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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
RCN CORPORATION, et al.,	:	Case No. 04-13638 (RDD)
Debtors.	:	(Jointly Administered)

DEBTORS' RESPONSE TO OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS' APPLICATION TO RETAIN SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AS COUNSEL

RCN Corporation ("RCN") and certain of its direct and indirect subsidiaries, debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), submit this response (the "Response") to the Objection (the "Objection") of the United States Trustee (the "UST") to the Debtors' application (the "Application") under 11 U.S.C. §§ 327(a) and 329 and Fed. R. Bankr. P. 2014 and 2016 (a) authorizing the retention of Skadden, Arps, Slate, Meagher & Flom LLP and its affiliated law practice entities (collectively, "Skadden" or the "Firm") under a

general retainer as attorneys for the Debtors. In further support of the Application, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

Disqualification of counsel – which in essence will occur if the Application is not approved – has a drastic impact on the right of a debtor to representation by counsel of its choice. Because a court's intervention to prevent a debtor from being represented by its counsel of choice is so draconian, the Second Circuit Court of Appeals requires both unusual caution and case specific analysis by federal judges across this Circuit. For example, it is instructive in reviewing the objection to the retention of Skadden in these cases to recall the oft-quoted admonition of former Chief Judge Kaufman of the Second Circuit Court of Appeals:

> When dealing with ethical principles [of attorney disqualification] . . . we cannot paint with broad strokes. The lines are fine and must be so marked. Guideposts can be established when virgin ground is being explored, and the conclusion in a particular case can be reached only after a painstaking analysis of the facts and precise application of precedent.

Bd. of Educ. v. Nyquist, 590 F.2d 1241, 1246 (2d Cir. 1979) (emphasis added) (quoting Fund of Funds, Ltd. v. Arthur Andersen & Co., 567 F.2d 225, 227 (2d Cir. 1977)).

The Second Circuit's precepts applicable to disqualification of counsel in a non-bankruptcy context are of equal force in determining whether a debtor-in-possession's chosen counsel should be retained under section 327(a) of Chapter 11 of

title 11 of the United States Code (the "Bankruptcy Code"). Under relevant provisions of section 327 of the Bankruptcy Code, the retention of a debtor's chosen counsel should be approved unless the proposed counsel has an actual conflict of interest or a potential conflict of interest that is sufficiently serious to outweigh the harm resulting from the denial of the debtor's choice of counsel.

The UST does not and cannot allege that Skadden has an actual conflict of interest with respect to its representation of the Debtors; rather, the UST alleges that there exists a potential conflict of interest. (Objection ¶ 15.)[1] As discussed below, no actual or potential conflict, or even appearance of conflict, exists with respect to Skadden's representation of the Debtors. Moreover, contrary to the UST's assertions, section 327(a) mandates disqualification only when there is an

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[1] The Debtors are at a loss to respond to the substance or motivation of a number of the arguments included by the UST in its Objection. For example, the UST implies that Skadden is somehow not disinterestedness because it borrowed construction financing from a predecessor of J.P. Morgan Chase Bank amounting to less than 2% of its annual revenues. (Objection ¶ 12.) The UST also asks the Court to aggregate revenues from disparate affiliated entities (which is contrary to most conventional ethics analyses) because the UST needs such aggregation to get Skadden over the UST's unilateral 1% threshold. The UST imagines that "if the Court were to ignore a firm's representation of an affiliated group, it would encourage the creation of meaningless shell entities by proposed counsel in order to evade the retention standards set forth in the Bankruptcy Court." (Objection ¶ 11.) In this "horrible imagining," the UST suggests that Skadden and other major law firms in this District would somehow affirmatively arrange for the corporate restructuring of Fortune 100 companies and large financial institutions – all to evade the UST's 1% rule.

actual conflict of interest, allows for it when there is a potential conflict, and precludes it based solely on an appearance of conflict. See, e.g., In re Marvel Entm't Group, Inc., 140 F.3d 463, 476 (3d Cir. 1998) (reversing the disqualification of counsel).[2]

This court should not countenance the fatally flawed attempt of the UST to unilaterally construct and impose a blanket per se disqualification rule that would prohibit debtors in this jurisdiction from retaining counsel if that law firm represented another client interested in the debtors on matters totally unrelated to the debtors where the other client constituted 1% or more of the law firm's revenues no matter whether an actual conflict of interest exists or not.[3] This attempt is not only

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[2] In at least two cases extensively cited by the UST in its Objection, the court expressly declined to disqualify a law firm based on mere speculation about the potential for conflict. For example, in In re Leslie Fay Cos., debtor's counsel failed to disclose a conflict which could have impaired an investigation into fraud, which precipitated the debtor's bankruptcy, by the debtor's upper management. 175 B.R. 525, 526, 529-30 (Bankr. S.D.N.Y. 1994). Even under these egregious facts, the court refused to disqualify debtor's counsel reasoning that "interests are not considered 'adverse' merely because it is possible to conceive a set of circumstances under which they [the interests] might clash." Id. at 532. Likewise, in TWI Int'l, Inc. v. Vanguard Oil & Serv. Co., the Southern District of New York concluded that "merely hypothesizing that conflicts may arise is not a sufficient basis to warrant the disqualification of an attorney" and that "disqualification should be mandated when an actual, as opposed to hypothetical or theoretical, conflict is present." 162 B.R. 672, 675 (S.D.N.Y. 1994) (citations omitted).

[3] While bankruptcy practitioners in this District have customarily identified client relationships where the client (not the client and its affiliates) repre-

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not required by Section 327(a) of the Bankruptcy Code but it also cannot be reconciled with controlling Second Circuit precedent.

