

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

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

**FEE AUDITOR’S FINAL REPORT REGARDING THE FIRST INTERIM
FEE APPLICATION OF COZEN O’CONNOR**

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 First Interim Fee Application of Cozen O’Connor (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 \$141,991.50¹ and expenses totaling \$4,300.52 for its services for the period from November 9, 2009 through February 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

¹Cozen O’Connor’s Application contains two fee requests, one in the amount of \$139,741.50 for debtor Advanta Corp. and another in the amount of \$2,250.00 for debtor AMCUSA. Our review does not address which debtor entity is responsible for the fees sought, but rather addresses the reasonableness and necessity of the fees and expenses as a whole.

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. Based on our review, we emailed questions to Cozen O’Connor, and we received a response from Cozen O’Connor, portions of which response are quoted herein.

DISCUSSION

General Issues

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 . . .”²

5. We note that Cozen O’Connor’s fees and expenses for the three-month period following the month in which the case was commenced (December 2009 through February 2010) total \$142,686.44, and thus exceed the \$75,000.00 cap by \$67,686.44.³

Specific Time and Expense Entries

6. We noted that Cozen O’Connor was charging 25¢ per page for its in-house photocopies. Pursuant to Local Rule 2016-2(e)(iii), copying charges shall not exceed 10¢ per page. Cozen O’Connor billed for 7,065 photocopies at a cost of \$1,766.25. We asked Cozen O’Connor if it would agree to reduce its charges for these copies to \$706.50, or 10¢ per page, and Cozen O’Connor responded: “Cozen O’Connor agrees to . . . a reduction of \$1,059.75 with respect to photocopies . . .” We appreciate Cozen O’Connor’s response and recommend a reduction of \$1,059.75 in expenses.

CONCLUSION

7. Thus, we recommend approval of \$139,372.00 in fees (\$141,991.50 excluding \$2,619.50⁴) and \$2,254.69 in expenses (\$4,300.52 excluding \$986.08,⁴ and minus an additional

²Order 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.


³Cozen O’Connor also included in its Application fees and expenses totaling \$3,605.58 for the month of November 2009 which should not be included in calculating the Quarterly Cap. These fees totaling \$2,619.50 and expenses totaling \$986.08 may be paid by the Debtor pursuant to the OCP Order without prior approval from the Court and are, thus, excluded from the scope of our review.

⁴See FN 3.

\$1,059.75) for Cozen O'Connor'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 4th day of October, 2010.



Warren H. Smith

SERVICE LIST
Notice Parties

Applicant

John T. Carroll, III
Cozen O'Connor
1201 N. Market Street, Suite 1400
Wilmington, DE 19801

Thomas J. Gallagher
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103

Debtors

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

Debtor's Counsel

Marcia L. Goldstein
Robert L. Lemons
Victoria Vron
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
Adam Singer
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