

**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 FINAL REPORT REGARDING THE THIRD INTERIM
FEE APPLICATION OF LATHAM & WATKINS LLP**

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 Third Interim Fee Application of Latham & Watkins LLP (the "Application").

BACKGROUND

1. Latham & Watkins LLP ("Latham") was retained as counsel to the Official Committee of Unsecured Creditors. In the Application, Latham seeks approval of fees totaling \$2,222,158.75 and expenses totaling \$64,630.16 for its services from August 1, 2010 through November 30, 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, 2011, 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 Latham based on our review, and we received a response from Latham, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted certain depositions attended by multiple Latham professionals. See Exhibit “A.” We asked Latham to explain why it was necessary for each attorney to be present at these depositions. Latham’s response is included as Response Exhibit “1.” We accept Latham’s response and have no objection to these fees.

4. We noted certain instances in which multiple Latham professionals attended the same hearing or mediation. See Exhibit “B.” 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; . . .” We asked Latham to explain why it was necessary for each attorney to be present, and Latham’s response is included as Response Exhibit “2.” We appreciate Latham’s response but do not believe Latham has satisfied its burden of proof with respect to Mr. Singer’s attendance at the hearing on November 12, 2010, and the status conference on November 17, 2010. According to the response, “Mr. Singer attended the hearing telephonically so that Mr. Singer could take note of the Court’s positions and integrate such findings into other Rule 2004 motions being prepared by Latham on behalf of the Committee.” Similarly, with respect to the status conference, the response reads, “Mr. Singer attended the status conference so that Mr. Singer could take note of the Court’s positions and integrate such findings into other

Rule 2004 motions being prepared by Latham on behalf of the Committee.” While we understand the necessity of this work, the response fails to demonstrate why one or more of the other Latham attorneys in attendance were unable to perform this task. Thus, we recommend disallowance of Mr. Singer’s time at the November 12 hearing and the November 17 status conference, for a reduction of \$1,045.00 in fees.

5. We noted four time entries in which the amount of time billed exceeds the amount of time recorded within the work description. See Exhibit “C.” Latham’s explanations for these discrepancies is included as Response Exhibit “3.” We accept Latham’s response and have no objection to these fees.

6. We noted a total of \$11,480.36 in Westlaw and Lexis charges. We asked Latham to confirm that these charges were billed at or less than the firm’s actual cost.¹ Latham responded:

Latham hereby confirms that these charges are actual charges, and reflect a 10% discount from the actual rates charged by Westlaw and Lexis to Latham.

We accept Latham’s response and have no objection to these expenses.

7. We noted the following travel expense for which more information was needed:

08/04/10	455.04	TRIP EXPENSES - OUT OF TOWN Advanta depositions in Philadelphia ROBERT J MALIONEK
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We asked Latham to itemize this expense, and Latham responded:

. . . [T]his particular entry is for lodging during depositions in Philadelphia, PA, including \$395.00 for lodging plus tax of \$60.04.

Latham further stated that “Mr. MalioneK stayed at the Four Seasons Hotel in Philadelphia for one night.” We appreciate Latham’s response and note that the Four Seasons is classified as a five-star

¹Local Rule 2016-2(e)(iii) provides that charges for “computer-assisted legal research . . . shall not be more than actual cost. . .”

hotel on the Expedia travel website. Thus, we recommend that reimbursement of the room rate portion of this expense be reduced to our recommended nightly “trigger rate” of \$300.00 for Philadelphia, for a reduction of \$95.00 in expenses.

8. We noted several meal expenses for which more information was needed. See Exhibit “D.” In response to our inquiry, Latham provided the information attached as Response Exhibit “4.” We accept Latham’s response with respect to each of the charges, except for the \$88.93 dinner charge for one person in Philadelphia, for which we recommend a reduction of \$33.93 in expenses.²

9. We noted several ground transportation charges for which more information was needed. See Exhibit “E.” In response to our request, Latham provided the information on Response Exhibit “5.” We accept Latham’s response with respect to each charge,³ except for attorney Casey’s taxi charge of \$26.76 incurred on August 14, 2010, as he billed only 0.4 hours to the case on that date.⁴ Thus, we recommend a reduction of \$26.76 in expenses.

10. We noted a total of \$8,911.91 in photocopy charges which appeared to have been billed at the rate of \$0.17 per page. The Delaware Local Rules limit charges for in-house photocopies to \$0.10 per page.⁵ It appears that 52,423 photocopies were made. In response to our

²For meal charges incurred in New York, we apply per person guidelines of \$40 for breakfast, \$50 for lunch, and \$70 for dinner. For most other locales, including Philadelphia, we utilize guidelines of \$25 for breakfast, \$35 for lunch, and \$55 for dinner.

³We noted Mr. Malione’s car service charges, but determined that the cost of a taxi for these trips (if available) would have exceeded each of the car service charges billed.

⁴We ordinarily do not object to requests for reimbursement of late night or “overtime” taxi rides home, provided the professional incurring the charge billed at least three hours to the case on the date the charge was incurred.

⁵See Del. Bankr. L.R. 2016-2(e)(iii).

inquiry, Latham agreed to reduce its photocopy charges by \$3,669.61 in order to bring them into compliance with the Local Rule. We appreciate Latham's response and recommend a reduction of \$3,669.61 in expenses.