The United States Court of Appeals for the Second Circuit has explicitly rejected a "'per se ban" with respect to the retention of a law firm that has represented a creditor. In re Arochem, 176 F.3d 610, 621 (2d Cir. 1999). The Court of Appeals explained that, "[t]he statutory scheme does not dictate such a rule, however. Rather, given the 'fact-specific nature of parties' interests and their alignments . . . no general rule of simple application . . . can be gleaned." Id. (citations omitted). The Second Circuit ultimately concluded that each case "must finally turn

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[3] (...continued)
sents 1% or more of the law firm's annual revenues – and the UST and the bankruptcy judges in this District have routinely scrutinized such disclosures – the UST's new rule would require separate conflicts counsel to deal with all such clients in a chapter 11 case even where no conflict exists. The Debtors acknowledge that the UST has been on a campaign recently to impose its per se disqualification rule on a blanket basis across this District. However, to the Debtors' knowledge, no major New York law firm has agreed to the imposition of the UST rule in all of its cases (nor has any bankruptcy court imposed such a blanket rule in all cases coming before the court). The fact that some law firms have agreed in some cases to the UST's approach based on the particular facts and circumstances of a debtor (e.g., Enron, Parmalat USA) cannot be used by the UST as justification for a preemptive ban across all chapter 11 cases in the District. There is a world of difference between cases such as Enron and Parmalat where a debtors' law firm's other clients are alleged to have wronged the debtor and such allegations are central to the reorganization cases and cases such as Worldcom and the instant case where no such allegations are present. Indeed, the case-by-case approach that law firms have adopted in response to the UST is precisely what the Second Circuit requires – a fact specific analysis of each individual case.

on its own circumstances, based on a common-sense divination of adversity or commonality." Id. at 627 (citations omitted).

Rather, when evaluating a proposed retention, a bankruptcy court "should exercise its discretionary powers over the approval of professionals in a manner which takes into account the particular facts and circumstances surrounding each case and the proposed retention before making a decision." In re Arochem Corp., 176 F.3d at 621 (quoting 3 Collier on Bankruptcy ¶ 327.04 [1][a] (15th ed. rev. 1998));[4] see also In re Caldor, Inc. - NY, 193 B.R. 165, 171 (Bankr. S.D.N.Y. 1996) (holding that whether an adverse interest exists is best determined on a case by case basis).

Here, there is undisputably no actual conflict of interest, nor does the UST suggest (or could it suggest) otherwise. Instead, the UST challenges the proposed retention of Skadden primarily on the basis that two parties-in-interest – J.P. Morgan Chase Bank ("JP Morgan Chase"), agent for the prepetition lenders and Deutsche Bank AG Cayman Islands Branch ("Deutsche Bank"), the agent for the proposed exit facility – each, when aggregated with their affiliates, paid fees to Skadden in 2003 in matters unrelated to the Debtors that were in excess of 1% of

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[4] Notably, the UST's Objection failed to cite or mention the Second Circuit's recent decision in Arochem.

Skadden's total revenue for that period.[5] Because they are "major" clients of Skadden, the UST argues that a disabling potential conflict exists due to Skadden's supposed inability to act with impartiality in negotiations with these entities.[6]

Thus, the UST unilaterally seeks to establish a per se disqualification rule that automatically precludes a law firm from representing a debtor in possession so long as any party-in-interest (creditor or not) is a "major"client, i.e., unilaterally defined by the UST as a client that pays fees to a law firm in excess of 1% of the firm's total revenue for a calender year. This per se disqualification rule is precisely the type of "broad stroke rule" that the Second Circuit, and every other circuit for that matter, do not permit. Rather, the Court must view the Application in light of specific facts and circumstances that, when viewed separately or in their totality, warrant approval.

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[5] The UST raises no objection to Skadden's representation of other creditors and parties-in-interest that paid fees to Skadden less than this percentage amount.

[6] For sake of accuracy, we again note that J.P. Morgan Chase Bank did not meet the UST's unilaterally imposed 1% standard. It is only when the revenue from J.P. Morgan Chase Bank and its affiliates is aggregated that the UST's arbitrary 1% threshold is reached. The same holds true for Deutsche Bank AG Cayman Islands Branch, who is not even a client, and therefore provided no revenue itself to Skadden. Moreover, out of an abundance of caution, Skadden obtained a waiver from JP Morgan Chase and Deutsche Bank, respectively, permitting Skadden, to represent the Debtors in these Chapter 11 cases in matters involving JP Morgan Chase and Deutsche Bank.

Indeed, once the relevant facts are carefully analyzed, it becomes clear that there is no actual or potential conflict, or even appearance of a conflict or impropriety, with respect to Skadden's representation of either JP Morgan Chase or Deutsche Bank on unrelated matters. First and foremost, Skadden is not representing, nor has it ever represented, either JP Morgan Chase or Deutsche Bank in any matter related to the Debtors, thus belying the UST's assertion that Skadden "is on both sides of the table." To dispel any doubt regarding Skadden's ability to freely negotiate with JP Morgan Chase and Deutsche Bank, Skadden has obtained waivers from both JP Morgan Chase and Deutsche Bank allowing Skadden to represent the Debtors in connection with these matters. The UST's speculation that Skadden will not fulfill its ethical duties to the Debtors by zealously representing the Debtors in doing so is without any factual basis.[7]

More fundamentally, neither JP Morgan Chase nor Deutsche Bank, in their own right, has an interest at odds with the Debtors, thus minimizing the possibility of even a potential conflict of interest. JP Morgan Chase, agent to the lenders to one of the Debtors' pre-petition credit facilities, is unquestionably

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[7] As mentioned above, in the unlikely event that a conflict actually arises (such as one of the "horrible imaginings" conceived by the UST), Skadden will continue to comply with its ongoing duty under section 328(c) of the Bankruptcy Code to notify this Court of any such conflict, and, if necessary, arrange for the retention of special counsel to handle such matters. To that end, the Debtors have contacted other counsel, who has agreed to act as special counsel to the Debtors on any such matter.

oversecured and has agreed to the general terms of the Debtors' pre-arranged plan of reorganization, which appropriately contemplates the full satisfaction of JP Morgan Chase's claims upon consummation. The UST can point to no facts that would negate this conclusion. Even if a scintilla of doubt surfaces regarding the validity or status of JP Morgan Chase's secured claims, the Creditors' Committee, an independent fiduciary with separate counsel, is free to investigate and challenge such claims.[8]

Moreover, as discussed below, JP Morgan Chase is itself the lender only with respect to 4.4% of the credit facility; approximately forty (40) other lending institutions hold the remaining 95.6% of such debt. It would be difficult, if not impossible, to locate a large law firm in which one of these 40 lenders did not pay fees to such firm in excess of 1% of the firm's total revenues. Taken to its logical conclusion, the UST's per se disqualification rule would automatically disqualify virtually every large law firm from ever representing these Debtors, or for that matter, any sizable debtor in possession in any case in the Southern District of New York. Obviously, this would be an absurd result – but this is where the UST's position leads.

