

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF LOUISIANA**

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**In re** : **Chapter 11 Case No.**  
 : **06-10179 (B)**  
**OCA, INC., et al.,** :  
 : **Jointly Administered**  
 :  
**Debtors.** :  
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**JOINT MOTION OF THE DEBTORS, THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS, AND THE LAW FIRM OF JONES DAY FOR AN ORDER  
APPROVING COMPROMISE AND SETTLEMENT WITH JONES DAY PURSUANT  
TO BANKRUPTCY RULE 9019**

OCA, Inc., et al., Debtors and Debtors in Possession in the above-captioned cases (the “Debtors”), the Official Committee of Unsecured Creditors of OCA, Inc., et al. (the “Creditors’ Committee”), and the law firm of Jones Day hereby move this Court (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A and incorporated herein by reference, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving a settlement (the “Settlement”) between the Debtors, the Committee and Jones Day that resolves all claims asserted against the Debtors by Jones Day (collectively, the “Claims”). In support of this Motion, the Debtors and the Committee respectfully state as follows:

**Jurisdiction, Venue, and Authority**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Bankruptcy Rule 9019.

## Background

3. On March 14 and 17, and June 1, 2006 (the “Petition Dates”), the Debtors commenced these proceedings by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors each continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On March 14 and 17, and June 2 and 6, 2006, the Debtors also filed motions requesting that this Court jointly administer the Chapter 11 Cases, for procedural purposes only, under the case number assigned to OCA, Inc. The Court subsequently approved the joint administration of the Chapter 11 Cases. No trustee or examiner has been appointed or designated in the Chapter 11 Cases.

5. On March 24, 2006, the United States Trustee for Region 5, which includes the Bankruptcy Court for the Eastern District of Louisiana (the “U.S. Trustee”), appointed the Creditors’ Committee pursuant to section 1102 of the Bankruptcy Code. On March 29, 2006, the Committee selected Jenner & Block, LLP, as its national counsel and Steffes, Vingiello & McKenzie, LLC, as its local counsel, which retentions this Court approved on April 26, 2006.

6. On or about April 13, 2006, Jones Day timely filed its proofs of claim against the Debtors, consisting of: (a) Claim No. 9 in Case No. 06-10179 for \$3,522,781.25; (b) Claim No. 10 in Case No. 06-10179 for \$3,415,834.03; and (c) Claim No. 1 in Case No. 06-10229 for \$3,415,834.03 (collectively, the “Claims”).<sup>1</sup> The Claims arise as a result of the Debtors failing to pay Jones Day for pre-petition legal services and expenses incurred by Jones

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<sup>1</sup> Claim No. 10 filed in Case No. 06-10179 and Claim No. 1 filed in Case No. 06-10229 appear to be duplicative claims.

Day on behalf of the Debtors. Prior to the Petition Dates, Jones Day represented the Debtors in more than 20 lawsuits pending throughout the United States. The largest of the Claims, number 9, consists of: (a) unpaid legal fees and expenses in the amount of \$2,448,609.77; (b) prejudgment interest through the Debtors' petition date at a statutory rate of 1.5% per month on the unpaid balance, as provided in section 7-4-16 of the Georgia Code; and (c) an unliquidated amount for costs, expenses and attorneys' fees incurred by Jones Day in its pre-petition efforts to collect on the Claims. In an attempt to collect on the Claims, Jones Day filed a complaint against the Debtors in the United States District Court for the Northern District of Georgia, Atlanta Division, in 2004 (the "Georgia Lawsuit"). The Debtors asserted certain counterclaims in the Georgia Lawsuit. As of the Debtors' petition date, Jones Day had filed a motion for summary judgment and pleadings in support thereof, which motion the Debtors had not responded to as of the petition date. Additionally, prior to the petition date Orthalliance, one of the Debtors, commenced a lawsuit against Jones Day in Superior Court in Los Angeles, California (the "California Lawsuit"). Prior to the Petition Dates, the California Lawsuit was stayed pending the disposition of the prior filed Georgia Lawsuit. If the Court grants this Motion, the parties will dismiss, with prejudice and without an award of fees or costs, both the Georgia Lawsuit and the California Lawsuit, and the parties will be deemed to have granted each other mutual, general releases of all claims and causes of action that either of them may have or may have asserted against the other; provided only that Jones Day shall have an allowed, general unsecured, non-priority claim in the amount of \$2,067,000, which claim under the current plan of reorganization would be classified as a Class 4 claim.

7. The Debtors, the Committee and Jones Day have agreed to settle the Claims by allowing Jones Day a general unsecured, non-priority claim in the amount of

\$2,067,000, which claim under the current plan of reorganization would be classified as a Class 4 claim (the “Allowed Claim”). The Committee took the following into account when evaluating the Claims and negotiating the settlement of the Claims: (a) the Jones Day engagement letter; (b) the unpaid Jones Day invoices; (c) the pleadings filed in the lawsuit pending in the United States District Court; (d) the Debtors history of payment to Jones Day; (e) the report of Bruce R. Meckler prepared on behalf of the Debtors in connection with pre-petition litigation (Mr. Meckler was hired by the Debtors as an expert witness in connection with the pre-petition litigation regarding the Claims; Mr. Meckler’s firm is a member of the Creditors’ Committee and the firm representative on the Creditors’ Committee; Mr. Meckler’s firm, as well as every other member of the Creditors’ Committee, supports the settlement described in this motion); and, (f) Section 7-4-16 of the Official Code of Georgia, and cases interpreting that section.

