

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-11960 (BLS)
: (Jointly Administered)
Debtors. : **Objection Deadline: October 22, 2009@ 4:00 p.m.**
----- **Hearing Date: Only in the Event of an Objection**

**THIRD MONTHLY FEE APPLICATION OF BLANK ROME LLP,
DEBTORS' COUNSEL, FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR THE PERIOD AUGUST 1, 2009 THROUGH AUGUST 31, 2009**

This Third Monthly Fee Application for Compensation and Reimbursement of Expenses ("Fee Application") is filed by Blank Rome LLP ("Blank Rome") requesting payment for services rendered and reimbursement of expenses incurred as lead bankruptcy counsel for Alset Owners, LLC, *et al.* (the "Debtors") for the period August 1, 2009 through and including August 31, 2009 (the "Application Period").

JURISDICTION

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 5, 2009, the above-captioned Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); Altes, LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016). The Debtors' service address is Altes, LLC/Setla, LLC, 1200 North Federal Highway, Suite 111-B, Boca Raton, FL 33432-2813.

3. On June 19, 2009, the Debtors' Application for Authority to Employ Blank Rome LLP as General Bankruptcy Counsel (the "Retention Application"), was filed with the Court. This Court approved the employment of Blank Rome, Nunc Pro Tunc as to June 5, 2009, by Order dated July 7, 2009 [Docket No. 75].

4. On June 24, 2009, The Office of the United States Trustee (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") in the Debtors' cases.

5. Blank Rome is a nationally recognized law firm with extensive experience and expertise in bankruptcy and reorganization proceedings, particularly with respect to the representation of debtors and creditors' committees.

6. Presently, the attorneys having primary day-to-day responsibility for representation of these cases are Michael Z. Brownstein, Rocco A. Cavaliere and David W. Carickhoff. Blank Rome has drawn and will draw upon the knowledge and skills of other firm attorneys to provide services as the needs arise.

RELIEF REQUESTED

7. Blank Rome submits this Fee Application pursuant to § 330 and § 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals dated July 7, 2009 [Docket No. 71] (the "Administrative Order"), and Del. Bankr. LR 2016-2. By this Fee Application, Blank Rome seeks interim allowance of compensation for actual and necessary professional services rendered in the amount of \$122,132.50 for the Application Period, and seeks payment of \$97,706.00 in accordance with the terms of the Administrative Order. Blank Rome also seeks reimbursement of expenses incurred in the amount of \$2,891.93.

SUMMARY OF FEES

8. The total number of hours expended by Blank Rome professionals and paraprofessionals in performing professional services for the Debtors during the Application Period was 243.30 hours at a blended billing rate of \$501.98 per hour. The value of these services has been computed at the rates Blank Rome customarily charges for similar services provided to other clients.

9. A detailed chronological itemization of the services rendered by each attorney and paraprofessional calculated by tenths of an hour and categorized in accordance with the appropriate project code, is attached hereto as Exhibit "A". Specifically, the services rendered by Blank Rome during the Application Period included without limitation the following:

(a) Blank Rome Fee/Employment Applications (Project Code 1):

During the Application Period, Blank Rome performed various tasks necessary to the preparation, filing, and service of Blank Rome's Second Fee Application. Such work required coordination between and among the accounting department, paralegals, and attorneys for retrieval and review of the billing statements in furtherance of the Fee Application. Blank Rome also, prepared and filed its certificate of no objection for its first fee application.

Total Hours: 10.60 Total Fees: \$4,044.50

(b) Other Professionals' Employment and Fee Applications (Project Code 2):

During the Application Period, Blank Rome performed various tasks necessary to the preparation and filing of the Certificate of No Objection for the First Fee Application of Franchise Resale Consultants, LLC, d/b/a Praetorian Group ("Praetorian") as Sales Advisors.

Finally during the Application Period, Blank Rome reviewed fee applications filed by professionals retained by the Committee.

Total Hours: 1.40 Total Fees: \$630.00

(c) Executory Contracts and Unexpired Leases (Project Code 3):

On the Petition Date, the Debtors filed a motion, seeking, to the extent necessary, the rejection of various leases associated with certain closed restaurants (the “Rejection Motion”). Blank Rome reviewed objections to the Rejection Motion filed by certain landlords. On July 28, 2009, the court entered an order (i) approving the Rejection Motion as to several leases and (ii) adjourning the hearing to August 26, 2009 for landlords that had filed objections or otherwise responded.