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[8] See Interim Order (I) Authorizing The Use of Lenders' Cash Collateral, (II) Granting Adequate Protection Pursuant to 11 U.S.C. ss 361 and 363 and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) (entered on June 3, 2004) (Docket No. 17).

Similarly, Deutsche Bank, as a potential exit lender, is not even a present creditor of the Debtors. Deutsche Bank will only become a creditor (other than with respect to any approved commitment fees) after the Debtors emerge from Chapter 11 following the approval of creditors, and confirmation by the Court of the terms of the exit financing. In light of these economic realities, the UST has not and cannot assert that a disqualifying conflict exists here.

Even if the Court determines that there is a potential for a conflict of interest based upon the UST's "horrible imaginings," the harm to the Debtors, their estates, creditors, and public policy in general will far outweigh any benefit arguably derived from the UST's arbitrary disqualification rule. Skadden attorneys have been representing the Debtors for several years, have been working on the Debtors' financial restructuring for over a year, and have become intimately familiar with the Debtors' business and financial affairs. Because of Skadden's familiarity with the Debtors and the economic reality of the Debtors' Chapter 11 cases – pre-negotiated cases set on a fast track to allow the Debtors to exit bankruptcy as soon as practicable – it would be difficult, if not impossible, for another law firm to replace Skadden without disrupting the expedited track. Disqualification of Skadden at this point in these cases could be potentially devastating to the Debtors, their estates and every party holding an economic interest in these estates, severely prejudicing the Debtors and resulting in a substantial delay in the progress of these cases and enormous

administrative costs that will benefit no one. Particularly telling, the UST's concerns are not shared by the real economic stakeholders in the cases; the Creditors' Committee has advised the Debtors that it fully supports Skadden's retention application and opposes the UST's objection.

Moreover, to adopt a rule disqualifying Skadden where, as here, no facts suggest an actual or potential conflict of interest with respect to the Firm's representation of the Debtors – solely because a party in interest generates one percent of the firm's revenues – would not only overturn well-established jurisprudence in the Second Circuit and elsewhere, but would effectively preclude most large law firms from debtor representations in the Southern District of New York. This rule, if adopted, could have far reaching public policy implications that could dramatically affect the efficiency and cost of large chapter 11 reorganizations as the number of large law firms eligible to represent particular debtors is dramatically reduced.

Finally, the UST asserts that Skadden should not be retained because it borrowed funds from JP Morgan Chase to finance capital improvements at the Firm's offices. (Objection ¶ 12.) However, the UST does not argue that the loan creates an actual conflict of interest precluding retention, or even attempt to hypothesize a set of circumstances that would elevate this red herring into a disqualifying conflict. Nor is there any reported caselaw that suggests a loan made in the ordinary

course of business to a law firm by a lender that also happens to be a client is inappropriate or taints the independent judgment of the law firm in advising a client in matters concerning the lender. Accordingly, the existence of the loan from a predecessor of JP Morgan Chase does not preclude retention.

For these reasons and as more fully set forth below, the Application should be approved.

FACTUAL BACKGROUND

Skadden has represented the Debtors on various matters since September 1997, including advice in connection with general corporate matters, investments, tax, litigation advice, securities, debt offerings, real estate and mergers and acquisitions. Prior to September 1997, Skadden represented Commonwealth Telephone Enterprises, Inc., the former parent of RCN, in connection with its spinoff of RCN.

In June 1999, the Debtors entered into a $1 billion senior secured credit facility (the "Senior Credit Facility") with JP Morgan Chase, as administrative agent and collateral agent and approximately forty other lender parties (collectively the "Senior Lenders"). As of April 30, 2004, approximately $432.5 million was outstanding under the Senior Credit Facility.[9] Of the approximately $432.5 million

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[9] In June 2003, RCN also entered into a $41.5 million Commercial Term Loan and Credit Agreement (the "Junior Credit Facility") with Evergreen Invest-
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outstanding under the Senior Credit Facility, JP Morgan Chase is the lender for only approximately $19.8 million, or 4.4% of the debt; approximately forty (40) other banks financed the remaining $412.7 million, or 95.6% of the debt.

Beginning in October 2003, Skadden's engagement was formally expanded to include assisting the Debtors in their current restructuring efforts by, among other things, advising the Debtors regarding restructuring matters in general and preparing for the potential commencement and prosecution of chapter 11 cases for the Debtors. Skadden is familiar with the Debtors' capital structure, financing documents and other material agreements. In connection with its representation of the Debtors, Skadden has become familiar with the Debtors' and its subsidiaries' business affairs and many of the potential legal issues that may arise in the context of the Debtors' chapter 11 cases. Skadden has assisted the Debtors in the preparation of

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[9] (...continued)
ment Management Company, LLC and certain of its affiliates (collectively, "Evergreen"). As of April 30, 2004, approximately $27.5 million was outstanding under the Junior Credit Facility. The Junior Credit Facility is secured by a junior lien on substantially all of the assets of RCN (excluding cash), including equity of its directly owned subsidiaries (except for RLH Property Corp.)

these chapter 11 cases, various first-day motions and other documents and pleadings.

As part of their restructuring efforts, in October 2003, the Debtors began preliminary discussions with an ad hoc committee of certain holders of the Debtors' senior notes (the "Noteholders' Committee")[10] and JP Morgan Chase concerning a comprehensive restructuring proposal in which the Debtors would undergo a financial restructuring through reorganization under chapter 11. Those negotiations included discussions with various entities on a possible new credit facility to replace the existing Senior Credit Facility.

Such efforts resulted in a commitment letter (the "Commitment Letter") with Deutsche Bank and Deutsche Bank Securities, Inc. pursuant to which Deutsche Bank committed to provide the Debtors with new financing (the "New Senior Exit Financing") upon the consummation of a plan of reorganization (the "Pre-Arranged Plan"). In connection therewith, the Debtors, the Senior Lenders and the Noteholders' Committee agreed to support the general terms of the Pre-Arranged Plan. The agreed upon Pre-Arranged Plan terms include, among other things, that the existing holders of claims under the Senior Credit Facility will have such claims repaid in full in cash, unless any existing Senior Lender elects to roll its outstanding

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[10] Between 1997 and 2000, RCN issued five different series of senior notes (collectively, the "Senior Notes"). RCN's obligations under the Senior Notes were approximately $1.1 billion as of December 31, 2003.

claim into the New Senior Exit Financing, on the effective date of such Pre-Arranged Plan or sooner.

