

**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.)	

**FIRST INTERIM APPLICATION OF PROTIVITI INC. FOR
ALLOWANCE OF FEES AND EXPENSES AS FINANCIAL ADVISOR
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR THE PERIOD NOVEMBER 16, 2012 THROUGH MARCH 31, 2013**

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

PROTIVITI INC. (“Protiviti”), financial advisor for the Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned cases, files this first interim application (the “Application”) seeking the allowance of fees in the amount of \$110,000.00 and reimbursement of expenses in the amount of \$0.00, for the period of November 16, 2012 through March 31, 2013 (the “Period”). In support of the Application, Protiviti respectfully submits the following:

STATEMENT OF JURISDICTION

1. This Court has jurisdiction to hear this Application pursuant to the provisions of 28 U.S.C. §§ 1334 and 157. This proceeding involves the administration of the respective estates and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).

2. The predicates for the relief requested herein are (a) 11 U.S.C. §§ 328, 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”) ((a) through (e) are collectively referred to herein as the “Guidelines”).

PROCEDURAL HISTORY

A. Background

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

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

5. On October 23, 2012, Henry G. Hobbs, Acting United States Trustee for Region 5, appointed the Committee pursuant to 11 U.S.C. § 1102.

B. The Administrative Order and Retention of Protiviti as Financial Advisor to the Committee

6. On January 8, 2013, the Committee, on behalf of Protiviti, filed the *Application of the Official Committee of Unsecured Creditors to Employ Protiviti Inc. as Financial Advisor, Nunc Pro Tunc to November 16, 2012* (the “Retention Application”) [Dkt. No. 453]. This Court granted the Retention Application on a final basis on March 11, 2013 (the “Retention Order”), effective *nunc pro tunc* to November 16, 2012. A copy of the Retention Order [Dkt. No. 570] is attached hereto as **Exhibit A**.

7. Pursuant to the terms of the Administrative Order, on or before the fifteenth (15th) day of each month, retained professionals may submit invoices for payment (the “Fee Statement”) to those parties who make up 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.

8. 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

9. This is the first interim Application filed on behalf of Protiviti. Protiviti has submitted monthly Fee Statements for November and December 2012 and January, February, and March 2013. As of the date of filing this Application, Protiviti has received payment on all of its submitted monthly Fee Statements.

10. Through this Application, Protiviti seeks approval of fees in the amount of \$110,000.00 and reimbursement for expenses in the amount of \$0.00, for the period from November 16, 2012 through and including March 31, 2013. During this Period, Protiviti professionals rendered 341.60 hours of services in the course of advising the Committee. As stated in the Retention Application, Protiviti has agreed that its fees for November 16, 2012 through November 30, 2012 and the month of December 2012 will be \$25,000 each and monthly fees thereafter will be \$20,000 per month. This fixed fee structure represents a significant and substantial discount from the firm’s customary billing rates for such cases.

COMPENSATION SOUGHT

A. Case Status

11. Protiviti, as financial advisor to the Committee, has been charged with addressing many of the issues that arise in the traditional chapter 11 context, including, *inter alia*, (a) reviewing and analyzing the Debtors' weekly financial and cash flow performance as compared to its budget; (b) reviewing and analyzing the Debtors' business segments and location-by-location analyses of profitability to determine profitable and unprofitable locations or business segments; (c) reviewing and analyzing historical operating results, recent performance, business plan, and associated restructuring initiatives; (d) reviewing and analyzing lease negotiations; (e) review of the Debtors' schedules and statement of financial affairs; (f) analyzing the Merchants' Foodservice transaction; and (g) communicating with creditors and the Committee members.

B. Monthly Fee Summary Exhibits

12. The financial services rendered by Protiviti to the Committee fall within the categories listed below. In compliance with the Guidelines, such financial services are fully set forth in **Exhibit B** through **Exhibit D**. Attached hereto as **Exhibit B** is a summary of fees incurred during the Period itemized as to professionals by hours expended and the total fees accrued. Attached hereto as **Exhibit C** is a summary of fees incurred by project category during the Period. Attached hereto as **Exhibit D** is a detailed report including the description of financial services rendered by Protiviti professionals, the dates on which Protiviti's professionals rendered such financial services, the identity of those professionals, and the time spent by each such professional.

