

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

In re:)	
)	Chapter 11
PICCADILLY RESTAURANTS, LLC,)	
PICCADILLY FOOD SERVICE, LLC, and)	Case No. 12-51127
PICCADILLY INVESTMENTS, LLC,)	
)	Jointly Administered
Debtors.)	

**THIRD INTERIM APPLICATION OF GREENBERG TRAUIG, LLP,
FOR ALLOWANCE OF FEES AND EXPENSES AS COUNSEL
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR THE PERIOD APRIL 1, 2013 THROUGH JULY 31, 2013**

**TO THE HONORABLE ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE:**

GREENBERG TRAUIG, LLP (“GT”), counsel for the Official Committee of Unsecured Creditors (the “Committee”), files this third interim application (the “Application”) seeking the allowance of fees in the amount of \$382,952.50 and reimbursement of expenses in the amount of \$18,179.92 for the period of April 1, 2013 through July 31, 2013 (the “Period”). In support of the Application, GT respectfully submits the following:

PROCEDURAL HISTORY AND PREDICATES FOR RELIEF

A. Background

1. On September 11, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On September 14, 2012, the Court entered an order jointly administering the Debtors’ bankruptcy cases [Dkt. No. 43]. The Debtors continue in possession of their property

and operate their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed in these cases.

3. On October 23, 2012, the Committee was appointed.

4. The predicates for the relief requested are (a) 11 U.S.C. §§ 330 and 331; (b) Federal Rule of Bankruptcy Procedure 2016(a); (c) LBR 2016-1; (d) the *Order Granting Motion for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and Committee Members* (Dkt. No. 231, the “Administrative Order”); and (e) the applicable provisions of the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 adopted by the Office of the U.S. Trustee (the “U.S. Trustee”).

B. The Administrative Order and Retention of GT as Counsel to the Committee

5. On November 13, 2012, on behalf of the Committee, GT filed the *Application of the Official Committee of Unsecured Creditors to Employ Greenberg Traurig, LLP, as Its Counsel, Nunc Pro Tunc, to November 1, 2012* (the “Retention Application”) [Dkt. No. 309]. This Court granted the Retention Application on a final basis on December 19, 2012 (the “Retention Order”), effective November 1, 2012. A copy of the Retention Order [Dkt. No. 414] is attached hereto as **Exhibit A**.

6. Pursuant to the Administrative Order, on or before the fifteenth (15th) day of each month, retained professionals may submit invoices for payment (the “Fee Statement”) to the Service Parties (as defined in the Administrative Order). Thereafter, if no objection is made within ten (10) days to the Fee Statement, the Debtors are authorized to pay eighty percent (80%) of the requested fees and one hundred percent (100%) of the expenses requested in the Fee Statement. To date, no objection to GT’s fees and expenses has been lodged.

7. The Administrative Order also provides that professionals retained in these cases shall file applications for interim court approval and allowance of the compensation and reimbursement of expenses requested for the prior four (4) month period.

C. Previous Fee Applications and Fee Statements

8. This is the third interim Application filed by GT. The Court approved GT's First Interim Application for Allowance of Fees and Expenses as Counsel to the Official Unsecured Creditors Committee for the Period November 1 through November 30, 2012, by order entered January 31, 2013 [Docket No. 479], allowing interim fees in the amount of \$130,745.00 and reimbursable expenses in the amount of \$2,765.51, for a total of \$133,510.51. Additionally, the Court also approved GT's Second Interim Application for Allowance of Fees and Expenses as Counsel to the Official Unsecured Creditors Committee for the period December 1, 2012 through March 31, 2013, by order entered May 20, 2013 [Docket No. 823], allowing interim fees in the amount of \$267,178.00 and reimbursable expenses in the amount of \$14,577.48, for a total of \$281,755.48.

9. On August 15, 2013, GT served its Fee Statement on the Service Parties seeking compensation for services rendered in the amount of \$110,323.50 and reimbursement of expenses in the amount of \$3,682.78 for the period July 1, 2013 through July 31, 2013 (the "July Fee Statement").

10. By this Application, GT seeks allowance of fees in the amount of \$382,952.50 and expenses in the amount of \$18,179.92, for the Period from April 1, 2013 through July 31, 2013. During this Period, GT attorneys and paraprofessionals rendered 969.5 hours of professional services. As stated in the Retention Application, GT has agreed that its blended hourly rate for these cases will not exceed \$395 per hour, notwithstanding GT's standard billing rates for attorneys and paralegals. This capped hourly blended rate represents a significant and

substantial discount from the firm's customary billing rates for complex chapter 11 cases such as these.

