

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**FEE AUDITOR’S FINAL REPORT REGARDING
INTERIM FEE APPLICATION OF VOLLMAN BROTHERS LIMITED
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 Vollman Brothers Limited for the Eighth Interim Period (the “Application”).

BACKGROUND

1. Vollman Brothers Limited (“Vollman”) was retained as special corporate and financial advisers to the Debtors. In the Application, Vollman seeks approval of fees totaling \$241,500 and costs totaling \$98,321.30 for its services from June 1, 2008, to 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 Vollman an initial report based on our review, and received a response from Vollman, portions of which response are quoted herein.

DISCUSSION

3. Under the initial engagement agreement filed at docket no. 150 (the “HT Engagement Agreement”) and the revised engagement agreement (the “Revised Engagement Agreement”) attached as an exhibit to the retention order entered on October 3, 2007, at docket #1070 (the “Final Retention Order”), all of Vollman’s fees are fixed or transaction-based rather than hourly. The fees sought by Vollman in this Application consist of fees specified in section 5.5 of the Revised Engagement Agreement.

4. More specifically, Vollman requests £150,000 in fees for “Pending Advisory Projects” under Section 5.5 of the Revised Engagement Agreement. (This amount converts to \$241,500 based on the exchange rates prevailing at the time of the filing of Vollman’s invoices.) These fees consist of monthly fees owed to Vollman at the beginning of each subsequent month “if any Pending Advisory Project continues for more than five months from the agreed date of commencement without consummating a Transaction”. Vollman, whose services in this regard began on September 1, 2007, seeks £12,500 per month for the months of June, July, August, and September 2008 with respect to each of (1) Charleston Marine Containers Inc. (“CMCI”), (2) Yorkshire Marine Containers Ltd. (“YMCL”), and (3) a 70% interest in an Ivory Coast banana plantation (“Ivory Coast”).

5. Vollman spent 1,032.5 hours on the Pending Advisory Projects, plus 72.0 hours on fee applications, for an effective hourly rate of \$218.65 based on total fees of \$241,500 for those projects in the aggregate. On a project-by-project basis, Vollman spent 559.0 hours on the CMCI project, for an effective hourly rate of \$144.01 based on total fees of \$80,500; 292.5 hours on the

YMCL project, for an effective hourly rate of \$275.21 based on total fees of \$80,500; and 181.0 hours on the Ivory Coast project, for an effective hourly rate of \$444.75 based on total fees of \$80,500.

6. In our initial report, we noted two airfare charges that do not indicate the class of carriage.

6/30/08	Brett Roberts	\$9,405.57	Brett Roberts flight from Heathrow Airport to Charleston E Ticket No. 5758293049 for CMCI bidder site visit
7/11/08	Brett Roberts	\$9,426.33	Brett Roberts flight tickets traveling from Heathrow Airport to Charleston E Ticket No. 5758293049

We asked Vollman to indicate the class of carriage for the travel associated with these charges.

Additionally, we asked Vollman to explain why the two charges have the same ticket number.

Vollman provided the following response:

First, in paragraph 7, the Fee Auditor requests information relating to the class of the flights taken on June 30, 2008 and July 13, 2008. With respect to the class type, on June 30 and July 13, 2008, Mr. Brett Roberts flew business class from London to Newark, New Jersey where he transferred to a coach class seat for the trip to Charleston, South Carolina. Likewise, on the return flights home on July 3 and July 17, 2008, Mr. Roberts took a coach seat for the trip from Charleston to Newark where he then flew to London with a business class ticket (on the flight on July 3, Mr Roberts received a free upgrade to first class as part of a promotion by British Airways). Both trips related to important meetings between Mr. Roberts and bidders interested in the CMCI assets. As a result, with regard to both trips, Mr. Roberts was required to work diligently in preparation of such meetings and would not have been able to properly prepare otherwise in a coach seat. Furthermore, for each trip, Mr Roberts traveled in the same class as employees of the Debtor who were also travelling to Charleston for the meetings. It is customary for both Debtor employees and Vollman Brothers employees to travel business class on long haul flights. Meetings in Charleston were with a number of bidders, including the party to whom the business was ultimately sold in extremely difficult circumstances. Lastly, as to the Fee Auditor's questions about the ticket numbers for these two separate flights. The Fee Auditor correctly noted that the ticket numbers for each separate flight were the same in the information previously provided. Attached as part of Exhibit "1" are

the correct invoices which show that the ticket number for the June 30, 2008 flight was 5758121948 and the ticket number for the July 13, 2008 flight was 5758293049.

