

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
PIKE NURSERY HOLDING LLC,)	Case No. 07-79129-MGD
)	
Debtor and Debtor in Possession.)	Judge Diehl
)	
_____)	

**RESPONSE TO UNITED STATES TRUSTEE’S OBJECTION
TO APPLICATIONS OF PROFESSIONALS FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Powell Goldstein LLP (“Powell Goldstein”) files this response to the objection filed by the United States Trustee (Docket Entry No. 591) to Powell Goldstein’s final application for compensation and reimbursement of expenses (Docket Entry No. 557) and shows the Court the following:

1. The United States Trustee requests that the Court continue the hearing on Powell Goldstein’s final fee application because “quantifying the amount of benefit to the Debtor’s estate, i.e., allowing final compensation as the professionals have requested, is premature and problematic until such time as the Chapter 7 Trustee completes pursuit of those matters which the Chapter 7 Trustee reasonably believes may enhance solvency.” See United States Trustee Objection ¶ 15.

2. The problem with the requested continuance is that it assumes that it is appropriate for Court to consider the outcome of subsequent events when ruling on fee applications. This assumption is contrary to the well established line of authority that bankruptcy courts, when considering whether professional services were “necessary” for purposes of section 330(a)(3)(C) of the Bankruptcy Code, should only consider the facts known

to the professionals at the time the fees were incurred and should not engage in second guessing based on hindsight. See, e.g., In re Tri-State Plant Food Inc., 273 B.R. 250, 259 (Bankr. M.D. Ala. 2002) ("Professionals will not be paid for services which are not necessary to the administration of the estate. This determination is made in light of the facts known at the time the services were performed and not on an after-the-fact basis using the benefit of hindsight.") (emphasis added); In re Angelika Films 57th, Inc., 227 B.R. 29, 42 (Bankr. S.D.N.Y. 1998) ("This standard does not rely on perfect hindsight, which the court must scrupulously avoid."); Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 330.04[1][b][iii] (15th ed. rev. 2008) (recognizing it as the majority approach).

3. In this case, the services Powell Goldstein performed which form the basis of its application were necessary and reasonable especially when viewed from the perspective of what the committee professionals knew at the time.

4. Accordingly, Powell Goldstein requests that the Court overrule the United States Trustee's objection and approve Powell Goldstein's final fee application.

[remainder of the page intentionally left blank]

WHEREFORE, Powell Goldstein LLP requests that the Court enter an order: (i) overruling the United States Trustee's objection; (ii) approving Powell Goldstein's final fee application; (iii) awarding Powell Goldstein compensation in the amount of \$219,104.00 and reimbursement of expenses in the amount of \$7,340.40; and (iv) granting such other and further relief as is just.

This 9th day of July 2008.

Very respectfully,

/s/ Robert M.D. Mercer

Robert M.D. Mercer (Ga. Bar No. 502317)

rmerc@pogolaw.com

POWELL GOLDSTEIN, LLP

One Atlantic Center, 14th Floor

1201 West Peachtree Street, N.W.

Atlanta, Georgia 30309-3488

(404) 572-6600 Telephone

(404) 572-6999 Facsimile

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
PIKE NURSERY HOLDING LLC,)	Case No. 07-79129-MGD
)	
Debtor and Debtor in Possession.)	Judge Diehl
)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that, on the 9th day of July 2008, I caused to be served via U. S. Mail to the attached Distribution List a true and correct copy of the *Response to United States Trustee's Objection to Applications of Professionals for Compensation and Reimbursement of Expenses.*

Dated: July 9th 2008.

/s/ Robert M.D. Mercer
 Robert M.D. Mercer (Ga. Bar No. 502317)
rmerc@pogolaw.com
 POWELL GOLDSTEIN, LLP
 One Atlantic Center, 14th Floor
 1201 West Peachtree Street, N.W.
 Atlanta, Georgia 30309-3488
 (404) 572-6600 Telephone
 (404) 572-6999 Facsimile

DISTRIBUTION LIST

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 21226
Philadelphia, PA 19114

Internal Revenue Service
Insolvency
Attn: District Director
Room 400 – Stop 334D
401 W. Peachtree Street, NW
Atlanta, GA 30308

Commissioner
Georgia Department of Labor
Sussex Place – Room 600
148 International Blvd., NE
Atlanta, GA 30303

United States Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

U.S. Attorney
Civil Process Clerk
1800 Richard B. Russell Building
75 Spring Street, SW
Atlanta, GA 30303

Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Federal Trade Commission
Southeast Region
Attn: Bradley Elbein, Director
Suite 1500
225 Peachtree Street, NE
Atlanta, GA 30303

Law Offices
Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236

J. Robert Williamson, Jr., Esq.
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30303

Pike Nursery Holding LLC
Attn: Mr. Scott Schnell
Chief Operating Officer
4020 Steve Reynolds Boulevard
Norcross, GA 30093

Office of the U.S. Trustee
Attn: Leroy Culton
362 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303

Monrovia Nursery Company
Attn: Tyler Page, CFO
18331 East Foothill Boulevard
Azusa, CA 91702

Pennington Seed, Inc.
Attn: Brooks Pennington, III
P.O. Box 290
1280 Atlanta Highway
Madison, GA 30650

GroSouth, Inc.
Attn: John W. Morgan, President
620 North McDonough Street
P.O. Box 349
Montgomery, AL 36101

Border Concepts, Inc.
Attn: Neil R. Miller, President
10450 Park Road, Suite 100
Charlotte, NC 28210

