

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WOODBIDGE GROUP OF COMPANIES,  
LLC, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-12560 (KJC)

(Jointly Administered)

**FEE EXAMINER'S CONSOLIDATED FINAL REPORT REGARDING  
FIRST INTERIM QUARTERLY FEE REQUESTS OF (I) YOUNG CONAWAY  
STARGATT & TAYLOR, LLP; (II) HOMER BONNER JACOBS, P.A.; (III) GARDEN  
CITY GROUP, LLC; (IV) KLEE, TUCHIN, BOGDANOFF & STERN LLP; (V)  
PROVINCE, INC.; (VI) PACHULSKI STANG ZIEHL & JONES LLP; (VII) BERGER  
SINGERMAN LLP; (VIII) FTI CONSULTING, INC.; AND (IX) VENABLE LLP**

Elise S. Frejka, the fee examiner (the "Fee Examiner") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") submits this final report (the "Final Report") pursuant to the *Order Appointing Fee Examiner and Establishing Related Procedures for the Review of Fee Applications of Retained Professionals* (the "Fee Examiner Order") [Dkt. No. 525] in connection with the applications for allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses (each, a "Fee Application," and together, the "Fee Applications") of (i) Klee, Tuchin, Bogdanoff & Stern LLP ("KTB&S") [Dkt. Nos. 1677, 1680]; (ii) Young Conaway Stargatt & Taylor, LLP ("YCS&T") [Dkt. Nos. 1677, 1678]; (iii) Homer Bonner Jacobs, P.A. ("HBJ") [Dkt. Nos. 1677, 1679]; (iv) Garden City Group, LLC ("GCG") [Dkt. No. 1677]; (v) Province, Inc. ("Province") [Dkt. No. 1677]; (vi) Pachulski Stang Ziehl & Jones LLP ("PSZ&J") [Dkt. No. 1684]; (vii) Berger Singerman LLP ("Berger

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<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the debtors in these cases, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC).

Singerman”) [Dkt. No. 1685]; (viii) FTI Consulting, Inc. (“FTI”) [Dkt. No. 1809]; and (ix) Venable LLP [Dkt. Nos. 1682, 1683] (“Venable,” and together with KTB&S, YCS&T, HBJ, GCG, Province, PSZ&J, Berger Singerman, and FTI, the “Retained Professionals”).<sup>2</sup>

### **Background**

1. On December 4, 2017 (the “Petition Date”), all but fourteen of the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”). Thereafter, on February 9, 2018, March 9, 2018, March 23, 2018, and March 27, 2017, additional affiliated Debtors (27 in total) commenced voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors’ Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and Rule 1015-1 of the Local Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). As of the date hereof, no trustee or examiner has been appointed in these Chapter 11 Cases.

3. On December 14, 2017, the Acting United States Trustee for Region 3 (the “U.S. Trustee”), appointed an official committee of unsecured creditors (the “Committee”) [Dkt. No. 79]. On January 23, 2018, the Court held a hearing to resolve, among other things, two motions to appoint a chapter 11 trustee, and entered an order approving the settlement reached between the Debtors and other parties in interest (the “Settlement Order”) and incorporated a term sheet (the “Term Sheet”) [Dkt. No. 357]. The terms of the settlement provided for, among other

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<sup>2</sup> The First Interim Fee Application of Gibson Dunn & Crutcher LLP [Dkt. Nos. 1677, 1693] has been adjourned with the consent of the parties to August 21, 2018.

things, the formation of an ad hoc noteholder group (the “Noteholder Group”) and an ad hoc unitholder group (the “Unitholder Group”).

4. On February 8, 2018, after recognizing the size and complexity of the Chapter 11 Cases, the Court entered the Fee Examiner Order to assist the Court in its determination of whether applications for compensation are compliant with the Bankruptcy Code, all applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules, the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, at 28 C.F.R. Part 58, Appendix A, and the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective as of November 1, 2013, at 28 C.F.R. Part 58, Appendix B (together, the “UST Guidelines”), and the *Order Establishing Interim Compensation Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* entered on January 9, 2018 (the “Interim Compensation Order”) [Dkt. No. 261].

