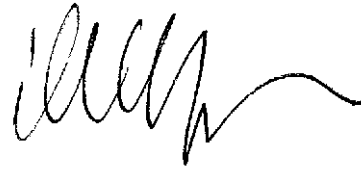


U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS
ON THE COURTS DOCKET
MANA C. MARSHALL, CLERK



D. Michael Lynn
U.S. Bankruptcy Judge

OCT 27 2009

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:)	Chapter 11
)	
PILGRIM'S PRIDE CORPORATION, et al.,)	Case No. 08-45664 (DML)
)	
Debtors.)	(Jointly Administered)
)	
)	

**ORDER AUTHORIZING THE RETENTION OF
HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC. AS FINANCIAL
ADVISOR TO THE OFFICIAL EQUITY SECURITY HOLDERS' COMMITTEE**

Upon the Application (the "Application") for Order Approving the *Nunc Pro Tunc* Employment and Retention of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey") as Financial Advisor to the Official Equity Security Holders' Committee (the "Committee"); and upon the Limited Objection of Official Committee of Unsecured Creditors to the Application; the United States Trustee's Objection to the Application; and the Debtors' Limited Objection to the Application; and the Court having jurisdiction over the Application

pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application being a core proceeding under 28 U.S.C. § 157(b)(2); and it appearing that notice of the Application was sufficient under the circumstances; and upon the hearing on the Application conducted on October 27, 2009 (the “Hearing”), and after due consideration of the Application and good cause appearing therefore, it is

ORDERED that the Application be, and it hereby is, granted, and the Committee is hereby authorized to employ and retain Houlihan Lokey as its financial advisor on the terms set forth herein and in the Application; and it is further

ORDERED that Houlihan Lokey shall be compensated in accordance with the Court’s and Committee counsel’s comments on the record at the Hearing; provided, however, that, as discussed on the record on December 30, 2008 in this case with respect to the retention of Lazard Freres & Co. (“Lazard”) (excerpt attached hereto), such compensation shall be subject to approval by this Court, any order entered in these chapter 11 cases establishing procedures for interim compensation and reimbursement of expenses, the Bankruptcy Code, Bankruptcy Rules and Local Rules and Local Rules and Orders of this Court; and it is further

ORDERED, that in determining the reasonableness of the Deferred Fee pursuant to the preceding paragraph, the Court will consider all applicable factors established by section 330 of the Bankruptcy Code and binding precedent; assessment of the Deferred Fee under section 330(a)(3)(F) will be based upon whether the Deferred Fee is comparable to the range of fees paid to investment bankers in comparable transactions both in and outside of bankruptcy court in this and other Districts; and provided that the number of hours spent by Houlihan Lokey’s personnel during its engagement or during any given monthly period thereof shall not be the sole factor in

and of itself in determining the reasonableness of the Deferred Fee or the Monthly Fee. The court does not intend this provision as binding precedent in other chapter 11 proceedings;

ORDERED that, notwithstanding anything to the contrary in the Bankruptcy Code, Bankruptcy Rules and Local Rules and Orders of this Court, the United States Trustee Guidelines or any other guideline regarding submission and approval of fee applications, in light of the services to be provided by Houlihan Lokey and the structure of Houlihan Lokey's compensation pursuant to the Engagement Letter, Houlihan Lokey and its professionals shall be excused from any requirement to maintain time records, as set forth in the Bankruptcy Code, Bankruptcy Rules and Local Rules or orders of this Court not made specifically applicable to Houlihan Lokey or guidelines, provided, however, that, at the Court's request (or the Fee Review Committee) Houlihan Lokey shall instead present to the Court (or the Fee Review Committee, as appropriate) records (in summary format) that contain reasonably detailed descriptions of those services provided to the Committee, the approximate time expended in providing those services in half-hour increments and the individuals who provided the professional services; and it is further

ORDERED that Debtor is authorized and required to indemnify, hold harmless, provide contribution to and reimburse Houlihan Lokey, or any of its divisions, affiliates, current or former directors, officers, partners, members, agents or employees of Houlihan Lokey or any of its affiliates, or any person controlling Houlihan Lokey or its affiliates, current or former directors, officers, partners, members, agents or employees, pursuant to the Indemnification Provisions of the Engagement Letter, which is hereby approved (subject to the limitations imposed by the Court in connection with Lazard's retention, as set forth in the record excerpt attached hereto); it is further

ORDERED that this Court hereby retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of the Engagement Letter and this Order during the pendency of these bankruptcy proceedings, and to adjust the terms of this Order if a Fee Review Committee is appointed in these cases; and it is further

ORDERED that to the extent there may be any inconsistency between the terms of the Application, the Engagement Letter or this Order, the terms of this Order shall govern; and it is further

ORDERED that the retention of Houlihan Lokey shall be effective as of June 22, 2009.