11. 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 several overtime meal and transportation charges incurred on dates when it appeared that the professional in question recorded minimal or no time to the case. See Exhibit "F." We asked Latham to explain why the estate should reimburse these expenses, and Latham's response is included as Response Exhibit "6." We appreciate Latham's proffered reductions of \$48.11. We accept Latham's response for all of the other charges, except for Ms. Glasser's taxi charge of \$22.10 incurred on August 25, 2010, as Ms. Glasser billed no time to the case on that date. Thus, we recommend a total reduction of \$70.21 in expenses.


12. We noted total charges of \$984.00 for "Document Preparation." According to Paragraph II.E.7. of the U. S. Trustee Guidelines, "Overhead includes word processing, proofreading, secretarial and other clerical services...." We asked Latham to explain why these expenses should be reimbursed by the estate, and Latham responded: "Latham suggests and requests that \$984.00 be deducted from the 20% holdback currently pending under the Application." We appreciate Latham's response and recommend a reduction of \$984.00 in expenses.

CONCLUSION

13. Thus, we recommend approval of \$2,221,113.75 in fees (\$2,222,158.75 minus \$1,045.00) and \$59,750.65 in expenses (\$64,630.16 minus \$4,879.51) for Latham'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 2nd day of May, 2011.


Warren H. Smith

SERVICE LIST

Notice Parties

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EXHIBIT "A"

a. We noted that on August 3, 2010, attorneys Malioneck (\$780), Schwartz (\$885), and Casey (\$645) attended the Rosoff deposition. The total time spent was 23.6 hours, for total fees of \$17,967.00.

MALIONEK	08/03/10	7.00	5,460.00	ATTEND ROSOFF DEPOSITION (7.0);.....
SCHWARTZ	08/03/10	7.50	6,637.50	ATTEND WITH ROSOFF DEPOSITION AT WEIL GOTSHAL IN CONNECTION WITH TAX ELECTION LITIGATION (7.5)
CASEY	08/03/10	9.10	5,869.50	ROSOFF DEPOSITION AND PREPARATION FOR SAME (9.1);.....

b. We noted that on August 6, 2010, attorneys Malioneck (\$780), Schwartz (\$885), and Casey (\$645) attended the Stern deposition. The total time spent, including the deposition preparation session, was 27.40 hours for total fees of \$21,348.00.

MALIONEK	08/04/10	2.70	2,106.00	PREPARE M. STERN FOR DEPOSITION AND PREPARE FOR SAME (2.7);.....
SCHWARTZ	08/04/10	1.50	1,327.50	DEPOSITION PREPARATION MEETING WITH M. STERN IN PREPARATION FOR 8/6 DEPOSITION (1.5)
CASEY	08/04/10	0.50	322.50; PREPARATION WITH M. STEN AND CORRESPONDENCE REGARDING SAME (0.5)
SCHWARTZ	08/05/10	1.50	1,327.50	REVIEW OF ROSOFF DEPOSITION TESTIMONY IN CONNECTION WITH ADDITIONAL DEPOSITION PREPARATION,..... (1.5)
SCHWARTZ	08/05/10	0.30	265.50	TELEPHONE CALL WITH L&W AND WEIL REGARDING DEPOSITION PREPARATION

ISSUES (0.3)

CASEY	08/05/10	0.50	322.50; PREPARATION WITH M. STERN AND CORRESPONDENCE REGARDING SAME (0.5)
MALIONEK	08/06/10	7.10	5,538.00	DEFEND M. STERN DEPOSITION AND MEETING REGARDING SAME (7.1);.....
SCHWARTZ	08/06/10	6.50	5,752.50	ATTEND AND PARTICIPATE IN DEFENSE OF M. STERN DEPOSITION (6.5)
CASEY	08/06/10	6.80	4,386.00	STERN DEPOSITION AND PREPARATION FOR SAME (6.8);.....

c. We noted that on November 30, 2010, attorneys Harris (\$835), Malonek (\$780), Glasser (\$435), and Goldberg (\$575) attended the Dunn deposition. The total time spent was 30.50 hours, for total fees of \$19,376.00.

11/30/10	CH	8.90	7,431.50	Prepare for and take Dunn deposition review transcript
11/30/10	RJM	4.10	3,198.00	Attend Dunn deposition and meetings (3.6); calls with L&W regarding same (.5).
11/30/10	JEG	9.40	4,089.00	Review exhibits, pleadings and other supporting documents in preparation for Dunn deposition (2.0); prepare for and attend Dunn deposition (7.4);.....
11/30/10	AJG	8.10	4,657.50	Attend deposition (7.2); prepare for same (0.9);.....

EXHIBIT "B"

a. We noted that on August 10, 2010, attorneys Malioneck (\$780), Raab (\$995), and Schwartz (\$885) attended a mediation. The total time spent was 29.50 hours, for total fees of \$26,210.00.

MALIONEK 08/10/10 9.50 7,410.00; PARTICIPATE IN MEDIATION (9.5);.....

RAAB 08/10/10 10.00 9,950.00 MEDIATION MEETING AT WEIL'S OFFICES (10.0);.....

SCHWARTZ 08/10/10 10.00 8,850.00 ATTEND AND PARTICIPATE IN TAX ELECTION LITIGATION MEDIATION WITH DEBTORS, FDIC AND JUDGE DRAIN

b. We noted that on November 17, 2010, attorneys Malioneck (\$780), Schwartz (\$885), Goldberg (\$575), and Singer (\$550) attended a hearing. The total time spent, including non-working travel time and preparation time, was 20.10 hours, for total fees of \$13,216.25.

