

## **EXHIBIT 1**

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

In re:	)	
	)	Chapter 11
	)	
J.L. FRENCH AUTOMOTIVE CASTINGS, INC., et al.,	)	Case No. 09-12445 (KG)
	)	
Debtors.	)	Jointly Administered
	)	Response to US Trustee Objection [Docket No. 175]
	)	Hearing Date: August 17, 2009 at 11:00 a.m. (Eastern)

**JOINT RESPONSE OF DEBTORS AND HOULIHAN LOKEY HOWARD &  
ZUKIN CAPITAL, INC. TO THE OBJECTION OF THE ACTING UNITED  
STATES TRUSTEE TO APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING RETENTION AND EMPLOYMENT OF HOULIHAN LOKEY  
HOWARD & ZUKIN CAPITAL, INC. AS INVESTMENT BANKER TO THE  
DEBTORS AND DEBTORS-IN-POSSESSION *NUNC PRO TUNC* TO THE  
PETITION DATE**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) and Houlihan Lokey Howard & Zukin Capital, Inc. (“Houlihan Lokey”), proposed Financial Advisor and Investment Banker to the Debtors, hereby jointly respond to the Acting United States Trustee’s Objection (the “Objection”) [Docket No. 175] to the Application for Entry of an Order Authorizing Retention and Employment of Houlihan Lokey Howard & Zukin Capital, Inc. as Investment Banker to the Debtors and Debtors-in-Possession *Nunc Pro Tunc* to the Petition Date (the “Application”) [Docket No. 7]. In support of this Objection, the Debtors and Houlihan Lokey respectfully state as follows:

**PRELIMINARY STATEMENT**

As made clear in the Application (and further described below), the terms and conditions under which the Debtors seek to retain Houlihan Lokey are both reasonable and consistent with the market for such services both before this Court, and throughout

the country. Indeed, no party, including the Acting United States Trustee (the “UST”), has questioned the qualifications of Houlihan Lokey or the Debtors’ need to retain Houlihan Lokey. In fact, the UST raises no specific objection to any of the terms and conditions of the Debtors’ proposed retention of Houlihan Lokey. Rather, the UST states that it simply “leaves Debtors and Houlihan Lokey to its burden.” (Objection at ¶ 22.) In its Objection, the UST also resurrects the argument it unsuccessfully has advanced in several recent cases that in essence seeks to eliminate section 328 from the Bankruptcy Code. The UST’s attempt to prohibit a financial advisor from being retained under section 328 ignores not only the applicable law, but the well-established precedent in this District. For the reasons described herein, the Objection should be overruled, and the Application should be granted.

### **BACKGROUND**

As explained in the Application, the Debtors engaged Houlihan Lokey well before the Petition Date pursuant to the terms of an engagement letter dated as of November 25, 2008 (the “Engagement Letter,” a copy of which is attached to the Application). According to the Engagement Letter, the Debtors engaged Houlihan Lokey to “assist and advise the [Debtors] with the analysis, evaluation, pursuit and effectuation of [a] Transaction.” (Engagement Letter at ¶ 1.) To that end, Houlihan Lokey devoted significant time and resources to consummate an out-of-court Restructuring Transaction (as that term is defined in the Engagement Letter). It became apparent, however, that a Restructuring Transaction could not be completed outside of the chapter 11 process.

Thus, on July 13, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On that same day, along with their other “first day motions,” the Debtors filed the Application seeking to retain Houlihan

Lokey as their investment banker under the terms set forth in the Engagement Letter pursuant to section 328(a) of the Bankruptcy Code and *nunc pro tunc* as of the Petition Date. In the Application, which is supported by the Declaration of Andrew Turnbull (the “Turnbull Declaration”), a Managing Director of Houlihan Lokey, the Debtors explained why Houlihan Lokey was well-qualified for this engagement. Besides Houlihan Lokey’s unquestioned expertise in advising debtors and other constituencies in chapter 11 cases, Houlihan Lokey is particularly well-suited to serve as the Debtors’ investment banker given the specific knowledge of and relationships with the Debtors that it has established as a result of working on behalf of the Debtors for almost eight months prior to the Petition Date. (Application at ¶¶ 14-16.)

