UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

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

APPLICATION TO EMPLOY GORDON, ARATA, MCCOLLAM, DUPLANTIS & EAGAN, LLC AS ATTORNEYS FOR THE DEBTORS

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 Gordon, Arata, McCollam, Duplantis & Eagan, LLC ("Gordon Arata") as counsel for the Debtors. In support of this Application, the Debtors and Gordon Arata represent:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. 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).

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

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

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

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. By separate motion (R. at 3), the Debtors have requested joint administration of these chapter 11 cases pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

4. This Court is referred to the Declaration of Thomas J. Sandeman (the "Declaration") (R. at 2) for a detailed discussion of the factual background and circumstances surrounding the Debtors' commencement of these chapter 11 cases.[3]

Relief Requested

5. The Debtors wish to employ Louis M. Phillips, Peter A. Kopfinger, Courtney S. Lauer, Ryan J. Richmond and Elizabeth A. Spurgeon and the firm Gordon Arata as attorneys under a general retainer to give the Debtors legal advice with respect to the Debtors' powers and duties as debtor-in-possession in the continued operation of the Debtors' businesses and management of the Debtors' property and to perform all legal services for the debtor-in-possession which may be necessary herein, at the rates for services shown on Exhibit A, which is attached hereto. Gordon Arata will as well utilize the services of other members and associates of the firm as necessary.

6. To secure the payment of any attorney's fees and reimbursable expenses, Gordon Arata has received in trust a retainer in the amount of $200,000 ("Retainer"). The Retainer is designed to secure the payment of services performed and reimbursement of expenses incurred by Gordon Arata for services rendered on and after the Petition Date. Any fees for services and amounts for reimbursement of expenses will be applied for as compensation under Bankruptcy

[3] All capitalized term used herein, but not specifically defined, shall have the meaning ascribed to such terms in the Declaration.

Code §§ 327 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, shall comply with such order.

7. 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).

8. Prior to the Petition Date, Gordon Arata was paid $593,336.35 for their fees and expenses in the ordinary course of business during the prior 18 months. Fees for services rendered through September 9, 2012 (except for a small amount for time which was not finalized prior to billing) have been paid. Some work was done between September 9, 2012 and the petition date prior to filing and the retainer is intended to provide for payment of any fees and costs incurred on the petition date but prior to filing. This work directly related to the filing of these bankruptcy cases and the finalization of motions to be filed as "First Day" motions will be contained in the Fee Application to be brought before the Court. As mentioned, Gordon Arata holds $200,000 in trust for this pre-petition work and for post-petition services and reimbursable costs.

9. The Debtors have selected Louis M. Phillips, Courtney S. Lauer, Peter A. Kopfinger, Ryan J. Richmond, Elizabeth A. Spurgeon, and their co-counsel at Gordon Arata for various reasons. These attorneys have worked two of with the Debtors prior to the filing of the case in connection with the Debtors' operations (Piccadilly Restaurants and Piccadilly Food Service). Immediately prior to filing Piccadilly Investments retained Gordon Arata as its counsel. They have provided counsel as to the alternatives to bankruptcy and the possible effects

of a bankruptcy filing. The hiring of Gordon Arata was expressly approved by resolutions of the Debtors.

10. Gordon Arata has prepared the initial papers on behalf of the Debtors, which necessitated acquiring familiarity with the Debtors' asset and debt structure, possible restructuring options, the Debtors' corporate structure and personnel. The Debtors believe Gordon Arata is well qualified to represent the Debtors, as the debtors-in-possession, in this case and in the proceedings that should be handled by general counsel for debtors-in-possession. Furthermore, it is necessary for the Debtors, as the debtors-in-possession, to employ attorneys for such professional services. A statement concerning the qualifications of the relevant Gordon Arata attorneys is attached hereto as Exhibit B.

11. As to individual matters regarding which any one or more of the Debtors' interests are not consistent, Gordon Arata 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. Gordon Arata therefore 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 Gordon Arata's ability to adequately represent all of the Debtors. As indicated in the attached Affidavit, Gordon Arata has not represented Investments prior to the 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.

12. Notwithstanding, there is a remote possibility that an interest of one or more of the Debtors are 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, Gordon Arata 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. As well, 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 become adverse to others of the 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).

13. In seeking to represent all of the Debtors, Gordon Arata 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." 3 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. Because the few absolute disqualifications Congress has established are carefully delineated and narrowly tailored, the courts must 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 and Williams Dev. Co.*, 977 F.2d 906, 9099-10 (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. Gordon Arata is not asking this Court to rubberstamp its employment application. Gordon Arata merely asks that this Court evaluate the significant benefits to the Debtors and their respective creditors before exercising its discretion on this employment application.

14. 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 interests 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 (3rd 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 state of the bankruptcy process, and perhaps most damaging to the interest of the Debtors' respective creditors, separate law firms' filing fee applications.

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

15. To the best of the Debtors' knowledge, Louis M. Phillips, Courtney S. Lauer, Peter A. Kopfinger, Ryan J. Richmond, Elizabeth A. Spurgeon, and Gordon Arata have no connection with the Debtors, the creditors or 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 in the preparation of the initial pleadings and in matters preliminary hereto, except as specifically stated in the affidavit of Louis M. Phillips, which is attached hereto as Exhibit C. Gordon Arata is therefore disinterested and holds no claim or interest adverse to the estate.

16. 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 be held because of the presumption accorded the debtor-in-possession pursuant to Bankruptcy Code § 1107(b).

17. 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.

18. The Debtors and Gordon Arata request that a final hearing on this Application be set no later than twenty-eight days from the Petition Date.

19. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Western District of Louisiana; (b) Atalaya Capital Management LP and its counsel of record; (c) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; and (d) the managing member of Piccadilly Investments, LLC. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

20. 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 Gordon Arata pray that the Debtors immediately be authorized to employ the firm of Gordon Arata, and any of its attorneys or staff under a general retainer to represent the Debtors as debtors-in-possession under chapter 11 of the Bankruptcy Code on an interim basis, under the terms requested herein, and to fix a final hearing on this Application, and for such other relief as this Court may deem appropriate.

Respectfully submitted,

GORDON, ARATA, MCCOLLAM, DUPLANTIS & EAGAN, LLC

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