IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

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

APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO AMEND ENGAGEMENT WITH PROTIVITI, INC., *NUNC PRO TUNC* TO JULY 1, 2013

The Official Committee of Unsecured Creditors (the "Committee") files this Application to Amend Engagement with Protiviti, Inc. ("Protiviti"), *nunc pro tunc* to July 1, 2013 (the "Amended Application"). By this Amended Application, the Committee seeks to increase the monthly fixed fee for Protiviti, the Committee's financial advisor, *nunc pro tunc* to July 1, 2013, and to partially compensate Protiviti for the substantial amount of fees incurred by Protiviti in excess of its current existing fixed fee of $20,000 per month. In support of this Motion, the Committee respectfully moves as follows:

Background

1. On September 11, 2012 (the "Petition Date"), the Debtors filed this bankruptcy case and they have operated their businesses as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. On October 23, 2012, the Office of the United States Trustee appointed the Committee.

3. On January 8, 2013, the Committee filed its Application to Employ Protiviti, Inc. as Financial Advisor, *Nunc Pro Tunc* to November 16, 2012 [Docket No. 453] (the "Protiviti

ATL 19226762v4

Application"). The Court approved the Protiviti Application on a final basis on March 11, 2013 [Docket No. 570].

4. Pursuant to the retention order, Protiviti received $25,000 per month for November and December of 2012 and $20,000 per month thereafter. Even though Protiviti is entitled to its actual non-travel expenses, it agreed to waive reimbursement for its actual travel expenses.

Fee Overage Above Initial Approved

5. Since its engagement, Protiviti has incurred some fee overage each month. However, its work was generally within the range of compensation initially contemplated by the parties, so Protiviti has not until now sought additional compensation.

6. In May of 2013, negotiations with the Debtors and their equity holders over a potential plan of reorganization heated up, and Protiviti has necessarily taken an active role in these protracted negotiations. Protiviti is key to the plan negotiations and the confirmation process and continues to provide the Committee with necessary and high quality financial analysis, even though its overage now exceeds $140,000.

7. The Committee's professionals continue to seek to maximize value for the unsecured creditors. The increased workload was more than initially anticipated and was unforeseeable in light of the circumstances when Protiviti was engaged.

8. The increase in work is illustrated by Protiviti's significant overage in June. A chart illustrating the difference between the fees actually incurred against by Protiviti compared to the amount Protiviti billed pursuant to its retention is as follows:

MONTH	AMOUNT INCURRED	AMOUNT BILLED	OVERAGE
November	$37,424.00	$25,000.00	$12,424.00
December	30,760.00	25,000.00	5,760.00
January	32,474.00	20,000.00	12,474.00
February	24,360.00	20,000.00	4,360.00
March	29,864.00	20,000.00	9,864.00
April	31,734.00	20,000.00	11,734.00
May	38,836.00	20,000.00	18,836.00
June	87,182.00	20,000.00	67,182.00
TOTAL:	**$312,634.00**	**$170,000.00**	**$142,634.00**

9. Since its engagement, Protiviti has incurred $142,634 in fees in excess of what it billed pursuant to its initial retention. As illustrated above, Protiviti incurred over $85,000 of this overage in May and June, 2013.

Relief Requested

10. By this Motion, the Committee respectfully requests that the Court: (a) grant Protiviti $50,000 to compensate it for a portion of its $142,634 overage (the "Compensatory Payment"); and (b) revise Protiviti's fixed monthly fee to $75,000 per month, *nunc pro tunc* to July 1, 2013 (the "Revised Monthly Fee"), for the increased workload now required of Protiviti to engage in an adversarial and protracted plan confirmation procedure with the Debtors, their pre-petition equity and secured lenders.

11. The Committee respectfully submits that the Compensatory Payment and Revised Monthly Fee are necessary and appropriate. Due to circumstances beyond the Committee's control, including the filing of a plan of reorganization and disclosure statement that provide a return to the unsecured creditors that is significantly inferior to that which Yucaipa Corporate

Initiatives Fund I, L.P. ("Yucaipa") (the equity holder) represented to the Committee, demands upon Protiviti substantially increased.[1]

12. Despite its fixed compensation, Protiviti has met the demands of this Case and provided excellent analysis and support to the Committee.

The Compensatory Payment is Reasonable and Necessary

13. The Committee requests that Protiviti be reimbursed for $50,000 of the $142,634 overage that it has incurred.

14. Payment of $50,000 to Protiviti to partially compensate it for the overage incurred due to changing circumstances in these cases is reasonable and necessary so the Committee may fulfill its statutory duty to seek the best return for the unsecured creditors.

