

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

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

**FEE AUDITOR’S FINAL REPORT REGARDING THE SECOND  
INTERIM FEE APPLICATION OF FTI CONSULTING, INC.**

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 FTI Consulting, Inc. (the “Application”).

**BACKGROUND**

1. FTI Consulting, Inc. (“FTI”), was retained as financial advisor to the Official Committee of Unsecured Creditors. In the Application, FTI seeks approval of fees totaling \$455,262.50 and expenses totaling \$1,752.82 for its services from April 1, 2010 through July 31, 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 FTI based on our review, and we received a response from FTI, portions of which response are quoted herein.

## **DISCUSSION**

### General Issues

3. We noted that during the Application Period, FTI billed a total of \$28,860.00 in fees for fee application preparation. This computes to 6.339% of FTI's total fee request of \$455,262.50. We note that FTI's cumulative fees for fee application preparation (for the First and Second Interim Periods) total \$57,944.50 which computes to 4.24% of FTI's cumulative fees billed in the case to date.<sup>1</sup> We further note that 91% of the time billed for fee application preparation was billed by professionals Park and Chen at hourly rates of \$585 and \$355, respectively. Section 330(a)(6) of the Code provides that "[a]ny compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application." Although the Court has not set a defined limit on fees for fee application preparation in this case, such fees must still be reasonable under Section 330 of the Bankruptcy Code. A number of courts have established 5% of the total fees billed as a guideline for reasonableness for such fees. FTI's cumulative fees for fee application are close to exceeding this guideline, thus warranting our continued monitoring of FTI's fees for this activity. For the present Application Period, however, we recommend no reduction in FTI's fees based on this issue.

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<sup>1</sup>FTI's cumulative fees billed in the case through the end of the Second Interim Period total \$1,367,365.00.

### Specific Time and Expense Entries

4. We noted certain instances in which multiple FTI professionals attended the same meetings. See Exhibit “A.” Paragraph II.D.5. of the U.S. Trustee Guidelines provides: “If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.” Similarly, Local Rule 2016-2(d)(ix) provides: “The activity descriptions shall individually identify all meetings and hearings, each participant, the subject(s) of the meeting or hearing and the participant’s role; . . .” For each meeting listed, we asked FTI to explain why it was necessary for each professional to be present. FTI provided the following response:

a. It is necessary for FTI to attend most meetings and calls with core engagement members to ensure everyone is up-to-speed on case issues, which will ensure efficiency and cost-effectiveness. If any of the core members did not participate in meetings, a follow up meeting at a later date would be required to educate such a member on key issues, which would be inefficient and repetitive. The core members include: Mr. Scruton (lead SMD), Ms. Park (day to day manager), and Ms. Chen (day to day analyst).

b. This case involves specific issues that require the expertise of FTI’s specialists. Engaging specialists ensures that such issues are addressed on the most effective and efficient manner and that FTI can provide the best services to the client. To the extent that meetings and calls involved discussions of specific issues requiring FTI’s specialists, then the specialists were invited to attend. FTI’s specialists include: Mr. Nolan (FDIC/regulatory issues), Mr. Joffe (tax), and Mr. Hershman (insurance).

c. As mentioned earlier, it is FTI’s internal practice to try to limit meeting attendance at 4 professionals at a time. However, when it is important for more than 4 professionals to attend, all professionals would attend and FTI may voluntarily write off the time associated with additional professionals, if deemed appropriate. In certain instances, FTI has written off time when more than 3 professionals attended a meeting.

d. Please see below for FTI’s detailed responses to the meeting entries flagged by the Fee Auditor. We believe all of the fees are justifiable.

