

**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 FINAL APPLICATION  
OF RICHARDS, LAYTON & FINGER, P.A., FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE  
PERIOD FROM NOVEMBER 8, 2009 THROUGH FEBRUARY 28, 2011**

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 Final Application of Richards, Layton & Finger, P.A., for Allowance of Compensation and Reimbursement of Expenses for the Period from November 8, 2009 through February 28, 2011 (the “Application” or “Final Application”).

**BACKGROUND**

1. Richards, Layton & Finger, P.A. (“RL&F”), was retained as counsel to the Debtors and Debtors-in-Possession. In the Application, RL&F seeks approval of fees and expenses as follows: fees totaling \$119,423.00 and expenses totaling \$17,070.05 for its services from December 1, 2010 through February 28, 2011 (the “Fourth Interim Period”),<sup>1</sup> and final approval of fees totaling

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<sup>1</sup>RL&F did not file a quarterly fee application for the Fourth Interim Period, but filed monthly applications for December 2010 through February 2011 and included these amounts in its Final Application.

\$672,378.00<sup>2</sup> and expenses totaling \$56,053.49<sup>3</sup> for its services from November 8, 2009 through February 28, 2011 (the “Final 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 RL&F based upon our review, and we received a response from RL&F, portions of which response are quoted herein.

## **DISCUSSION**

### **Fourth Interim Period**

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<sup>2</sup>We note that the total of the fees requested in RL&F’s three prior applications, plus the compensation sought for the Fourth Interim Period, is \$672,378.00. It does not appear that RL&F has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in Paragraph 6, to arrive at the figure it seeks of \$672,378.00. We note that the Court has ruled on the First through Third Interim Periods, but no rulings have been made on the Fourth Interim Period.

<sup>3</sup>We note that the total of the expenses requested in RL&F’s three prior applications, plus the expenses sought for the Fourth Interim Period, is \$56,053.49. It does not appear that the RL&F has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in Paragraph 6, to arrive at the figure it seeks of \$56,053.49. We note that the Court has ruled on the First through Third Interim Periods, but no rulings have been made on the Fourth Interim Period.

3. Ordinarily, we do not question late night or “overtime” meal charges unless the professional incurring the charge recorded less than three hours of work on the case on the date the charge was incurred. However, we noted the following working meal charges incurred on dates when the professional recorded minimal time to the case:

12/6/2010	Pizza by Elizabeth’s	Jaime E. Schairer	Dinner for 1 Assist with preparation of, efile and serve fee application	\$35.16	2.3 hrs.
12/14/2010	Mikumotos	Zachary I. Shapiro	Dinner for 1 Prepare for disclosure statement hearing and finalize amended plan and disclosure statement	\$35.90	2.3 hrs.
				\$71.06	

We asked RL&F to explain why the estate should reimburse these expenses, and RL&F’s response is included as Response Exhibit “1.” We accept RL&F’s response, as it appears these were situations which arose after hours and were beyond RL&F’s control.<sup>4</sup> Thus, we have no objection to these expenses.

4. We noted the following meal charges for which more information was needed:

1/11/2011	Grotto’s	Dinner for 1	Efile notice re: assumption of executory contracts and WGM’s fee application	\$8.89
1/25/2011	Grotto’s	Dinner for 1	Prepare to file second amended notice of assumption of contracts	\$10.63
1/27/2011	Mikumotos	Dinner for 1	Finalize and prepare for filing amended schedule 8.1	\$36.58
				\$56.10

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<sup>4</sup>In evaluating these expenses, we take special note of the fact that RL&F serves as local counsel, and, in that role, is sometimes required to work after hours at the request of the debtors’ other professionals. We believe that such circumstances are peculiar to local counsel.

In response to our request, RL&F provided the information on Response Exhibit “2.” We note from RL&F’s response that the professionals incurring the charges and the number of hours which they worked on the case on the date the charges were incurred are as follows:

1/11/2011	Grotto’s	Ann Jerominski	Efile notice re: assumption of executory contracts and WGM’s fee application	\$8.89	0.7 hr
1/25/2011	Grotto’s	Robyn K. Sinclair	Prepare to file second amended notice of assumption of contracts	\$10.63	1.0 hr
1/27/2011	Mikimotos	Zachary I. Shapiro	Finalize and prepare for filing amended schedule 8.1	\$36.58	2.1 hrs
				\$56.10	

We understand from RL&F’s response that, in each instance, the situations requiring the timekeepers to stay late arose after hours and were beyond RL&F’s control. Thus, we accept RL&F’s response and have no objection to these expenses.

5. Thus, we recommend approval of \$119,423.00 in fees and \$17,070.05 in expenses for RL&F’s services for the Fourth Interim Period.