END OF ORDER

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In Re:) **Case No. 08-45664-dml-11**
) Jointly Administered
PILGRIM'S PRIDE) Chapter 11
CORPORATION,)
) Fort Worth, Texas
Debtors.) Tuesday, December 30, 2008
) 10:30 a.m. Docket
)
) MOTIONS [Docket Numbers 24,
) 49, 50, 51, 52, 53, 54, 55,
) 57, 81, 120, 302]
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE.

COURTROOM APPEARANCES:

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transcript produced by transcription service.

1 Ernst & Young as auditors and tax advisors to the Debtors.
2 My firm, Weil Gotshal & Manges, as counsel for the Debtors.
3 Lazard Frères and Company as the Debtors' investment banker.
4 Baker & McKenzie as special counsel to the Debtors. And CRG
5 Partners Group LLC as well as the retention of Mr. Snyder as
6 Chief Restructuring Officer, or the Court's approval of that
7 retention. And also on the docket is interim application for
8 Andrews Kurth as counsel to the statutory committee.

9 THE COURT: Are any of these contested?

10 MR. YOUNGMAN: Nominally, all are. There has been a
11 limited objection filed by the DIP agent with respect to the
12 Court's ability to review fees for reasonableness under the
13 standards of Section 330, which I believe we'll have a
14 separate presentation with respect to the Lazard retention
15 and some modifications that have been made in that respect to
16 the application that's on file.

17 With respect to the CRG Partners and Mr. Snyder
18 application, Mr. Snyder and CRG have agreed to amend that
19 application that they will file monthly statements in
20 accordance with the interim compensation procedure in
21 Sections 330 and 331 of the Code, subject to the Court's
22 review under a reasonableness standard.

23 THE COURT: All right.

24 MR. YOUNGMAN: With respect to the Lazard retention,
25 the Debtors did file that under Section 328 of the Bankruptcy

1 Code. We understood the Court's ruling in respect of issues
2 on that. Given the market in which that retention was made,
3 and given how we view Lazard's role going forward and with
4 respect to the various constituency interests that may be
5 represented, it is our desire to keep Lazard free from any
6 kind of influence when they are making their valuation
7 decisions and negotiating with the creditor bodies on plan
8 issues.

9 That said, we recognize the Court's concern, and there
10 has been some movement in that respect, and I would defer to
11 Lazard's counsel to give the Court an update on discussions
12 they've had with the Office of the United States Trustee and
13 with respect to the Lazard retention.

14 THE COURT: All right. Thank you, Mr. Youngman.

15 MR. ESSERMAN: May I approach, Your Honor?

16 THE COURT: Yes.

17 MR. ESSERMAN: Good morning, Your Honor. Sander
18 Esserman on behalf of Lazard. We've met with the U.S.
19 Trustee and we do have some modifications to the application
20 which we hope Your Honor will find acceptable. As regards
21 the United States Trustee and the Court, Lazard agrees that
22 the review can be a 330 review rather than a 328 review as to
23 those parties only.

24 Further, the U.S. Trustee had an issue with
25 indemnification. For example, of counsel for Lazard -- in

1 this case, me -- making what I'll call routine appearances
2 before the Court for routine fee applications and something
3 that's sort of what I think the U.S. Trustee considers
4 ordinary course, and wanted that carved out of the
5 indemnification section. So that would be strictly on
6 Lazard's tab only and not --

7 THE COURT: It would seem to me that Lazard, if it
8 were representing a private client, at least I would think,
9 would not be able to charge that client for legal advice it
10 got in connection with its retention by that client or legal
11 advice it got in connection with billing that client. And it
12 would seem to me that a similar rule would be appropriate
13 here.