Moreover, the Debtors enumerated the professional services that Houlihan Lokey would provide when retained, including, among other services, (i) preparing and distributing materials to create interest in a Transaction, (ii) soliciting and evaluating indications of interest and proposals for a Transaction, (iii) developing, structuring, negotiating and implementing any Transaction, including representing the Debtors in negotiations with respect to a Transaction, (iv) valuing the Debtors, (v) providing expert testimony relating to any Transaction and (vi) advising and attending meetings of the Debtors’ Board of Directors and other constituencies in these cases. (*Id.* at ¶ 17.)

In its Application, the Debtors also explained how Houlihan Lokey will be compensated. Houlihan Lokey will receive a paid monthly fee of \$175,000 (the “Monthly Fee”). The Debtors also agreed to pay a Transaction Fee (the “Transaction

Fee”) of \$2,100,000 in the event of an in-court Restructuring Transaction,<sup>1</sup> including confirmation of a plan of reorganization (a “Plan”). (*Id.* at ¶ 12.)

This compensation arrangement was reached through extensive arms-length negotiations between the Debtors and Houlihan Lokey and reflected in the Debtors’ view “fair and reasonable” compensation given the services provided by Houlihan Lokey and the “typical fee structure for Houlihan Lokey and other leading financial advisory and investment banking firms.” (*Id.* at ¶ 13).

Moreover, not only has no other party in these cases objected to the Application, but in connection with the postpetition financing that the Court approved on an interim basis, the economic stakeholders agreed to a Carve-Out,<sup>2</sup> which includes up to \$2.1 million for Houlihan Lokey’s Transaction Fee. (Interim DIP Order at 34.)

In order to allow time to address certain concerns raised by the UST in early August, the Debtors agreed to extend the deadline for the UST to object to any of the Debtors’ professional retention applications to August 12, 2009 (from August 10). Since that time, Houlihan Lokey has addressed to the UST’s satisfaction all the issues it earlier raised, other than the objection to retention pursuant section 328(a). On August 12, 2009 the UST filed the Objection. At the same time, the UST also served its Requests for Production of Documents in which the UST seeks from the Debtors and Houlihan Lokey an extensive collection of 15 separate categories of documents. The Debtors and

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<sup>1</sup> The terms “Transaction” and “Restructuring Transaction” are defined in paragraph 5 of the Engagement Letter.

<sup>2</sup> “Carve-Out” is defined in the Interim Order Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (a) Authorizing the Debtors to (i) Use Cash Collateral, (ii) Obtain Postpetition Financing and (iii) Provide Adequate Protection, and (b) Providing Notice and Scheduling of Final Hearing (the “Interim DIP Order”) [Docket No. 69].

Houlihan Lokey each produced documents to the UST in advance of the hearing in response to the Requests for Production.

## **ARGUMENT**

### **A. Standards for Retention Pursuant to Section 328(a)**

Section 328(a) of the Bankruptcy Code is clear in allowing a bankruptcy court to approve the terms and conditions of compensation of certain professionals at the inception of the case, stating that “[t]he trustee, or 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, including on a retainer, on an hourly basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). Section 328(a) also clearly states that, to the extent the professional establishes the reasonableness of the terms and conditions of its compensation at the inception of the case, the compensation will not be subject to further modification unless “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.”<sup>3</sup> *Id.* This “improvident” proviso enables the Court to raise or lower compensation depending on the circumstances. *See In re Warrior Drilling & Engineering Co., Inc.*, 18 B.R. 684, 689 (D. Ala. 1981) (“Section 328 allows the court to increase as well as decrease compensation . . . as indicated by legislative history.”)

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3 Section 330 of the Bankruptcy Code, by contrast, provides general standards to assist a bankruptcy court in determining the appropriate and reasonable compensation for, *inter alia*, professionals hired by a debtor, with such a review typically coming at the conclusion of a case. 11 U.S.C. § 330; *In re Federal Mogul-Global, Inc.*, 348 F. 3d 390, 397 (3d Cir. 2003) (“[u]nder 11 U.S.C. § 330(a)(1), such a professional may apply to receive fees from the bankruptcy estate after the professional has rendered services to the committee”).