11/17/10 RGS 1.50 663.75 Non-working travel time on return from 2004 Motion hearing

11/17/10 AJG 2.50 718.75 Travel to hearing (1.0); return from hearing (1.5).

11/17/10 RJM 8.00 6,240.00 2004 Motion and travel, preparation en route for same (8.0);.....

11/17/10 RGS 2.50 2,212.50 Working travel and preparation time for 11/17 2004 Motion hearing

11/17/10 RGS 0.90 796.50 Attend 2004 Motion hearing (.9);.....

11/17/10 RGS 0.70 309.75 Working travel time on return from 2004 motion hearing

11/17/10 AJG 3.00 1,725.00 Prepare for hearing (2.2); attend hearing (0.8);.....

11/17/10	AMS	1.00	550.00	Attend hearing via conference call in order to take notes and for implications for Rule 2004 Motion (1.0);.....
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c. We noted that on November 12, 2010, attorneys Malionek (\$780), Schwartz (\$885), Glasser (\$435), Goldberg (\$575), and Singer (\$550) attended a telephonic hearing. The total time spent was 6.30 hours, for total fees of \$4,548.00.

11/12/10	RJM	3.00	2,340.00	Telephonic hearing with court regarding 2004 scheduling motion (1.0); prepare for same (2.0);.....
11/12/10	RGS	0.80	708.00	Prepare for 2004 Motion status conference
11/12/10	RGS	0.50	442.50	Participate in 2004 Motion status conference
11/12/10	JEG	0.50	217.50; attend scheduling conference to provide expertise on discovery requests (.5);.....
11/12/10	AJG	0.60	345.00; attend court status conference (0.6);.....
11/12/10	AMS	0.90	495.00; attend telephonic hearing (.5); attend planning session with team in preparation for conference with court (.4).

EXHIBIT "C"

- a. SINGER 08/13/10 10.60 DRAFT, REVISE AND INPUT COMMENTS ON PRETRIAL BRIEF (9.0); ATTEND SETTLEMENT DISCUSSIONS AND PROVIDE SETTLEMENT UPDATES TO THE COMMITTEE (1.4)

The recorded time totals 10.40 hours. Thus, it appears there is an overcharge of 0.20 hours and \$110.00 in fees.

- b. Barby 09/04/10 1.40 Review and email regarding split dollar life insurance issues (.9); review regarding SEIP issues (.4).

The recorded time totals 1.30 hours. Thus it appears there is an overcharge of 0.10 hours and \$96.00 in fees.

- c. Glasser 09/20/10 10.50 Review and analyze documents and correspondence in connection with assessment of potential claims and issues in preparation for discussions with Dechert (5.5); correspondence with K. Sussman and K. Rock regarding issue charts (.5); meeting with R. Malioneck, R. Schwartz and FTI to strategize for upcoming meeting and evaluation of potential claims (4.0).

The recorded time totals 10.00 hours. Thus, it appears there is an overcharge of 0.50 hours and \$217.50 in fees.

- d. 10/05/10 EJK-O 3.50 Meeting with R. Malioneck regarding matter (1.5); review of preliminary materials (.5); correspondence with J. Glasser regarding matter (.5); correspondence with A. Goldberg regarding matter (.5).

The recorded time totals 3.0 hours. Thus, it appears there is an overcharge of 0.50 hours and \$307.50 in fees.

EXHIBIT "D"

08/04/10	130.50	MEALS - OUT OF TOWN Advanta depositions in Philadelphia ROBERT J MALIONEK
09/30/10	234.36	Meal Services A M SINGER
10/01/10	159.48	Meal Services Y M Nieves
10/04/10	165.67	Meal Services A M Singer
10/06/10	195.82	Meal Services V G Perry
10/18/10	(117.50)	Meal Services V G Perry
10/18/10	218.21	Meal Services Y M Nieves
10/22/10	219.33	Meal Services A M Singer
11/29/10	69.05	Meal Services J E Glasser
11/29/10	31.86	Meal Services J E Glasser
11/29/10	221.86	Meal Services J E Glasser
11/29/10	142.15	Meal Services J E Glasser
11/03/10	1,056.43	Meals - Local A M Singer Berkeley Caterers, Inc., on 10/1/10

EXHIBIT "E"

08/03/10	104.98	LOCAL GROUND TRANSPORTATION - LOCAL Taxi fares KELLI G SUSSMAN
08/03/10	116.68	LOCAL GROUND TRANSPORTATION -- VITAL TRANSPORTATION INC. 7/30/2010 R J MALIONEK
08/03/10	106.08	LOCAL GROUND TRANSPORTATION – VITAL TRANSPORTATION INC. 7/29/2010 R J MALIONEK
08/10/10	125.48	LOCAL GROUND TRANSPORTATION – VITAL TRANSPORTATION INC. 8/5/2010R J MALIONEK
08/03/10	335.67	Ground Transportation - Local Taxi Fares J M Casey
08/24/10	124.33	Ground Transportation - Vital Transportation, Inc. 8/16/2010 – R J MalioneK
08/24/10	104.04	Ground Transportation - Vital Transportation, Inc. 8/15/2010 – R J MalioneK
10/01/10	135.66	Ground Transportation - Local - Elite Limousine ... 09/28/2010 – R J MalioneK
11/23/10	131.44	Ground Transportation - Local - Vital Transportation, Inc. 11/17/2010 R J MalioneK