COMPENSATION SOUGHT

A. Case Status

11. GT, as counsel to the Committee, has been charged with addressing many of the issues that arise in the traditional chapter 11 context, including, *inter alia*, (a) analyzing and finalizing debtor-in-possession financing; (b) reviewing and evaluating the sales of several of the Debtors' properties; (c) reviewing information related to the assumption and rejection of leases and executory contracts in conjunction with business operations; (d) reviewing and reconciling certain claims issues; (e) communicating with the Debtors and other parties to formulate a plan of reorganization and exit strategy from chapter 11; and (f) communicating with creditors and the Committee members.

B. Hourly Fee/Expense Summary Exhibits

12. The legal services rendered by GT to the Committee fall within the categories listed below. In compliance with applicable guidelines, such legal services are fully set forth in GT's invoices attached hereto as **Exhibit B**, which report in detail the description of the legal services rendered by GT, the dates on which GT's attorneys and paraprofessionals rendered such legal services, the identity of those attorneys and paraprofessionals, and the time spent by each such attorney and paraprofessional. Attached hereto as **Exhibit C** is a summary of the itemized expenses incurred by GT during the Period. Attached hereto as **Exhibit D** is a summary of fees incurred during the Period itemized as to attorneys and paraprofessionals by hours expended and the total fees accrued at the blended hourly rate.

C. Project Billing -- Description of Services by Billing Category

13. During the Period, GT provided the following services, separated into the major billing categories primarily identified below.¹ GT classified all services performed for which compensation is sought into categories. In doing so, GT attempted to place the services performed in the category that best relates to the services provided. However, because certain services may relate to or overlap with one or more categories, time spent on certain tasks may be included in another category.

- (i) Category 110: General Case Administration - Hearings, U.S. Trustee Matters, Statement of Financial Affairs, Schedules, and General Creditor Inquiries

14. During the Period, GT reviewed numerous motions filed by the Debtors and other parties-in-interest and communicated with members of the Committee regarding same. Members of the firm also attended hearings, some of which were contested and others of which were uncontested through consensual resolution among the Debtors and other major constituencies, including the Committee. These hearings included, among other things, motions to approve compromises concerning worker's compensation claims, a motion filed by Atalaya Administrative, LLC to establish a procedure for valuation of secured claims, several motions filed by the Debtors related to assumption or rejection of leases and motions directed at reducing claims to the benefit of all creditors.

15. This category also encompasses certain general bankruptcy services provided to the Committee, including corresponding with the U.S. Trustee, conferring with counsel for the Debtors and various creditors on miscellaneous case administration issues, reviewing monthly operating reports and a plethora of financial data, and offering generalized assistance to the

¹ More detailed descriptions of the services rendered by GT may be found in the monthly invoices attached hereto as **Exhibit B**, which invoices are incorporated herein by reference.

Committee regarding myriad issues involving the day-to-day administration of the estates. Other tasks which generally fall into this category include a review of pleadings, preparation of meeting agendas and the filing of documents and information with the Court. In connection with the foregoing services, GT professionals expended approximately 52.1 hours for which GT seeks compensation of \$20,579.50.

(ii) Category 130: Asset Disposition

16. Time spent in this category is related to working with counsel for the Debtors and the Committee's proposed financial advisors to finalize the sale of a property located in Tamarac, Florida. In connection with the foregoing services, GT professionals expended approximately .6 hours for which GT seeks compensation of \$237.00.

(iii) Category 150: Communications with Creditors and Miscellaneous Business Issues

17. This category includes time spent discussing case status with Debtors' counsel, various unsecured creditors, the Committee members, and covers the calls with the Committee. GT has been instrumental in fostering frequent communication with the unsecured creditors, which is necessary to efficiently and immediately address business issues as they arise. GT conducts at least weekly meetings to keep Committee members well-informed and to aid the members in fulfilling their fiduciary duties to the unsecured creditor constituency. Negotiations regarding the plan and disclosure statement are ongoing, which requires frequent and constant communication with the Committee and other major constituencies. In this category, GT professionals expended approximately 97.8 hours for which GT seeks compensation of \$38,631.00.