After negotiating the material terms of the Pre-Arranged Plan, on May 27, 2004 (the "Petition Date"), the Debtors, with the assistance of Skadden, filed voluntary petitions in this Court for reorganization relief under chapter 11 of the Bankruptcy Code. On the Petition Date, Skadden filed the Application and this Court entered an interim order approving the Application on June 3, 2004. In support of the Application, Skadden filed the Affidavit of Jay M. Goffman in Support of Debtors' Application for Order Under 11 U.S.C. §§ 327(a) and 329 and Fed. Bankr. P. 2014 and 2016 Authorizing Retention of Skadden, Arps, Slate, Meagher & Flom LLP as Attorneys for the Debtors. Thereafter, as part of the Firm's routine practice and its ongoing duty under section 328(c) of the Bankruptcy Code to provide supplemental disclosure if additional relevant information comes to its attention, as well as to address (and Skadden believed to consensually resolve) the specific issues raised by the UST with respect to the Firm's representation of the Debtors, Skadden filed the Revised Affidavit of Jay M. Goffman in Support of Debtors' Application for Order Under 11 U.S.C. §§ 327(a) and 329 and Fed. Bankr. P. 2014 and 2016 Authorizing Retention of Skadden, Arps, Slate, Meagher & Flom LLP as Attorneys for the Debtors (the "Goffman Affidavit") on June 4, 2004. The

Goffman Affidavit provides, among other things, additional detail regarding its representation of JP Morgan Chase and Deutsche Bank, respectively.

UNDER SECTIONS 327(a) AND 327(c) OF THE BANKRUPTCY CODE, SKADDEN'S REPRESENTATION OF CREDITORS ON UNRELATED MATTERS DOES NOT PRECLUDE ITS RETENTION

Section 327(a) of the Bankruptcy Code permits a debtor-in-possession to employ attorneys (1) that are "disinterested" persons and (2) that do not hold or represent an interest adverse to the estate. 11 U.S.C. § 327(a). The Bankruptcy Code does not define "adverse interest," but "interests are not considered 'adverse' merely because it is possible to conceive a set of circumstances under which they might clash." In re Leslie Fay Cos., 175 B.R. 525, 532 (Bankr. S.D.N.Y 1994). Section 327(c) of the Bankruptcy Code supports that conclusion: "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c) (emphasis added); see Banque v. Indosuez v. Coan (In re Arochem Corp.), 176 F.3d 610, 621 (2d Cir. 1999) (describing subsection 327(c) as an "exception" to the broad prohibition provided in section 327(a) of the Bankruptcy Code).[11]

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[11] Disinterestedness is not an issue in this case. Section 101(14)(E) of the Bankruptcy Code defines "disinterested person" as one that "does not have an (continued...)

A. No Per Se Rule Governs Section 327(a) Analysis or Warrants Disqualifying Skadden's Representation of the Debtors.

In its Objection, the UST attempts to convince this Court to adopt a per se rule disqualifying a debtor's retention of a professional firm where a client of such firm is a party in interest and generates a certain percentage of the firm's revenue; no such per se rule or specific percentage has ever been adopted by a court. In fact, adoption of such a per se rule is contrary to the law in this Circuit and elsewhere. Nor, as more fully set forth below, are the Debtors aware of any large

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[11] (...continued)
interest materially adverse to the interest of the estate . . . ." 11 U.S.C. § 101(14)(E) (emphasis added). In In re Huntco, the bankruptcy court explained that section 101(14)(E) only applies when the law firm itself holds a materially adverse interest, and not where the issue is whether the firm represents a particular interest. 288 B.R. 229, 233 (Bankr. E.D. Mo. 2002). Relying on the Second Circuit's decision in Arochem and the plain language of sections 327(a) and 101(14)(E) of the Bankruptcy Code, the court reasoned that Congress clearly knew the difference between holding and representing an interest in section 327(a) of the Bankruptcy Code and chose not to include representing an interest in the definition of a non-disinterested person under § 101(14)(E). 288 B.R. at 233. In any event, in their practical application "the twin requirements of disinterestedness and lack of adversity [in sections 327(a) and 101(14)(E)] telescope into what amounts to a single hallmark." In re Water's Edge Ltd. P'ship, 251 B.R. 1, 6 (Bankr. D. Mass. 2000). As the court stated in In re Angelika Films 57th, Inc., "the 'disinterestedness' prong of the test, insofar as it precludes counsel with an interest 'materially adverse,' overlaps with the requirement that counsel not hold or represent an interest adverse to the estate." 227 B.R. 29, 38 (S.D.N.Y. 1998).

chapter 11 case filed in this District adopting such a rule, either consensually or nonconsensually, where, as here, no allegations of fraud are present.

Rather, when evaluating a proposed retention, a bankruptcy court "should exercise its discretionary powers over the approval of professionals in a manner which takes into account the particular facts and circumstances surrounding each case and the proposed retention before making a decision." In re Arochem Corp., 176 F.3d at 621 (quoting 3 Collier on Bankruptcy ¶ 327.04 [1][a] (15th ed. rev. 1998));[12] see also In re Caldor, Inc. - NY, 193 B.R. 165, 171 (Bankr. S.D.N.Y. 1996) (holding that whether an adverse interest exists is best determined on a case by case basis).

The United States Court of Appeals for the Second Circuit has explicitly rejected a '"per se ban" with respect to the retention of a law firm that has represented a creditor. In re Arochem Corp., 176 F.3d at 626. The Court of Appeals explained that, "[t]he statutory scheme does not dictate such a rule, however. Rather, given the 'fact-specific nature of parties' interests and their alignments . . . no general rule of simple application . . . can be gleaned." Id. (citations omitted). The Second Circuit ultimately concluded that each case "must finally turn on its own circum-

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[12] Notably, the UST's Objection failed to cite or mention the Second Circuit's recent decision in Arochem.

stances, based on a common-sense divination of adversity or commonality." Id. at 627 (citations omitted).

