts that the fees sought are excessive based on the amount of fees sought during the second interim fee application fee period. However, the compensation sought by FSS in the second interim fee application pertains to the fees incurred in preparation of its first interim fee application, which comprised a fee period of approximately six months and pursuant to which FSS seeks \$1,167,898.50 in fees, before the adjustments contemplated above. The fees incurred in preparation of the first interim fee application, as set forth in the second interim fee application, fit well within the purported 5% standard set forth by the UST.

f. Expenses

55. Pursuant to the Objection, the UST objects to the FSS request for reimbursement of expenses in the first interim fee application based on the fact that the first interim fee application did not contain a comprehensive itemization of expenses. In response thereto, supplemental information regarding the expenses sought in the first interim fee application has been publicly filed on the docket in these cases on December 17, 2012 (Docket No. 950). The UST's sole objection to the expense reimbursement requested by FSS in the second interim fee application of FSS appears to relate to two meal expenses. Although FSS disagrees with the position taken by the UST, given the modest amount involved, FSS does not oppose the UST's request to reduce its meal expenses by a total of \$94.43.

56. Based on the foregoing, FSS submits that an aggregate reduction of \$10,514.46 is appropriate, particularly in light of the voluntary fee and expense reductions already taken by FSS. Accordingly, FSS proposes to seek final compensation for the Fee Period in the amount of \$1,616,621.00, and reimbursement for expenses for the Fee Period in the amount of \$193,010.38.

57. FSS respectfully requests that the Court enter an order (a) approving interim compensation in the sum of \$1,616,621.00 and interim reimbursement of expenses in the sum of \$193,010.38, (b) allowing the payment of 50% of the approved interim compensation and 100% of the approved interim expenses after notice to the Court, the UST and the Committee that the Trustee has recovered sufficient funds to pay such amounts, and (c) granting to FSS such other and further relief as the Court may deem proper.

CONCLUSION

WHEREFORE, Respondents respectfully request that the Court enter an order (a) approving interim compensation and interim reimbursement of expenses for the Respondents as set forth herein, (b) allowing the payment of 50% of the approved interim compensation and 100% of the approved interim expenses after notice to the Court, the UST and the Committee that the Trustee has recovered sufficient funds to pay such amounts, and (c) granting Respondents such other and further relief as the Court may deem proper.

| | |
|--|---|
| <p>Dated: New York, New York December 17, 2012</p> <p>PEPPER HAMILTON LLP</p> <p>By: <u>/s/ David M. Fournier</u> David B. Stratton, Esq. (<i>pro hac vice</i>) David M. Fournier, Esq. (<i>pro hac vice</i>) Evelyn J. Meltzer, Esq. (<i>pro hac vice</i>)</p> <p>Hercules Plaza, Suite 5100 1313 N. Market Street P.O. Box 1709 Wilmington, Delaware 19899 Tel.: (302) 777-6500 Fax: (302) 421-8390</p> <p><i>Special Counsel for the Chapter 11 Trustee</i></p> | <p>MORRISON & FOERSTER LLP</p> <p>By: <u>/s/ Brett H. Miller</u> Brett H. Miller Lorenzo Marinuzzi Melissa Hager</p> <p>1290 Avenue of the Americas New York, NY 10104-0050 Tel.: 212.468.8000 Fax: 212.468.7900 bmiller@mofocom lmarinuzzi@mofocom mhager@mofocom</p> <p><i>Counsel for the Chapter 11 Trustee</i></p> |
|--|---|

Exhibit 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

AMBAC FINANCIAL GROUP, INC.

Debtor.

Case No. 10-15973-scc
New York, New York
November 27, 2012
10:13 a.m. - 10:30 a.m.

TRANSCRIPT - CASE 10-15973-SCC - CHAPTER 11

FIRST APPLICATION OF HOGAN LOVELLS US LLP AS ATTORNEYS FOR
THE DEBTOR FOR ALLOWANCE OF INTERIM COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
PERIOD APRIL 18, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1106];

FIRST APPLICATION OF SHEARMAN & STERLING LLP AS ATTORNEYS FOR
THE DEBTOR FOR ALLOWANCE OF INTERIM COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
PERIOD MAY 29, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1121];

FIRST INTERIM APPLICATION OF MAYER BROWN LLP, AS SPECIAL
CORPORATE COUNSEL TO THE DEBTOR, FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD FROM APRIL
12, 2012 THROUGH AUGUST 31, 2012 [DOCKET NO. 1108];

THIRD INTERIM APPLICATION OF WHYTE HIRSCHBOECK DUDEK S.C. AS
SPECIAL COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
INCURRED FOR THE PERIOD APRIL 1, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1105];