14 MR. ESSERMAN: Well, what I was saying, Your Honor,
15 --

16 THE COURT: Yes.

17 MR. ESSERMAN: -- maybe inelegantly, --

18 THE COURT: No, I think you were saying the same
19 thing.

20 MR. ESSERMAN: But yes, we certainly -- Lazard has
21 certainly agreed to that and agreed that those charges are
22 absorbed by Lazard.

23 THE COURT: Because you know we had one law firm in
24 *Mirant* that tried to charge a bit over a half a million
25 dollars for a conflicts check. And so --

1 MR. ESSERMAN: That's impressive.

2 THE COURT: Those are the things that make things
3 like this happen in court.

4 MR. ESSERMAN: Yeah. It's extraordinary. I've
5 never heard that. Anyway, needless to say, that's not going
6 to happen here.

7 And with those two modifications on the 330 rights to be
8 given to the Court and the Trustee, --

9 THE COURT: Let me ask you a question. Does that
10 mean that if I wish to review Lazard's application under
11 Section 330, that no other party would be entitled to
12 participate in the hearing or --

13 MR. ESSERMAN: Except for the U.S. Trustee.

14 THE COURT: All right. I'm not -- why could I not
15 allow -- why would, just under general rules of court, if
16 your partner from Lazard is sitting on the witness stand, why
17 could not Mr. Spiotto or Mr. Youngman or Mr. Silverstein
18 question him?

19 MR. ESSERMAN: I think that has to be in the
20 discretion of the Court.

21 THE COURT: If you're saying --

22 MR. ESSERMAN: In other words, --

23 THE COURT: If you're saying that I can allow
24 parties to participate in the hearing, that's one thing.

25 MR. ESSERMAN: I believe the Court can conduct the

1 hearing in any way the Court deems that to be the best way of
2 presenting the issues to the Court. And if the Court deems
3 that appropriate, I certainly would not disagree with that.

4 THE COURT: All right. All right. Go ahead.

5 MR. ESSERMAN: So, with those two modifications, we
6 believe that any objection the U.S. Trustee has is resolved,
7 first. Secondly, Mr. Aronson is in the courtroom --

8 THE COURT: Oh, I do have one other thing.

9 MR. ESSERMAN: Yes?

10 THE COURT: It would seem to me that, if we go to a
11 Fee Committee, that the Committee ought to have, and the
12 Court's expert, which is one of the reasons why it would be
13 the Court's expert, ought to have the ability to review and
14 comment on the fees of Lazard, as with any professional.

15 MR. ESSERMAN: That's fine, Your Honor.

16 THE COURT: Okay.

17 MR. ESSERMAN: Finally, pursuant to the standing
18 order and guidelines for the United States Bankruptcy Court
19 for the Northern District of Texas -- in particular, Section
20 G, Page 3, Number -- on Page 3, Number 3, it's actually
21 1(g) (3) -- for a 328 application, the compensation and
22 expense reimbursement requested are billed at rates in
23 accordance with practices no less favorable than those
24 customarily employed by the applicant and generally accepted
25 by the applicant's clients. That's the guideline, and we

1 would proffer Mr. Aronson, who's a managing director of
2 Lazard, who could make that statement and further, as
3 evidence of such statement, has a hand-out. If I may
4 approach?

5 THE COURT: All right.

6 PROFFER OF TESTIMONY OF DANIEL ARONSON

7 MR. ESSERMAN: Your Honor, Mr. Aronson, if called to
8 testify, would state that this chart is something that was
9 prepared under his supervision and control, that it surveys
10 Chapter 11 cases and fees charged by not only Lazard but
11 other financial advisors. That the pre-2008 cases are
12 basically limited to \$2 billion to \$3 billion cases. The
13 post-2008 is a \$500 million to \$3 billion range.

14 Furthermore, Lazard's fees are at the bottom -- as
15 proposed to be charged are at the bottom of this chart and
16 are within the purview of fees customarily charged and those
17 employed by the applicant and accepted by the applicant's
18 clients in conformance with the Rule.

19 Lazard would also -- has five restructuring professionals
20 working on this case and access to five M&A bankers,
21 including one would be at the company probably two days a
22 week. In addition, Lazard will keep timesheets, although
23 they're investment banker-type timesheets rather than lawyer-
24 type detail timesheets which are necessary.