**Prior Interim Applications**

6. We note that we previously filed the following final reports for RL&F’s prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on RL&F’s prior interim fee applications:

1<sup>st</sup> Period: Fee Auditor’s Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the First Interim Period (Docket #844) filed on or about October 5, 2010, in which we recommended approval of fees totaling \$194,397.00 and expenses totaling \$15,510.35. These recommendations were adopted in the Omnibus Order Approving First

Interim Fee Application Requests, dated October 26, 2010 (Docket #879).

2<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Second Interim Period (Docket #1117) filed on or about January 20, 2011, in which we recommended approval of fees totaling \$194,722.50 and expenses totaling \$5,596.80. These recommendations were adopted in the Omnibus Order Approving Second Interim Fee Application Requests, dated February 8, 2011 (Docket #1150).

3<sup>rd</sup> Period: Fee Auditor's Final Report Regarding the Third Interim Fee Application of Richards, Layton & Finger, P.A. (Docket #1259), filed on or about May 10, 2011, in which we recommended approval of fees totaling \$163,738.00 and expenses totaling \$17,701.95, reflecting our recommended reductions of \$97.50 in fees and \$174.34 in expenses, as further explained in paragraphs 3 and 5 of that final report. These recommendations were adopted in the Omnibus Order Approving Third Interim Fee Applications, dated June 3, 2011 (Docket #1279).

7. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods.

## CONCLUSION

8. Thus, we recommend final approval of \$672,280.50 in fees (\$672,378.00<sup>5</sup> minus \$97.50<sup>6</sup>) and \$55,879.15 in expenses (\$56,053.49<sup>7</sup> minus \$174.34<sup>8</sup>) for RL&F's services for the Final Application Period.

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<sup>5</sup>We note that the total of the fees requested in RL&F's three prior applications, plus the compensation sought for the Fourth Interim Period, is \$672,378.00. It does not appear that RL&F has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in Paragraph 6, to arrive at the figure it seeks of \$672,378.00. We note that the Court has ruled on the First through Third Interim Periods, but no rulings have been made on the Fourth Interim Period.


<sup>6</sup>This amount represents the Court-ordered fee reduction for the Third Interim Period, not previously deducted by RL&F.

<sup>7</sup>We note that the total of the expenses requested in RL&F's three prior applications, plus the expenses sought for the Fourth Interim Period, is \$56,053.49. It does not appear that the RL&F has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in Paragraph 6, to arrive at the figure it seeks of \$56,053.49. We note that the Court has ruled on the First through Third Interim Periods, but no rulings have been made on the Fourth Interim Period.

<sup>8</sup>This amount represents the Court-ordered expense reduction for the Third Interim Period, not previously deducted by RL&F.

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 22<sup>nd</sup> day of June, 2011.

  
\_\_\_\_\_  
Warren H. Smith

**SERVICE LIST**  
Notice Parties

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Chun I. Jang  
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## RESPONSE EXHIBIT “1”

... RL&F has reviewed the charges questioned by the Fee Auditor listed in paragraph 3 of the Initial Report and has determined that the charges were reasonable and necessary and, therefore, compensable.

Due to the nature of RL&F’s practice as local counsel, RL&F’s attorneys and paralegals often have multiple matters that require after hours work. It is often the case that an attorney or paralegal has not billed over three (3) hours on a matter, but must still complete tasks after hours on that same matter.

To the extent that a filing must occur after normal business hours, a certain amount of attorney or paralegal time may be spent waiting for co-counsel to deliver a draft of the required document before he or she can begin the filing process. If co-counsel requires, and the circumstances of the case demand, that an attorney or paralegal remain in the office to coordinate filings after normal business hours, and such attorney or paralegal has no other tasks to attend to during that time, it is certainly reasonable and appropriate for such professional to bill for his or her time. There are circumstances in a case where documents required to be served and filed on a given day will not be completed until after normal business hours, and sometimes it is unknown exactly when these documents will be finalized during those hours. In such instances, to ensure the documents are timely filed and served as required, RL&F is required to maintain an attorney and/or a paralegal in the office until the filing and service are properly accomplished. It would be unreasonable to expect the assigned attorney or paralegal to leave the office and return at some later uncertain time to handle the filing. Indeed, part of the role of local counsel in large and complex chapter 11 cases, and, to be sure, the Chapter 11 Cases are large and complex, is to be available for the client, here, the Debtors, and lead counsel, here, Weil, Gotshal and Manges, whenever needed, in order to effectively and efficiently administer the cases for the benefit of all parties in interest.