Section 328(a) and the other provisions of the Bankruptcy Code represent a rejection of the previously-existing standards of “conservation of the estate and economy of administration,” as Congress determined that those standards discouraged practitioners from entering the bankruptcy field and that estates were ill-served by less able bankruptcy specialists. *See In re Benassi*, 72 B.R. 44, 47 (D. Minn. 1987).

Section 328(a), in particular, allows professionals to determine their compensation in advance.<sup>4</sup> Courts, including those in this District, have recognized the paramount importance of this pre-approval and regularly have approved the retention of investment bankers and financial advisors under section 328(a).<sup>5</sup>

**B. The Terms and Conditions of Houlihan Lokey’s Employment Are Reasonable Under Section 328(a)**

The terms and conditions of Houlihan Lokey’s employment, including the compensation structure agreed to between the Debtors and Houlihan Lokey, are reasonable and should be approved pursuant to section 328(a) of the Bankruptcy Code. In determining whether the terms and conditions of a professional’s employment are reasonable under section 328(a), a court should consider a number of factors, including the skills and qualifications of the professional, the commitment required to fulfill the

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4 As one court put it in affirming the approval of a retention under section 328(a), “[i]f the most competent professionals are to be available for complicated capital restructuring and the development of successful corporate reorganization, they must know what they will receive for their expertise and commitment.” *In re Nat’l Gypsum Co.*, 123 F.3d 861, 862-63 (5th Cir. 1997).

5 *See, e.g., In re Tropicana Entm’t, LLC*, Case No. 08-10856 (KJC) (Bankr. D. Del. May 30, 2008 and August 8, 2008) (orders approving, respectively, debtors’ retention of Lazard Freres & Co. LLC and committee’s retention of Capstone Advisory Group, LLC); *In re HomeBanc Mortgage Corp.*, Case No. 07-11079 (KJC) (Bankr. D. Del. Oct. 18, 2007 and Dec. 18, 2007) (orders approving committee’s retention of Mesirow Financial Consulting, LLC); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr. D. Del. May 30, 2007) (order approving committee’s retention of FTI Consulting, Inc.); *In re Dura Auto. Systems, Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Dec. 21, 2006) (order approving committee’s retention of Chanin Capital Partners); *In re Global Home Products LLC*, Case No. 06-10340 (KG) (Bankr. D. Del. May 4, 2006) (order approving debtors’ retention of Houlihan Lokey).

engagement, the complexity of the engagement and the cost of comparable services. *In re Federal Mogul-Global, Inc.*, 348 F.3d at 396-97. Each of these factors weighs heavily in favor of approving the Application.

### **1. Skills and Qualifications of Houlihan Lokey**

At the outset, the UST has not questioned Houlihan Lokey's skills and qualifications. Indeed, Houlihan Lokey is one of the leading financial advisory firms in the world, having provided services on behalf of debtors, creditors and other financial stakeholders in many of the largest restructurings, both in and out of court, in the United States and around the world. Among those cases where Houlihan Lokey has provided financial advisory services have been *Lehman Brothers Holdings, Inc.*, *Enron Corp.*, *WorldCom, Inc.*, *SemCrude, L.P.*, *Conseco, Inc.*, *Kaiser Aluminum Corp.*, *Northwest Airlines, Inc.*, *USG Corp.* and *NRG Energy Corp.* Moreover, Houlihan Lokey's substantial prepetition work on behalf of the Debtors even further supports its credentials to serve as the Debtors investment banker in these bankruptcy cases.

### **2. Nature of Engagement**

As described above, the Debtors are seeking to retain Houlihan Lokey to provide a wide range of investment banking services. As the Court is well aware, these cases have been extremely active prior to and since the Petition Date, and Houlihan Lokey already has provided many of the services described in the Engagement Letter, including (i) representing the Debtors in structuring and negotiating the consensual restructuring transaction that included assisting with financial analysis and documentation of the transaction through, among other things, the Lock-Up Agreement, Plan of Reorganization and Disclosure Statement; (ii) performing valuation and debt capacity analysis for the Board of Directors in connection with the Plan of Reorganization; (iii) representing the



Debtors in structuring and negotiating various amendments and forbearance agreements to existing credit agreements; (iv) pursuing debtor-in-possession (“DIP”) financing alternatives, including representing the Debtors in negotiating and securing a DIP facility from its existing lenders; (v) pursuing on an ongoing basis exit financing alternatives; (vi) assisting the Debtors in the development, preparation and distribution of materials and participation in meetings with customers in conjunction with securing customer agreements; (vii) assisting the Debtors in the development and dissemination of due diligence materials to a variety of key constituents and interested parties; and (viii) attending meetings of the Board of Directors, management, professionals, creditors, vendors, customers and other interested parties.