FIFTH INTERIM APPLICATION OF LAZARD FRERES & CO. LLC AS
FINANCIAL ADVISOR AND INVESTMENT BANKER FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD APRIL 1,
2012 THROUGH AUGUST 31, 2012 [DOCKET NO. 1104];

(Agenda Continued)

1
2 FIFTH INTERIM APPLICATION OF MORRISON & FOERSTER LLP AS
3 COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
4 COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE
5 PERIOD APRIL 1, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1103];

6 FIFTH INTERIM FEE APPLICATION OF WACHTELL, LIPTON, ROSEN &
7 KATZ AS SPECIAL COUNSEL TO THE DEBTOR FOR INTERIM ALLOWANCE
8 FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
9 FROM APRIL 1, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1102]

10 FIRST APPLICATION OF WINSTON & STRAWN LLP, AS SPECIAL COUNSEL
11 TO THE DEBTOR, FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
12 FOR THE PERIOD MAY 9, 2012 THROUGH AUGUST 31, 2012

[DOCKET NO. 1096];

13 THIRD INTERIM FEE STATEMENT OF PRICEWATERHOUSECOOPERS LLP,
14 ACCOUNTING AND VALUATION ADVISORS TO THE DEBTOR, FOR
15 COMPENSATION FOR SERVICES AND FOR REIMBURSEMENT OF EXPENSES

[DOCKET NO. 1101];

16 FIFTH FEE APPLICATION OF KPMG LLP, AS AUDITORS, TAX
17 CONSULTANTS AND BANKRUPTCY ADMINISTRATION CONSULTANTS TO THE
18 DEBTOR AND DEBTOR IN POSSESSION, FOR INTERIM ALLOWANCE AND
19 COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND
20 REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FROM
21 APRIL 1, 2012 THROUGH AUGUST 31, 2012 [DOCKET NO. 1098];

22 THIRD INTERIM FEE APPLICATION OF BUTTNER HAMMOCK & CO. P.A.
23 AS LITIGATION CONSULTANTS FOR THE DEBTOR FOR INTERIM
24 ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES
25 RENDERED AND EXPENSES INCURRED FROM APRIL 1, 2012
THROUGH AUGUST 31, 2012 [DOCKET NO. 1099]; AND

(Agenda Continued)

1 FIFTH APPLICATION OF BLACKSTONE ADVISORY PARTNERS L.P. AS
2 FINANCIAL ADVISOR TO THE DEBTORS FOR INTERIM ALLOWANCE OF
3 COMPENSATION FOR ACTUAL AND NECESSARY SERVICES RENDERED AND
4 REIMBURSEMENT OF ACTUAL AND NECESSARY OUT-OF-POCKET EXPENSES
5 INCURRED FOR THE PERIOD OF APRIL 1, 2012 THROUGH
6 AUGUST 31, 2012 [DOCKET NO. 1100].

APPEARANCES ON BEHALF OF

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11 *The U.S. Trustee:* BRIAN S. MASUMOTO, ESQ.
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25 (Proceedings recorded by electronic sound recording)

In re Ambac Financial Group - 11/27/12

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1 THE COURT: Good morning. Please have a seat. How is
2 everybody? Ms. Weiss, your show.

3 MS. WEISS: Good morning, Your Honor. Allison Weiss,
4 Hogan Lovells, for the Debtor.

5 We're here this morning requesting approval of the
6 interim fee applications for the professionals retained in this
7 case. We did receive one objection from the U.S. Trustee. The
8 U.S. Trustee objected to several of the fee applications. And
9 within such objections, with respect to all applicants,
10 requested that a holdback be required until the end of the case.

11 Your Honor, as with the prior interim fee
12 applications, we request that the 10 percent holdback from the
13 prior interim period be paid to the professionals at this time,
14 as well as 10 percent of the 20 percent that is being held back
15 during this interim period.

16 With respect to the U.S. Trustee's other objections to
17 the specific professional's fee applications, the U.S. Trustee's
18 objections with respect to the Debtor's professionals has been
19 resolved. And I believe that the committee wants to address the
20 Court with respect to the committee --

21 THE COURT: All right. So, what's the resolution of
22 the U.S. Trustee's objection?

23 MR. MASUMOTO: Your Honor, if I may?

24 THE COURT: Sure.

25 MR. MASUMOTO: With respect to Wachtell Lipton, I

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1 guess from our fee application, we objected to vague and lump
2 time entries in the amount of \$29,000 and change. The agreed
3 resolution was that they would accept a 20 percent reduction of
4 that amount. They also provided us with corrected time entries.