<b>DATE</b>	<b>PROFESSIONAL</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>DESCRIPTION OF HOURS</b>	<b>FTI RESPONSE</b>
04/26/10	Joffe, Steven	3.5	3,097.50	Meeting with Debtors.	Tax Specialist
04/26/10	Park, Ji Yon	3.0	1,755.00	In-person meeting with management to discuss liquidation update and plan issues.	Core team member
04/26/10	Scruton, Andrew	2.8	2,478.00	Meeting with Debtors.	Core team member
04/26/10	Joffe, Steven	2.5	2,212.50	Meeting with UCC and Counsel members.	Tax Specialist
04/26/10	Park, Ji Yon	3.0	1,755.00	Pre-meeting with Latham and meeting with UCC re: plan issues.	Core team member
04/26/10	Scruton, Andrew	3.5	3,097.50	Prep meeting and meeting with UCC.	Core team member
06/03/10	Chen, Iris	1.5	532.50	Prepare for in-person meeting with Weil and Latham re: claims	Core team member
06/03/10	Chen, Iris	2.5	887.50	In-person meeting with Weil and Latham to discuss claims.	Core team member
06/03/10	Park, Jo Yon	3.0	1,755.00	Prepare for and participate in meeting with advisors to discuss claims.	Core team member
06/03/10	Scruton, Andrew	2.5	2,212.50	Meeting with Debtors' professionals	Core team member

We accept FTI's response and have no objection to these fees.

5. Ordinarily, if a professional bills three or more hours on a case in one day, we do not

object to the individual's reimbursement request for an overtime meal or late night taxi home. However, we noted the following overtime meal and transportation charges incurred on dates when it appeared that the professional in question billed minimal or no time to the case:

04/09/2010	Iris Chen	Taxi - Office to home overtime.	9.00	0.0 hrs.
04/27/2010	Ji Yon Park	Taxi - Office to home overtime	6.60	0.0 hrs.
04/12/2010	Ji Yon Park	Meals - Working dinner overtime.	19.96	1.7 hrs.
05/03/2010	Iris Chen	Taxi - Office to home overtime.	9.00	1.8 hrs.
04/16/2010	Andrew Scruton	Taxi - Office to home overtime	9.94	1.8 hrs.

We asked FTI to explain why the estate should reimburse these expenses, and FTI responded:

We provide the following three categories of explanations for the entries flagged by the fee auditor.

i. Internal write off – We voluntarily wrote off several hours by Ms. Chen when we deemed appropriate to do so. For instance, it is FTI's internal practice to try to limit meeting attendance at 4 professionals at a time. However, when it is important for more than 4 professionals to attend, all professionals would attend and FTI may voluntarily write off the time associated with additional professionals, if deemed appropriate. In certain instances, FTI has voluntarily written off time when 3 or more professionals attended a meeting. A total of \$5,609 reduction has already been voluntarily taken off by FTI for Ms. Chen's time. However, we will agree to write these expenses off.

ii. Timing – In several instances, there was a delay in entering the expense into the system. We identified the entries where more than 3 hours of work was performed for the previous day but no expense was recorded. We believe these expenses are reimbursable.

iii. Human error – One expense was mistakenly billed to Advanta instead of a different case. We will write this expense off.

Date	Name	Description	Amt	Proposed Write-Off	Hrs	FTI Response
04/09/10	Chen	Taxi - Office to home overtime.	\$9.00	\$9.00	—	Ms. Chen's time was voluntarily written off by FTI. However, we will agree to write off this amount.
04/27/10	Park	Taxi - Office to home overtime.	6.60	—	—	This expense entry was entered into the system one day after it was incurred. Ms. Park worked 7.2 hours on the previous day (4/26) but no expense was recorded for this day.
04/12/10	Park	Meals - Working dinner overtime.	19.96	19.96	1.7	Write off
05/03/10	Chen	Taxi - Office to home overtime.	9.00	9.00	1.8	Ms. Chen's time was voluntarily written off by FTI. However, we will agree to write off this amount.
04/16/10	Scruton	Taxi - Office to home overtime.	9.94	—	1.8	This expense entry was entered into the system one day after it was incurred. Mr. Scruton worked 4.7 hours on the previous day (4/15) but no expense was recorded for this day.
		<b>Total</b>	<b>\$54.50</b>	<b>\$37.96</b>		

We accept FTI's response and recommend a reduction of \$37.96 in expenses.