EXHIBIT ‘F’

09/10/10	Meal Services	A M Singer	45.69	1.6 hrs
09/16/10	Meal Services	A M Singer	10.78	2.1 hrs
09/17/10	Meal Services	A M Singer	10.15	2.1 hrs
09/17/10	Meal Services	A M Singer	45.69	2.1 hrs
09/30/10	Meals - Local . . . Working lunch on 9/24/10	P N Singarella	20.17	0.0 hrs
08/11/10	Ground Transportation - Local taxi fares	A T Ozawa	8.00	0.0 hrs
08/23/10	Ground Transportation - Local taxi fares	J E Glasser	126.00	0.0 hrs
09/14/10	Ground Transportation - Local Taxi fares	A J Goldberg	35.04	1.2 hrs
09/28/10	Ground Transportation - Local Taxi - Work Related	K G Sussman	11.30	1.3 hrs
11/03/10	Meal Services	A M Singer	12.86	2.2 hrs
10/09/10	Ground Transportation - Local - Taxis - late and weekend work	A J Goldberg	41.14	0.5 hrs
11/13/10	Ground Transportation - Local Taxi Fares	A J Goldberg	21.40	0.0 hrs
11/21/10	Ground Transportation - Local Taxi Fares	Y Lozovatskaya	8.64	0.0 hrs

RESPONSE EXHIBIT “1”

a. In its Initial Report, the Fee Auditor noted that on August 3, 2010, attorneys Malioneck (\$780), Schwartz (\$885), and Casey (\$645) attended the Rosoff deposition. The total time spent was 23.6 hours, for total fees of \$17,967.00.

MALIONEK	08/03/10	7.00	5,460.00	ATTEND ROSOFF DEPOSITION (7.0);.....
SCHWARTZ	08/03/10	7.50	6,637.50	ATTEND WITH ROSOFF DEPOSITION AT WEIL GOTSHAL IN CONNECTION WITH TAX ELECTION LITIGATION (7.5)
CASEY	08/03/10	9.10	5,869.50	ROSOFF DEPOSITION AND PREPARATION FOR SAME (9.1);.....

Explanation: it was necessary for each of Mr. Malioneck, Mr. Schwartz and Mr. Casey to attend the Rosoff deposition. Mr. Malioneck provided specialized litigation expertise necessary for the adequate representation of the Committee at the deposition including participation as the Committee’s lead trial attorney and attorney posing all questions on behalf of the Committee. Mr. Schwartz attended the deposition in order to provide bankruptcy law expertise. Finally, Mr. Casey attended the deposition in order to provide support to Mr. Malioneck with respect to supporting documentation and fact analysis pertinent to the subject matter of the deposition.⁶

b. In its Initial Report, the Fee Auditor noted that on August 6, 2010, attorneys

⁶Fee Auditor’s Note: With respect to the Rosoff and Dunn depositions (subparagraphs a and c), we also asked Latham if it was taking or defending the depositions. Latham responded:

Latham professionals took the deposition of Ms. Dunn. With respect to the deposition of Mr. Rosoff, Latham professionals attended as third party participants, but also, in fact, coordinated and participated in the defense of Mr. Rosoff.

Malionek (\$780), Schwartz (\$885), and Casey (\$645) attended the Stern deposition. The total time spent, including the deposition preparation session, was 27.40 hours for total fees of \$21,348.00.

MALIONEK	08/04/10	2.70	2,106.00	PREPARE M. STERN FOR DEPOSITION AND PREPARE FOR SAME (2.7);.....
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SCHWARTZ	08/05/10	1.50	1,327.50	REVIEW OF ROSOFF DEPOSITION TESTIMONY IN CONNECTION WITH ADDITIONAL DEPOSITION PREPARATION,..... (1.5)
SCHWARTZ	08/05/10	0.30	265.50	TELEPHONE CALL WITH L&W AND WEIL REGARDING DEPOSITION PREPARATION ISSUES (0.3)
CASEY	08/05/10	0.50	322.50; PREPARATION WITH M. STERN AND CORRESPONDENCE REGARDING SAME (0.5)
MALIONEK	08/06/10	7.10	5,538.00	DEFEND M. STERN DEPOSITION AND MEETING REGARDING SAME (7.1);.....
SCHWARTZ	08/06/10	6.50	5,752.50	ATTEND AND PARTICIPATE IN DEFENSE OF M. STERN DEPOSITION (6.5)
CASEY	08/06/10	6.80	4,386.00	STERN DEPOSITION AND PREPARATION FOR SAME (6.8);.....

Explanation: it was necessary for each of Mr. Malionek, Mr. Schwartz and Mr. Casey to assist Mr. Stern in preparing for his deposition and in the defense of Mr. Stern at his deposition. Mr. Malionek provided specialized litigation expertise necessary for the adequate representation of the Committee at the deposition and was the lead trial attorney responsible for defending Mr. Stern at his deposition. Mr. Schwartz attended the deposition in order to provide bankruptcy law expertise

and overall case supervision. Finally, Mr. Casey attended the deposition in order to provide support to Mr. Malioneck with respect to supporting documentation and fact analysis pertinent to the subject matter of the deposition.

c. In its Initial Report, the Fee Auditor noted that on November 30, 2010, attorneys Harris (\$835), Malioneck (\$780), Glasser (\$435), and Goldberg (\$575) attended the Dunn deposition. The total time spent was 30.50 hours, for total fees of \$19,376.00.