5. Under paragraph 7 of the Fee Examiner Order, the Fee Examiner was charged by the Court with, among other things: (a) reviewing the interim and final fee applications filed by each applicant in these Chapter 11 Cases, along with the fee detail related thereto; (b) reviewing any relevant documents filed in these Chapter 11 Cases to be generally familiar with these Chapter 11 Cases and the dockets; (c) within thirty (30) days after the filing of an interim or final fee application, serving an initial report on the applicant addressing whether the requested fees, disbursements and expenses are in compliance with the applicable standards of sections 330 of the Bankruptcy Code and Local Rule 2016-2; (d) engaging in written communication with each applicant, the objective of which is to resolve matters raised in the initial report and endeavor to reach consensual resolution with each applicant with respect to the applicant’s requested fees and

expenses; and (e) following communications between the Fee Examiner and the applicant, and the Fee Examiner's review of any supplemental information provided by such applicant in response to the initial report, conclude the information resolution period by filing with the Court a final report with respect to each application within thirty (30) days after service of the initial report. Per the Fee Examiner Order, the final report shall be in a format designed to quantify and present factual data relevant to whether the requested fees and expenses of each applicant are in compliance with the applicable standards of sections 330 of the Bankruptcy Code and Local Rule 2016-2, and whether the application has made a reasonable effort to comply with the UST Guidelines. The final report shall also inform the Court of all proposed consensual resolutions of the fee and/or expense reimbursement request for each applicant and the basis for such proposed consensual resolution.

6. In accordance with the Fee Examiner Order, the Fee Examiner reviewed the Fee Applications for compliance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Compensation Order, and the UST Guidelines. In addition, the Fee Examiner reviewed the Fee Applications for general compliance with legal precedent established by the District Court and Bankruptcy Court for the District of Delaware, the Third Circuit Court of Appeals, and other applicable precedent. This process consisted of a detailed substantive review of the time and expense records by the Fee Examiner and her professionals using their expertise and judgment to identify noncompliant timekeeping practices and other areas of concern.

7. Due to the size and complexity of these Chapter 11 Cases, the Fee Examiner reviewed the time entries supporting the Fee Applications on a monthly basis and provided extensive comments to the Retained Professionals to facilitate more compliant timekeeping on a

go-forward basis and provide transparency into the fee review process. This informal exchange allowed for timekeeping adjustments to be made immediately by the Retained Professionals such that the timekeeping after each Retained Professional's first monthly fee statement was significantly improved. Areas of general concern to the Fee Examiner during this initial review were the role of each attorney attending hearings and meetings so that she could access case staffing issues and the benefit to the estate of certain work streams that the Fee Examiner deemed administrative in nature in addition to general concerns about block billing and vague entries.

8. Following this initial review, the Fee Examiner issued a detailed initial report to each Retained Professional. Each initial report detailed the Fee Examiner's issues, questions, and concerns with respect to the specific Fee Application and identified specific time or expense entries that required further information to assess compliance with the Bankruptcy Code, the Local Rules, and the UST Guidelines.

#### **Governing Statutory Sections**

9. The Appointment Order specifically provides that it will not apply to "professionals requesting the payment of any success fee or transaction fee set forth in such professionals' engagement agreement, solely with respect to such requested fee." See Appointment Order at ¶ 2(iii). Accordingly, the Fee Examiner will refrain from discussing the standards applicable to review of compensation pursuant to section 328(a) in this First Period Final Report in light of the foregoing language.

10. Section 330 of the Bankruptcy Code provides:

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103—

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(5) The court shall reduce the amount of compensation awarded under this section by the amount of any interim compensation awarded under section 331, and, if the amount of such interim compensation exceeds the amount

of compensation awarded under this section, may order the return of the excess to the estate.

(6) Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.

11 U.S.C. § 330.

11. Section 330 of the Bankruptcy Code allows a bankruptcy court to award “reasonable compensation for actual, necessary services rendered by . . . professional[s].” 11 U.S.C. § 330(a)(1)(A). Reasonable compensation under section 330 is based on the nature, extent and value of the services, taking into account “all relevant factors . . . .” 11 U.S.C. § 330(a)(3).

12. The statute enumerates six (6) relevant factors that the court must consider to determine whether the fees are reasonable:

- The time spent on such services;
- The rates charged for such services;
- Whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of the cases;
- Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed;
- With respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- Whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases.