During the Application Period, Blank Rome engaged in discussions and correspondence with counsel to the objecting landlords in order to come to a resolution of the pending objections. The objections were finally resolved in late September 2009 culminating in the Court’s Second Order dated September 29, 2009 approving the Rejection Motion as it related to certain leases of the objecting landlords.

During the Application Period, Blank Rome analyzed certain equipment leases and determined, after discussions with the proposed purchaser, that such leases should be rejected, rather than assumed and assigned in connection with the proposed sale. Thereafter, Applicant prepared a motion seeking an order rejecting certain equipment leases that were not to be assumed and assigned (the “Equipment Lease Rejection Motion”). On August 26, 2009, the Court entered an order approving the Equipment Lease Rejection Motion.

Finally, during the Application Period, Blank Rome prepared a supplemental notice of possible assumption and assignment of certain executory contracts.

Total Hours: 10.90 Total Fees: \$5,144.50

(d) Committee Business And Meetings (Project Code 5):

During the Application Period, Blank Rome reviewed and responded to the lengthy document requests (the “Document Requests”) served upon the Debtors by the Committee.

Blank Rome discussed the Document Requests with the Debtors and the Debtors’ accountants. Blank Rome and counsel to the Committee agreed that the Debtors would provide the information relevant to the Document Requests on a periodic basis in light of the Debtors’ limited staff and increased responsibilities in these cases. During the Application Period, Blank Rome obtained significant information and documentation responsive to the Document Requests. After delivery of such documentation, Blank Rome discussed the Document Requests and the responsive documents with counsel to the Committee.

Finally, Blank Rome attended the continued Section 341(a) meeting of creditors during the Application Period and reviewed the Debtors’ schedules and statements of financial affairs in connection therewith.

Total Hours: 16.30 Total Fees: \$8,300

(e) Case Administration And Miscellaneous Issues (Project Code 6):

During the Application Period, Blank Rome prepared administrative functions such as the updating of the master file index, reviewing and updating dockets and updating the Rule 2002 service list. Furthermore, Blank Rome electronically filed several pleadings during the Application Period. Blank Rome coordinated with BMC Group Inc. (“BMC”), the Debtors’ Claims Agent regarding the service of the various pleadings and notices filed during the Application Period. To that end, Blank Rome also filed affidavits of service prepared by BMC.

Further, during the Application Period, and shortly after the closing of the sale of the Debtors' assets, Blank Rome prepared a list of various post-closing items that needed to be addressed by the Debtors and their professionals. In addition, Blank Rome, with the assistance of the Debtors, prepared an initial liquidation budget for the wind down of the Debtors' estates.

Finally, Blank Rome's professionals coordinated amongst themselves to avoid duplication of efforts concerning the various tasks required of Blank Rome on behalf of the Debtors during the Application Period.

Total Hours: 10.40 Total Fees: \$4,801.00

(f) Debtors' Business Operations (Project Code 7):

After the Petition Date, Blank Rome filed, among other things, (i) the Motion of the Debtors for Entry of Interim and Final Order pursuant to §§ 105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Providers Adequately Assured of Future Performance, and (III) Establishing Procedures For Determining Adequate Assurance of Payment [Docket No. 6] (the "Utility Motion"). Blank Rome attended the interim and final hearings to consider the relief requested in the Utility Motion. On June 9, 2009, the Court entered an interim order approving the Utility Motion (the "Utility Order"). On July 7, 2009, the Court entered the Utility Order on a final basis.

In furtherance of the Utility Order, during these cases, Blank Rome negotiated and coordinated with various utilities concerning requests for additional adequate assurance. During the Application Period, Blank Rome discussed various developments concerning utility deposits with the Debtors and addressed some minor disputes concerning such matters.

Further, Blank Rome worked closely with the Debtors with respect to various operational issues related to the bankruptcy filings, including communications with the Debtors' banks, creditors, and vendors.

Finally, during the Application Period, Blank Rome reviewed the detailed schedules and statements of financial affairs that had been filed for each of the Debtors on July 31, 2009 to ascertain whether any amendments to such schedules and statements were necessary and in preparation of the section 341(a) meeting of creditors.