The Revised Monthly Fee is Reasonable and Necessary

15. The Committee will require Protiviti to perform the following tasks, which, among others, will be instrumental in the Committee's representation of the unsecured creditors in context of a contested plan confirmation. Because the proposed plan as filed is so inferior to the proposal initially made by the Debtors and Yucaipa to the Committee, the demands upon Protiviti to carry out the following tasks will be much higher than previously anticipated:

a. participate in analysis of discovery served upon the current plan proponents and the Debtors' secured lender, including written discovery and depositions;

b. analyze information relating to the pre-petition transfers and management of the Debtors to explore potential causes of action;

c. perform solvency and liquidation analyses of the Debtors at various relevant points in time based upon documents produced in discovery and customary market assumptions;

d. assess the feasibility of the currently pending proposed plan;

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[1] For example, on April 22, 2013, Yucaipa publicly stated that it would "satisfy all claims against the Debtors in full" [Docket No. 741]. The plan proposed by Yucaipa does not accomplish this.

e. conduct a valuation of the Debtors at various relevant points in time; and

f. assess the market to determine whether possibilities exist that may yield a superior return for the unsecured creditors and participate in executing any other option the Committee deems necessary or appropriate.

16. These items will be time-intensive to a degree not initially contemplated in connection with the $20,000 per month fee to which Protiviti originally agreed. This is evidenced by the fees incurred May and June – the months in which Protiviti began performing certain of the foregoing tasks – in which Protiviti's fees substantially increased.

17. The Committee and Protiviti believe that $75,000 per month is reasonable and necessary for the Committee to adequately represent the interests of the unsecured creditors against the Debtors, their secured lender and pre-petition equity, each of which is adequately funded and active in this Case.

18. The Committee respectfully requests that the Court approve a fixed monthly fee for Protiviti of $75,000 per month, *nunc pro tunc* from July 1, 2013.

19. After 90 days, the Committee requests authority to reduce Protiviti's monthly fee to an amount below $75,000 in the Committee's sole discretion and without further order of the Court, should the increased fees not continue to be justified by the demands of these cases.

Basis for Relief Requested

20. Section 328(a) of the Bankruptcy Code provides, in relevant part:

> a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment…the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

21. The Court specifically retained jurisdiction "to hear and determine all matters arising from the implementation of this Order [authorizing the retention of Protiviti]." Docket No. 570, p. 2. See also In re Coho Energy, Inc., 395 F.3d 198, 204 (5th Cir. 2004) ("The bankruptcy code manifests a strong policy of maintaining jurisdiction and control over the payment of professional fees.")

22. The Revised Monthly Fee, awarding Protiviti a fixed fee of $75,000 per month *nunc pro tunc* to July 1, 2013 and permitting the Committee to reduce such fee in its sole discretion after 90 days, is necessary and reasonable and therefore permitted under section 328(a). It is necessary because of the highly involved role Protiviti must now take in analyzing the plan proposed by the Debtors and Yucaipa and determining whether it represents the best value for the unsecured creditors. Accordingly, $75,000 is a reasonable amount to perform these functions, as evidenced in part by the compensation to the Debtors' financial advisors of $75,000 per month to perform similar functions.

23. The Compensatory Payment of $50,000 is also necessary and reasonable. The Court may allow compensation of a professional different from the compensation already approved under section 328(a) where differing circumstances require a different scope of work. See Matter of ASARCO, LLC, 702 F.3d 250, 257 (5th Cir. 2012) (holding a bankruptcy court may award a professional compensation different from that originally approved if "developments subsequent to the original approval that were incapable of being anticipated render the terms improvident.")

24. Circumstances have changed since Protiviti's engagement, placing them in a much more active role than originally anticipated. Protiviti has already increased its work in this Case and now carries approximately $140,000 of overage, with approximately $85,000 accruing

in May and June. In order to partially compensate Protiviti for this overage, which was unforeseeable when Protiviti was engaged, the Committee respectfully requests the Court approve a payment of $50,000 to Protiviti.

WHEREFORE, the Committee respectfully requests the Court enter an order: (a) revising the terms of Protiviti's compensation to a fixed fee of $75,000 per month, *nunc pro tunc* to July 1, 2013, and granting the Committee authority to reduce such compensation after 90 days should the increased fee not continue to be justified, in the Committee's sole discretion; (b) granting Protiviti a cash payment of $50,000 in compensation for the overage incurred by Protiviti above its prior Court-approved amounts; and (c) granting such further relief as the Court deems just, equitable and proper.

Respectfully submitted on July 16, 2013.

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