11 U.S.C. § 330(a)(3)(A)-(F).

13. Although the statute does specifically list factors to review when determining the reasonableness of fees, the list itself is not exhaustive. See 11 U.S.C. § 102(3) (terms “includes” and “including” are not limiting). Thus, the Court is “itself an expert on the question [of

attorney's fees] and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of testimony of witnesses as to value." See Campbell v. Green, 112 F.2d 143, 144 (5th Cir. 1940).

14. A fee applicant bears the burden of proof on all of the elements of a fee application, including proving that the services provided were necessary and reasonable and that the billed expenses were necessary, reasonable, and actually incurred. Zolfo, Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 261 (3d Cir. 1995). The failure of an applicant to sustain the burden of proof as to the reasonableness of the compensation may result in the denial of the requested compensation. See Brake v. Tavormina (In re Beverly Mfg. Co.), 841 F.2d 365, 369 (11th Cir. 1988). Where appropriate, section 330 expressly authorizes this Court to award less than the amount requested by the fee applicant. See 11 U.S.C. § 330(a)(2). In re Bennett Funding Grp., Inc., 213 B.R. 234, 244 (Bankr. N.D.N.Y. 1997) ("Interim fee applications submitted pursuant to Code § 331 . . . are judged under the same standards as final applications under Code § 330.").

15. Professional services are considered "actual and necessary" if they benefit the estate. APW Enclosure Sys., No. 06-11378, 2007 WL 3112414, at \*3 (Bankr. D. Del. Oct. 23, 2007). Success is not required, but rather the court "must conduct an objective inquiry based upon what services a reasonable professional would have performed in the same circumstances." In re Channel Master Holdings, Inc., 309 B.R. 855, 861-62 (Bankr. D. Del. 2004) (quoting In re Cenargo Int'l, PLC 294 B.R. 571 (Bankr. S.D.N.Y. 2003); see also In re Jefsaba, Inc., 172 B.R. 786, 799 (Bankr. E.D. Pa. 1994) ("[S]o long as there was a reasonable chance of success which outweighed the cost in pursuing the action, the fees relating thereto are compensable."). The test of what is necessary cannot be applied in hindsight. If at the time the work is performed, it



reasonably appears that it would benefit the estate, it may be compensated.” In re Berg, No. 05-39380 (DWS), 2008 WL 2857959 at \*7 (Bankr. E.D. Pa. July 21, 2008); see also Cenargo, 294 B.R. at 595 (when determining what is necessary, courts do not attempt to “invoke perfect hindsight.”).

16. The Fee Examiner identified the following issues based upon her review of the Fee Applications of the Retained Professionals:

- a. Vague time entries that do not include complete activity descriptions “sufficiently detailed to allow the Court to determine whether all the time, or any portion thereof, is actual, reasonable and necessary . . . .” as required by Local Rule 2016-2(d) (hereinafter, “Vague Time Entries”). The Fee Examiner recommends that Vague Time Entries be reduced by 20% to the extent the Retained Professional did not supplement the time entry in a manner that adequately addressed the Fee Examiner’s questions, comments and concerns. In response to her initial reports, the Retained Professionals adequately supplemented the Vague Time Entries.
- b. Block billed or “lumped” time entries that do not clearly identify each discrete task billed, indicate the date the task was performed, the precise amount of time spent (not to be billed in increments greater than one-tenth of an hour), who performed the task, the level of experience, and that person’s hourly rate as required by the UST Guidelines at C.9(d) (hereinafter, “Block Billing Entries”). The Fee Examiner recommends that Block Billing Entries be reduced to 0.50 hours to the extent the Retained Professional did not supplement the entry in a manner that addressed the Fee Examiner’s questions, comments, and concerns. In response to her initial reports, the Retained Professionals adequately supplemented the Block Billing Entries.
- c. Entries that the Fee Examiner identified as more in the nature of overhead or other administrative activities where the benefit to the Debtors’ estate was not readily ascertainable from the time entry (hereinafter “Administrative Entries”). The Fee Examiner recommends that Administrative Entries be disallowed in full.
- d. Non-working travel billed at a professional’s standard hourly billing rate rather than at fifty (50%) percent of a professional’s regular hourly rate as required by Local Rule 2016-2(d)(ix). The Fee Examiner recommends that the non-working travel entry be reduced by half to comply with Local Rule 2016-2(d)(ix).
- e. Time entries where the sub-parts of a particular time entry did not equal the amount of time that was actually charged (hereinafter, “Over/Under Billing”).