25 THE COURT: So it's going to say "Month of July, 300

1 hours work," right?

2 MR. ESSERMAN: Hopefully not -- not quite that
3 general.

4 THE COURT: That's an old John King timesheet.

5 MR. ESSERMAN: Yes. Hopefully, a little more detail
6 than that.

7 Anyway, with those -- with that proffer, Mr. Aronson is
8 available and in the courtroom today should anyone wish to
9 ask him any questions in connection with his retention, or
10 the Court.

11 THE COURT: Does anyone wish to examine Mr. Aronson?

12 (No response.)

13 MR. ESSERMAN: Thank you.

14 THE COURT: Okay.

15 MR. ESSERMAN: Nothing further.

16 THE COURT: Mr. Spiotto? Or were you just
17 twitching?

18 MR. SPIOTTO: I was twitching, Your Honor.

19 THE COURT: Okay. Fine. Thank you.

20 Well, just a minute, before we go on. Just a minute, Ms.
21 Lambert. Let me have Mr. Esserman back for just a second.

22 I just want to be sure that I understand, and I want it
23 very clear. My view is that I am not going to have a problem
24 paying Lazard for its work, but I want it very clear, and I'm
25 going to trust you, the United States Trustee, and the

1 Debtors' lawyer to ensure that the order doesn't trap me the
2 way I was trapped in *Mirant*.

3 MR. ESSERMAN: Absolutely correct, Your Honor.

4 THE COURT: And --

5 MR. ESSERMAN: We would never do that. And --

6 THE COURT: I know you wouldn't.

7 MR. ESSERMAN: I value my life.

8 (Laughter.)

9 THE COURT: Yes. You value your future fee
10 applications. Let's be honest about this. But no, all
11 right.

12 So as I understand it, we are in agreement, then. And I
13 understand what is being presented here, and this will be of
14 greater consideration at the end when I'm judging
15 compensation, rather than when I'm judging employment. Do we
16 agree on that?

17 MR. ESSERMAN: Yes, Your Honor.

18 THE COURT: Okay. And we're in agreement that --
19 and Lazard is free to convince me, if the issue arises at
20 all, that they did work that was worthy of the fees they're
21 seeking or that they obtained results that are worthy of the
22 fees that they are seeking?

23 MR. ESSERMAN: That is correct, Your Honor.

24 THE COURT: But that they do not say and will not
25 say, as Houlihan did in the *Mirant* case, that, "It doesn't

1 matter what we did. You have no choice. You've got to pay
2 us whatever we ask." Right?

3 MR. ESSERMAN: You are correct, Your Honor.

4 THE COURT: All right. Good. Then let me go ahead.
5 Let's start with the U.S. Trustee and work our way to the
6 right. Thank you, Mr. Esserman.

7 MR. ESSERMAN: Thank you.

8 MS. LAMBERT: Your Honor, the U.S. Trustee had one
9 clarification with respect to that, which is a universal
10 clarification on the indemnification. The language says
11 finally adjudicated as -- on the indemnification -- as
12 will... the exclusion for willful or intentional conduct
13 refers to finally non-appealable adjudicated. And the U.S.
14 Trustee has asked that it just be at a point of preclusive
15 effect.

16 In other words, if you get a judgment that the conduct
17 was willful but it's subject to appeal, it would be given
18 preclusive effect so that the indemnification is not subject
19 to triggering while a case is on appeal after a finding of
20 willful or malicious or intentional conduct.

21 THE COURT: All right.

22 MS. LAMBERT: And we have also asked, for all of the
23 employment applications that involve indemnification, that
24 the tailoring include the *Heartland*-type language which is
25 similar to what the Court just mentioned in terms of basic

1 bankruptcy retention and fee issues not being subject to
2 reimbursement.

3 THE COURT: All right. Mr. Youngman, I don't know
4 whether -- and this is not something that I'm going to
5 impose, but, again, in the past, I have once or twice entered
6 an order providing -- that essentially tracks the language of
7 plan exculpation provisions that prevents suit against any
8 professionals, Committee members, officers or directors
9 during a case without leave of the Court, which will be
10 granted only in cases where indemnification would be
11 inappropriate, in lieu of indemnification.