(iv) Categories 160 and 170: Professionals' Employment and Compensation Matters, including Monthly Fee Statements

18. These combined categories consist of time spent reviewing and addressing current and proposed engagements of professionals and attending hearings to approve retention of these professionals and reviewing motions to expand the scope of representation of FTI Consulting, Inc., the Debtors' financial advisor. Expansion of the FTI engagement was contested by the Committee and Atalaya. GT attended the depositions taken by Atalaya in connection with Atalaya's objection to FTI's initial retention. These depositions were held in New Orleans and Denver. This category also includes the preparation and service of four monthly Fee Statements, the First and Second Fee Applications. In connection with the foregoing services, GT professionals expended approximately 94.6 hours for which GT seeks compensation of \$37,367.00.

(v) Category 185: Executory Contracts and Leases

19. During the Period covered by this Application, Debtors filed several global motion to assume, reject or extend their leases. GT reviewed each of these motions and meaningfully participated in the complicated lease analyses. Time spent in this category relates to review and analysis of the issues related to the motion to assume, reject or extend leases. In this category, GT professionals expended approximately 3.6 hours for which GT seeks compensation of \$1,422.00.

(vi) Category 190: Miscellaneous Motions and Other Contested Matters

20. This category includes the time spent, among other things, on the Committee's successful motion to share confidential information with third parties. The Committee sought permission from the Court to disclose information, including confidential information, with certain third parties under a Court approved protocol and procedure. In support of its motion, the

Committee argued that Section 1103(c)(3) of the Bankruptcy Code provides that a “committee appointed under section 1102 of this title may...(3) participate in the formulation of a plan....” Indeed, the legislative history of Section 1103(c)(3) clarifies the intent of Congress that an official committee be involved in the process to formulate a reorganization plan and an advocate in such process on behalf of its constituency. Committees are generally the primary negotiating bodies for the formulation of the plan or reorganization. The Committee argued that the relief would aid the Committee in carrying out its duties under the Bankruptcy Code, including, but not limited to, in the evaluation of a plan of reorganization for the Debtors. The Committee’s motion was granted over the Debtors’ objection.

21. The Committee filed an adversary proceeding against Atalaya seeking a determination, inter alia, of the extent, validity, and priority of Atalaya’s liens, claims and encumbrances. That litigation is ongoing. Discovery was prepared and served on Atalaya during the Period. In this category, GT professionals expended approximately 88.8 hours for which GT seeks compensation of \$35,076.00.

(vii) Category 210: Business Operations

22. Under the stipulation and final financing order negotiated by GT on behalf of the Committee, the Debtors report each week to the Committee and its professionals regarding the Debtors’ operations, cash position and other financial and operational matters. GT and the Committee’s financial advisors reviewed and analyzed this data each week to prepare reports and recommendations to the Committee. In this category, GT professionals expended approximately 55.6 hours for which GT seeks compensation of \$21,962.00.

(viii) Category 220: Employee Benefits/Pensions

23. This category includes the time spent reviewing and analyzing various settlements of workers' compensation related claims. In this category, GT professionals expended approximately 3.6 hours for which GT seeks compensation of \$1,422.00.

(ix) Category 230: DIP Financing/Cash Collateral and Loan Review

24. This category consists of time spent, among other things, reviewing, analyzing and negotiating the issues regarding the Debtors' use of cash collateral and obtaining debtor-in-possession financing. In connection with compliance with such financing, GT has continued to review and analyze DIP budgets, variance reports and other weekly and monthly financial reports received from the Debtors and their professionals. GT also coordinates and attends in-person and telephonic conferences with the counsel for the Debtors and their CEO to discuss various issues regarding the Debtors' use of cash collateral and operations.

25. Early in the case, GT, upon approval of the Committee, was successful in obtaining a number of concessions with respect to postpetition financing and use of cash collateral from the Debtors and their pre- and postpetition lenders. In connection with the foregoing services, GT professionals expended approximately 12.1 hours for which GT seeks compensation of \$4,779.50.

