

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>	)	<b>Chapter 11</b>
	)	
<b>SEA CONTAINERS LTD. <u>et al.</u>,</b>	)	<b>Case No. 06-11156 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>

**FEE AUDITOR'S FINAL REPORT REGARDING  
INTERIM FEE APPLICATION OF BINGHAM MCCUTCHEN LLP  
FOR THE EIGHTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of Bingham McCutchen LLP for the Eighth Interim Period (the "Application").

**BACKGROUND**

1. Bingham McCutchen LLP, ("Bingham") was retained as counsel to the Official Committee of Unsecured Creditors. In the Application, Bingham seeks approval of fees totaling \$1,012,496.40 and costs totaling \$15,224.63 for its services from July 1, 2008 September 30, 2008 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2009, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of

Delaware, and the Third Circuit Court of Appeals. We served on Bingham an initial report based on our review, and received a response from Bingham, portions of which response are quoted herein.

## **DISCUSSION**

3. In our initial report we noted several occasions throughout the Application Period, wherein several professionals participated in conference calls. The entries do not specifically address the participants' roles in the conference calls. At times, the number of professionals involved or the amount of time spent appears excessive. See Exhibit A. While we do not believe that all instances of the use of multiple professionals are inappropriate, it is our opinion that the use of multiple professionals should be scrutinized closely. See *In re Busy Beaver Bldg. Centers, Inc.*, 19 F.3d 833, 856 (3rd Cir. 1994). Paragraph II.D.5 of the Guidelines provides that "[i]f more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees." Moreover, Rule 2016-2(d)(ix) states "[t]he activity descriptions shall individually identify all meetings and hearings, each participant, the subject(s) of the meeting or hearing, and the participant's role." We asked Bingham to provide further explanation regarding these fees and its response is set forth as Response Exhibit 1. We appreciate Bingham's response and concur with the fees identified by Bingham for reduction in the amount of \$814.50. However, we believe an additional reduction is necessary with regard to the following:

7/10/08 Conference Call: We note five professionals participating in this conference call. We do not believe that Bingham's response provides an explanation for the necessity of Ms. Nwokonkor's participation in this conference call. Thus we recommend a reduction of Ms. Nwokonkor's fees, for a reduction of \$1,194.60 in fees.

Thus for this paragraph 3, we recommend a total reduction of \$2,009.10 in fees.

4. In our initial report we noted that Bingham appears to have over-billed the bankruptcy estate \$602.50 for the following entries whose sub-parts do not total the amount billed:

8/14/2008	Silverman	3.4	\$800.00	\$2,720.00	Meet with Ms. Weinstein regarding exit finance issues (.7); two telephone conferences with Mr. Martinez regarding same (.7); analysis regarding same (1.8).
8/5/2008	Silverman	8.3	\$800.00	\$6,640.00	Analysis of NewCo corporate governance (2.8); telephone conference with Mr. Eaton, Ms. Barlow and Mr. Martinez regarding same (.6); review and revise NewCo corporate governance proposal (1.7); review Disclosure Statement (.4); analysis of plan issues and options (1.8).
8/21/2008	Seamon	5.1	\$520.00	\$2,652.00	Prepare objection to Disclosure Statement, including comments from Mr. Silverman and Mr. Wilamowsky (5.1); revise corporate governance term sheet (.7).
7/1/2008	Willett	0.3	\$760.00	\$228.00	Conference with Mr. Silverman, et al. regarding employee bar date issues (.3); attention to summary of opposing trial briefs (.3).
7/31/2008	Wright	7.3	\$255.00	\$1,861.50	Conference with Mr. Seamon concerning preparation of quarterly fee applications and deadline concerning same (.2); attention to finalizing Exhibit C to 17th interim fee application (1.5); attention to drafting Navigant's Second Quarterly Fee Application (3.2); review and revise Conyers Dill 5th Interim Fee Application (.6); attention to further revisions to Exhibit C of Bingham's 17th Interim Fee Application (1.7).
7/18/2008	Seamon	7.4	\$520.00	\$3,848.00	Prepare for and participate in conference call with Bingham team regarding Plan and Disclosure Statement (3.2); prepare memorandum to Company regarding comments, review comments circulated by Mr. Silverman and Ms. Mayor (1.2); correspondence with Company and Kramer Levin regarding plan issues. (.5).
7/30/2008	Bannister	2.7	\$950.00	\$2,565.00	Review and attention to Joint Venture documentation and comment on same (2.0); email correspondence regarding NewCo governance and Joint Venture documentation (.4).
9/17/2008	Silverman	8.4	\$800.00	\$6,720.00	Review revised Plan & Disclosure Statement (1.4); consider areas of concern and potential objection (3.8); revise Disclosure Statement objection (1.3); attention to finalization of corporate governance (1.8); telephone conference with Ms. Horwitz regarding current issues (.4); review SCSL Disclosure Statement objection (.7).
9/24/2008	Maluf	2.9	\$640.00	\$1,856.00	Review drafts and telephone conference with Mr. Kirchoefer (2.8); office conference with Mr. Seamon (1.0).