12 I don't know whether that would be something that the
13 parties would like to consider here, but if you are
14 interested in that, we can take it up in the status
15 conference. All right?

16 All right. Mr. Spiotto?

17 MR. SPIOTTO: Thank you, Your Honor. James Spiotto
18 for the DIP agent.

19 Your Honor, we did file an objection, a limited objection
20 to this, precisely based upon your ruling in *Mirant* and some
21 other cases. And the issue which -- and I was unclear as to
22 whether or not this has really been, you know, addressed --
23 is that this -- the review, you know, because they brought it
24 under 328 and they're asking for an order under it, you know,
25 that the order should say that the reasonableness review

1 under 330 is applicable.

2 There are provisions in the motion that talk about a
3 success fee or a restructuring fee of \$6.5 million.

4 Obviously, as we mention in our objection, fees for success
5 or restructuring can be judged and should be judged at the
6 end of the case, and parties in interest should have a right
7 to comment on that as to whether or not the money has been
8 earned. No one wants to take away the right to be paid for
9 what has been earned, but, again, we cannot prejudge what is
10 reasonable and appropriate at this time.

11 THE COURT: All right. I don't disagree with that,
12 and my understanding from my colloquy with Mr. Esserman is
13 that, while the issue, in order for the issue of
14 reasonableness to be raised must be raised by the Court, the
15 United States Trustee, or the Fee Committee, that
16 nevertheless, once that is done during a hearing, the Court
17 can allow participation to determine reasonableness as is
18 appropriate.

19 It's my further understanding that notwithstanding the
20 references to Section 328 -- and we all understand, and I
21 know, Mr. Esserman, you've explained to Lazard, we have
22 peculiar law in the Fifth Circuit that gives bankruptcy
23 judges serious heartburn once the numbers 328 are invoked.
24 In other circuits, I don't know that this is so, but in this
25 circuit there's unfortunately some case law that restricts

1 the bankruptcy judge dramatically in assessing fees once a
2 328 order is entered.

3 But it is my understanding that to the extent that this
4 application would be granted under Section 328, it
5 nevertheless would be subject to Section 330 as has been
6 discussed on this record.

7 Am I correct, Mr. Esserman?

8 MR. ESSERMAN: Yes, Your Honor.

9 THE COURT: Mr. Youngman?

10 MR. YOUNGMAN: Yes, Your Honor.

11 THE COURT: Okay. And I would suggest perhaps that
12 we make reference and incorporate this record into the order
13 granting the application.

14 MR. SPIOTTO: Right. Your Honor, one question I
15 have about that is, if there is an issue that a party in
16 interest, such as a DIP agent who may very well represent the
17 DIP lenders who will be winding up paying or advancing money
18 to make the payment, there should be, I think, a way in which
19 they could present to the Court an issue or a concern which
20 they have which may not at the time otherwise be evident. I
21 would think that as a party in interest that would be
22 appropriate. I think that's what 330 is about.

23 THE COURT: Well, --

24 MR. SPIOTTO: It seems to me the procedure may not
25 allow for input unless it's specifically requested.

1 THE COURT: Okay. Well, here, let me give you two
2 comments on that that may give you some comfort. Three
3 comments, Mr. Spiotto.

4 The first is, if you submit something, I don't believe
5 that I can prevent you from telling me something if you want
6 to tell me. Whether I listen is another question, and
7 whether I consider it is another question.

8 Secondly, if a Fee Committee is established, the agent
9 will have at least one and conceivably two seats, because, as
10 I understand, there are two separate agents.

11 MR. SPIOTTO: Yes, Your Honor.

12 THE COURT: And therefore will have representation
13 on the Committee. And if the Committee is empowered to
14 review fees, then under those circumstances the agent would
15 have the ability to raise those issues through the Committee.
16 And I just -- I understand what you're saying. I would
17 prefer to have it be ordinary and normal, but I'm reluctant
18 at this point to kick over the table and say, "Go back and
19 start over again." It sounds to me like we're going to get
20 where I think all the lawyers believe we should go on this.