Even in the cases cited by the UST in its Objection, the courts refused to adopt any sort of per se rule and insisted on a facts and circumstances inquiry for purposes of section 327(a) analysis. See, e.g., TWI Int'l, Inc. v. Vanguard Oil & Serv. Co., 162 B.R. 672, 675 (S.D.N.Y. 1994) (finding that determination of disinterestedness is a "fact specific inquiry"); see also In re Leslie Fay Cos., 175 B.R. at 532-33 (there is not a "mandatory requirement that reorganization courts woodenly must deny compensation in every case of conflict of interest, regardless of the facts") (quoting Iannotti v. Manufacturers Hanover Trust Co. (In re N.Y., New Haven & Hartford R.R.), 567 F.2d 166, 175 (2d Cir. 1977)); In re Garza, No. 93-14622-AT, 1994 Bankr. LEXIS 1273, at *4 (Bankr. E.D. Va. Jan. 19, 1994) ("[C]ourts have generally declined to formulate bright-line rules concerning the criteria for disqualification, favoring instead an approach which evaluates the facts and circumstances of each particular case.").[13]

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[13] See also In re Huntco, Inc., 288 B.R. at 234-5, 236 (stating that "the proper application of § 327(a) must give the bankruptcy court the flexibility to analyze the economic realities underlying the relationship" and "[a] law firm represents an interest adverse to the estate under § 327(a) only if the issues on which it represented the interest holder is somehow germane to the issues involved in the bankruptcy.") (emphasis added) (citing In re Arochem, 176 F.3d at 624; New Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1343-44 (2d Cir. 1985)).

Indeed, there are several instances in this District where courts have approved the retention of a law firm as general bankruptcy counsel when parties in interest account for more than one percent of the law firm's revenue, without special counsel having been retained as a result of that circumstance. See, e.g., Marafioti Aff. ¶ 9, In re Am. Banknote Corp. (Bankr. S.D.N.Y. Dec. 8, 1999) (No. 99-11577) (bondholder accounting for 1.1% and affiliate of bondholder accounting for 1.9% of firm's revenue, respectively); Butler Aff. ¶¶ 14, 28, In re the Singer Co. (Bankr. S.D.N.Y. Sept. 13, 1999) (No. 99-10578) (major unsecured creditor accounting for more than 1% of firm's revenue).

Even where special counsel has been retained in this District to deal with the possibility of a future potential conflict of interest, such counsel has been retained to represent a debtor only if, and to the extent, issues might subsequently arise which would cause the debtor to be adverse to any of its general bankruptcy counsel's clients such that it would not be appropriate for the general bankruptcy counsel to represent the debtor with respect to such matters. See, e.g., Holtzer Aff. ¶ ¶ 15, 17, In re Parmalat USA Corp. (Bankr. S.D.N.Y. Feb. 24, 2004) (No. 04-11139) (significant lessor of debtor accounting for 6.2% and debtor lender accounting for 2.1% of firm's revenue, respectively); Basta Aff. ¶ 4, In re Global Crossing Ltd. (Bankr. S.D.N.Y. Feb. 28, 2002) (No. 02-40188) (debtor lender accounting for more than 2% firm's revenue); Walsh Aff. ¶ 12, Global Crossing (Bankr. S.D.N.Y. Jan. 28,

2002 (No. 02-40188) (same); Abrams Aff. ¶ ¶ 5,12 In re Adelphia Communications Corporation (Bankr. S.D.N.Y. June 26, 2002) (No. 02-41729) (two prepetition secured lenders each representing greater than 1% of firm's revenue); Goldstein Aff. ¶ ¶ 12,17 In re Worldcom, Inc. (Bankr. S.D.N.Y. July 22, 2002) (No. 02-13533) (DIP lender accounting for 6.5%, five other parties acting as underwriters, bondholders, bank lenders, DIP lenders and shareholders each accounted for 1% of firm's revenue, respectively); Rosen Aff. ¶ 14, In re Enron Corp. (Bankr. S.D.N.Y. Jan. 25, 2002) (No. 01-16034) (four debtor lenders each representing greater than 1% of firm's annual revenue, respectively).[14] Thus, the fact that general bankruptcy counsel represented a creditor or party in interest that paid fees in excess of 1% of such firm's revenue did not, by itself, require the retention of special counsel or disable general bankruptcy counsel from representing the debtor in matters related to such creditor or party in interest. Only if the debtor became adverse to such creditor or party in interest such that it would be inappropriate for general bankruptcy counsel to continue to represent the debtor in that matter, i.e., the real possibility of litigation between the parties, would special counsel step in to represent the debtor. Moreover, each of the aforementioned cases showed a unique characteristic – highly publicized

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[14] Contemporaneous with the filing of this Response, the Debtors are providing this Court, the UST, and counsel to the Creditors' Committee with an appendix of the retention affidavits cited herein. Additional copies of such appendix are available upon request from undersigned counsel.

massive fraudulent and possibly criminal activities precipitating the chapter 11 filings – creating an obvious potential conflict and therefore a potential need for special counsel.

In the present circumstances, there is no adversity between the Debtors, on the one hand, and either JP Morgan Chase or Deutsche Bank such that it would be inappropriate for Skadden to represent the Debtors in matters involving JP Morgan Chase or Deutsche Bank. Moreover, there is no suggestion of fraud or any potential conflict. However, if such adversity would develop – for instance, if the Debtors believed there was a real possibility of the commencement of litigation or similar adversarial proceeding[15] – Skadden, in compliance with its ongoing duty under section 328(c) of the Bankruptcy Code, would promptly notify this Court of any such conflict, and the Debtors would retain special counsel to represent them in such matters.[16]

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[15] One such scenario could involve Deutsche Bank wrongfully refusing to honor its financing commitment, as posited by the UST.

[16] The Debtors have already arranged for the retention of another firm as special counsel to represent the Debtors on any such matter.

B. The Facts and Circumstances of This Case Do Not In Any Way Give Rise to An Actual or Potential Conflict Warranting Denial of the Application.

