UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:	*	**CASE NO. 12-51127**
	*	
	*	**(JOINT ADMINISTRATION)**[1]
PICCADILLY RESTAURANTS, LLC, ***ET.AL.,***	*	
	*	**CHAPTER 11**
	*	
DEBTORS	*	**JUDGE ROBERT SUMMERHAYS**

APPLICATION TO EMPLOY JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE, L.L.P. AS ATTORNEYS FOR THE DEBTORS *NUNC PRO TUNC* TO SEPTEMBER 19, 2012

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),[2] who submit this application (the "Application") for the entry of an order authorizing the employment of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P. ("Jones Walker") as counsel for the Debtors, *Nunc Pro Tunc* to September 19, 2012. In support of this Application, the Debtors and Jones Walker represent:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1134. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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[1] Joint administration requested with *In re Piccadilly Food Service, LLC,* 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC,* 12-51129 (Bankr. W.D. La. 2012).

[2] The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC ("Restaurants"), Piccadilly Food Service, LLC ("Food Service"), and Piccadilly Investments, LLC ("Investments").

Background

2. On September 11, 2012 (the "Petition Date"), the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed, and no official committee of creditors or equity interest holders has been established in these Chapter 11 cases.

3. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

Relief Requested

4. The Debtors wish to employ R. Patrick Vance, Elizabeth J. Futrell, Mark A. Mintz, Patrick L. McCune, Tyler J. Rench, and the firm Jones Walker as attorneys under a general retainer to (a) give the Debtors legal advice with respect to the Debtors' powers and duties as debtors-in-possession in the continued operation of the Debtors' businesses and management of the Debtors' property, and (b) perform all legal services for the debtors-in-possession which may be necessary herein, all at the rates for services shown on Exhibit A, which is attached hereto. Jones Walker will utilize the services of other members and associates of the firm as necessary.[3]

5. The Debtors' former counsel in these bankruptcy cases was the law firm of Gordon, Arata, McCollam, Duplantis & Eagan, LLC ("Gordon Arata"). Gordon Arata was paid a retainer in the amount of $200,000 (the "Retainer"), which was designed to secure the payment of services performed and reimburse expenses incurred by Gordon Arata, and its lawyers for services rendered on and after the Petition Date. Any fees for services, and the amounts for reimbursement of expenses, will be applied for as compensation under Bankruptcy Code §§ 327

[3] This specifically includes A. Justin Ourso, III, a partner at Jones Walker, who handles certain of Restaurant's intellectual property matters, and who also handled those matters before the Petition Date.

and 330 prior to application of any retainer funds, or, in the event of entry of an order by this Court governing procedures for interim payment of fees and reimbursement of expenses, the Debtors shall comply with such an order. After Gordon Arata's fees and expenses are approved by this Court and paid from the Retainer, Jones Walker's sole expectation for a retainer is that the remaining amount of the Retainer shall be transferred to Jones Walker to be held as Jones Walker's Retainer, under the same conditions as when it was held by Gordon Arata, as explained in its Application to be Employed (Docket #14). That is, Jones Walker will draw against monies held in trust for post-petition services provided to Debtors after application to, and approval by, this Court pursuant to the United States Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or in compliance with any procedural orders that may be entered by this Court.

6. Counsel for debtors-in-possession in Chapter 11 must be approved by this Court pursuant to Bankruptcy Code § 327. Such employment may be approved "on any reasonable terms and conditions of employment, including on a retainer..." 11 U.S.C. § 328(a).

7. Before the Petition Date, Jones Walker represented Restaurants with regard to intellectual property issues. Since January 1, 2011, Restaurants has paid Jones Walker $37,120.50 in attorneys' fees and expenses in the ordinary course of business. As of the Petition Date, Jones Walker had unpaid bills in the aggregate amount of $290.50, and additional unbilled time and expenses in the amount of $3,227.10. Jones Walker has agreed to waive both the outstanding billed and unbilled time and expenses as part of this Application. See statement of R. Patrick Vance attached hereto as <u>Exhibit C</u>.