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

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

(i) Category 440: Asset Analysis and Recovery

14. During the Period covered by this Application, Protiviti reviewed and analyzed the Debtors' monthly operating reports and sale related documents for the Ocala real estate.

15. In connection with the foregoing services, Protiviti professionals expended approximately 6.50 hours equating to fees of \$2,832.00.

(ii) Category 441: Asset Disposition

16. During the Period covered by this Application, Protiviti reviewed and analyzed sale agreements for the Tamarac, Ocala, and Warner Robins properties.

17. In connection with the foregoing services, Protiviti professionals expended approximately 2.80 hours equating to fees of \$1,134.00.

(iii) Category 443: Case Administration

18. During the Period covered by this Application, Protiviti reviewed and analyzed the Debtors' Schedules and Statement of Financial Affairs, motions, orders and other various items of interest filed on the docket, corresponded with creditors and professionals, prepared a document request list, and worked with Debtors' counsel in obtaining the necessary documents. Ever since being selected as financial advisor to the Committee, Protiviti has devoted

considerable resources to ensuring the most efficient and expeditious administration of these cases.

19. In connection with the foregoing services, Protiviti professionals expended approximately 53.5 hours equating to fees of \$25,938.00.

(iv) Category 444: Claims Administration and Objections

20. This category includes time spent reviewing information related to the Debtors' filed and scheduled claims, conference calls with counsel discussing secured claim issues, and reconciliations of AP balances.

21. In connection with the foregoing services, Protiviti professionals expended approximately 5.50 hours equating to fees of \$2,525.00.

(v) Category 445: Employee Benefits / Pensions

22. This category includes time spent reviewing information related to the Debtors' employee incentive plan and preparing a presentation for Committee members.

23. In connection with the foregoing services, Protiviti professionals expended approximately 1.00 hours equating to fees of \$440.00.

(vi) Category 446: Fee / Employment Applications

24. This category includes time spent preparing Protiviti's engagement letter and employment application and preparing the declaration of Michael Atkinson.

25. In connection with the foregoing services, Protiviti professionals expended approximately 7.50 hours equating to fees of \$2,640.00.

(vii) Category 448: Financing

26. During the Period covered by this Application, Protiviti reviewed and analyzed the Debtors' DIP motion and associated DIP budget, held conferences calls with counsel and the

Debtors, reviewed 3-year projections of the businesses, reviewed DIP objections, and analyzed same store sales data.

27. In connection with the foregoing services, Protiviti professionals expended approximately 22.20 hours equating to fees of \$8,673.00.

(viii) Category 450: Meetings of Creditors

28. During the Period covered by this Application, Protiviti prepared weekly presentation for Committee members, participated in conference calls with counsel and Committee members, attended meetings with Committee members, and responded to requests of Creditors.

29. In connection with the foregoing services, Protiviti professionals expended approximately 92.60 hours equating to fees of \$45,855.00.

(ix) Category 451: Plan and Disclosure Statement

30. During the Period covered by this Application, Protiviti prepared presentations for Committee members regarding plan-related issues.

31. In connection with the foregoing services, Protiviti professionals expended approximately 4.70 hours equating to fees of \$1,833.00.

(x) Category 453: Accounting / Auditing

32. This category includes time spent analyzing budgets, cash flow statements, and other related financial information.

33. In connection with the foregoing services, Protiviti professionals expended approximately 5.60 hours equating to fees of \$3,472.00.

(xi) Category 454: Business Analysis

34. This category includes time spent analyzing same store sales and reviewing leasing information.

35. In connection with the foregoing services, Protiviti professionals expended approximately 5.40 hours equating to fees of \$1,224.00.

(xii) Category 456: Data Analysis

36. This category includes time spent preparing financial updates including the analysis of store-level historical financial operating results, annual EBITDA, Debtors' 3-year projections, Debtors' profitability, Debtors' 4-wall analysis, analysis of sales, cash flow budgets, accounts receivable, accounts payable, lease rejection claims, and long-term projections. Protiviti also reviewed financial documents provided by the Debtors on a data site. On a weekly basis Protiviti prepared presentations for Committee members including updates on the previous week's financial operating results and a variance analysis comparing actual operating results to the DIP budget.

37. In connection with the foregoing services, Protiviti professionals expended approximately 134.30 hours equating to fees of \$58,316.00.

