

**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           |
|                                  | ) |                       |
|                                  | ) |                       |

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

Pachulski Stang Ziehl & Jones LLP ("PSZJ") files this response to the objection filed by the United States Trustee (Docket Entry No. 591) to PSZJ's final application for compensation and reimbursement of expenses (Docket Entry No. 550) and shows the Court the following:

1. The United States Trustee requests that the Court continue the hearing on PSZJ'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] (15<sup>th</sup> ed. rev. 2008) (recognizing it as the majority approach).

3. In this case, the services PSZJ 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.

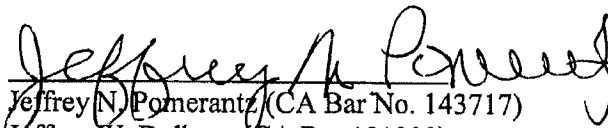
4. Accordingly, PSZJ requests that the Court overrule the United States Trustee's objection and approve PSZJ's final fee application.

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WHEREFORE, Pachulski Stang Ziehl & Jones LLP requests that the Court enter an order: (i) overruling the United States Trustee's objection; (ii) approving PSZJ's final fee application; (iii) awarding PSZJ compensation in the amount of \$198,739.00 and reimbursement of expenses in the amount of \$10,154.31; and (iv) granting such other and further relief as is just.

This 9th day of July 2008.

Very respectfully,



Jeffrey N. Pomerantz (CA Bar No. 143717)

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**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

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