The UST does not and cannot allege that Skadden has an actual conflict of interest with respect to its representation of the Debtors; rather, the UST alleges that there exists a potential conflict of interest. (Objection ¶ 15.) As discussed herein, no actual or potential conflict, or even appearance of conflict, exists with respect to Skadden's representation of the Debtors. Moreover, contrary to the UST's assertions, section 327(a) mandates disqualification only when there is an actual conflict of interest, allows for it when there is a potential conflict, and precludes it based solely on an appearance of conflict. See, e.g., In re Marvel Entm't Group, Inc., 140 F.3d 463, 476 (3d Cir. 1998) (reversing the disqualification of counsel).[17]

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[17] In at least two cases extensively cited by the UST in its Objection, the court expressly declined to disqualify a law firm based on mere speculation about the potential for conflict. For example, in In re Leslie Fay Cos., debtor's counsel failed to disclose a conflict which could have impaired an investigation into fraud, which precipitated the debtor's bankruptcy, by the debtor's upper management. 175 B.R. 525, 526, 529-30 (Bankr. S.D.N.Y. 1994). Even under these egregious facts, the court refused to disqualify debtor's counsel reasoning that "interests are not considered 'adverse' merely because it is possible to conceive a set of circumstances under which they [the interests] might clash." Id. at 532. Likewise, in TWI Int'l, Inc. v. Vanguard Oil & Serv. Co., the Southern District of New York concluded that "merely hypothesizing that conflicts may arise is not a sufficient basis to warrant the disqualification of an attorney" and that "disqualification should be mandated when (continued...)

The undisputed facts are that Skadden has not represented, and, during the pendency of the Chapter 11 cases, will not represent, JP Morgan Chase or Deutsche Bank, or any of their affiliates, in any matter related to the Debtors in the Chapter 11 cases. Moreover, Skadden has represented and will in the future represent JP Morgan Chase and Deutsche Bank only on matters completely unrelated to these cases or the Debtors. Finally, out of an abundance of caution, Skadden obtained a waiver from JP Morgan Chase and Deutsche Bank, respectively, permitting Skadden, to represent the Debtors in these Chapter 11 cases in matters involving JP Morgan Chase and Deutsche Bank.[18] Based upon these undisputed facts, the UST's objection should be overruled.

The Third Circuit's decision in In re Marvel is instructive. In Marvel, it was disclosed in a bankruptcy proceeding that the law firm that the trustee was seeking to retain had represented Chase, a creditor, in a matter unrelated to the

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[17] (...continued)
an actual, as opposed to hypothetical or theoretical, conflict is present." 162 B.R. 672, 675 (S.D.N.Y. 1994) (citations omitted).

[18] Notably, the Waiver Letters do not attempt to waive actual conflicts that would arise in the unlikely event that one of the UST's "horrible imaginings" actually occurs and it becomes appropriate for the Debtors to initiate litigation against either JP Morgan Chase and/or Deutsche Bank. Rather, as stated above, and as is customary in this District and elsewhere (see supra at 21), Skadden will continue to comply with its ongoing duty under section 328(c) of the Bankruptcy Code to notify this Court of any such conflict, and, if necessary, arrange for the retention of special counsel to handle such matters.

bankruptcy. 140 F.3d at 469. Chase had been informed of the law firm's potential appointment as the trustee's counsel and had granted the firm a waiver of all conflicts that could arise in the bankruptcy. Id. Under these facts, the Third Circuit held that the district court had abused its discretion in disqualifying the law firm based on an "appearance of impropriety" rather than an actual or potential conflict of interest. Id. The court stressed that "it must be made clear that horrible imaginings alone cannot be allowed to carry the day. Not every conceivable conflict must result in sending the [law firm] away to lick his wounds.'" Id. (citations omitted). In so ruling, the court emphasized, among other things that (i) the law firm had never represented Chase on a matter related to the bankruptcy and (ii) Chase had granted the firm a waiver of conflicts. Id. at 477.

The bankruptcy court in In re Dynamark also considered whether debtor's counsel was disinterested where, as here, the law firm represents a creditor in matters unrelated to the bankruptcy. 137 B.R. 380 (Bankr. S.D. Ca. 1991). In Dynamark, the law firm represented the debtor's largest secured creditor in unrelated transactions. Id. at 380. The court observed that, even though it was "conceivable that proposed counsel could fail to focus objectively on reorganization for the benefit of all creditors . . . . , it appears that no actual conflict or adverse interest has surfaced in this case so far which would outweigh the debtor's right to counsel of its choice." Id. at 381. The court reasoned that the law firm "diligently . . . represented the

debtor in its motion to use the cash collateral of [the debtor's largest secured creditor]" and "represented the debtor in the financing stipulation entered into between the debtor and [the relevant creditor]." Id. The court further reasoned that, "[i]n the instant case, [the law firm] continues to represent [the creditor] on matters totally unrelated to the Chapter 11 proceeding. Thus, any potential conflict that may exist is too remote to warrant disqualification on these grounds." Id. The court also gave judicial notice to several facts, including (i) the "rapid succession of events in this case [which] are consistent with the underlying policies of bankruptcy law"; (ii) the firm fully disclosed that it currently represented the largest secured creditor on matters unrelated to the Chapter 11 case; (iii) the firm obtained a written waiver of any conflict that exists or may exist with regard to representation of the debtor; and (iv) if the firm becomes aware of an actual conflict during representation, the firm has a duty to immediately disclose that conflict or risk denial of its fees. Id.

Marvel and Dynamark are on all fours here. As in Marvel and Dynamark, Skadden fully disclosed its representations of JP Morgan Chase and Deutsche Bank. Skadden never represented JP Morgan Chase or Deutsche Bank in any matters related to the Debtors, and has committed never to represent any such parties in any matters related to the Debtors whether or not they related to the instant bankruptcies. Further, out of an abundance of caution, Skadden, like the law firms in Marvel and Dynamark, obtained a written waiver from JP Morgan Chase and

Deutsche Bank. As mentioned above, in the unlikely event that a conflict actually arises, Skadden will continue to comply with its ongoing duty under section 328(c) of the Bankruptcy Code to notify this Court of any such conflict, and, if necessary, arrange for the retention of special counsel to handle such matters.