21 MR. SPIOTTO: Okay.

22 THE COURT: We just may not get there in accordance
23 with the ordinary and normal pathway.

24 MR. SPIOTTO: Right. One other issue, Your Honor.

25 THE COURT: All right.

1 MR. SPIOTTO: And I think this is the last.

2 THE COURT: Okay.

3 MR. SPIOTTO: There is reference to sales of assets.
4 And again, I think that's similar to a restructuring fee. It
5 may be, and we believe this debtor does have the capacity to
6 actually consider marketing and selling assets if it decides
7 that's the right thing to do, by itself. It may mean that
8 they have to engage others. But again, we don't believe any
9 asset sale, no matter its size, should be predetermined to be
10 --

11 THE COURT: That's one of the problems with the
12 success fee, is the way it was -- again, and I hate to keep
13 referring to *Mirant*, but the way the success fees were
14 referred to in *Mirant* was if any debtor sells its assets or
15 if any debtor confirms a plan, then that will trigger the
16 success fee. And obviously, if the Debtor here sells a
17 thousand chickens, that should not --

18 MR. SPIOTTO: Right.

19 THE COURT: -- trigger the success fee.

20 I think you can safely assume, Mr. Spiotto, that either
21 the Committee, the U.S. Trustee, or the Court would come in
22 on that and you would have your opportunity to participate in
23 a hearing where they would have to justify any success fee on
24 that basis.

25 And I don't see this being a problem. My expectation,

1 based on prior experience with Lazard, is that I'm not going
2 to have the kind of problems with them that I've had with let
3 us say just other financial advisors in the past.

4 MR. SPIOTTO: Right. All right, Your Honor. And
5 obviously, you know, that is important because various
6 parties may have a security interest or something in the
7 proceeds --

8 THE COURT: Right.

9 MR. SPIOTTO: -- and it becomes then a matter of
10 interest.

11 THE COURT: And the other problem is they may hire
12 someone who does the sale, and then who should get credit for
13 the sale: the person who does the sale, the auctioneer, or
14 the investment banker, or both?

15 MR. SPIOTTO: Right, Your Honor.

16 THE COURT: And that's one of the problems here, is
17 we wind up with seven parties, each with an investment
18 advisor, as opposed to in the real world where you have one
19 or two investment advisors who are putting together the deal.

20 MR. SPIOTTO: Right.

21 THE COURT: Okay.

22 MR. SPIOTTO: We appreciate that. We appreciate
23 your time listening to the issues.

24 THE COURT: All right. Then I'm going to request
25 that we include, if it's all right with you, Mr. Esserman and

1 Mr. Youngman, a reference incorporating this record into any
2 order approving Lazard's retention so that we're all clear as
3 to what we meant. Is that okay, Mr. Esserman?

4 MR. ESSERMAN: May I approach?

5 THE COURT: Sure. It scares me when you say you
6 want to approach. He's bigger than I am.

7 MR. ESSERMAN: Well, just say yes.

8 THE COURT: Oh, okay. Good.

9 MR. ESSERMAN: And furthermore, I did want to note
10 for Mr. Spiotto that sales fees are credited against the
11 success fee under the Lazard engagement.

12 The only thing that's been said that gives me pause, and
13 I don't know that it's going to be unacceptable, is the issue
14 that Ms. Lambert raised on the finding for the
15 indemnification to occur ultimately versus, say, this Court
16 has the finding, at which time the indemnification would cut
17 off only probably to be reinstated if, say, it's reversed
18 later on.

19 The way the wording of the engagement is now, it's -- the
20 indemnification's cut off at final order. Ms. Lambert wanted
21 a modification of that. I'm not saying no to that
22 modification.

23 THE COURT: Uh-huh.

24 MR. ESSERMAN: I just don't have authority, and Mr.
25 Aronson in the court --

1 THE COURT: It seems -- it seems to me --

2 MR. ESSERMAN: -- in the courtroom today doesn't
3 have --

4 THE COURT: I would have two comments on that. One
5 is the exculpatory order may give some help here. And the
6 second thought is that it seems to me that if I say that we
7 have a willful and malicious act on Lazard's part, which I
8 think is unlikely, but if we did have that and ultimately
9 Fifth Circuit says no, it wasn't that at all, that Fifth
10 Circuit's decision would relate back and would cover the
11 interim period. And I presume the U.S. Trustee would not
12 have a problem with that. And that may solve what -- if I
13 understand your concern --

14 MR. ESSERMAN: Yes.

15 THE COURT: -- and Ms. Lambert's concern, that may
16 give both of you --

17 MR. ESSERMAN: That would -- that was my
18 understanding about how it would work also, Your Honor.

19 The only thing is, with the indemnification issues, Mr.
20 Aronson, who's in the courtroom today, is a managing director
21 of Lazard, but on the indemnification issues he can't agree
22 to the modification. He's got to take it back to Lazard.