#### **Relief Requested**

8. By this Motion, pursuant to Bankruptcy Rule 9019, the Debtors, the Committee and Jones Day request that this Court enter an order approving the Settlement between the Debtors, the Committee and Jones Day, according to the terms herein stated.

#### **Basis for Relief Requested**

9. Rule 9019 provides, in pertinent part, that “[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Under Rule 9019, “[a]pproval should only be given if the settlement is ‘fair and equitable and in the best interest of the estate.’” *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997) (citations omitted).

10. When considering a compromise settlement, a court must compare “the terms of the compromise with the likely rewards of litigation.” *Id.* at 356. The Fifth Circuit has considered three factors to ensure that the settlement is fair, equitable, and in the interest of the

estate and creditors: (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (3) all other factors bearing on the wisdom of the compromise. *Id.* (citing *In re Jackson Brewing Co.*, 624 F.2d 599, 609 (5th Cir. 1980)). With respect to the third, “catch-all” factor, the Court should consider the best interests of the creditors and “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* (citations omitted).

**A. Probability Of Success In Litigation**

11. The parties believe that any such litigation of the Claims, whether through lifting the automatic stay to proceed with the pre-petition litigation or by way of an objection to the Claims, would result in substantial liability on behalf of the Debtors for the Claims. Furthermore, the Jones Day claim is a Class 4 claim under the Plan of Reorganization presently on file, which means that any allowance of the Jones Day claim, and any litigation of that claim, would principally impact the constituents represented by the Creditors’ Committee. The Creditors’ Committee believes that in any such litigation regarding the Claims, there is a risk that a substantial portion of the \$2,448,609.77 of principal amount of the Claims might be allowed, there is a risk that all or a portion of \$1,074,171.48 of prejudgment interest claimed by Jones Day might be allowed under the Georgia Code, and there is a risk that expenses, costs and attorneys’ fees incurred in connection with pre-petition litigation regarding the Claims (which has been asserted in an amount in excess of \$300,000) might be allowed. On the other hand, there also is a risk to Jones Day that a substantial portion of the \$2,448,609.77 of principal amount of the Claims may be disallowed. Accordingly, a compromise whereby the Claims are reduced by almost \$1,500,000 is a fair and reasonable compromise. Accordingly, the Settlement, which

results in an Allowed Claim in the amount of \$2,067,000.00 represents a reasonable settlement in light of the uncertain prospects for success in litigation and should be approved.

**B. Complexity And Likely Duration Of The Litigation And Any Attendant Expense, Inconvenience And Delay**

12. Any litigation will, of course, be costly and time-consuming, and require a significant investment of time, effort and resources, including attendant attorneys' fees and expenses. Both the Debtors and Jones Day incurred hundreds of thousands of dollars of legal fees and expense in connection with the pre-petition litigation regarding the Claims. Having considered this fact, and the inherent uncertainty of litigation, the proposed Settlement resulted from the exercise of sound business judgment, and is in the best interests of the Debtors, their estates and their creditors. The Creditors' Committee took the lead in investigating the Claims and negotiating the Settlement because, under the pending Plan of Reorganization, the litigation and satisfaction of the Claims will be the responsibility of the Unsecured Creditors' Trust that will come into existence upon the Effective Date of the Plan.

**C. The Settlement Is In The Best Interests Of Creditors And Is The Product Of Arm's-Length Negotiations**

13. The Settlement is in the best interests of creditors. If a prompt, reasonable settlement is not achieved, the initial cash payment made to the Unsecured Creditor's Trust upon Plan confirmation will be the source of funds used to litigate with Jones Day. Given the Jones Day engagement letter, the Debtors past history of payment of Jones Day invoices, and the pleadings filed in the underlying pre-petition litigation, it is in the best interests of Class 4 creditors that the Claims be resolved in an efficient and expedient manner, something the Settlement clearly accomplishes. And, the settlement was negotiated at arm's length by the Creditors' Committee, through its counsel, on the one hand, and Jones Day on the other hand.

14. For all of the above reasons, it is respectfully submitted that the Settlement of the Claims is in the best interests of the estates and that it should be approved by the Court.

**Notice**

15. Notice of this Motion will be provided to the following parties in interest: (a) counsel for the Equity Committee; (b) the U.S. Trustee; (c) Silver Point Capital, LLC, Bank of America, and their respective counsel; and (d) all parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the movants submit that no further notice is required.

**No Prior Request**

16. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors, the Creditors' Committee and Jones Day respectfully request that this Court enter an order substantially in the form attached hereto as Exhibit A (i) approving the Settlement between the Debtors, the Committee and Jones Day resolving the Claims, and (ii) granting such other and further relief as this Court deems just and proper.

Dated: August 15, 2006

Respectfully submitted,

OCA, INC., *et al.*

By: /s/William H. Patrick III  
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Respectfully submitted,

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