

**Emergency Motion for Entry of an Order Authorizing the Retention and Compensation of Certain Professionals in the Ordinary Course of the Debtors' Businesses *Nunc Pro Tunc* to the Petition Date (the "OCP Motion").**

By the OCP Motion, the Debtors seek entry of an order authorizing the Debtors to employ and compensate certain professionals used in the ordinary course of the Debtors' businesses (each an "OCP" and, collectively, the "OCPs"). The Debtors assert that the OCPs provide services in a variety of matters unrelated to the chapter 11 cases, including, but not limited to, legal, accounting, auditing and tax and certain consulting services. In addition, the Debtors employ, in the ordinary course of business, other service providers, such as architects, engineers, title companies, surveyors, real estate closing professionals, environmental consultants, design consultants, information technology consultants, marketing and business consultants and others (the "Service Providers").

The Debtors seek permission to continue to employ the OCPs and Service Providers postpetition without the necessity of each OCP or Service Provider filing a formal application for employment or compensation. Due to the number and geographic diversity of the OCPs that are regularly retained by the Debtors, the Debtors claim that it would be burdensome to both the Debtors and the Bankruptcy Court to request each OCP to apply separately for approval of its employment and compensation.

The Debtors represent that: (i) they wish to employ the OCPs, as necessary, for the day-to-day operations of the Debtors' businesses; (ii) expenses for the OCPs will be kept to a minimum; and (iii) the OCPs will not perform substantial services relating to bankruptcy matters without permission of the Bankruptcy Court.

In that regard, the Debtors request the following procedures:

- The Debtors will be authorized to pay, without formal application to the Bankruptcy Court, 100% of fees and disbursements to each of the OCPs retained by the Debtors upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date. Fees, excluding costs and disbursements, must not exceed \$50,000 per month on average over a rolling three-month period (the "Fee Cap"), while the chapter 11 cases are pending.
- Any payments in excess of the Fee Cap will require approval from the Bankruptcy Court in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Court, the Fee Guidelines promulgated by the Executive Office of the United States Trustee, and any applicable orders of the Bankruptcy Court.
- Twenty days after entry of an order, the Debtors will serve a list of OCPs on specified parties in interest, including the Committee (the "Notice Parties"). The Notice Parties will have ten days to object to retention of any listed OCP.
- Beginning on March 30, 2008, and the first day of each subsequent quarter of every year thereafter in which the cases are pending, the Debtors will file with the Bankruptcy Court and serve a statement on the Notice Parties

containing the following information for each OCP: (i) the name of the OCP; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such OCP during the reported quarter; and (iii) a general description of the services rendered by each OCP.

- The Debtors reserve the right to supplement or revise the list of OCPs without the need for any further hearing and without the need to file individual retention applications.

The Debtors state that, if the expertise and background knowledge of the OCPs with respect to the particular areas and matters for which they were responsible prior to the Petition Date are lost, the Debtors will incur additional expenses as new professionals will have to be trained and acclimated to the Debtors' needs, businesses, and operations. The Debtors further assert that the OCPs will not be involved in the administration of the chapter 11 cases but, rather, will provide services in connection with the Debtors' ongoing business operations or services. Accordingly, the Debtors request that the OCP procedures be approved.

***An order granting the OCP Motion was entered on February 4, 2008.***