11/30/10	CH	8.90	7,431.50	Prepare for and take Dunn deposition review transcript
11/30/10	RJM	4.10	3,198.00	Attend Dunn deposition and meetings (3.6); calls with L&W regarding same (.5).
11/30/10	JEG	9.40	4,089.00	Review exhibits, pleadings and other supporting documents in preparation for Dunn deposition (2.0); prepare for and attend Dunn deposition (7.4);.....
11/30/10	AJG	8.10	4,657.50	Attend deposition (7.2); prepare for same (0.9);.....

Explanation: it was necessary for each of Mr. Harris, Mr. Malioneck, Ms. Glasser and Mr. Goldberg to prepare for and attend the Dunn deposition. Both Mr. Harris and Mr. Malioneck provided specialized litigation expertise necessary for the adequate representation of the Committee at the deposition. Due to a potential conflict in scheduling based on a trial in an unrelated matter, it was necessary for both Mr. Harris and Mr. Malioneck to attend the deposition in order to ensure that seamless representation of the Committee. Please note that Mr. Malioneck only attended a portion of the deposition. Ms. Glasser attended the deposition in order to provide support to Mr. Harris and Mr. Malioneck with respect to supporting documentation and fact analysis pertinent to the subject matter of the deposition. Finally, Mr. Goldberg attended the deposition in order to provide bankruptcy law expertise.

RESPONSE EXHIBIT “2”

a. In its Initial Report, the Fee Auditor noted that on August 10, 2010, attorneys Malioneck (\$780), Raab (\$995), and Schwartz (\$885) attended a mediation. The total time spent was 29.50 hours, for total fees of \$26,210.00.

MALIONEK 08/10/10 9.50 7,410.00; PARTICIPATE IN MEDIATION (9.5);.....

RAAB 08/10/10 10.00 9,950.00 MEDIATION MEETING AT WEIL'S OFFICES (10.0);.....

SCHWARTZ 08/10/10 10.00 8,850.00 ATTEND AND PARTICIPATE IN TAX ELECTION LITIGATION MEDIATION WITH DEBTORS, FDIC AND JUDGE DRAIN

Explanation: it was necessary for each of Mr. Malioneck, Mr. Raab and Mr. Schwartz to attend and participate in the mediation in order to ensure adequate representation of the Committee. The particular mediation was in connection with tax law claims brought by the FDIC against the Debtors and their estates in the bankruptcy proceedings. Mr. Malioneck provided specialized litigation expertise. Mr. Raab attended the mediation in order to provide strategic tax law expertise and general tax strategy for the cases and specifically with respect to the FDIC litigation. Finally, Mr. Schwartz attended the mediation to supervise the overall management of the case, to provide strategic case guidance and to provide bankruptcy law expertise.

b. In its Initial Report, the Fee Auditor noted that on November 17, 2010, attorneys Malioneck (\$780), Schwartz (\$885), Goldberg (\$575), and Singer (\$550) attended a hearing. The total time spent, including non-working travel time and preparation time, was 20.10 hours, for total fees of \$13,216.25.

11/17/10 RGS 1.50 663.75 Non-working travel time on return from 2004 Motion hearing

11/17/10	AJG	2.50	718.75	Travel to hearing (1.0); return from hearing (1.5).
11/17/10	RJM	8.00	6,240.00	2004 Motion and travel, preparation en route for same (8.0);.....
11/17/10	RGS	2.50	2,212.50	Working travel and preparation time for 11/17 2004 Motion hearing
11/17/10	RGS	0.90	796.50	Attend 2004 Motion hearing (.9);.....
11/17/10	RGS	0.70	309.75	Working travel time on return from 2004 motion hearing
11/17/10	AJG	3.00	1,725.00	Prepare for hearing (2.2); attend hearing (0.8);.....
11/17/10	AMS	1.00	550.00	Attend hearing via conference call in order to take notes and for implications for Rule 2004 Motion (1.0);.....

Explanation: it was necessary for each of Mr. Malioneck, Mr. Schwartz, Mr. Goldberg, and Mr. Singer (telephonically) to attend and participate in the Rule 2004 motion hearing in order to ensure adequate representation of the Committee. The particular hearing related to the Committee's request for Rule 2004 discovery of the Debtors. Mr. Malioneck provided specialized litigation expertise necessary for the litigation of the Committee's motion and was the Committee's lead attorney responsible for arguing the Rule 2004 motion before the Court. Mr. Schwartz attended the hearing in order to supervise the overall management of the case, to provide strategic case guidance and to provide bankruptcy law expertise. Mr. Goldberg attended the deposition in order to provide support to Mr. Malioneck with respect to supporting documentation and fact analysis pertinent to the subject matter of the hearing. Finally, Mr. Singer attended the hearing telephonically so that Mr. Singer could take note of the Court's positions and integrate such findings into other Rule 2004 motions being prepared by Latham on behalf of the Committee.

c. In its Initial Report, the Fee Auditor noted that on November 12, 2010, attorneys Malioneck (\$780), Schwartz (\$885), Glasser (\$435), Goldberg (\$575), and Singer (\$550) attended

a telephonic hearing. The total time spent was 6.30 hours, for total fees of \$4,548.00.