23 THE COURT: All right.

24 MR. ESSERMAN: We're not necessarily anticipating --

25 THE COURT: Okay.

1 MR. ESSERMAN: -- a problem with that modification
2 or that change.

3 THE COURT: All right.

4 MR. ESSERMAN: But we'll get --

5 THE COURT: Well, we'll just -- we'll defer the
6 order.

7 MR. ESSERMAN: We'll save it for the order.

8 THE COURT: All right. That sounds good.

9 MR. ESSERMAN: Okay. Thank you.

10 THE COURT: Mr. Silverstein?

11 MR. SILVERSTEIN: Your Honor, I have two comments,
12 very briefly.

13 We -- I'm sorry. Thank you. Paul Silverstein, Andrews
14 Kurth, for the Committee.

15 We, Your Honor, did not file an objection because we're
16 well aware that Your Honor is very sensitive to the issues.
17 We understand that the order's being revised. We've not seen
18 the order. The Court is reserving discretion, as I
19 understand it, to determine who can participate in any
20 hearing that may occur regarding reasonableness. We're fine
21 with that. I think the order should be clear on that.

22 What we don't want is that, until Your Honor, you know,
23 invites people in, we'd prefer no unnecessary projects from
24 the various parties in interest on the subject. So I'd --

25 THE COURT: All right.

1 MR. SILVERSTEIN: -- somehow appreciate it if Your
2 Honor could control that process, if and when it happens, and
3 hopefully it won't happen. Based on what Mr. Esserman says,
4 it won't happen, but you know, you'll reach that point.

5 THE COURT: All right. I'm not sure that -- try
6 that again on me. I think I --

7 MR. SILVERSTEIN: Well, what I'm saying is that we
8 are fine with the process where Your Honor has --

9 THE COURT: Yes.

10 MR. SILVERSTEIN: -- the discretion to determine who
11 --

12 THE COURT: Right.

13 MR. SILVERSTEIN: -- participates in any hearing on
14 reasonableness of fees.

15 THE COURT: Right.

16 MR. SILVERSTEIN: Essentially, a quasi-330 approach.

17 THE COURT: I think you can assume that I would
18 exercise my discretion broadly.

19 MR. SILVERSTEIN: I absolutely do assume that.
20 That's why we're fine with that.

21 THE COURT: Yes.

22 MR. SILVERSTEIN: We would also urge the parties not
23 to sort of gun-jump that by making projects out of
24 reasonableness before Your Honor --

25 THE COURT: No, I --

1 MR. SILVERSTEIN: -- says who --

2 THE COURT: I would expect not, and that's one of
3 the reasons why the Committee, I think, will serve a useful
4 function in providing sort of a filter for --

5 MR. SILVERSTEIN: Yes. I think that's right.

6 THE COURT: -- those issues.

7 All right. Anybody have anything else?

8 (No response.)

9 THE COURT: All right. Well, contingent upon the
10 parties being able to agree to the form of order approving
11 Lazard's retention, I will approve Lazard's retention.

12 And what's next, Mr. -- I'll tell you what, Mr. Youngman.
13 Why don't we take a short recess for about ten minutes, and
14 then we'll resume? And I presume the next matter is the
15 financing order?

16 MR. YOUNGMAN: It is, Your Honor. If I could have
17 two minutes before we go to that?

18 THE COURT: Okay. Sure.

19 MR. YOUNGMAN: First, I would ask you to go ahead
20 and approve the retention of the other professionals.

21 THE COURT: Yes. They will all be approved.

22 MR. YOUNGMAN: And we will have to submit a revised
23 order for CRG Partners to reflect --

24 THE COURT: All right.

25 MR. YOUNGMAN: -- the filing of monthly statements.