Total Hours: 5.20 Total Fees: \$2,954.00

(g) Sale Of Assets/Asset Purchase Agreement (Project Code 12):

On June 19, 2009, the Debtors filed a motion to, among other things, approve a sale of substantially all of their assets to Checkerco, Inc. (the Purchaser), an affiliate of the Franchisor, in accordance with an asset purchase agreement dated June 5, 2009 (the "Asset Purchase Agreement", as amended) and to establish bidding procedures in connection with such sale (the "Sale Motion"). On or about July 9, 2009, the Court entered an order (the "Procedures Order") approving the bidding procedures for the sale and scheduling August 26, 2009 as the hearing to consider approval of the sale (the "Sale Hearing").

After entry of the Procedures Order and through the Sale Hearing, Blank Rome communicated regularly with Praetorian, the Debtors' sales advisors and the Debtors concerning the pending sale process and due diligence issues. In addition, Blank Rome also discussed the pending sale process with interested bidders. Further, Blank Rome monitored the data room that was established in connection with the sale process.

Under the Asset Purchase Agreement as approved and/or amended by the Procedures Order, the Purchaser provided the following consideration to the Debtors: (i)

\$1,200,000 in cash for all of the Debtors' assets, except for certain equipment (the "Textron Collateral") which was secured by a lien and security interest maintained by Textron Financial Corporation ("Textron"), (ii) \$300,000 for the Textron Collateral, (iii) \$500,000 in cash to satisfy administrative expenses in the Debtors' estates to the extent available cash from the sale did not satisfy such obligations (the "Administrative Expense Cash"), and (iv) assumption of various liabilities, including cure costs associated with assumed executory contracts and unexpired leases.

During the Application Period, substantial efforts were made to reach a resolution with Textron in respect of the Textron Equipment. Textron had approached the Debtors and the Purchaser indicating its belief that the value of the Textron Collateral was greater than \$300,000. In an effort to avoid an objection to the sale by Textron, Blank Rome, on behalf of the Debtors, expended significant efforts to reach a resolution with Textron whereby the Purchaser agreed to pay \$500,000 to Textron to purchase the Textron Collateral. In exchange, Textron agreed to (i) waive any secured and deficiency claims it had against the Debtors aggregating approximately \$1,900,000, (ii) release any liens and security interests in the Textron Collateral, and (iii) waive its right to credit bid for the Textron Collateral at auction. This agreement was embodied in a Stipulation prepared and negotiated by Blank Rome, counsel to the Purchaser, and counsel to Textron (the "Textron Stipulation"). Blank Rome prepared the motion to approve the Textron Stipulation, filed on August 18, 2009, together with a motion requesting the Court to shorten the notice period to allow the hearing to take place on August 26, 2009. The Court granted the motion to shorten notice, and subsequently, on August 27, 2009, entered an order approving the Textron Stipulation. The resolution of the consideration to be provided to Textron along with a

waiver of Textron's significant claims was a significant achievement for the benefit of the Debtors' estates and creditors.

Only three objections were filed to the Sale Motion. First, the Township of Muskegan, Michigan filed an objection stating that the Township may have had rights as a secured creditor in respect of certain of the assets being sold as part of the sale. Blank Rome reviewed the objection and communicated with the Treasurer of the Township. After confirming that the Debtors were not seeking to sell any assets in Michigan (a market they had abandoned a few months prior to the Petition Date), the Township agreed to withdraw its objection. The second objection was filed by R&R Capital, a landlord to certain assumed real property leases. R&R Capital argued that the Debtors' proposed cure amount was incorrect. Blank Rome reviewed the objection and coordinated with counsel to the Purchaser who reached an agreement with R&R Capital on the cure associated with assumption and assignment of the R&R leases. Lastly, the Committee filed an objection to the sale and a supplemental confidential objection to the sale. Blank Rome and counsel to the Purchaser negotiated a resolution of the Committee's objections which resulted in additional consideration of \$600,000 to the Debtors' estates. The Administrative Expense Cash that had been negotiated as part of the Asset Purchase Agreement was essentially removed and replaced with \$600,000 in additional consideration that could be utilized by the estates, without conditions.