Of particular relevance to the UST's challenge with respect to Deutsche Bank, in In re Kliegl Bros. Universal Electric Stage Lighting Co., the court held that a law firm's representation of a creditor that provided post-petition financing to the debtor – like Deutsche Bank – did not constitute an interest adverse to the estate merely because of its status as a post-petition creditor. 189 B.R. 874, 880 (Bankr. E.D.N.Y. 1995). The Court reasoned that

> to hold otherwise would be to hold that a debtor's counsel, trustee, or United States Trustee would in all cases hold an interest adverse to the estate because all of these entities become post-petition creditors in a particular case by virtue of: (i) a debtor's counsel incurring fees and having an administrative expense claim, (ii) a trustee incurring a claim for commissions, and (iii) a United States Trustee having a claim for its statutory fees.

Id. at 880-81. The court observed that the fact that the bankruptcy court was willing to approve the "financing orders is an implicit recognition that the [lender,] as a post-petition creditor, did not have an interest adverse to the estate but on the contrary, . . . was in the interest of the Debtor, its estate, and its creditors." Id. at 880 n.9

Finally, as discussed above, the UST asserts that Skadden should not be retained because it borrowed funds from JP Morgan Chase to finance capital improvements at the Firm's offices. (Objection ¶ 12.) However, the UST does not argue that the loan creates an actual conflict of interest precluding retention, or even attempt to hypothesize a set of circumstances that would elevate this red herring into a disqualifying conflict. Nor is there any reported case law that suggests a non-recourse loan made in the ordinary course of business to a law firm by a lending institution that also happens to be a client is inappropriate or taints the independent judgment of the law firm. To be sure, the loan itself does not implicate potentially conflicting ethical duties to two different clients.[19] Accordingly, the existence of the loan from a predecessor of JP Morgan Chase does not preclude retention.

C. The UST Has Not and Cannot Locate a Single Case Disqualifying Debtor's Counsel Based Solely on the Firm's Unrelated Representation Of A Creditor or Post-Petition Lender.

The UST attempts to draw factually similarities between Skadden's representation of the Debtors and six other cases: In re Premier Farms, L.C., 305 B.R. 717 (Bankr. N.D. Iowa 2003); In re Filene's Basement, Inc., 239 B.R. 850 (Bankr. D. Mass. 1999); In re Granite Partners, L.P., 219 B.R. 22 (Bankr. S.D.N.Y. 1998); In re American Printers & Lithographers, Inc., 148 B.R. 862 (Bankr. N.D. Ill.

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[19] Obviously, Skadden has no professional ethical duty to JP Morgan Chase on account of the loan.

1992); In re Amdura Corp., 121 B.R. 862 (Bankr. D. Colo. 1990); and In re Status Game Corp., 102 B.R. 19 (Bankr. D. Conn. 1989). Contrary to the UST's assertions, not one of these cases is dispositive to the case at bar.

In In re Premier Farms, the debtor's only secured creditor and shareholder was a client of debtor's counsel, and four of the debtor's other creditors objected to the retention. 305 B.R. at 719. Here, the Debtors have other secured creditors, including the forty other banks that are secured lenders with respect to 95% of the debt outstanding under the Senior Credit Facility and Evergreen, and other unsecured creditors, including the holders of the Senior Notes, all of whom support approval of the Application. Neither JP Morgan Chase nor Deutsche Bank are shareholders of the Debtors.

In two of the cases cited by the UST, the creditor was "the hand that fed" the law firm representing the debtor. See In re Am. Printers, 148 B.R. at 863, 865-66 (relying on the firm's great dependence on the creditor's business, which represented over 10% of the firm's revenues); see also In re Amdura Corp., 121 B.R. at 867 (disqualifying debtor's counsel because the creditor was the most significant "hand that fed" the law firm and the challenges to the creditor's claims were the "lynch-pin" of the debtor's entire bankruptcy). With its highly diverse client base,[20]

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[20] With approximately 1,750 attorneys, Skadden represents a broad spectrum of (continued...)

neither JP Morgan Chase nor Deutsche Bank could ever be described as the "hand that feeds" Skadden. Similarly, in In re Premier Farms, the court based its decision on the fact that the debtor was a "one-time client" of the law firm, but the bank creditor was a long-standing major firm client. 305 B.R. at 720-21. As described above, RCN has been a Firm client since 1997. As the Premier Farms court noted, a "debtor should be deprived of its choice of counsel only in rare cases" and that disqualification is appropriate only where there is a "legitimate and real concern that [an] attorney-client relationship . . . could detrimentally affect the firm's zealous representation." Id. To be sure, no such "real concern" has been alleged or exists with respect to Skadden's representation of the Debtors.

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[20] (...continued)
clients including nearly 50 percent of the Fortune 250 industrial and service corporations, as well as financial and governmental entities, small high-technology start-up companies, and cultural, educational and charitable institutions. Skadden, with 44 mentions, was the law firm most often cited as outside counsel in The National Law Journal's "Who Represents Corporate America" survey (October 6, 2003). Representatives of the National Law Journal asked the law departments of the Fortune 250 companies to name their primary outside counsel in several areas, including corporate transactions, litigation, labor and employment, and intellectual property. The survey states that Skadden is the "across-the-board leader in the combined areas of litigation, corporate transactions and intellectual property." Skadden was the number one firm in the area of corporate transactions, and was the second "most sought-after firm" for litigation.

Also, in In re Premier Farms, debtor's counsel was required to bring certain actions against its bank client, including challenging the validity of liens, disputing adequate protection, subordination issues and plan treatment. Id. at 720. Likewise, in In re Status Game Corp., with little analysis, the bankruptcy court disqualified debtor's counsel based on the firm's representation of the debtor's secured bank lender because the bank clearly would have an issue with "claimed priority." 102 B.R. at 21-22. As discussed above, none of these issues are present here, and Skadden will promptly supplement its disclosure to this Court in the unlikely event that a conflict arises that could necessitate retaining special counsel or some other protective measure to address such issues.

Finally, in two of the cases cited by the UST, the issue – which the UST has not and cannot allege here – was lack of disclosure. In Filene's Basement, debtor's counsel was disqualified primarily due to lack of disclosure of an actual adverse interest; that is, the firm's client had a pending lawsuit against the debtor. 239 B.R. at 856-57. Likewise, in Granite Partners , the law firm was retained by the trustee to investigate alleged wrongdoing of another valuable firm client. 219 B.R. at 27-28. The law firm failed to disclose the representation to the bankruptcy court, failed to file supplemental disclosure notifying the court regarding the increased importance of the client to the firm, and, despite four attempts to do so, could not obtain a waiver of conflicts letter from the client. Id. at 28-30. Even with these

egregious facts – none of which are present here – the court declined to disqualify the firm. Id. at 41-42. Instead, based on the lack of disclosure, the court ordered the firm to disgorge those fees that related to its investigation of its own client. Id. at 42-43 (notably, the court approved the firm's retention of $2.2 million in fees with respect to its representation of the debtor).