11/12/10	RJM	3.00	2,340.00	Telephonic hearing with court regarding 2004 scheduling motion (1.0); prepare for same (2.0);.....
11/12/10	RGS	0.80	708.00	Prepare for 2004 Motion status conference
11/12/10	RGS	0.50	442.50	Participate in 2004 Motion status conference
11/12/10	JEG	0.50	217.50; attend scheduling conference to provide expertise on discovery requests (.5);.....
11/12/10	AJG	0.60	345.00; attend court status conference (0.6);.....
11/12/10	AMS	0.90	495.00; attend telephonic hearing (.5); attend planning session with team in preparation for conference with court (.4).

Explanation: it was necessary for each of Mr. Malioneck, Mr. Schwartz, Ms. Glasser, Mr. Goldberg, and Mr. Singer to attend and participate in the Rule 2004 status conference in order to ensure adequate representation of the Committee. Mr. Malioneck provided specialized litigation expertise necessary for the litigation of the Committee's motion and acted as the Committee's lead attorney for purposes of appearing at the status conference. Mr. Schwartz attended the status conference in order to supervise the overall management of the case, to provide strategic case guidance and to provide bankruptcy law expertise. Ms. Glasser attended the status conference as she was responsible for the early stages of document discovery. As such Ms. Glasser's presence was necessary in order to ensure that the Court was adequately informed of the Committee's progress and to ensure that the Court's findings would be reflected in the Committee's further discovery efforts. Mr. Goldberg attended the status conference in order to provide support to Mr. Malioneck with respect to supporting documentation and fact analysis pertinent to the subject matter of the hearing. Finally, Mr. Singer attended the status conference so that Mr. Singer could take note of the

Court's positions and integrate such findings into other Rule 2004 motions being prepared by Latham on behalf of the Committee.

RESPONSE EXHIBIT “3”

- a. SINGER 08/13/10 10.60 DRAFT, REVISE AND INPUT COMMENTS ON PRETRIAL BRIEF (9.0); ATTEND SETTLEMENT DISCUSSIONS AND PROVIDE SETTLEMENT UPDATES TO THE COMMITTEE (1.4)

The recorded time totals 10.40 hours. Thus, it appears there is an overcharge of 0.20 hours and \$110.00 in fees.

Explanation: In addition to the above time recorded, our records show that Mr. Singer also billed 0.20 hours for his “REVIEW OF EXHIBITS TO THE PRETRIAL BRIEF.”

- b. Barby 09/04/10 1.40 Review and email regarding split dollar life insurance issues (.9); review regarding SEIP issues (.4).

The recorded time totals 1.30 hours. Thus it appears there is an overcharge of 0.10 hours and \$96.00 in fees.

Explanation: our records reflect a mathematical error was made when entering the time recorded entry. That entry should read as follows: “Review and email regarding split dollar life insurance issues (.9); review regarding SEIP issues (.5).”

- c. Glasser 09/20/10 10.50 Review and analyze documents and correspondence in connection with assessment of potential claims and issues in preparation for discussions with Dechert (5.5); correspondence with K. Sussman and K. Rock regarding issue charts (.5); meeting with R. Malioneck, R. Schwartz and FTI to strategize for upcoming meeting and evaluation of potential claims (4.0).

The recorded time totals 10.00 hours. Thus, it appears there is an overcharge of 0.50 hours and \$217.50 in fees.

Explanation: our records reflect a mathematical error was made when entering the time recorded entry. That entry should read as follows: Review

and analyze documents and correspondence in connection with assessment of potential claims and issues in preparation for discussions with Dechert (**6.0**); correspondence with K. Sussman and K. Rock regarding issue charts (.5); meeting with R. Malioneck, R. Schwartz and FTI to strategize for upcoming meeting and evaluation of potential claims (4.0).

- d. 10/05/10 EJK-O 3.50 Meeting with R. Malioneck regarding matter (1.5); review of preliminary materials (.5); correspondence with J. Glasser regarding matter (.5); correspondence with A. Goldberg regarding matter (.5).

The recorded time totals 3.0 hours. Thus, it appears there is an overcharge of 0.50 hours and \$307.50 in fees.

Explanation: our records reflect a mathematical error was made when entering the time recorded entry. That entry should read as follows: Meeting with R. Malioneck regarding matter (1.5); review of preliminary materials (**1.0**); correspondence with J. Glasser regarding matter (.5); correspondence with A. Goldberg regarding matter (.5).

RESPONSE EXHIBIT “4”

Date	Amount	Expense Type	Name	Explanation (# of people, breakfast, lunch or dinner)
08/04/10	130.50	MEALS - OUT OF TOWN Advanta depositions in Philadelphia	Robert J Malioneck	This entry reflects four meal expenses incurred by Mr. Malioneck while traveling on business for depositions. The breakdown is as follows: <ul style="list-style-type: none"> • 8/5/2010: dinner \$88.93 • 8/5/2010, breakfast \$4.87 • 8/5/2010, snack \$3.58 • 8/5/2010, lunch \$33.12
09/30/10	234.36	Meal Services ⁷	AM Singer	25 people, breakfast for meeting on October 1, 2010.
10/01/10	159.48	Meal Services	Y M Nieves	8 people, lunch for meeting on October 4, 2010.
10/04/10	165.67	Meal Services	A M Singer	8 people, lunch for meeting on October 4, 2010.
10/06/10	195.82	Meal Services	V G Perry	8 people, lunch for additional attendees at October, 4, 2010 meeting.
10/18/10	(117.50)	Meal Services	V G Perry	Credit to be applied to 10/4/2010 order of lunch for 8 people.
<p>Note: on October 4, 2010 lunch was provided at a meeting for 16 people. Due to a mistake on the part of the caterer or conference services, lunch was ordered in increments of 8 people, including one extra order for 8 additional people. The credit addresses this error.</p>				
10/18/10	218.21	Meal Services	Y M Nieves	20 people, snacks and drinks for meeting on 10/19/2010.
10/22/10	219.33	Meal Services	A M Singer	20 people, snacks and drinks for meeting on 10/25/2010.
11/29/10	69.05	Meal Services	J E Glasser	13 people, snacks and drinks for meeting on 11/30/2010.