### **3. Cost of Comparable Services**

As described in the Application, “[t]he overall compensation structure ... is comparable to compensation generally charged by investment banking firms of similar stature to Houlihan Lokey for comparable engagements, both in and out of court.”

(Application at ¶ 21.)

This conclusion is further confirmed by comparing Houlihan Lokey’s proposed compensation with rates that have been approved by bankruptcy courts in comparable engagements, as illustrated in the Fee Study prepared by Houlihan Lokey and attached as **Exhibit A**. The Fee Study includes the compensation terms of the debtor’s financial advisor in 20 recent bankruptcy cases filed since May 2008 in which the debtor had between \$100 million and \$500 million in debt. In the bankruptcy cases included in the Fee Study, the bankruptcy court approved on average a monthly fee of \$142,600 and a success or transaction fee of approximately \$2.67 million, which amounted to approximately 0.82% of the debtors’ outstanding debt. As the Fee Study demonstrates,

the fee structure agreed to by the Debtors and Houlihan Lokey is squarely consistent with fees of debtors' financial advisors approved by other bankruptcy courts in similarly-sized cases. Houlihan Lokey would be paid the Monthly Fee of \$175,000, which is slightly more than the average monthly fee of \$142,600; Houlihan Lokey would be eligible for the Transaction Fee of \$2.1 million, which is less than the \$2.67 million average; and Houlihan Lokey's Transaction Fee would be 0.73% of total debt, comparable to the average of 0.82%.

**C. The UST's Objection Should Be Overruled**

The Objection does not take issue with the fees the Debtors agreed to pay Houlihan Lokey or any other term or condition of the engagement. Instead, the Objection appears to be based on the UST's contention that the Debtors and Houlihan Lokey have not "provided ... evidence to support [their] conclusion that the terms of [the] retention are reasonable." (Objection at ¶ 11.) While the Debtors and Houlihan Lokey believe that they have met their burden under section 328(a), the Debtors and Houlihan Lokey intend to supplement the record by presenting evidence at the hearing to further demonstrate that the terms and conditions of the engagement are reasonable.

Moreover, to the extent the UST's Objection asks this Court to ignore the rationale underlying section 328(a) and create a *per se* rule prohibiting professionals from being retained pursuant to section 328(a), that invitation must be rejected, as courts in this District, including this Court, recently have done. The UST, as it has done in several recent cases, appears to take issue with the actual language embodied in section 328(a), a task more appropriately dealt with in an alternative forum.

An essential premise of the Objection is that "[t]he Court should not deprive itself of future discretion by entering what is, in essence, a final compensation order at the

commencement of Houlihan Lokey's engagement." (Objection at ¶ 21.) Thus, according to the UST, Houlihan Lokey "should not be granted the benefit of 'protection' under [section 328(a)] to circumvent" its "burden of proof" under section 330.

By suggesting that Houlihan Lokey somehow is "circumventing" its "burden" under section 330, the UST ignores that section 328(a) imposes a very different standard than section 330. While both require that compensation of a bankruptcy professional must be reasonable, section 328(a) permits the approval of that compensation for certain professionals at the inception of the engagement. *See In re Dividend Dev. Corp.*, 145 B.R. 651, 655 (Bankr. D.C. Cal. 1992) (section 328(a) "clearly anticipates that the court will make a determination as to the reasonableness of a fee arrangement at the beginning of a case"). The distinction between sections 328 and 330, however, cannot serve as a basis for the UST to object to the Application. Indeed, the UST's position disregards the clear mandate of section 328(a), which seeks to attract top-quality professionals to bankruptcy engagements by establishing the reasonableness of their compensation at the inception of the engagement. *See In re Nat'l Gypsum Co.*, 123 F.3d at 862-63. Taken to its logical conclusion, the UST's argument would render section 328 a nullity in virtually every case.