The exhibit referenced by Vollman (which includes the invoices for the tickets, as well as documents relating to the issues discussed in paragraphs 8 and 9 below) has been attached hereto as Response Exhibit 2. We appreciate this response and have no objection to these expense items.

7. In our initial report, we noted several charges for the fees of lawyers hired by Vollman, totaling \$57,094.69:

7/31/07	Retention	\$2,814.62	Invoice 882833 - Advice relating to the general retention of Vollman Brothers from 18/7/07 - 31/7/07
8/31/07	Retention	\$20,942.61	Invoice 886197 - General retention advice from 1/8/07 - 31/8/07
10/31/07	Retention	\$12,491.45	Invoice 898133 - General retention advice from 1/9/07 - 31/10/07
11/30/07	Fee applications	\$1,530.93	Invoice 913224 - General fee application advice from 1/11/07 - 30/11/07
12/31/07	Fee applications	\$2,339.87	Invoice 913225 - General fee application advice from 1/12/07 - 31/12/07
1/31/08	Fee applications	\$10,052.00	Invoice 913226 - Advice relating to and preparation of first fee application from 01/1/08 - 31/1/08
3/31/08	Fee applications	\$6,923.21	Invoice 925019 - Advice relating to and preparation of first and second fee application from 01/2/08 - 31/3/08

We asked Vollman to provide the invoices including time entries reflecting the services provided by these lawyers to facilitate our evaluation of the reasonableness of these fees. Additionally, we asked Vollman to explain why these fees should be considered reasonable. Vollman provided a written response, which is attached hereto as Response Exhibit 1, along with the requested invoices, which are included within the attached Response Exhibit 2. We appreciate this response and note

that ordinarily a fee applicant is entitled to allowance of reasonable fees for time expended in the course of preparing and prosecuting fee applications. In the case of a fixed-fee applicant like Vollman, however, the time spent on fee applications is not billable at an hourly rate but must instead be included within the fixed fees. In this case, we have a fixed-fee applicant that has delegated some or all of its fee-application work to a law firm, with the result that the total fees charged to the estate exceed the fixed fees payable under the Final Retention Order. In the absence of court approval of this arrangement, such fees might well be objectionable, but we note that the Final Retention Order approved the Revised Engagement Agreement, which provides,

The Company shall indemnify and keep indemnified or reimburse on a full indemnity basis Vollman Brothers on demand from and against any and all losses, claims, expenses, damages or liabilities (including all reasonable legal costs and expenses and the cost of any investigation and the preparation of any documentation and the reasonable cost of professional services) suffered or incurred by Vollman Brothers arising out of or in connection with its engagement hereunder....

Retention Order at 8. We believe this provision permits the reimbursement of Vollman's reasonable attorneys' fees in connection with the retention and fee-application processes, and we have no objection to these fees.

8. In our initial report, we noted one substantial telephone charge for which inadequate detail is provided:

7/19/08	Brett Roberts	\$576.90	Telephone calls from Bret Roberts mobile to Mel Williams and SCL whilst in England and the United States
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We asked Vollman to indicate whether these charges relate to specific phone calls for this case, or whether they constitute an allocation based on estimated usage. Vollman provided the following response:

In paragraph 9 of the Initial Report, the Fee Auditor requests information related to telephone calls by Mr. Roberts with a value of \$576.90. These specific phone calls

related to communications by and between Mr. Roberts and various parties in interest in these cases while he was in Charleston, South Carolina. The backup support for \$518.06 of these charges is attached as part of Exhibit "1". Vollman Brothers could not find backup for the balance, i.e. \$58.84, and therefore, Vollman Brothers will accept a voluntary reduction related to same.

We appreciate this response and recommend a reduction of \$58.84 in expenses.