5 THE COURT: Okay.

6 MR. MASUMOTO: With respect to the objection regarding
7 the travel out of town for \$770.45, they provided
8 substantiations satisfactory to our office. With respect to
9 KPMG, KPMG presented all time records of which they had
10 voluntarily reduced \$2,600. So the additional time records in
11 the amount of \$672, which matched up to the total of our
12 objectionable entries of \$3,272, it's that difference that they
13 will further reduce. They will add 672 to their already
14 previously reduced \$2,600.

15 With respect to Blackstone Advisory Partners, they
16 agreed to the reduction of the expenses in the amount of
17 \$426.40. I will -- if I may skip, I may defer to committee
18 counsel. We had certain issues with respect to Morrison &
19 Foerster's time entries and expenses. They made a concession
20 with respect to the expenses, but they'd like to set forth
21 statements on the record regarding the time entry disputes.

22 THE COURT: Okay.

23 MR. MASUMOTO: In addition, they will also I assume
24 either directly or through their professional, Lazard Freres fee
25 application.

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1 I'm sorry, Your Honor, we did have one other
2 application with respect to Shearman & Sterling. With respect
3 to those objections, that begins on page 20, paragraph 40. They
4 agreed to reduce their transitory timekeepers by \$750.50. And
5 they provided time records to review, and that's acceptable.
6 They're also taking a further reduction for the \$40 in word
7 processing, and \$123.75 for word processing and proofreading
8 expenses.

9 THE COURT: Okay. Thank you.

10 MR. KLEIN: Good morning, Your Honor --

11 THE COURT: Good morning.

12 MR. KLEIN: -- Aaron Klein. Morrison & Foerster for
13 the Committee.

14 Your Honor, we did have some substantive discussions
15 earlier with the Office of the United States Trustee regarding
16 our fee application. I think the issues that are still on the
17 table are the objection to the so-called transitory timekeepers.

18 THE COURT: Mm-hm.

19 MR. KLEIN: Those timekeepers that throughout the fee
20 period billed less than five hours. And also we have still some
21 open items with respect to review of our retained professionals'
22 fee applications.

23 If I can address the timekeepers' issue first; we
24 acknowledge the position of the United States Trustee with
25 respect to writing off time billed by those timekeepers that are

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1 less than five hours. We understand that's written into the
2 proposed rules for the United States Trustee fee guidelines that
3 are not yet in affect. Our position is this -- and we're
4 definitely willing to be reasonable about who we can write off
5 and who we don't wrote off.

6 Our position is there were certain issues in this case
7 which required us to consult certain professionals who were not
8 regular timekeepers on this case. The U.S. Trustee has
9 identified I think five of them, and I can go through each one
10 of them and say why they made a valuable contribution to the
11 case.

12 I think, taking it down the line, they mention Barbara
13 Mendelson who's a partner in our Corporate Department at
14 Morrison & Foerster. We had an issue with a Bermuda entity. We
15 wanted -- the Debtor wanted to liquidate.

16 THE COURT: Let me stop you because this is a topic on
17 which I have an opinion that Mr. Masumoto may or may not have
18 had the pleasure of hearing from me before. A transitory
19 timekeeper generally, as it's come to be called, is someone that
20 as you say bills fewer than -- I don't know what the particular
21 cutoff is -- ten hours/five hours; some small amount of hours.

22 There are two kinds of such timekeepers. One, the
23 kind that you're describing, which is you have a discreet issue
24 that only requires someone to think about it for an hour; some
25 arcane issue of the law, a foreign jurisdiction, a tax issue,

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1 something of that sort. So somebody who works full time on the
2 case goes to that person and says, hey, I want to pick your
3 brain on this issue, and you talk. And then you say to the
4 person, bill .5 to Ambac. Here's the number and that's it.
5 That's compensable. Whether it's .5 or whether it's five,
6 that's compensable because that person's given their expertise.

7 What's not compensable is junior associate is on
8 vacation so another junior associate gets asked to do some task,
9 or a paralegal is on vacation, and another paralegal gets asked
10 to do a task. And part of that person's time is spent making up
11 for the fact that the other person really isn't there. Those
12 are the kinds of transitory timekeepers that frankly
13 professionals should bill off by themselves without having to be
14 prompted by the U.S. Trustee.

15 So the only thing that I'm interested in is which is
16 which and that's the way it needs to be resolved. So if you
17 want to go through each of them we're rapidly getting to the
18 point that this is going to cost more than what you're writing
19 off, which is another one of my pet peeves.