The entries are correctly tabulated at 44.6 hours and \$28,488.00 in fees. We asked Bingham about these fees, and Bingham responded that “a reduction in the amount of \$602.50 is appropriate”. We appreciate Bingham’s response and thus, recommend a reduction of \$602.50 in fees.

5. In our initial report we noted that Bingham seeks reimbursement of \$3,147.49 for the following meals which, without further information, appear excessive:

4/26/2008	\$96.32	Seamless WebInvNo: 332824 OrderID: 82773843 Date: 4/26/2008 11:49 OrderedBy: Adams Sally OrderedFrom: Sherwoods Fine Foods Catering additional food for Benson meeting Bank ID: 01FLDISB Check Number: 10122880
4/25/2008	\$209.76	Seamless WebInvNo: 332824 OrderID: 82727229 Date: 4/25/2008 12:00 OrderedBy: Benson William OrderedFrom: Sherwoods Fine Foods Catering 0804378/0000330456 - William Benson - Client Meeting BankID: 01FLDISB Check Number: 10122880
4/26/2008	\$476.85	RestaurantAssoc-InvNo: F1745300166 Date: 4/26/2008 FunctionID: 8688 Bill Benson Client meeting Bank ID: 01FLDISB Check Number: 10124190

The Guidelines II.E.1., states “. . . [f]actors relevant to a determination that the expense is proper include the following: 1. Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.” We asked Bingham to provide further explanation regarding these expenses and it responded as follows:

Each of the three charges is related to the full-day deposition taken of Ms. Barlow, the Debtors’ Chief Restructuring Officer on Saturday, April 26, 2008. Bingham provided breakfast, lunch, drinks and snacks throughout the day. There were 10 persons attending the deposition: Ms. Barlow, Mr. Willett, Mr. Rowley, Mr. Kaplan, Mr. Yates, Mr. Advani, Mr. O’Conner, Mr. Reimer, Mr. Schechter, and the court reporter. The charge of \$209.76 was for breakfast and the charges of \$476.85 and \$96.32 were for lunch, drinks and snacks throughout the day, for a total of \$782.93. The recommended caps for breakfast and lunch would be \$350 and \$450, respectively, for a total of \$800.00, however we note that this was an exceptionally long deposition and drinks and snacks were provided throughout the day, in addition to the 2 meals.

We appreciate Bingham’s response, however, it is our opinion that the estate should not be asked to reimburse lunch expenses beyond \$45 per person in the New York City market. Thus we


recommend a reduction of the amount the lunch expense exceeds this per person charge, for a reduction of \$26.85<sup>1</sup> in expenses.

### **CONCLUSION**

6. Thus we recommend approval of fees totaling \$1,009,884.80 (\$1,012,496.40 minus \$2,611.60) and costs totaling \$15,197.78 (\$15,224.63 minus \$26.85), for Bingham's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

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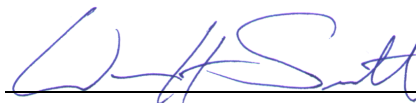
**FEE AUDITOR**

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<sup>1</sup>10 (people) times \$45.00 (per lunch in NYC) equals \$450.00. \$476.85 minus \$450.00 equals \$26.85.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served via First-Class United States mail to the attached service list on this 23<sup>rd</sup> day of March, 2009.

A handwritten signature in blue ink, appearing to read "W H Smith", is written over a horizontal line.

Warren H. Smith

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### **Exhibit A**

7/3/2008	Willett	1.7	\$760.00	\$1,292.00	Participate in call with Committee.
7/3/2008	Bannister	1.7	\$950.00	\$1,615.00	Update telephone call with UCC (1.7); .....
7/3/2008	Silverman	0.9	\$800.00	\$720.00	Lead UCC update call on multiple subjects.
7/3/2008	Mai	1.3	\$505.00	\$656.50	Participate in call with creditor's committee.
7/10/2008	Bannister	2.0	\$950.00	\$1,900.00	Telephone calls with Mr. Silverman, Mr. Wilamowsky, Conyers and Kirkland regarding plan issues (2.0); .....
7/10/2008	Silverman	1.1	\$800.00	\$880.00	Conference call with Company counsel regarding plan and disclosure statement (1.1); .....
7/10/2008	Harrison	1.4	\$950.00	\$1,330.00	Prepare and attend conference call with Kirkland & Ellis regarding plan issues.
7/10/2008	Nwokonkor	2.2	\$543.00	\$1,194.60	.....; prepare for and attend conference call with SCL's counsel regarding plan for reorganization (2.2).
7/10/2008	Wilamowsky	1.5	\$760.00	\$1,140.00	Conference call with Messrs. Agay, Norley, Silverman, Bannister and Ms. Mayor regarding foreign law issues (1.5); .....
7/14/2008	Seamon	3.5	\$520.00	\$1,820.00	Prepare for and participate in conference call with Company regarding Plan of Reorganization (3.5); .....
7/14/2008	Harrison	1.9	\$950.00	\$1,805.00	Attention to documents and attend conference call regarding plan issues.
7/14/2008	Nwokonkor	2.3	\$543.00	\$1,248.90	Prepare for and attend call to discuss the draft plan of reorganization.
7/14/2008	Wilamowsky	1.3	\$760.00	\$988.00	Participated in conference call with Messrs. Agay, Norwood, Silverman and Seamon regarding Plan issues.
7/14/2008	Bannister	2.3	\$950.00	\$2,185.00	Telephone conference regarding plan issues with Kirkland and Conyers and attention to same with Ms. Nwokonkor (2.3); .....
7/14/2008	Silverman	1.8	\$800.00	\$1,440.00	.....; conference call with company counsel regarding plan and disclosure statement (1.8); .....