⁷Fee Auditor’s Note: Latham subsequently confirmed that each of the “Meal Services” expenses were for meals at Latham’s New York office.

11/29/10	31.86	Meal Services	J E Glasser	13 people, snacks and drinks for meeting on 11/29/2010.
11/29/10	221.86	Meal Services	J E Glasser	13 people, lunch for meeting on 11/20/2010.
11/29/10	142.15	Meal Services	J E Glasser	13 people, snacks and drinks for meeting on 11/20/2010.
11/03/10	1,056.43	Meals – Local	A M Singer	25 people, lunch and drinks for meeting on 10/1/2010.

RESPONSE EXHIBIT “5”

08/03/10	104.98	LOCAL GROUND TRANSPORTATION - LOCAL Taxi Fares	KELLI G SUSSMAN
Explanation: this is a lump charge and payment made for 11 local taxi rides: \$8.20; \$6.90; \$7.70; \$6.70; \$7.28; \$24.70; \$8.50; \$8.50; \$10.10; \$8.30; and \$8.10.			

08/03/10	116.68	LOCAL GROUND TRANSPORTATION – VITAL TRANSPORTATION INC. 7/30/2010	R J MALIONEK
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

08/03/10	106.08	LOCAL GROUND TRANSPORTATION – VITAL TRANSPORTATION INC. 7/29/2010	R J MALIONEK
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

08/10/10	125.48	LOCAL GROUND TRANSPORTATION – VITAL TRANSPORTATION INC. 8/5/2010	R J MALIONEK
Explanation: this entry reports expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

08/03/10	335.67	Ground Transportation - Local Taxi Fares	J M CASEY
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Explanation: this entry lumps together and covers two types of expenses. First, the entry covers 8 local taxi rides in New York City in the following amounts: \$24.76; \$24.84; \$26.18; \$24.74; \$26.28; \$22.00; \$26.66; and \$24.72.

Second, the entry covers 4 taxi ride expenses that were made in Salt Lake City, UT in order to attend depositions. The 4 expenses are in the following amounts: \$22.00; \$59.07; \$16.00; and \$15.00.

08/24/10	124.33	Ground Transportation – Vital Transportation, Inc. 8/16/2010	R J Malioneck
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

08/24/10	104.04	Ground Transportation – Vital Transportation, Inc. 8/15/2010	R J Malioneck
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

10/01/10	135.66	Ground Transportation - Local - Elite Limousine 09/28/2010	R J Malioneck
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

11/23/10	131.44	Ground Transportation - Local - Vital Transportation, Inc. 11/17/2010	R J Malioneck
Explanation: this entry reports the expenses associated with transportation from Latham’s New York office (885 Third Avenue, New York, NY) and Mr. Malioneck’s home in Westchester, New York. Normal taxi service is not available for this destination.			

(Fee Auditor's Note: In response to our request, Latham provided us with the following additional information concerning the taxi charges of Ms. Sussman and Mr. Casey.)

Attorney	Date	Charge	Expense Description
KG Sussman	8/11/2010	\$8.20	Ground Transportation — Local Taxi Fares
KG Sussman	8/10/2010	\$6.90	Ground Transportation — Local Taxi Fares
KG Sussman	8/9/2010	\$7.70	Ground Transportation — Local Taxi Fares
KG Sussman	8/9/210	\$6.70	Ground Transportation — Local Taxi Fares
KG Sussman	8/8/2010	\$7.28	Ground Transportation — Local Taxi Fares
KG Sussman	8/7/2010	\$24.70	Ground Transportation — Local Taxi Fares
KG Sussman	8/7/2010	\$8.50	Ground Transportation — Local Taxi Fares
KG Sussman	8/7/2010	\$8.50	Ground Transportation — Local Taxi Fares
KG Sussman	8/7/2010	\$10.10	Ground Transportation — Local Taxi Fares
KG Sussman	8/4/2010	\$8.30	Ground Transportation — Local Taxi Fares
KG Sussman	8/3/2010	\$8.10	Ground Transportation — Local Taxi Fares
KG Sussman		\$104.98	
J M Casey	8/14/2010	\$26.76	Ground Transportation — Local Taxi Fares
J M Casey	8/13/2010	\$24.84	Ground Transportation — Local Taxi Fares
J M Casey	8/12/2010	\$26.18	Ground Transportation — Local Taxi Fares
J M Casey	8/12/2010	\$24.74	Ground Transportation — Local Taxi Fares
J M Casey	8/10/2010	\$26.28	Ground Transportation — Local Taxi Fares
J M Casey	8/8/2010	\$22.00	Ground Transportation — Local Taxi Fares
J M Casey	8/8/2010	\$26.66	Ground Transportation — Local Taxi Fares
J M Casey	8/7/2010	\$27.20	Ground Transportation — Local Taxi Fares
J M Casey	8/7/2010	\$25.22	Ground Transportation — Local Taxi Fares
J M Casey	8/3/2010	\$24.72	Ground Transportation — Local Taxi Fares
J M Casey	8/7/2010	\$22.00	Ground Transportation — Utah Taxi Fares
J M Casey	8/6/2010	\$59.07	Ground Transportation — Utah Taxi Fares
J M Casey	8/5/2010	\$16.00	Ground Transportation — Utah Taxi Fares
J M Casey	8/4/2010	\$15.00	Ground Transportation — Utah Taxi Fares
J M Casey		\$366.67	\$254.60 in Local Taxi Fares, \$112.07 in Utah Taxi Fairs