As this Court knows, the Objection is not the first time that the UST in this District has objected to Houlihan Lokey's retention under section 328(a) on the same "policy" basis. Indeed, the UST similarly has objected to Houlihan Lokey's retention under section 328(a) in at least four recent cases: (i) *In re SemCrude, L.P.* Case No. 08-11525 (BLS); (ii) *In re WCI Communities, Inc.*, Case No. 08-11643 (KJC); (iii) *In re*

*Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) and (iv) *In re Aventine*

*Renewable Energy Holdings, Inc.*, Case No. 09-11214 (KG). In each of those four cases:

- the debtors or creditors’ committee sought to retain Houlihan Lokey as financial advisor and investment banker pursuant to section 328(a);
- the negotiated terms of Houlihan Lokey’s retention included compensation in the form of a monthly fee and a transaction fee payable upon the occurrence of certain enumerated events;
- the UST objected to Houlihan Lokey’s retention on, among others, the grounds that the determination of reasonableness “is premature and inconsistent with 11 U.S.C. §§ 330 and 331” and approval under section 328(a) would improperly limit the scope of review of Houlihan Lokey’s fees at the end of the cases.<sup>6</sup>

In all four cases, the bankruptcy court rejected the UST’s argument and approved Houlihan Lokey’s retention pursuant to section 328(a).<sup>7</sup> In *SemCrude*, for instance, the court in overruling the UST’s objection noted that retention pursuant to section 328(a) “is something that is specifically identified in the Code” and “that section 328(a) retentions for investment bankers are particularly common.” *In re SemCrude*, (Transcript of Sept. 10, 2008 hearing [Docket No. 1447] at 126.) Likewise, in *Aventine*, this Court recognized that “one of the purposes of Section 328 is to attract able professionals to a case such as this.” (Transcript of June 19, 2009 hearing [Docket No. 279] at 83.) In approving the retention of Houlihan Lokey by the debtors in that case, the Court held that

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<sup>6</sup> See United States Trustee’s objections to applications to retain Houlihan Lokey. *In re SemCrude, L.P.*, Case No. 08-11525 (BLS) (Bankr. D. Del. Sept. 5, 2008) [Docket No. 1177]; *In re WCI Communities, Inc.*, Case No. 08-11643 (KJC) [Docket No. 516], (iii) *In re Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) [Docket No. 566] and (iv) *In re Aventine Renewable Energy Holdings, Inc.*, Case No. 09-11214 (KG) [Docket No. 108].

<sup>7</sup> See Orders approving retention of Houlihan Lokey under section 328(a). *In re SemCrude, L.P.*, Case No. 08-11525 (BLS) (Bankr. D. Del. Sept. 5, 2008) [Docket No. 1401]; *In re WCI Communities, Inc.*, Case No. 08-11643 (KJC) [Docket No. 712], (iii) *In re Smurfit-Stone Container Corp.*, Case No. 09-10235 (BLS) [Docket No. 767] and (iv) *In re Aventine Renewable Energy Holdings, Inc.*, Case No. 09-11214 (KG) [Docket No. 222].

“one thing that I think largely supports this application is the integrity of” Houlihan Lokey, which the Court described as “unassailable.” (*Id.* at 81.)

### **CONCLUSION**

For all the foregoing reasons, the Debtors and Houlihan Lokey respectfully request that the Court grant the Application and approve Houlihan Lokey’s employment pursuant to section 328(a).