20 MR. KLEIN: Agreed, Your Honor. I can represent to
21 the Court that each of these are senior level people, where we
22 went to them with discreet issues of law for the very purpose of
23 picking their brain, as opposed to a junior associate --

24 THE COURT: All right. So to the extent that the U.S.
25 Trustee has a continuing objection to those timekeepers, it's

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1 overruled. Okay? And then what's the other category?

2 MR. KLEIN: The other category, Your Honor, is review
3 of our own fee applications, billing for the time taken for our
4 fee applications, and also the fee applications of our retained
5 professionals, Lazard and Whyte Hirschboeck. The United States
6 Trustee noted in his objection that you can't -- it's
7 impermissible to bill for manipulation of time records or review
8 of time records.

9 THE COURT: Not manipulation. That's an unfortunate
10 choice of words.

11 MR. KLEIN: Sorry. Pardon me, Your Honor. For
12 revision or review of time records.

13 THE COURT: Right.

14 MR. KLEIN: Verses a fee application. Now, you
15 understand, Your Honor, when you go to build a fee application,
16 we're talking about a six month fee period; you have to review
17 the actual time records --

18 THE COURT: Right.

19 MR. KLEIN: -- in order to build out the narratives.

20 THE COURT: Sure.

21 MR. KLEIN: And so that's what we've had. And I can
22 represent to the Court that in each of the line items that the
23 United States Trustee has highlighted in the objection that is
24 what was going on here, which is we were reviewing the time
25 records, and then we were building out, and reviewing and

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1 revising the narrative of the services provided. That's for
2 our --

3 THE COURT: For your own fee application.

4 MR. KLEIN: Exactly.

5 THE COURT: Okay.

6 MR. KLEIN: And now the --

7 THE COURT: All right. So let me ask you to pause and
8 ask Mr. Masumoto. So when there's an entry that says review of
9 time records, and they were being reviewed for the purpose of
10 preparing the fee application, your office doesn't have an
11 objection, right?

12 MR. MASUMOTO: No, Your Honor. In fact, we agreed
13 prior to the hearing that based upon his explanation and
14 representation that none of them involved editing of time
15 records --

16 THE COURT: Got it.

17 MR. MASUMOTO: -- we would find it acceptable.

18 THE COURT: Okay. Good. All right.

19 MR. KLEIN: And we will represent that to the Court
20 that that's exactly what happened.

21 The other issue is the question about a review of the
22 monthly fee application fee application submitted by Lazard and
23 by Whyte Hirschboeck, our professions who may not be fully aware
24 of the U.S. Trustee fee guidelines; may not be fully aware of
25 the rules of this Court, and so we took it upon ourselves to

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1 review and revise their actual monthlies, as well as their
2 interim fee applications. So we would request reimbursement for
3 the fees and expenses that we spent time on --

4 THE COURT: What's the amount that falls into this
5 last category, do you know?

6 MR. MASUMOTO: Your Honor, in terms of the other
7 professional review, I think the total we noted was \$6,955.50.
8 And again, Your Honor, this is one area we did not have
9 agreement on. From our standpoint, this is an obligation of the
10 retained professional. To offload that obligation to whether
11 it's the committee counsel or to some other professional is an
12 added burden upon the estate that should not occur.

13 MR. KLEIN: Your Honor, if I may?

14 THE COURT: Mm-hm.

15 MR. KLEIN: One problem with that number I think is
16 that it includes review of monthlies and of fee applications,
17 which I would suggest would be distinguished based upon what we
18 were talking about before which is permitted versus
19 impermissible review of time records for Lazard and for Whyte
20 Hirschboeck.

21 THE COURT: It's slightly different though because
22 doing your own versus doing other professionals. I mean you're
23 counsel to the estate; you're not counsel to these other
24 individuals. So I suppose we could go down the rabbit hole and
25 say that they -- as an expense would hire a lawyer to review the

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1 fee applications and then we would loop back into another item
2 or issue that the U.S. Trustee would have. So, I think that
3 \$6,000 is a high number, so I think we're going to split it on
4 this one. I don't think you should be reviewing their monthly
5 statements. They're big boys; they know how to do this. And
6 they can -- you know, they've got in-house people that they
7 could task with doing that, and at a certain point, there's an
8 expense of doing business and you don't get paid for every
9 single hour that you can bill. So, I'm going to split this one
10 in half. All right?