Flowerwood Nursery
Attn: Jim Van Antwerp
P.O. Box 665
15315 Kelly Road
Loxley, AL 36551

Pavestone Company
Attn: David Newman, Corp. Credit Manager
4835 LBJ Freeway, Suite 700
Dallas, TX 75244

Christopher T. Buchanan, Esq.
James R. Langdon, Esq.
Moore & Van Allen
100 North Tryon Street, Suite 4700
Charlotte, NC 28202

Ron C. Bingham, II, Esq.
Thompson, O'Brien, Kemp & Nasuti, P.C.
40 Technology Parkway South, Suite 300
Norcross, GA 30092

William A. DuPre, IV, Esq.
Paul M. Alexander, Esq.
Miller & Martin PLLC
1170 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309-7649

Sarah R. Borders, Esq.
Robert K. Ozols, Esq.
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309

Gus H. Small, Esq.
Karen Fagin White, Esq.
Cohen Pollock Merlin & Small
3350 Riverwood Parkway, Suite 1600
Atlanta, GA 30339

John C. Pennington, Esq.
P.O. Box 275
Helen, GA 30545

Scott B. Riddle, Esq.
Suite 2250 Resurgens Plaza
945 East Paces Ferry Road
Atlanta, GA 30326

Priscilla H. Douglas, Esq.
Corporate Counsel
California First Leasing Corporation
Suite 800
18201 Von Karman Avenue
Irvine, CA 92612

Samuel D. Hicks, Esq.
Hicks, Casey & Foster, P.C.
Suite 100
136 North Fairground Street
Marietta, GA 30060

Recovery Management Systems Corp.
ATTN: Ramesh Singh
Suite 1120
25 SE 2nd Avenue
Miami, FL 33131-1605

Micheal W. Bishop, Esq.
Looper Reed & McGraw, P.C.
1601 Elm Street, Suite 4100
Dallas, TX 75201

Michael E. Hastings, Esq.
Brandy M. Rapp, Esq.
LeClairRyan, P.C.
Drawer 1200
1800 Wachovia Tower
Roanoke, VA 24006

Paul M. Rosenblatt, Esq.
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street, N.E.
Atlanta, GA 30309-4530

William A. Rountree, Esq.
Suite 600 Marquis Two Tower
285 Peachtree Center Avenue NE
Atlanta, GA 30303-1229

American Express Bank FSB
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

Kelly E. Culpin, Esq.
Vivieon E. Kelley, Esq.
Troutman Sanders, LLP
Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308

W. Clark Watson, Esq.
Balch & Bingham, LLP
Suite 2600
1901 Sixth Avenue North
Birmingham, AL 35203

Samuel R. Arden, Esq.
Hartman, Simons, Spielman & Wood, LLP
Suite 400
6400 Powers Ferry Road, N.W.
Atlanta, GA 30339

J. Hayden Kepner, Jr., Esq.
Michael F. Holbein, Esq.
Arnall Golden Gregory LLP
Suite 2100
171 Seventeenth Street NW
Atlanta, GA 30363

Jonathan S. Shenson, Esq.
Klee, Tuchin, Bogdanoff & Stern, LLP
39th Floor
1999 Avenue of the Stars
Los Angeles, CA 90067-5061

American Express Travel Related Svcs Co
Inc Corp Card
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

Jody Charles Campbell, Esq.
Webb, Tanner, Powell, Mertz
& Wilson, LLP
P.O. Box 1390
Lawrenceville, GA 30046

Eric T. Ray, Esq.
Balch & Bingham, LLP
P.O. Box 306
Birmingham, AL 35201-0306

William H. Short, Esq.
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889

Michael D. Payne, Esq.
Lisa Ritchey Craig, Esq.
McCullough Payne & Haan, LLC
Suite 975
171 Seventeenth Street NW
Atlanta, GA 30363

David H. Conaway, Esq.
Shumaker Loop & Kendrick LLP
Suite 1800
128 South Tryon Street
Charlotte, NC 28202

James C. Joedecke, Jr., Esq.
Ryan D. Worsley, Esq.
Andersen Tate & Carr, P.C.
Suite 100
1505 Lake Parkway
Lawrenceville, GA 30043

J. Dewayne Bunch, Esq.
McCain, McCain & Bunch
443 Worth Street, NW
Cleveland, TN 37311

Dudley Nurseries, Inc.
2417 Washington Road
P.O. Box 429
Thomson, GA 30824

Baskin Nurseries, Inc.
411 Ozora Road
Loganville, GA 30052

I.M. Flowers
213 Hendricks Road
Rydal, GA 30171

Riverbend Nursery Inc.
1295 Mt. Elbert Road
Riner, VA 24149

Bruce Z. Walker, Esq.
Cohen Pollock Merlin & Small
Suite 1600
3350 Riverwood Parkway
Atlanta, GA 30339

Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236-3568

Thomas R. Walker, Esq.
McGuireWoods LLP
The Proscenium
1170 Peachtree Street, N.E.
Atlanta, GA 30309

David W. Cranshaw, Esq.
Morris Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, GA 30326

S. Elizabeth Hall, Esq.
McKenna Long Aldridge LLP
Suite 5300
303 Peachtree Street
Atlanta, GA 30308

Ronald S. Gellert, Esq.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102

Melissa J. Perignat, Esq.
J. Scott Jacobson, Esq.
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway
Suite 600
Atlanta, GA 30339

Amy A. Quackenboss, Esq.
Hunton & Williams LLP
Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, GA 30308-2216

5170788_2.DOC