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Dated: August \_\_, 2009

Respectfully submitted,

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## **EXHIBIT A**

J.L. French Automotive Castings, Inc. | August 2009

Debtor Fee Study



**HOULIHAN LOKEY**

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## Summary of Analysis

- Houlihan Lokey maintains an internal database relating to recent corporate bankruptcies in multiple domestic jurisdictions
- While not exhaustive, the database is nonetheless expansive and provides a representative cross section of recent bankruptcy activity across the United States
- For purposes of this analysis, the database was segmented into a relevant subject universe of recent filings (since early May 2008) involving companies with between \$100 million and \$500 million in debt
  - 20 comparables were included in the subject universe
  - The average monthly fee was \$142,600
  - The average restructuring transaction fee was \$2.7 million or 0.82% of total debt
- Further detail is provided in Appendix A

Appendix A

## Select Debtor Advisor Bankruptcy Fees

Analysis of Select Debtor Advisor Bankruptcy Fees (\$ in thousands)

Debtor	Note	Debtor Advisor	District	Filing Date	Estimated Pre-Petition Debt	Monthly Fee	Monthly Offset	Restructuring Transaction Fee	% of Pre-Petition Debt
Eddie Bauer Holdings, Inc.		Peter J. Solomon	DE	6/17/09	\$318,000	\$200.0	No	\$2,250	0.71%
Building Materials Holding Corporation		Peter J. Solomon	DE	6/16/09	\$290,000	\$200.0	Yes	\$2,500	0.86%
Dayton Superior Corporation	(1)	Moelis	DE	4/19/09	\$383,000	\$150.0	Partial	\$3,500	0.91%
Aventine Renewable Energy, Inc.		Houlihan Lokey	DE	4/7/09	\$355,000	\$150.0	Partial	\$3,550	1.00%
Silicon Graphics, Inc.		Houlihan Lokey	SD-NY	4/1/09	\$162,000	\$100.0	Partial	\$1,000	0.62%
Milacron Inc.		Rothschild	SD-OH	3/10/09	\$272,000	\$175.0	Partial	\$3,000	1.10%
Midway Games Inc.		Lazard	DE	2/12/09	\$239,000	\$150.0	Partial	\$2,000	0.84%
Muzak Holdings LLC		Moelis	DE	2/10/09	\$437,000	\$175.0	Partial	\$4,000	0.92%
Hartmarx Corporation		Moelis	ND-IL	1/23/09	\$212,000	\$150.0	Partial	\$2,000	0.94%
Star Tribune Holdings Corporation		Blackstone	SD-NY	1/15/09	\$492,000	\$150.0	Partial	\$4,000	0.81%
Recycled Paper Greetings, Inc.		Rothschild	DE	1/2/09	\$225,000	\$137.5	Partial	\$1,900	0.84%
Constar International Inc.		Greenhill	DE	12/30/08	\$424,000	\$125.0	Partial	\$4,000	0.94%
Key Plastics LLC		Chanin Capital	DE	12/15/08	\$120,000	\$115.0	Partial	\$1,000	0.83%
Portola Packaging, Inc.		Peter J. Solomon	DE	8/27/08	\$265,000	\$50.0	Partial	\$1,000	0.38%
Pierre Foods, Inc.		Perella Weinberg	DE	7/15/08	\$367,000	\$150.0	No	\$2,000	0.54%
American Color Graphics, Inc.		Lehman / Barclays	DE	7/15/08	\$411,000	\$75.0	Partial	\$4,200	1.02%
Greektown Holdings, LLC		Moelis	ED-MI	5/29/08	\$500,000	\$150.0	Yes	\$4,250	0.85%
BHM Technologies, LLC		Rothschild	WD-MI	5/19/08	\$324,000	\$150.0	Yes	\$2,250	0.69%
Pappas Telecasting Incorporated		Moelis	DE	5/10/08	\$304,000	\$150.0	Yes	\$2,000	0.66%
Hillex Poly Co. LLC		Rothschild	DE	5/6/08	\$296,000	\$150.0	Yes	\$3,000	1.01%
Mean					\$319,800	\$142.6		\$2,670	0.82%
Median					\$311,000	\$150.0		\$2,375	0.85%

J.L. French Automotive Castings, Inc. (2) Houlihan Lokey DE 7/13/09 \$288,000 \$175.0 No \$2,100 0.73%

Source: Bankruptcy Court Documents

Notes:

(1) Restructuring Fee equal to \$3.5 million if both bank debt and bonds are restructured.

(2) Restructuring Transaction Fee equal to \$2.1 million for a Bankruptcy Transaction Fee and \$1.0 million for an Out-of-Court Restructuring Transaction Fee. Monthly Fees equal to \$175 thousand post-petition and \$150 thousand for all pre-petition periods paid to date.