Moreover, Blank Rome prepared proffers of testimony of Leonard Levitsky, the Debtors' President, and Manny Armesto, a Senior Manager at Praetorian, in connection with the Sale Hearing. Blank Rome attended the Sale Hearing and presented the Sale Motion to the Court, together with the proffers. The Court approved the Sale Motion at the Sale Hearing, subject to the submission of an agreed sale order (the "Sale Order"). Thereafter, Blank Rome

prepared and negotiated the terms of the Sale Order with counsel to the Purchaser. On August 31, 2009, the Court entered the Sale Order thereby approving the Sale Motion. Simultaneously with the preparation of the Sale Order, Blank Rome prepared and negotiated the necessary closing documents in connection with the sale. Shortly prior to the closing on the sale, a dispute arose concerning whether the Buyer or the Debtors were liable for certain taxes aggregating approximately \$185,000 relating to real property leases that were assumed and assigned as part of the Sale (the "Tax Escrow Monies"). Several discussions between Blank Rome, the Purchaser, and counsel to the Committee ensued regarding the Tax Escrow Monies. In order to avoid a delay in the closing of the sale, the parties agreed to place the Tax Escrow Monies into escrow. Blank Rome worked on the escrow agreement relating thereto. On August 31, 2009, shortly after entry of the Sale Order, the Debtors closed on the sale of substantially all of their assets to Purchaser.

Total Hours: 130.40 Total Fees: \$73,327.50

(h) Hearings (Attendance/Preparation) (Project Code 17):

During the Application Period, Blank Rome prepared for and attended the hearing held on August 26, 2009. Several motions and applications including the Sale Motion were addressed by the Court at the August 26th hearing. Blank Rome prepared an agenda and binders in connection with the August 26th hearing. All of the relief requested at the August 26th hearing was approved, including approval of the Sale Motion.

Total Hours: 27.40 Total Fees: \$10,894.50

(i) Non-Working Travel Time (Project Code 19):

Time billed to this matter related to non-working travel time. In accordance with Del. Bankr. L.P. 2016-2(d) (viii), any time in this category may be billed at either 50% of the

regular hourly rate or reduced to 50% of the amount of time actually expended. Blank Rome has reduced the total fee for non-working travel time from \$3,483.00 to \$1,741.50.

Total Hours: 5.40 Total Fees: \$1,741.50

(j) Other Litigation (Project Code 21):

During the Application Period, the Committee scheduled depositions of Todd Lindsey and Steven Fox, each an employee of the Franchisor. The depositions were taken in connection with the Committee's investigation of the sale process and in anticipation of an objection to the sale of the Debtors' assets. Blank Rome reviewed the notices of deposition and attended the depositions on the Debtors' behalf. Furthermore, Blank Rome reviewed the various exhibits that were utilized in the depositions of Mr. Lindsey and Mr. Fox.

Total Hours: 24.00 Total Fees: \$9,574.50

ACTUAL AND NECESSARY COSTS AND EXPENSES INCURRED

10. Reimbursement of expenses in the amount of \$2,891.93 is sought herein. A complete breakdown of these expenses is reflected in Exhibit "B". Blank Rome reserves the right to request, in subsequent fee applications, reimbursement of any additional expenses incurred during the Application Period, as such expenses may not yet have been accounted for in Blank Rome's billing system.

**COMPLIANCE WITH THE BANKRUPTCY CODE,
THE BANKRUPTCY RULES AND LOCAL RULES**

11. In accordance with Del. Bankr. LR 2016-2, a summary schedule of hours and fees for each attorney and paraprofessional, and a summary schedule of hours and fees categorized by project code are set forth in the attachments to this Fee Application.

12. Blank Rome submits that the services rendered and expenses incurred were actual and necessary and that the compensation sought is reasonable and in accordance with the standards of 11 U.S.C. § 330.

13. Every effort has been made by Blank Rome to categorize daily time entries in accordance with the correct project code. However, in some instances, services overlap between project codes. Thus, some services may appear under more than one code, although in no instance is a specific time entry recorded more than once.

14. The undersigned submits that this Fee Application complies with Del. Bankr. LR 2016-2.

15. No agreement or understanding exists between Blank Rome and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with these cases.

NOTICE

16. As required by the Administrative Order, a copy of this Fee Application has been served upon the (i) Debtors, (ii) counsel for the Committee, (iii) counsel for the U.S. Trustee, and (iv) counsel for Checkers Drive-In Restaurants, Inc. Notice of this Fee Application was served upon all parties requesting notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, Blank Rome respectfully requests that this Court: (i) approve this Third Monthly Interim Fee Application for services rendered and expenses incurred for the Application Period; and (ii) enter any other and further relief as the Court deems proper and just.

Dated: October 2, 2009

BLANK ROME LLP

By: /s/ David W. Carickhoff

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