RESPONSE EXHIBIT “6”

In its Initial Report, the Fee Auditor noted the following overtime meal and transportation charges incurred on dates when it appeared that the professional in question recorded minimal or no time to the case. Please find explanations integrated into the chart below.

09/10/10	Meal Services	A M Singer	45.69	1.6 hrs
	Explanation: this entry reports a catering order of snacks for a meeting held on 9/13/2010 with 10 people in a conference room at Latham's office.			
09/16/10	Meal Services	A M Singer	10.78	2.1 hrs
	Explanation: this entry reports an overtime meal for which the cost of food was evenly split between two client-matters that required Mr. Singer to remain in the office later than 8:00 p.m. Though Mr. Singer's total time billed on this matter was less than 3 hours for the particular day, his work on the Advanta matter required his presence in the office past 8:00 p.m.			
09/17/10	Meal Services	A M Singer	10.15	2.1 hrs
	Explanation: this entry reports an overtime meal for which the cost of the food was evenly split between two client-matters that required Mr. Singer to remain in the office later than 8:00 p.m. Though Mr. Singer's total time billed on this matter was less than 3 hours for the particular day, his work on the Advanta matter required his presence in the office past 8:00 p.m.			
09/17/10	Meal Services	A M Singer	45.69	2.1 hrs
	Explanation: this entry reports a catering order of snacks for a meeting held on 9/20/10 with 10 people in a conference room at Latham's office.			
09/30/10	Meals - Local . . . Working lunch on 9/24/10	P N Singarella	20.17	0.0 hrs
	Explanation: This expense was erroneously charged to this case. Latham suggests and requests that \$20.17 be deducted from the 20% holdback currently pending under the Application.			
08/11/10	Ground Transportation - Local taxi fares	A T Ozawa	8.00	0.0 hrs
	Explanation: This expense was erroneously charged to this case. Latham suggests and requests that \$8.00 be deducted from the 20% holdback currently pending under the Application.			
08/23/10	Ground Transportation - Local taxi fares	J E Glasser	126.00	0.0 hrs

	Explanation: this expense is a lump charge and payment made for 10 local taxi rides that took place on the following dates in the following amounts: <ul style="list-style-type: none"> • 9/30/2010: \$11.70; • 9/29/2010: \$11.30; • 9/28/2010: \$10.90; • 9/27/2010: \$9.20; • 9/26/2010: \$10.90; • 9/24/2010: \$10.90; • 9/23/2010: \$16.30; • 9/19/2010: \$11.00; • 9/16/2010: \$11.70; and • 8/25/2010: \$22.10. 			
09/14/10	Ground Transportation - Local Taxi fares	A J Goldberg	35.04	1.2 hrs
	Explanation: this expense is a lump charge and payment made for 3 local taxi rides that took place on the following dates in the following amounts: <ul style="list-style-type: none"> • 9/16/2010: \$11.30 • 9/20/2010: \$10.90; and • 9/21/2010: \$12.84. 			
09/28/10	Ground Transportation - Local Taxi - Work Related	K G Sussman	11.30	1.3 hrs
	Explanation: This expense was erroneously charged to this case. Latham suggests and requests that \$11.30 be deducted from the 20% holdback currently pending under the Application.			
11/03/10	Meal Services	A M Singer	12.86	2.2 hrs
	Explanation: this entry reports an overtime meal for which the cost of food was evenly split between two client-matters that required Mr. Singer to remain in the office later than 8:00 p.m. Though Mr. Singer's total time billed on this matter was less than 3 hours for the particular day, his work on the Advanta matter required his presence in the office past 8:00 p.m.			
10/09/10	Ground Transportation - Local Taxis - late and weekend work	A J Goldberg	41.14	0.5 hrs
	Explanation: this expense is a lump charge and payment made for 3 local taxi rides that took place on the following dates in the following amounts: <ul style="list-style-type: none"> • 11/4/2010: \$19.30; • 11/3/2010: \$11.40; and • 11/2/1010: \$10.44 			
11/13/10	Ground Transportation - Local Taxi Fares	A J Goldberg	21.40	0.0 hrs

	Explanation: this expense is a lump charge and payment made for 2 local taxi rides that took place on the following dates in the following amounts: <ul style="list-style-type: none"> • 11/16/2010: \$10.30; and • 11/15/2010: \$11.10. 			
11/21/10	Ground Transportation - Local Taxi Fares	Y Lozovatskaya	8.64	0.0 hrs
	Explanation: This expense was erroneously charged to this case. Latham suggests and requests that \$8.64 be deducted from the 20% holdback currently pending under the Application.			