Entries”). The Fee Examiner recommends that Over/Under Billing Entries result in a credit or further reduction depending on the net effect of the math errors.

- f. Duplicate time entries (hereinafter, “Duplicate Entries”) where based upon the narrative the Fee Examiner was unable to ascertain if the timekeeper undertook separate tasks or the entry was duplicative. The Fee Examiner recommends that Duplicate Entries be disallowed in full to the extent the entry was in fact duplicative.
- g. Time charges attributable to transitory timekeepers who billed less than five (5) hours per month during the First Interim Fee Period (hereinafter, “Transitory Timekeepers”). The Fee Examiner reviewed the nature of the work performed, the expertise the timekeeper brought to the case, and determined that in all instances the issue of Transitory Timekeepers is better addressed at the conclusion of these Chapter 11 Cases.
- h. Staffing inefficiencies where the number of professionals participating in conference calls, meetings, depositions, and hearings appeared excessive and the benefit to the estate appeared minimal (hereinafter, “Staffing Inefficiency Entries”). The Fee Examiner recommends that Staffing Inefficiency Entries be adjusted downward to reflect appropriate staffing levels or assignment to an appropriate level of experience.
- i. Mismatched entries where the professionals participating in conference calls, meetings, depositions and hearings billed differing amounts to the same activity (“Mismatched Time Entries”). After accounting for minor discrepancies, the Fee Examiner recommends disallowance of excessive time related to these discrepancies.
- j. Expense reimbursement-related issues (flights, train travel, taxi/ground transportation, meals, service/booking fees, tips, photocopies/facsimiles, in-flight internet, upgrades, car service, pre-petition expenses and unknown expenses).

17. In undertaking her review, the Fee Examiner took in account reductions taken by the Retained Professionals in an exercise of their billing discretion prior to submission of the relevant fee application, whether the Retained Professional stayed within budget, general staffing considerations, and annual rate increases.

**Fee Examiner's Recommendations**

18. The First Period Final Report covers Fee Applications of the Retained Professionals relating to the First Interim Fee Period. Per the process described above, the Fee Examiner has reached an agreement with all of the Retained Professionals regarding allowance for the period under review. The Fee Examiner makes the following specific recommendations as to the fees to be allowed and expenses to be reimbursed for the First Interim Fee Period:

**Young Conaway Stargatt & Taylor, LLP (Co-Counsel to the Debtors)**

19. On December 20, 2017, the Debtors filed the *Debtors' Application for an Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Co-Counsel for the Debtors, Effective as of the Petition Date* [Dkt No. 119].

20. On January 23, 2018, the Court entered the *Order Authorizing Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Co-Counsel for the Debtors, Effective as of the Petition Date* [Dkt No. 359] (the "YCS&T Employment Order"). Pursuant to the YCS&T Employment Order, the Debtors were authorized to employ YCS&T as their general bankruptcy and restructuring co-counsel to render general legal services to the Debtors as needed throughout the course of the Chapter 11 Cases. For its services, YCS&T is compensated on an hourly basis.

21. YCS&T filed the YCS&T Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from the Petition Date through February 28, 2018 (Dkt. Nos. 1677, 1678) requesting an allowance of compensation for professional services rendered in the amount of \$1,607,115.50 and reimbursement of actual and necessary expenses in the amount of \$69,478.18.

22. During the First Interim Fee Period, YCS&T filed three (3) monthly applications for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date		Voluntary Reduction	
		Fees	Expenses	Fees	Expenses	Fees	Non-Working Travel
2/16/2018 617	12/4/2017- 12/31/2017	\$414,253.50	\$15,635.13	\$331,402.80	\$12,342.07 <sup>3</sup>	\$0.00	\$0.00
3/19/2018 786	1/01/2018- 1/31/2018	\$642,819.50	\$35,666.19	\$514,255.60	\$35,666.19	\$0.00	\$8,057.50
4/10/2018 922	2/01/2018- 2/28/2018	\$550,042.50	\$21,469.92	\$440,034.00	\$21,469.92	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$1,607,115.50</b>	<b>\$72,771.24</b>	<b>\$1,285,692.40</b>	<b>\$69,478.18</b>	<b>\$0.00</b>	<b>\$8,057.50</b>

23. The Fee Examiner's initial report regarding the YCS&T Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Vague Time Entries;
- b. Block Billing Entries;
- c. Duplicate Entries;
- d. Mismatched Time Entries;
- e. Over/Under Billing Entries;
- f. Administrative Entries; and
- g. Expense-related issues (working meals, prepetition expenses, and travel expenses, among other things).

