

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

In re:	:	Chapter 11
	:	
ADVANTA CORP., et al.,	:	Case No. 09-13931 (KJC)
	:	
Debtors.	:	(Jointly Administered)

**FEE AUDITOR’S INITIAL REPORT REGARDING THE SECOND
INTERIM FEE APPLICATION OF COZEN O’CONNOR
FOR THE PERIOD OF FEBRUARY 9, 2010 THROUGH MAY 8, 2010**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Second Interim Fee Application of Cozen O’Connor for the Period of February 9, 2010 through May 8, 2010 (the “Application”).

BACKGROUND

1. Cozen O’Connor was retained as an ordinary course professional to provide legal services to the Debtors. In the Application, Cozen O’Connor seeks approval of fees totaling \$192,832.50 and expenses totaling \$3,655.90 for its services for the period from February 9, 2010 through May 8, 2010 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2010, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30,

1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Cozen O’Connor based on our review, and we received a response from Cozen O’Connor, portions of which response are quoted herein.

DISCUSSION

3. We note that the Debtors were authorized to retain Cozen O’Connor as an ordinary course professional in accordance with the Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Implementing Certain Procedures to Retain, Compensate, and Reimburse Ordinary Course Professionals (the “OCP Order”) (Docket No. 105) entered herein on December 3, 2009. The OCP Order sets a quarterly cap of \$75,000.00 (inclusive of fees and expenses) for each three-month period starting from the first full month following the commencement of the case (the “Quarterly Cap”). The OCP Order provides that in the event a professional’s fees and expenses exceed the Quarterly Cap, the excess amount over the Quarterly Cap shall be subject to prior approval of the Court.

4. We also note that pursuant to the terms of our Fee Auditor Order in this case, ordinary course professionals employed by the Debtors in accordance with the OCP Order are excluded from the scope of our review, unless their fees and expenses exceed the Quarterly Cap, in which case, we are instructed to review them:

. . . [P]rovided, however, to the extent that the fees of any professional employed pursuant to the Ordinary Course Professionals Order exceed the Quarterly Cap Fee Cap Average set forth therein, such fees and expenses shall be reviewed by the

Auditor as set forth herein . . .”¹

We note that Cozen O’Connor’s fees and expenses for the Application Period exceed the \$75,000.00 cap by \$121,488.40 and are thus subject to our review.

5. In our initial report, we noted that Footnote 2 of the Application reads as follows:

Reduction of \$1,087.50 will be made to requested fees representing travel time reduced to 1/2 time and reduction of \$79.35 will be made to requested expenses representing photocopy charge at \$.10 per page.

However, Cozen O’Connor’s fee request of \$192,832.50 did not reflect a reduction of \$1,087.50 for non-working travel. Likewise, Cozen O’Connor’s expense request of \$3,655.90 did not reflect a reduction of \$79.35 in photocopy charges. We asked Cozen O’Connor about these issues, and Cozen O’Connor responded:

In connection with the 2nd Interim Fee Application Cozen O’Connor agrees to the reduction of fees in the amount of \$1,087.50 associated with 1/2 travel time.... Additionally Cozen O’Connor agrees to a reduction of expenses of \$79.35 to reduce photocopy costs to \$.10 per page.

We appreciate Cozen O’Connor’s response and recommend a reduction of \$1,087.50 in fees and \$79.35 in expenses.

6. We noted the following time entry in which the amount of time billed exceeds the amount of time recorded in the work description:

04/28/10	AS	BKE115	Placeholder for Advanta Foundation. Discussion with Arthur Zatz and David Glyn (.2); review trust instrument for Advanta Foundation (.2); review Trust Act re procedure for revocation of trusts (.3)	.80
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¹Order Appointing Fee Auditor and Establishing Related Procedures Concerning the Payment of Compensation and Reimbursement of Expenses of Professionals and Members of Official Committees and Consideration of Fee Applications (Docket No. 249) entered on February 4, 2010 (the “Fee Auditor Order”), at ¶ 2.

The amount of time recorded within the work description totals 0.70 hours. Thus, it appeared there was an overcharge of \$28.00. We asked Cozen O'Connor whether it agreed that a \$28.00 reduction was appropriate, and Cozen O'Connor responded affirmatively. Thus, we recommend a reduction of \$28.00 in fees.

CONCLUSION

7. Thus, we recommend approval of \$191,745.00 in fees (\$192,832.50 minus \$1,087.50) and \$3,548.55 in expenses (\$3,655.90 minus \$107.35) for Cozen O'Connor's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 


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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 5th day of January, 2011.


Warren H. Smith

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