8. At Jones Walker, the Debtors engaged R. Patrick Vance, Elizabeth J. Futrell, Mark A. Mintz, Patrick L. McCune, and Tyler J. Rench effective September 19, 2012, subject to this Court's approval. The Debtors believe Jones Walker is well qualified to represent the Debtors as debtors-in-possession in these Chapter 11 cases. Furthermore, it is necessary for the

Debtors, as debtors-in-possession, to employ attorneys for such professional services. A statement concerning the qualifications of Mr. Vance and Ms. Futrell is attached hereto as Exhibit B.

9. As to individual matters regarding where one or more of the Debtors' interests are not consistent, Jones Walker will not represent any Debtor whose interest conflicts with the bulk of the other Debtors. The interests of the Debtors are predominately identical. Significantly, the Debtors are all co-borrowers or guarantors under cross-collateralized loans and their business interests are extensively interdependent. Jones Walker believes, with some possible exceptions, that its joint representation of the multiple Debtors in connection with their respective bankruptcies would not have any adverse effect on Jones Walker's ability to adequately represent all of the Debtors. As indicated in the attached Affidavit, Jones Walker has not represented Investments prior to its retention to act as counsel in these bankruptcy cases. Also as mentioned, Investments is the sole member of Restaurants and is guarantor of the obligations of Restaurants and Food Service under various loan, credit and security agreements.

10. Notwithstanding, there is a remote possibility that an interest of one or more of the Debtors is or could become adverse in connection with the bankruptcies. For example, there may be contingent claims arising from the existence of guaranty agreements and joint debt. Investments was created to be the equity holder of the membership interests in Restaurants. However, Jones Walker is not aware of any intercompany due to/due from accounting entries, except as may arise within the providing of services under food service contracts, where Restaurants and Food Service operations are interrelated. There may be allocations of overhead between Food Service and Restaurants. However, "the presence of an intercompany debt does not create per se an actual conflict of interest." *In re Global Marine, Inc.*, 108 B.R. 998, 1001 (Bankr. S.D. Tex. 1989). In the event that the interests of one or more of the Debtors becomes

adverse to other Debtors, separate counsel will be utilized by any Debtor(s) whose interests are different than the remaining Debtors. *See id.* at 1004 (approving the option of employing special counsel in the future should a potential conflict between debtors turn into an actual conflict); *In re Lee*, 94 B.R. 172, 179 (Bankr. C.D. Cal. 1988) (citing the appointment of special counsel to handle inter-debtor claims as an adequate measure to assure the avoidance of conflicts of interest).

11. In seeking to represent all the Debtors, Jones Walker is not asking this Court to issue an extraordinary order. "In large multi-debtor reorganization cases, it is fairly commonplace for one law firm, or a group of law firms to represent all of the debtor entities." 2 Collier's on Bankruptcy ¶ 327.04[5] (15th ed. Rev. 2001). Because Congress has carefully chosen not to erect absolute barriers to legal representation, courts are hesitant to create per se disqualification rules where Congress has chosen not to do so. As the few absolute disqualifications that Congress has established are carefully delineated and narrowly tailored, courts simply take care not to fashion absolute prohibitions beyond those legislatively mandated without some measure of assurance that the purposes of the Bankruptcy Code will be served thereby. *In re Harold & Williams Dev. Co.*, 977 F.2d 906, 9099-110 (4th Cir. 1992). Instead of impulsively reaching for a per se rule where one does not and should not apply, this Court should carefully exercise its discretion to allow Applicants to represent the multiple Debtors and base its decision on the specific facts of this case. "The approval or disapproval of an application for dual representation pursuant to § 327 is committed to the discretion of the bankruptcy court." *Id.* at 908. Similarly, the Court "must not abdicate the equitable discretion granted to it by establishing rules of broad application which fail to take into account the facts of a particular case and the overall objectives of the bankruptcy process." *Id.* at 910.