24. YCS&T and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and YCS&T reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the YCS&T Fee Application, the Fee Examiner recommends allowance of fees in

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<sup>3</sup> After discussions with the Fee Examiner, YCS&T adjusted its request for reimbursement of expenses for the December Fee Application to the extent the expenses were incurred prior to the Petition Date. These pre-petition expenses in the amount \$3,293.06, were reconciled with the pre-petition retainer or written off.

the amount of \$1,605,197.00 and reimbursement of expenses in the aggregate amount of in the amount of \$68,788.30.

**Klee, Tuchin, Bogdanoff & Stern LLP (Counsel to the Debtors)**

25. On February 26, 2018, the Debtors filed the *Debtors' Application, Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1, for Entry of an Order Authorizing Employment and Retention of Klee, Tuchin, Bogdanoff & Stern LLP as Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to February 14, 2018* [Dkt. No. 657].

26. On March 16, 2018, the Bankruptcy Court entered the *Order, Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1, for Entry of an Order Authorizing Employment and Retention of Klee, Tuchin, Bogdanoff & Stern LLP as Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to February 14, 2018* [Dkt No. 767] (the “KTBS Employment Order”). Pursuant to the KTBS Employment Order, the Debtors were authorized to employ KTBS as their counsel to render general legal services to the Debtors as needed throughout the course of the Chapter 11 Cases. For its services, KTBS is compensated on an hourly basis subject to certain hourly rate caps (subject to adjustment at the conclusion of the Chapter 11 Cases) and a transition service discount.

27. KTBS filed the KTBS Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from February 14, 2018 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$638,555.50, but

payment of its fees as calculated pursuant to the agreed upon rate cap (or \$576,697.50), and reimbursement of actual and necessary expenses in the amount of \$3,574.59.

28. During the First Interim Fee Period, KTB&S filed one (1) monthly application for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date		Voluntary Reduction	
		Fees	Expenses	Fees	Expenses	Fees	Non-Working Travel
3/23/2018 815	2/14/2018- 2/28/2018	\$576,697.50	\$3,574.59	\$461,358.00	\$3,574.59	\$132,084.00	\$0.00
<b>TOTAL</b>		<b>\$576,697.50</b>	<b>\$3,574.59</b>	<b>\$461,358.00</b>	<b>\$3,574.59</b>	<b>\$132,084.00</b>	<b>\$0.00</b>

29. The Fee Examiner's initial report regarding the KTB&S Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Vague Time Entries;
- b. Block Billing Entries;
- c. Duplicate Entries; and
- d. Mismatched Time Entries.

30. KTB&S and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report and the Fee Examiner, after taking into account the voluntary reductions taken by KTB&S and the rate cap, does not believe that a further adjustment to the Fee Application is required. Accordingly, with respect to the KTB&S Fee Application, the Fee Examiner recommends allowance of fees and reimbursement of expenses as requested in the Fee Application.

**Homer Bonner Jacobs, P.A. (Special Litigation Counsel to the Debtors)**

31. On December 20, 2017, the Debtors filed the *Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Homer Bonner Jacobs, PA as Special*

*Litigation Counsel to the Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date* [Dkt. No. 111].

32. On January 23, 2018, the Court entered the *Order Authorizing the Employment and Retention of Homer Bonner Jacobs, PA as Special Litigation Counsel to the Debtors and Debtors in Possession Nunc Pro Tunc to Petition Date* [Dkt No. 361] (the “HBJ Employment Order”). Pursuant to the HBJ Employment Order, the Debtors were authorized to employ HBJ as their special litigation counsel to render professional services to the Debtors in connection with certain SEC and related state regulatory investigations and enforcement actions. For its services, HBJ is compensated on an hourly basis subject to a discounted hourly rate for the lead professionals.