11 MR. KLEIN: Thank you, Your Honor.

12 MR. MASUMOTO: Thank you, Your Honor.

13 THE COURT: All right. Were those the only open
14 issues?

15 MR. MASUMOTO: Yes, Your Honor, except for the general
16 one that we had with respect to Lazard Freres. We were
17 concerned that they only billed 38.8 hours for \$125,000. We
18 were concerned given that the expectation post confirmation was
19 just merely awaiting the settlement that even under improvidence
20 standards since Lazard is in fact I believe a 328 professional
21 that the compensation if the level of services they're providing
22 would remain at that level, we were concerned that it might have
23 been improvident.

24 We've had some discussions; I'll leave it to counsel,
25 to Debtor's counsel, as well as committee counsel as to the

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1 expectation. My understanding is that -- I will leave it to
2 counsel.

3 THE COURT: Okay.

4 MR. MASUMOTO: But they're hoping for a fairly short
5 settlement on the IRS matter.

6 THE COURT: Does the U.S. Trustee have -- is it
7 pressing -- is your office pressing your objection with respect
8 to Lazard or are we going to defer it to the final depending
9 upon when we actually get --

10 MR. MASUMOTO: I would be prepared to defer it to the
11 final, Your Honor, especially in light of the expectation that
12 I've been provided that hopefully the matter will be resolved by
13 the end of the year or the beginning of the year.

14 I mean I know we've heard that before and that was
15 part of my concern you know in terms of the continuation of the
16 fees --

17 THE COURT: Right.

18 MR. MASUMOTO: -- which were contemplated in their
19 original retention.

20 THE COURT: Right. Well, you know I think at this
21 point, none of us, except for the United States, can offer any
22 meaningful estimate of when we're going to be able to go
23 effective. So I think the only wise thing to do is to defer it
24 to the final. I hear your point.

25 MR. MASUMOTO: I agree, Your Honor.

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1 THE COURT: This is not the only case that this type
2 of thing happens in. So I think I'll approve them on an interim
3 basis, and then we can -- if that issue continues, we can take
4 it up at the final or at the next interim fee period if we're in
5 that unfortunate position.

6 MR. MASUMOTO: That's fine, Your Honor.

7 THE COURT: All right. Thank you. Is that
8 acceptable?

9 MR. KLEIN: That is, Your Honor.

10 THE COURT: Okay.

11 MR. KLEIN: Thank you. Aaron Klein, Morrison &
12 Foerster for the Committee. I just want to put one thing on the
13 record that Mr. Masumoto and I discussed that I would speak with
14 the Debtor. And we would make sure that the Office of the
15 United States Trustee has all the information about what Lazard
16 is doing from here on out so there's free flow of information.

17 THE COURT: Okay. I mean we have to go back and look
18 at the engagement letter. It undoubtedly provides that they
19 continue to be paid, but I'm not a big fan of paying a lot of
20 money for people doing nothing. Okay. Anything else on the fee
21 applications?

22 I should note for the record that on the phone we have
23 Mr. Arnold from the Whyte Hirschboeck firm. We have Mr. Bass
24 from Barclays Capital; Mr. Cunningham from Avenue Capital, and
25 Mr. Kwiatkowski from KPMG. Anyone on the phone --

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1 MR. KWIATKOWSKI: Good morning, Your Honor, thank you.

2 THE COURT: Anyone on the phone wish to add anything?

3 (No response.)

4 THE COURT: Okay. All right. So, Ms. Weiss, I think
5 that takes care of it, so I will ask you and the other parties
6 to the extent necessary to give us an order with the
7 appropriately revised schedules.

8 MS. WEISS: We will, Your Honor.

9 THE COURT: All right.

10 MS. WEISS: I'll email that later today.

11 THE COURT: Okay. Terrific. All right, can I ask
12 for, to the extent that there is one, an update on where things
13 stand?

14 MS. SCHOENBERGER: Your Honor, Carina Schoenberger,
15 from the United States Attorney's Office --

16 THE COURT: Good morning.

17 MS. SCHOENBERGER: -- on behalf of the IRS. Good
18 morning. The offer letter has left the Office of Review at the
19 DOJ Tax and is with the Joint Committee of Congress right now.
20 And that's about the best I can give you right now.

21 THE COURT: Okay. All right. Very good.

22 MR. KWIATKOWSKI: We can't hear anything on the phone.

23 THE COURT: Okay.

24 MS. SCHOENBERGER: We have -- as with our least
25 meeting, we have no reason to believe at this point that there's

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1 any significant delay with the joint committee.

2 THE COURT: Okay. All right. All right, thank you,
3 folks. Thanks for coming in. Happy Holidays.

4 ALL COUNSEL: Thank you, Your Honor.

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: December 12, 2012



Signature of Approved Transcriber