## **Response Exhibit 1**

This case is a very complex cross-border case, involving both UK and US law issues, there must be careful coordination on the diverse legal issues and laws applicable in order for proper analysis and restructuring efforts to be undertaken. It is necessary to have experienced English solicitors in the firm involved in the analysis of the pension issues and other English law issues. As this is a bankruptcy case filed in the US, it is necessary to have experienced US bankruptcy and finance lawyers involved in the case. During this particular interim period, the parties were negotiating the plan of reorganization and reviewing various drafts of the US plan and disclosure statement, the UK Scheme of Arrangement and the Bermuda Scheme of Arrangement, each prepared by the Debtors. It was therefore necessary to have firm members with both US and UK law experience.

With respect to certain conference calls, the most efficient way to receive and evaluate information may at times be to have several relevant firm members attend and have the ability to provide input, rather than to subsequently convey information that may lose nuance and/or require a follow up meeting or call to go over that which could have been addressed initially. During this particular interim period, we note below that this was the case with certain conference calls with Debtors' counsel, Kirkland & Ellis.

a. 07/3/08 This was a conference call with the Committee in which a wide range of issues were discussed, including a potential settlement of the pension claim as well as the negotiation of the plan of reorganization and UK Scheme of Arrangement. Mr. Silverman is a US bankruptcy lawyer who co-leads the SCL Committee representation and is responsible for all US bankruptcy issues in the case. Mr. Willett is a US litigator who has overall responsibility for the pension settlement litigation in this case. Mr. Bannister is responsible for UK pension law issues as well as the development of the UK and Bermuda Schemes of Arrangement. Ms. Mai is a US bankruptcy lawyer assisting both the US and UK teams including with respect to the development of a plan of reorganization.

b. 07/10/08 This was a comprehensive conference call with numerous Kirkland attorneys in which the plan of reorganization, UK Scheme of Arrangement and the Bermuda Scheme of Arrangement were discussed. It was therefore important to have both UK and US lawyers on the call. Mr. Silverman is a US bankruptcy lawyer who co-leads the SCL Committee representation and is responsible for all US bankruptcy issues in the case. Mr. Bannister is responsible for UK pension law issues as well as the development of the UK and Bermuda Schemes of Arrangement. Ms. Harrison is a UK litigator responsible for UK employment litigation issues, including the litigation trusts to be created pursuant to the plan of reorganization and UK Scheme of Arrangement. Ms. Nwokonkor is a UK lawyer assisting Mr. Bannister and Ms. Harrison with respect to UK law issues. Mr. Wilamowsky is a US bankruptcy lawyer assisting with respect to the resolution of claims under the plan of reorganization.

c. 7/14/08 This was a follow-up call to the conference call with Kirkland on 7/10/08 in which the plan of reorganization, UK Scheme of Arrangement and the Bermuda Scheme of Arrangement were discussed. Mr. Silverman is a US bankruptcy lawyer who co-leads the SCL

Committee representation and is responsible for all US bankruptcy issues in the case. Mr. Bannister is responsible for UK pension law issues as well as the development of the UK and Bermuda Schemes of Arrangement. Ms. Harrison is a UK litigator responsible for UK employment litigation issues, including the litigation trusts to be created pursuant to the plan of reorganization and UK Scheme of Arrangement. Ms. Nwokonkor is a UK lawyer assisting Mr. Bannister and Ms. Harrison with respect to UK law issues. Mr. Wilamowsky is a US bankruptcy lawyer assisting with respect to the resolution of claims under the plan of reorganization. Mr. Seamon is a US bankruptcy lawyer assisting both the US and UK teams including with respect to the development of a plan of reorganization. Notwithstanding the above, we agree to a reduction of 1.5 hours of Ms. Nwokonkor's time, for a total reduction of \$814.50.