33. HBJ filed the HBJ Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from January 1, 2018<sup>4</sup> through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$183,182.50 and reimbursement of actual and necessary expenses in the amount of \$263,942.42 [Dkt. Nos. 1677, 1679].

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<sup>4</sup> HBJ was paid in advance for services rendered for December 2017 and such payment was earned when paid pursuant to HBJ’s engagement letter with the Debtors.

34. During the First Interim Fee Period, HBJ filed two (2) monthly applications for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date	
		Fees	Expenses	Fees	Expenses
2/28/2018 671	1/01/2018- 1/31/2018	\$125,077.50	\$253,572.78	\$100,062.00	\$249,922.78 <sup>5</sup>
4/02/2018 877	2/01/2018- 2/28/2018	\$58,105.00	\$14,019.64	\$46,484.00	\$14,019.64
<b>TOTAL</b>		<b>\$183,182.50</b>	<b>\$267,592.42</b>	<b>\$146,546.00</b>	<b>\$263,942.42</b>

35. The Fee Examiner's initial report regarding the HBJ Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Duplicate Entries;
- b. Administrative Entries; and
- c. Mismatched Time Entries.

36. HBJ and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and HBJ reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the HBJ Fee Application, the Fee Examiner recommends allowance of fees in the amount of \$181,486.00 and reimbursement of expenses in the amount of \$263,942.42.

**Garden City Group, LLC (Administrative Advisor to the Debtors)**

37. On December 19, 2017, the Debtors filed the *Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Garden City Group, LLC as Administrative Advisor for the Debtors and Debtors in Possession Pursuant to 11 U.S.C. §§ 327(a) and 330, Nunc Pro Tunc to the Petition Date* [Dkt. No. 103].

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<sup>5</sup> After discussions with the Fee Examiner, HBJ obtained a \$3,650.00 reduction from the eDiscovery vendor and this adjustment is reflected in the HBJ Fee Application.



38. On January 10, 2018, the Court entered the *Order Authorizing the Retention and Employment of Garden City Group, LLC as Administrative Advisor for the Debtors and Debtors in Possession Pursuant to 11 U.S.C. §§ 327(a) and 330, Nunc Pro Tunc to the Petition Date* (the “GCG Employment Order”) [Dkt. No. 274]. Pursuant to the GCG Employment Order, the Debtors were authorized to employ GCG as their administrative advisor to, among other things and as relevant to the GCG Fee Application, assist with the preparation of the Debtors’ schedules of assets and liabilities and statements of financial affairs. For its services, GCG is compensated on an hourly basis.

39. GCG filed the GCG Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from the Petition Date through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$77,175.50<sup>6</sup> and reimbursement of actual and necessary expenses in the amount of \$0.00 [Dkt. No. 1677].

40. During the First Interim Fee Period, GCG filed two (2) monthly applications for compensation covering three (3) months as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date	
		Fees	Expenses	Fees	Expenses
3/19/2018 782	12/04/2017- 1/31/2018	\$51,212.00	\$0.00	\$40,969.60	\$0.00
4/25/2018 1631	2/01/2018- 2/28/2018	\$28,732.50	\$0.00	\$22,986.00	\$0.00
<b>TOTAL</b>		<b>\$79,944.50</b>	<b>\$0.00</b>	<b>\$63,955.60</b>	<b>\$0.00</b>

41. The Fee Examiner’s initial report regarding the GCG Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Duplicate Entries;

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<sup>6</sup> After discussions with the Fee Examiner, GCG agreed to reduce its fees with respect to the December Fee Application by \$2,769.00.

- a. Administrative Entries; and
- b. Mismatched Time Entries.

42. GCG and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report and informal comments to the December Fee Application. Both the Fee Examiner and GCG reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the GCG Fee Application, the Fee Examiner recommends allowance of fees and reimbursement of expenses in the requested amounts.

**Province, Inc. (Operational and Financial Advisors to the Debtors)**

43. On March 2, 2018, the Debtors filed the *Application for Entry of an Order, Pursuant to Section 327(a) of the Bankruptcy Code, Authorizing the Employment and Retention of Province, Inc. as Operational and Financial Advisors to the Debtors Nunc Pro Tunc to February 1, 2018* [Dkt. No. 692].