6. We noted the following meal expense for which more information was needed:

07/08/2010 Scruton, Andy Meals - Working lunch with Counsel 205.36

In response to our inquiry, FTI provided the following information:

On 7/9, FTI hosted a meeting at the FTI offices in New York City with the Latham team to discuss tax implications of the proposed plan structure. FTI provided lunch

to all the attendees (3 FTI and 4 Latham professionals). The specific entry is dated 7/8, but it refers to this lunch.


We accept FTI's response<sup>2</sup> and have no objection to this expense.

### CONCLUSION

7. Thus, we recommend approval of \$455,262.50 in fees and \$1,714.86 in expenses (\$1,752.82 minus \$37.96) for FTI's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**


By:   
Warren H. Smith  
Texas State Bar No. 18757050

325 N. St. Paul Street, Suite 1250  
Dallas, Texas 75201  
214-698-3868  
214-722-0081 (fax)  
whsmith@whsmithlaw.com

**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 11<sup>th</sup> day of January, 2011.

  
Warren H. Smith

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<sup>2</sup>We typically utilize a guideline of \$50.00 per person for lunch in New York City. This charge computes to \$29.34 per person.

**SERVICE LIST**  
Notice Parties

**Applicant**

Andrew Scruton  
FTI Consulting, Inc.  
Three Times Square  
New York, NY 10036

**Debtors**

Philip M. Browne  
Advanta Corp.  
P.O. Box 844  
Spring House, PA 19477

**Debtor's Counsel**

Robert L. Lemons  
Weil, Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, NY 10153

Chun I. Jang  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

**Counsel to Official Committee of  
Unsecured Creditors**

Mitchell A. Seider  
Roger G. Schwartz  
Latham & Watkins LLP  
885 Third Avenue, Suite 1200  
New York, NY 10022-4834

Howard A. Cohen  
Drinker Biddle & Reath LLP  
1100 N. Market Street, Suite 1000  
Wilmington, DE 19801

**U.S. Trustee**

David Klauder  
Office of the United States Trustee  
District of Delaware  
844 King Street, Suite 2207  
Lockbox 35  
Wilmington, DE 19801



**EXHIBIT “A”**

a. We noted that on April 26, 2010, professionals Joffe (\$885), Scruton (\$885), and Park (\$585) attended a meeting with the debtors. The total time spent was 9.30 hours, for total fees of \$7,330.50.

04/26/10	SJ	3.50	3,097.50	Meeting with Debtors.
04/26/10	JYP	3.00	1,755.00	In-person meeting with management to discuss liquidation update and plan issues.
04/26/10	AS	2.80	2,478.00	Meeting with Debtors.
		<b>9.30</b>	<b>7,330.50</b>	

b. We noted that on April 26, 2010, professionals Joffe (\$885), Scruton (\$885), and Park (\$585) attended a meeting with the Unsecured Creditors’ Committee. The total time spent was 9.0 hours, for total fees of \$7,065.00.

04/26/10	SJ	2.50	2,212.50	Meeting with UCC and Counsel members.
04/26/10	JYP	3.00	1,755.00	Pre-meeting with Latham and meeting with UCC re: plan issues.
04/26/10	AS	3.50	3,097.50	Prep meeting and meeting with UCC.
		<b>9.00</b>	<b>7,065.00</b>	

c. We noted that on June 3, 2010, professionals Chen (\$355), Park (\$585), and Scruton (\$885) attended a meeting with Weil Gotshal and Latham & Watkins concerning claims. The total time spent was 9.50 hours, for total fees of \$5,387.50.

06/03/10	Chen, Iris	1.5	532.50	Prepare for in-person meeting with Weil and Latham re: claims.
06/03/10	Chen, Iris	2.5	887.50	In-person meeting with Weil and Latham to discuss claims.
06/03/10	Park, Ji Yon	3.0	1,755.00	Prepare for and participate in meeting with advisors to discuss claims.
06/03/10	Scruton, Andrew	2.5	2,212.50	Meeting with Debtors’ professionals re: claims.
		<b>9.5</b>	<b>5,387.50</b>	