(x) Category 310: Claims Administration

26. GT began a review of the plethora and volume of claims filed in these cases to maximize returns to allowed claim holders, whether through a confirmed plan or otherwise. The analysis also included a review of rejection damages claim and their impact in the estates, Atalaya's \$28 million claim, unsecured claims, unsubstantiated personal injury claims, and certain Section 503(b)(9) claims and the potential impact of same upon confirmation. GT also monitored the objections to claims. This category also includes time spent on Atalaya's proposed

valuation procedures in connection with the plan confirmation process. GT personnel also reviewed the Debtors' numerous objections to claims and appeared at hearings on same. The time expended in this category includes approximately 250.1 hours for which GT seeks compensation of \$98,789.50.

(xi) Category 320: Plan and Disclosure Statement

27. GT has been very active and involved in plan negotiations. Meetings and conferences have been held among the Debtors and their professionals, the Committee and their professionals, and Yucaipa and its professionals. On July 8, 2013, the Debtors and Yucaipa filed a joint plan. However, the Committee did not join in the filed plan. Plan negotiations, however, continued after the joint plan was filed. GT professionals expended approximately 310.1 hours in this category for which GT seeks compensation of \$122,489.50.

D. Expenses Incurred by GT

28. Bankruptcy Code § 330 authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a chapter 11 case. GT seeks reimbursement for expenses incurred in rendering services to the Committee during the Period in the amount of \$18,179.92.² GT submits that these expenses were actual, reasonable, and necessary in light of the services provided.

29. GT maintains the following policies with respect to expenses for which reimbursement is sought:

a. All computerized research (*i.e.*, Westlaw and/or Lexis) is invoiced at actual cost.

b. Photocopies (internal) are charged at \$0.15 per page. More voluminous copy jobs are outsourced to a local vendor and are charged at \$0.12 per page.

² Additional detail regarding the expenses incurred by GT during the Period is attached hereto as **Exhibit C**.

c. Reimbursements are sought at actual cost and include filing fees, transcription charges, postage, delivery charges, and travel expenses (air, hotel, parking, meals, parking, etc.).

d. Items for which reimbursements are not sought include office overhead, word processing and secretarial overtime.

REQUEST FOR FINAL ALLOWANCE OF FEES AND EXPENSES

A. The Johnson Factors

30. Section 330 of the Bankruptcy Code authorizes the Court to award professional persons employed pursuant to sections §§ 327, 328 and 1103 of the Bankruptcy Code reasonable compensation for actual and necessary services rendered and reimbursement for actual and necessary expenses incurred. 11 U.S.C. § 330. As more fully stated below, GT submits that the elements governing awards of compensation pursuant to sections 330 and 331 of the Bankruptcy Code justify the allowance of the fees and expenses incurred in its representation of the Committee during the Period.

31. In 1974, the Fifth Circuit established a set of guidelines for use by lower courts when ruling on attorneys' fee requests. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). The *Johnson* court found the following factors necessary to consider:

- a. the time and labor required;
- b. the novelty and difficulty of the questions presented;
- c. the skill requisite to perform the legal services properly;
- d. the preclusion of other employment due to the acceptance of the case;
- e. the customary fee;
- f. whether the fee is fixed or contingent;
- g. time limitations imposed by the client with the circumstances of the case;

- h. the amount involved and the results obtained;
- i. the experience, reputation and ability of the attorney;
- j. the undesirability of the case;
- k. the nature and length of the professional relationship with the client; and
- l. awards in similar cases.

Id. at 717-19.

32. In *In re First Colonial Corp. of America*, 544 F.2d 1291, 1298-99 (5th Cir. 1977), *cert. denied*, 431 U.S. 904 (1977), the Fifth Circuit applied the *Johnson* factors to the analysis of fee awards in bankruptcy cases.

33. Under an analysis utilizing the *Johnson* factors and the standards customarily applied to fee awards under sections 330 and 331 of the Bankruptcy Code, GT submits that its request for compensation and reimbursement of expenses is reasonable and proper, and that such request should be allowed and paid in the amounts requested.

B. Detailed Application of the *Johnson* Factors

34. The professional services rendered by GT during the Period required a high degree of professional competence and expertise, so that the numerous bankruptcy, corporate finance, real estate, and other issues that arose could be addressed with skill and efficiency. GT submits that the services rendered to the Committee were performed efficiently and effectively, and that the results obtained have provided tangible, identifiable, and material benefits to the estates.

