

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|----------------------------------|---|------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| PIKE NURSERY HOLDING LLC, |) | Case No. 07-79129-mgd |
| |) | |
| Debtor. |) | |
| |) | |

**MOTION FOR ESTABLISHMENT OF PROCEDURES FOR
MONTHLY COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS**

Pike Nursery Holding LLC (the “Debtor”) files this Motion, respectfully showing the Court as follows:

Relief Requested

1. By this Motion, the Debtor respectfully requests the entry of an order, pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), establishing procedures by which professionals approved under Sections 327 and 1103 of the Bankruptcy Code by the Court in this case (the “Professionals”) may obtain monthly payment of their fees and expenses, subject to review and adjustment in connection with regular fee applications filed with the Court.

Jurisdiction

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The

Debtor is authorized to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. Additional information about the Debtor's business and the events leading up to the Petition Date can be found in the Declaration of Scott Schnell in Support of First Day Applications and Motions (the "Schnell Declaration") which is incorporated herein by reference.

Basis for Relief

5. Contemporaneously with the filing of this Motion, the Debtor is seeking approval of its employment, under Section 327 of the Bankruptcy Code, of Scroggins & Williamson as its legal bankruptcy counsel in this case. The Debtor anticipates that it may need to retain other professionals as this case progresses (each a "Professional"). In addition, an official committee of unsecured creditors may be appointed in this case and will likely retain counsel, and possibly other professionals, to assist it.

6. Under 11 U.S.C. § 331, each professional person is limited to applying for interim compensation not more than once every one hundred and twenty (120) days after the order for relief, unless the Court authorizes applications for interim compensation more frequently.

7. The Debtor believes that the relief requested in this Motion will streamline the professional compensation process and enable the Court and all other parties to monitor the professional fees incurred in this case more effectively.

8. Briefly stated, the requested procedures would permit each Professional to serve on counsel for the Debtor, the Office of the United States Trustee, counsel for the post-petition secured lenders, and counsel for any official committee appointed in this case, a statement of fees and expenses incurred by the Professional during the immediately preceding month (a "Monthly Statement").

9. Any party receiving such Monthly Statement shall have ten (10) days from the date of service within which to file and serve upon the Professional applying for such compensation, and upon counsel for the Debtor, counsel for any official committee appointed in this case, if any, and the United States Trustee, written objections, which shall specifically identify the time or expense objected to and shall state the reason(s) for such objection.

10. If no written objection is received to a Monthly Statement within ten (10) days of service, as stated above, then each Professional shall file a Certificate of No Objection with the Court (substantially in the form of Exhibit "A" attached hereto) and payment of the Monthly Statement shall be made by the Debtor. If a written objection to the Monthly Statement is timely filed, then the portion of the Monthly Statement which is not in dispute shall nevertheless be paid by the Debtor. The portion of the Monthly Statement which is in dispute shall not be paid unless and until an order of the Court directs such payment or until such objection is withdrawn.

11. All fees and expenses of each Professional, whether or not paid or objected to in connection with a Monthly Statement, would remain subject to review and approval by the Court in connection with interim and final fee applications under Sections 330 and 331 of the Bankruptcy Code.

12. Interim payments received in accordance with the procedures outlined above shall be applied to the fees and expenses itemized, subject to disgorgement or offset if such fees are not approved by the Court.

13. The Debtor proposes that these procedures also apply to members of any official committee appointed in this case seeking reimbursement of expenses pursuant to Section 503(b)(3)(F) of the Bankruptcy Code. However, these procedures will not apply to professionals

retained in the ordinary course of business pursuant to a separate motion or those retained pursuant to 28 U.S.C. § 156 (in the case of any claims agent).

14. Section 331 of the Bankruptcy Code, which generally permits professionals to file fee applications every one hundred and twenty (120) days, expressly contemplates that professionals may be compensated more frequently “if the court permits.” Courts in this and other districts regularly allow professionals to seek and receive compensation on a monthly basis. See, e.g., In re Allied Holdings, Inc., Case Nos. 05-12515 – 05-12537 (Bankr. N.D. Ga. Aug. 24, 2005) (Drake, J.); In re Metalforming Techs., Inc., Case No. 05-11697 (MFW) (Bankr. D. Del. July 18, 2005); In re Am. Online Latin Am., Inc., Case No. 05-11778 (MFW) (Bankr. D. Del. July 14, 2005); In re Rhodes, Case Nos. 04-78434 – 04-78436 (Bankr. N.D. Ga. Nov. 8, 2004) (Diehl, J.); In re The New Power Co., Case No. 02-10835 (Bankr. N.D. Ga. July 25, 2002) (Drake, J.); In re Centennial HealthCare Corp., Case No. 02-74974 (Bankr. N.D. Ga. Feb. 6, 2003) (Massey, J.).

15. In addition to minimizing the financial hardship on the Professionals, who must invest significant resources in this case, monthly compensation procedures will enable the Debtor to monitor the costs of administration of its estate, forecast level cash flows, and implement efficient cash management procedures. Moreover, these procedures will allow the Court and parties in interest, including the United States Trustee, to ensure the reasonableness and necessity of compensation sought in this case.

16. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of its estate.

Notice

17. Notice of this Motion has been provided to the Office of the United States Trustee, counsel for the Debtor's pre-petition senior secured lenders, counsel to the Debtor's proposed debtor-in-possession lenders, and the Debtor's twenty (20) largest unsecured creditors. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

Conclusion

WHEREFORE, the Debtor respectfully requests that this Court:

- (a) enter an order establishing procedures for monthly compensation and reimbursement of expenses of professionals; and
- (b) grant the Debtor such other and further relief as is just and proper.

This 14th day of November, 2007.

Respectfully submitted,

SCROGGINS & WILLIAMSON

/s/ Ashley R. Ray
J. ROBERT WILLIAMSON
Georgia Bar No. 765214
ASHLEY REYNOLDS RAY
Georgia Bar No. 601559
Counsel for the Debtor

1500 Candler Building
127 Peachtree Street, NE
Atlanta, GA 30303
(404) 893-3880

EXHIBIT "A"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|----------------------------------|---|------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| PIKE NURSERY HOLDING LLC, |) | Case No. 07-79129-mgd |
| |) | |
| Debtor. |) | |
| _____ |) | |

CERTIFICATE OF NO OBJECTION

COMES NOW, _____, counsel for _____ in the above-referenced case, and files this Certificate of No Objection, and shows the Court as follows:

1.

In accordance with the Order of this Court establishing procedures for interim compensation and reimbursement of expenses for professional persons entered on _____, 2007 ("Compensation Procedure Order"), _____ submitted to Scroggins & Williamson a monthly invoice ("Monthly Statement") for the period of time beginning _____, 200__ and ending _____, 200__.

2.

The Monthly Statement of _____ was served on _____, 200__, upon the proper parties as required by the Compensation Procedure Order.

3.

The deadline for the filing of any objection to the Monthly Statement was

_____, 200___. However, counsel for _____ has not received any objection to the Monthly Statement and, upon information and belief, no such objection has been filed with the Court.

This _____ day of _____, 200__.

FIRM NAME

Attorney

Georgia Bar No. _____

Address