When possible, however, rather than bill all the after-hours time to “stand-by,” attorneys and paralegals will complete tasks for other non-time-sensitive matters while they are at the office. Thus, while such attorney or paralegal is only remaining after hours due to one particular matter, time will be billed to other matters, thereby reducing the amount of “stand-by” time. Overall, this represents a net benefit to the bankruptcy estates due to the reduction in overall fees charged by professionals for “stand-by” time. RL&F believes that it is more fair to its clients to charge meals to the matter that requires the attorney or paralegal to stay after hours instead of the non-time-sensitive matters.

With respect to the specific meal charges questioned by the Fee Auditor in paragraph 3 of the Initial Report, RL&F specifically responds as follows:

1. Date incurred: 12/06/2010; Vendor: Pizza by Elizabeth’s; Charge to the Debtors: \$35.16. This charge represents a meal expense on account of a working dinner for Jamie E. Schairer, a paralegal with RL&F, who was working after hours

to finalize and file a fee application [Docket No. 972] (the “Fee Application”). The underlying documents were not finalized for filing until after the close of business and needed to be filed that evening at the direction of Alvarez & Marsal, the Debtors’ financial advisor, and the Debtors. While Ms. Schairer only billed 2.3 hours to the Debtors on December 6, 2010, and RL&F submits that this is not an insignificant amount of time, the filing of the Fee Application that evening was the reason Ms. Schairer was required to stay at the office after hours. In the meantime, Ms. Schairer completed work for other matters rather than simply billing all of the “stand-by” time to the Debtors. Therefore, RL&F submits that this meal charge was necessary and compensable.

2. Date incurred: 12/14/2010; Vendor: Mikimotos; Charge to the Debtors: \$35.90. This charge represents a meal expense on account of a working dinner for Zachary I. Shapiro, an associate with RL&F, who was working through dinner to review and revise various documents in preparation for the contested disclosure statement hearing which was scheduled for December 16, 2010. As part of reviewing and revising the hearing agenda, which reflected the revised status of the various and numerous objections to the disclosure statement, Mr. Shapiro, at the direction of RL&F’s co-counsel, reviewed and revised hearing outlines and other documents after hours. Accordingly, RL&F submits that this meal charge was necessary and compensable.

## RESPONSE EXHIBIT “2”

RL&F has reviewed the charges questioned by the Fee Auditor in paragraph 4 of the Initial Report and has determined that the charges were reasonable and necessary and, therefore, compensable. Anticipating that the Fee Auditor may object to the charges in question on the basis that the attorney or paralegal recorded less than three (3) hours of time on the date the charge was incurred, RL&F, given its role as local counsel, reasserts its position as stated above with respect to this requirement. With respect to the additional information requested by the Fee Auditor, RL&F specifically responds as follows:

1. Dated incurred: 1/11/2011; Vendor: Grotto Pizza; Cost to the Debtors: \$8.89. This charge represents a meal expense on account of a working dinner for Ann Jerominski, a paralegal with RL&F, who was working after hours to file a fee application [Docket No. 1096] and the notice of contracts to be assumed pursuant to the Debtors’ proposed plan [Docket No. 1095]. The documents were not finalized for filing until after the close of business and needed to be filed that evening in accordance with the deadlines of the Chapter 11 Cases and at the direction of RL&F’s co-counsel and the Debtors. Therefore, RL&F submits that this meal charge was necessary and compensable.

2. Date incurred: 1/25/2011; Vendor: Grotto Pizza; Cost to the Debtors: \$10.63. This charge represents a meal expense on account of a working dinner for Robyn K. Sinclair, a paralegal with RL&F. Ms. Sinclair was told by Mr. Shapiro that the Debtors planned on filing a second amended notice of the list of contracts to be assumed pursuant to the plan (the “Second Amended Contract Notice”). Accordingly, Ms. Sinclair ordered dinner and charged such meal to the Debtors as she was told that this filing would not occur until late in the evening. It turns out, however, that the Second Amended Contract Notice was not ready to be filed and, as such, it was not filed that evening. Regardless, RL&F submits that this meal charge was necessary and compensable as Ms. Sinclair was required to stay late and work through dinner as required by the deadlines of the Chapter 11 cases and by the Debtors, RL&F’s co-counsel and RL&F.

3. Date incurred: 1/27/2011; Vendor: Mikimotos; Cost to the Debtors: \$36.58. This charge represents a meal expense on account of a dinner for Zachary I. Shapiro, an associate with RL&F. Mr. Shapiro was informed by RL&F’s co-counsel that the Debtors intended on filing an amended schedule 8.1 to the plan that evening (“Schedule 8.1”). Mr. Shapiro, while standing by in the event of the filing, charged his dinner to the Debtors. That evening he billed his time to other matters while waiting for Schedule 8.1 rather than billing all of his “stand-by” time to the Debtors. While Schedule 8.1 was not filed that evening, the reason Mr. Shapiro remained at the office was in the event that it was ready for filing that evening. Accordingly, RL&F submits that this meal charge was necessary and compensable.