(i) *The Time and Labor Required*

35. As stated above, GT's attorneys and paraprofessionals have expended 969.5 hours during the Period in the representation of the Committee. Notwithstanding GT's standard hourly billing rates, GT has agreed to a blended rate not to exceed \$395 per hour for all professionals

and paraprofessionals, which is a significant and substantial discount from GT's standard billing rates. This resulted in a \$68,696 discount from GT's standard, market rates, and this discount has been applied to GT's fee statements. All of the fees and expenses incurred by GT during the Period were necessary and appropriate for the representation of the Committee in these cases, ensuring representation for all unsecured creditors' rights in these cases, and making meaningful progress toward a fair and equitable plan of reorganization that will allow the Debtors to successfully reorganize, emerge and pay their creditors. GT's representation of the Committee has required it to balance the need to provide quality services with the need to act quickly and to represent the Committee in an efficient and timely manner.

(ii) Novelty and Difficulty of Questions Presented

36. As set forth above and in the attached invoices, GT has begun the review of many complex issues relating to restructuring, litigation, sale, and plan confirmation issues.

37. GT is particularly well-poised to provide the Committee with a combination of highly-skilled lawyers who work together to provide an array of legal services as needed, regardless of the subject matter.

(iii) Preclusion of Other Employment

38. GT's representation of the Committee has not precluded it from providing services to any current client during the pendency of these cases.

(iv) Customary Fee

39. The standard 2013 hourly rates of the GT attorneys performing legal services on behalf of the Committee range from \$500 per hour to \$975 per hour for shareholders, \$355 per hour to \$375 per hour for associates; and \$150 to \$265 for paraprofessionals. The rates charged by GT in these cases are less than the rates charged by GT in other cases previously and currently pending in bankruptcy courts.

(v) Whether the Fee is Fixed or Contingent

40. GT's fees are based upon fixed hourly rates, but are always subject to the Court's review for reasonableness.

(vi) Time Limitations

41. GT has been required to provide capable legal representation within the time limitations imposed under the circumstances of these cases, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and counsel for various parties in interest.

(vii) Amounts Involved and Results Obtained

42. During the Period covered by this Application, GT was instrumental in plan negotiations for the benefit of the unsecured creditors. These negotiations are ongoing. In addition, the Court approved the sale of certain properties, which should result in gross sales proceeds of over \$3 million. Counsel is also trying to resolve Atalaya's claim, which Atalaya believes is over \$28 million. Counsel also fielded a plethora of questions from a very active creditor constituency. It is anticipated that the results obtained will continue to be beneficial to the unsecured creditors through the confirmation process. GT submits that the amounts charged are reasonable and fair in light of the results obtained.

(viii) Experience, Reputation and Ability of Counsel

43. Each of GT's attorneys who performed services for the Committee possesses a reputation for skill, quality, integrity, and ability. GT's attorneys have represented numerous debtors, banks, creditors, bidders for estate assets, trustees, and official committees in some of the largest and most sophisticated bankruptcy cases in the country.

(ix) Undesirability of the Cases

44. These cases are not undesirable. However, it is anticipated that GT will be called upon to draw from significant firm resources as counsel to the Committee, without absolute certainty as to compensation or reimbursement.

(x) Nature and Length of the Professional Relationship

45. GT has represented the Committee since November 1, 2012, and that relationship continues to the present date.

(xi) Awards in Similar Cases

46. The fees and expenses for which GT seeks compensation and reimbursement are not excessive and are substantially similar to or below the rates awarded in similar cases in this district for similar services rendered and results obtained. The fees requested by GT are more fully described in **Exhibit B**. After taking into consideration the time and labor spent thus far, and the nature and extent of the representation, GT believes the allowance prayed for herein is reasonable and should be approved by the Court.

CONCLUSION

47. No agreement or understanding exists between GT and any third person for the sharing of compensation, except as allowed by section 504(b) of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules with respect to sharing of compensation by and among partners at GT.

48. All services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Committee and not on behalf of any other entity.

PRAYER

GT respectfully requests that the Court enter an order: (i) allowing GT (a) interim compensation for professional services rendered as counsel for the Committee during the

Period in the amount of \$382,952.50; and (b) reimbursement of expenses incurred in connection with rendering such services in the amount of \$18,179.92; (ii) authorizing and directing the Debtors to pay to GT the unpaid portion of all such allowed fees and expenses incurred during the Period, *i.e.*, \$401,132.42, and (iii) granting such other and further relief as the Court deems just and proper.

Dated: August 15, 2013

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