9. In our initial report, we noted one charge that appears to be a charge for the use of a meeting room at Vollman's own offices:

8/23/08	Bill Kendall	\$167.31	Meeting took place with Bob Mackenzie and Laura Barlow from SCL at Vollman Offices
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We asked Vollman to explain this charge. Vollman provided the following response:

In paragraph 10 of the Initial Report, the Fee Auditor notes that on August 23, 2008, Vollman Brothers charged \$167.31 for a meeting room for a meeting between the Debtor and Vollman Brothers at Vollman Brothers' offices. In fact, the meeting room was procured at Vollman Brothers on August 22, 2008 for a confidential conference call between Vollman Brothers and the highest bidder for the Ivory Coast transaction. These negotiations resulted in the bidder raising their final offer by about 50 per cent from €50,000 to €1,000,000, which resulted in enhanced value to the estate when the minority shareholder exercised their right of first refusal.

We appreciate this response but do not believe it adequately explains why Vollman charged the estate for the use of Vollman's own offices. Accordingly, we recommend a reduction of \$167.31 in expenses.

CONCLUSION

10. Thus we recommend approval of fees totaling \$241,500 and expenses in the amount of \$98,095.15 (\$98,321.30 minus \$226.15) for Vollman's services from June 1, 2008, through September 30, 2008.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By:  _____

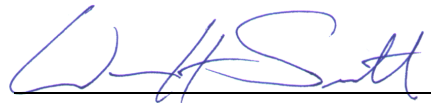
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FEE AUDITOR

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 25th day of March 2009.

 _____
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Response Exhibit 1

In paragraph 8 of the Initial Report, the Fee Auditor requests the invoices including the time entries reflecting the services provided by Vollman Brothers' outside lawyers, Blank Rome LLP ("Blank Rome"), in connection with the Fee Auditor's evaluation of the reasonableness of these fees. Vollman Brothers directs the Fee Auditor to the invoices which are attached in Exhibit "1".¹ As the Fee Auditor will see, the invoices include detailed descriptions of time entries relating to the substantial services provided in connection with the difficult retention process and fee application process. As the Fee Auditor may be aware and as described more fully in paragraphs 3 through 7 herein, in the early stages of the Debtors' cases, prior to Blank Rome's involvement, Vollman Brothers' engagement was limited to the Helsinki-Tallinn Transaction due to issues and concerns raised by the U.S. Trustee and the Committee, amongst others. A few months later, when the Debtors approached Vollman Brothers for additional services, Vollman Brothers retained Blank Rome to assist them in negotiating the terms of the Revised Engagement Letter and the Revised Order. Ultimately, through Blank Rome's efforts on Vollman Brothers' behalf, Vollman Brothers was ultimately retained to provide the important and beneficial services to the Debtors under the Revised Engagement Letter. Indeed, to date, through Vollman Brothers' efforts as financial advisors to the Debtors, the Debtors have recovered sale proceeds of \$41.6m relating to the following sales transactions (this does not include businesses that were not sold by Vollman Brothers, but for which Vollman Brothers prepared draft marketing materials and buyers lists which were integral to the successful sale of these businesses). The necessary expenses associated with the Vollman Brothers' retention thus represents merely 0.1% of the amounts received by the Debtors through Vollman Brothers' sale efforts.

Likewise, Vollman Brothers desired Blank Rome's assistance with its fee applications to be filed in the Debtors' cases to minimize issues that would otherwise be raised if Vollman Brothers was required to file the fee applications on their own.² Further, if Vollman Brothers was retained in these cases on an hourly basis, it clearly would have received reasonable fees for services rendered in drafting its own fee applications. Moreover, if Blank Rome was not involved, Vollman Brothers would likely have requested that Debtors' counsel assist them in connection with the preparation of fee applications. It is probable that had Debtors' counsel performed such services on behalf of Vollman Brothers, the fees generated by Debtors' counsel would have been similar to expenses sought herein. Finally, the request for the reasonable expenses associated with the work performed on the fee applications on Vollman Brothers' behalf was a small percentage of the total fees requested by Vollman Brothers in these cases and was included in the June Fee Application only after agreement with the Debtors.

¹ Despite the provision of these fee invoices to the Fee Auditor, Vollman Brothers preserves the attorney client privilege as to communications with its counsel.

² The Debtors' cases represent the first time Vollman Brothers has been retained as a professional in a Chapter 11 United States bankruptcy court case and as a result, Vollman Brothers was not familiar with the fee application process required under the Bankruptcy Code.