D. Expenses Incurred by Protiviti

38. Although Bankruptcy Code § 330 authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a chapter 11 case, Protiviti does not seek any reimbursement of expenses incurred in rendering services to the Committee during the Period.

REQUEST FOR FINAL ALLOWANCE OF FEES AND EXPENSES

The Johnson Factors

39. 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, Protiviti submits that

the elements governing awards of compensation pursuant to sections 330 and 331 of the Bankruptcy Code justify the allowance of the fees incurred in its representation of the Committee during the Period.

40. 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.

41. 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 in determining whether compensation is reasonable and necessary in a bankruptcy case.

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

Detailed Application of the *Johnson* Factors

43. The professional services rendered by Protiviti 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. Protiviti 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.

A. The Time and Labor Required

44. As stated above, Protiviti's professionals have expended 341.60 hours in the representation of the Committee during the Period. Notwithstanding Protiviti's standard hourly billing rates, Protiviti has agreed to a fixed fee amount of \$25,000 for each of November 16, 2012 through November 30, 2012 and the month of December 2012 and a fixed monthly fee amount of \$20,000 for each month thereafter, which is a significant and substantial discount from Protiviti's standard rates. This resulted in a \$44,882.00 discount from Protiviti's standard, market rates during the Period and this discount has been applied to Protiviti's fee statements. All of the fees incurred by Protiviti 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. Protiviti'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 and Protiviti has endeavored to do so during the Period.

B. Novelty and Difficulty of Questions Presented

45. Thus far in the cases, as set forth above and in the attached exhibits, Protiviti has begun the review of multiple complex issues relating to restructuring, litigation, sale and plan confirmation matters. Although the majority of the issues in these cases were not novel, these cases have presented a variety of complex issues normal to providing assistance and advisory services to the Committee.

C. Skill Requisite to Perform Services Properly

46. Protiviti is particularly well-poised to provide the Committee with a combination of highly-skilled professionals who work together to provide an array of financial services as needed, regardless of the subject matter.

D. Preclusion of Other Employment

47. Protiviti's representation of the Committee has not precluded it from providing services to other clients during the pendency of these cases.

E. Customary Fee

48. The standard 2013 hourly rates of the Protiviti professionals performing financial services on behalf of the Committee range from \$200 per hour to \$620 per hour. The rates charged by Protiviti in these cases are less than the rates charged by Protiviti in other cases previously and currently pending in bankruptcy courts.

F. Whether the Fee is Fixed or Contingent

49. Protiviti's fees are based upon fixed monthly rates. As is true for Protiviti and other retained professionals in every bankruptcy case, compensation is subject to the Court's approval of the Application.

G. Time Limitations

50. Protiviti has been required to provide capable financial 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.

H. Amounts Involved and Results Obtained

51. It is anticipated that the results obtained by Protiviti will continue to be beneficial as the Debtors progress toward the plan process, including confirmation. Protiviti submits that the amounts charged are reasonable and fair in light of the results obtained.

I. Experience, Reputation, and Ability of Financial Advisor

52. Each of Protiviti's professionals who performed services for the Committee possesses a reputation for skill, quality, integrity, and ability. Protiviti's professionals 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.

J. Undesirability of the Cases

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

K. Nature and Length of the Professional Relationship

54. Protiviti has represented the Committee since November 16, 2012, and that relationship continues to the present date.

L. Awards in Similar Cases

55. The fees and expenses for which Protiviti 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 Protiviti are more fully described in **Exhibit B** through **Exhibit D**. After taking into consideration the time and labor spent thus far, and the nature and extent of the representation, Protiviti believes the allowance prayed for herein is reasonable and should be approved by the Court.

CONCLUSION

56. No agreement or understanding exists between Protiviti 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 Protiviti.

57. 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

Protiviti respectfully requests that the Court enter an order: (i) allowing Protiviti (a) interim compensation for professional services rendered as financial advisor for the Committee during the Period in the amount of \$110,000.00; and (b) reimbursement of expenses incurred in connection with rendering such services in the amount of \$0.00; (ii) authorizing and directing the Debtors to pay (to the extent not previously paid in accordance with the Administrative Order) to Protiviti the unpaid portion, if any, of all allowed fees and expenses incurred during the Period, *i.e.*, \$110,000.00; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: April 15, 2013

Filed by:

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Respectfully submitted,

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