In sum, the United States Trustee has not alleged, and cannot allege, any facts establishing an actual or potential conflict, and, at best, has stretched to even articulate a mere "appearance of impropriety." Under the controlling law in the Second Circuit and elsewhere, as described herein, the facts in this case mandate that this objection to the retention of Skadden be overruled.[21]

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[21] Should this Court look to the American Bar Association ("ABA") Model Rules of Professional Conduct ("Model Rules") for further guidance, it will find only more support for the Debtors' Application. ABA comment to Rule 1.7 of the Model Rules states, in relevant part, the "simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients." Model Rules of Prof'l Conduct R. 1.7 cmt 6 (2002). Such commentary makes clear that, under the Model Rules, Skadden's representation of the Debtors and JP Morgan Chase and Deutsche Bank in unrelated matters did not even require their consent, let alone serve as a basis for disqualification. See In re Caldor, Inc. - N.Y., 193 B.R. 165, 181 (Bankr. S.D.N.Y. 1996) (looking to Model Rule 1.7 for guidance in determining whether conflict exists under Bankruptcy Code and concluding that counsel should not be disqualified).

D. Given the Absence of Actual or Potential Conflict, Disqualification of Skadden Would Deprive the Debtors' Of Their Choice And Would Be Devastating to the Debtors' Estates.

Courts give the debtor in possession significant deference in its selection of counsel to represent it under section 327 of the Bankruptcy Code. See, e.g., In re Codesco, 18 B.R. 997, 999 (Bankr. S.D.N.Y. 1982) (the debtor "should have wide latitude in determining who shall be employed to perform legal services for the estate . . . [and] [o]nly in the rarest cases should the trustee be deprived of the privilege of selecting his own counsel") (quoting Palmer v. Kennedy (In re Mandall), 69 F.2d 830, 831 (2d Cir. 1934)); see also In re Marvel, 140 F.3d at 478; In re Creative Rest. Mgmt., Inc., 139 B.R. 902, 909-10 (Bankr. W.D. Mo. 1992)).

Continued representation by their prepetition restructuring and bankruptcy counsel, Skadden, is critical to the success of RCN's Chapter 11 restructuring because Skadden has become intimately familiar with the Debtors' businesses and legal and financial affairs and, accordingly, is well-suited to guide the Debtors through the Chapter 11 process. See, e.g., In re Mulberry Phosphates, Inc., 142 B.R. 997, 999 (Bankr. M.D. Fla. 1992) ("There is no question that the [l]aw [f]irm is intimately familiar with the affairs of the Debtors and disqualifying them at this point would severely prejudice not only the Debtors but also the creditors involved in these

Chapter 11 cases.").[22] In light of the lack of actual conflict of interest here, a change in attorneys would necessarily result in enormous administrative costs adverse to the interests of the estate. Mulberry, 142 B.R. at 999 (even though the law firm represented debtor entities having conflicting interests, the court refused to disqualify the firm because "removal of the Law Firm . . . would not only impede the progress of [the] Chapter 11 cases, but also would generate additional administrative expenses . . . as a new law firm came 'up to speed'").

Moreover, to adopt a rule disqualifying Skadden where, as here, no facts suggest an actual or potential conflict of interest with respect to the Firm's representation of the Debtors – solely because a party in interest generates a certain percentage of the Firm's revenues – would not only overturn well-established

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[22] In O.P.M. Leasing Services, Inc., the Southern District of New York stated that "[t]he realities and practicalities of bankruptcy administration in large, complex cases, such as these, makes it 'doubtful' that a court will sever an established trusteeship over multiple related corporations in cases . . . unless there is a showing of actual, present conflict incapable of any other equitable resolution, especially where, as here, full disclosure of the potential for conflict was made at the outset of appointment." 16 B.R. 932, 938 (Bankr. S.D.N.Y. 1982). In O.P.M., "Judge Burton Lifland . . . . was concerned with disrupting the complicated proceedings . . . . creat[ing] unreasonable delay and expenses." In re Star Broad., Inc., 81 B.R. 835, 842 (Bankr. D.N.J. 1988). Likewise, notwithstanding the presence of egregious facts involving debtor's counsel investigation of its own client's fraud with respect to the bankruptcy case, in Leslie Fay the court declined to disqualify the law firm out of concern for the "viability of the reorganization case" and the fact that the company "may not be able to withstand the great delay and cost occasioned by the departure of counsel." 175 B.R. at 538-39.

jurisprudence in the Second Circuit and elsewhere, but would effectively preclude most large law firms from debtor representation in the Southern District of New York. For example, here, JP Morgan Chase is itself the lender with respect to only 4.4% of the credit facility; approximately forty (40) other lending institutions hold the remaining 95.6% of such debt. It would be difficult, if not impossible, to locate a large firm with sufficient resources to handle a large, complex case such as the Debtors, in which one of these 40 lenders did not pay fees to such firm in excess of 1% of the firm's total revenues. Taken to its logical conclusion, the UST's per se disqualification rule would automatically disqualify virtually every large law firm from ever representing these Debtors, or for that matter, any sizable debtor in possession in any case in the Southern District of New York. The UST's position, if adopted, could have far reaching public policy implications that could dramatically affect the efficiency and cost of large chapter 11 reorganizations as the number of large law firms eligible to represent particular debtors is dramatically reduced, if not eliminated altogether.

Based upon the foregoing, the Debtors submit that disqualification of Skadden is an unwarranted, draconian measure that would harm both the Debtors and their creditors. The UST's Objection should be overruled.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to retain Skadden as the Debtors' attorneys under a general retainer to perform the legal services that will be necessary during their chapter 11 cases, effective as of the Petition Date, (ii) overruling the UST's Objection, and (iii) granting such other and further relief as is just and proper.

Dated: New York, New York
June 21, 2004

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