12. The benefits of common representation are numerous. The most patently obvious benefit of representation of the Debtors by a single law firm is that the reorganization process has been and will continue to be much less time consuming for the Debtors themselves. "The requirement of separate law firms...for each debtor's estate would generally be unduly time consuming and impose excessive cost burdens not warranted by the purported benefit to be attained by these requirements." 3 Collier's on Bankruptcy ¶ 327.04[5][a][i] (15th ed. Rev. 2001). The costs savings of employing a single law firm is another obvious benefit of common representation. "Among the ultimate considerations for the bankruptcy courts in making these decisions must be the protection of the interest of the bankruptcy estate and of its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding." *Harold*, 977 F.2d at 910 (emphasis added); *see also In re BH&P, Inc.*, 949 F.2d 1300, 1316 (3d Cir. 1991) (Courts have the power to determine whether the efficiency and economy which may favor multiple representation justify such multiple representation.). Separate law firms means separate employment applications; separate groups of lawyers familiarizing themselves with the Debtors' history, organization, creditors, and bankruptcy issues; separate law firms filing separate briefs and motions at each stage of the bankruptcy process; and, perhaps most damaging to the interest of the Debtors' respective creditors, separate law firms filing fee applications.

13. Considering that each dollar spent on attorneys is one less dollar available to pay creditors, the benefits of common representation to the Debtors and their creditors cannot be overemphasized. The significant benefit of economies of scale is one of the major reasons this Court agreed to jointly administer the Debtors' bankruptcy cases, and it is also why, on the creditors side, courts appoint a single, official creditors' committee to represent the respective creditors of all the debtors, as the Debtors here seek.

14. To the best of the Debtors' knowledge, R. Patrick Vance, Elizabeth J. Futrell, Mark A. Mintz, Patrick L. McCune, Tyler J. Rench, and Jones Walker have no connection with the Debtors, the creditors, any other party-in-interest, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the Office of the U.S. Trustee, other than previously representing the Debtors and preparing initial pleadings and matters preliminary hereto, except as specifically stated in the Statement of R. Patrick Vance, which is attached hereto as Exhibit C. Jones Walker is therefore disinterested and holds no claim or interest adverse to the estate.

15. No party-in-interest has requested the appointment of a trustee, and thus no notice of this Application need be given and no hearing thereon need to be held because of the presumption afforded to the debtors-in-possession pursuant to Bankruptcy Code § 1107(b).

16. Under Bankruptcy Rule 6003(a), "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . an application under [Bankruptcy] Rule 2014." The Debtors respectfully request that this Court approve this Application on an interim basis to avoid immediate and irreparable harm because a debtor-in-possession cannot operate (*e.g.* submit the necessary filings) in Chapter 11 without the assistance of legal counsel.

17. The Debtors and Jones Walker request that a final hearing on this Application be set not later than twenty-eight days from the Petition Date.

18. Notice of this Application has been given to the following parties or, in lieu thereof, to: (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the thirty (30) largest unsecured creditors (Docket #10), the identity of which may be amended from time to time, (c) the twenty (20) additional random unsecured creditors; (d) all parties who have requested special notice

pursuant to Bankruptcy Rule 2002; (e) the Unsecured Creditors Committee, if appointed, or its counsel if one has been retained; and (f) the Office of the United States Trustee.

19. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors and Jones Walker pray that the Debtors be authorized to employ the firm of Jones Walker, and any of its attorneys or staff, to represent the Debtors as debtors-in-possession under Chapter 11 of the Bankruptcy Code on an interim basis, *nunc pro tunc* to September 19, 2012, and for such other relief as this Court may deem appropriate.

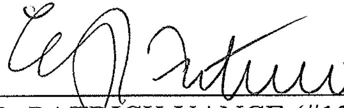
PICCADILLY RESTAURANTS, LLC

BY:

THOMAS J. SANDEMAN

ITS: CHIEF EXECUTIVE OFFICER

Respectfully submitted,



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