44. On March 27, 2018, the Court entered the *Order, Pursuant to Section 327(a) of the Bankruptcy Code, Authorizing the Employment and Retention of Province, Inc. as Operational and Financial Advisors to the Debtors Nunc Pro Tunc to February 1, 2018* (the "Province Employment Order") [Dkt. No. 835]. Prior to the entry of the Province Employment Order, Province was retained by the Debtors to provide valuation services in connection with obtaining debtor-in-possession financing and without prejudice to the expansion of Province's services upon separate application. Pursuant to the Province Employment Order, the Debtors were authorized to employ Province to provide consulting and advisory services to the Debtors. For its services, Province agreed to a flat fee of \$200,000 per month for the first six (6) months of its engagement, with the monthly fee to be reassessed at the end of the six-month period.

45. Province filed the Province Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from February 1, 2018 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$200,000.00 and reimbursement of actual and necessary expenses in the amount of \$2,437.36 [Dkt. No. 1677].

46. During the First Interim Fee Period, Province filed one (1) monthly application for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Paid to Date		Reduction
		Fees	Expenses	Fees	Expenses	Fees
4/10/2018 923	2/1/2018- 2/28/2018	\$200,000.00	\$2,437.36	\$160,000.00	\$2,437.36	\$103,058.50
<b>TOTAL</b>		\$200,000.00	\$2,437.36	\$160,000.00	\$2,437.36	\$103,058.50

47. The Fee Examiner did not issue an initial report to Province in light of the generally compliant timekeeping of the Province professionals, the monthly fee cap, and the reduction taken by Province in the amount of \$103,058.50. Accordingly, with respect to the Province Fee Application, the Fee Examiner recommends allowance of fees and reimbursement of expenses as requested in the Fee Application.

**Pachulski Stang Ziehl (Counsel to the Official Committee of Unsecured Creditors)**

48. On December 22, 2017, the Committee filed the *Application of the Official Committee of Unsecured Creditors for Order, Pursuant to 11 U.S.C. §§ 328, and 1103, Fed. R. Bankr. P. 2014, and Local Rule 2014-1, Authorizing and Approving the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to December 14, 2017* [Dkt. No. 137].

49. On January 18, 2018, the Court entered the *Order Authorizing and Approving the Retention of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to December 14, 2017* (the “PSZ&J Employment Order”)

[Dkt No. 320]. PSZ&J was retained as general bankruptcy counsel to the Committee. For its services, PSZ&J is compensated on an hourly basis.

50. PSZ&J filed the PSZ&J Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from December 14, 2017 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$1,896,777.00 and reimbursement of actual and necessary expenses in the amount of \$67,892.25 [Dkt. No. 1684].

51. During the First Interim Fee Period, PSZ&J filed three (3) monthly applications for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date		Voluntary Reduction	
		Fees	Expenses	Fees	Expenses	Fees	Non-Working Travel
2/23/2018 647	12/14/2017- 12/31/2017	\$527,779.50 <sup>7</sup>	\$12,368.61	\$422,223.60	\$12,368.61	\$0.00	\$18,621.50
4/13/2018 1260	1/01/2018- 1/31/2018	\$992,674.00	\$45,151.47	\$794,139.20	\$45,151.47	\$0.00	\$12,259.50
4/27/2018 1665	2/01/2018- 2/28/2018	\$376,323.50	\$10,372.17	\$301,058.80	\$10,372.17	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$1,896,777.00</b>	<b>\$67,892.25</b>	<b>\$1,517,421.60</b>	<b>\$67,892.25</b>	<b>\$0.00</b>	<b>\$30,881.00</b>

52. The Fee Examiner's initial report regarding the PSZ&J Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Vague Time Entries;
- b. Block Billing Entries;
- c. Duplicate Entries;
- d. Mismatched Time Entries;
- e. Over/Under Billing Entries;
- f. Non-working travel billed at 100%;

<sup>7</sup> The amount requested in the December Fee Statement was incorrectly stated as \$577,779.50 in the PSZ&J Fee Application; however, the correct amount was included in the aggregate fee request in the PSZ&J Fee Application.

- g. Administrative Entries; and
- h. Expense-related issues (working meals, printing and facsimile charges, service fees, and travel expenses, among other things).

53. PSZ&J and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and PSZ&J reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the PSZ&J Fee Application, the Fee Examiner recommends allowance of fees in the amount of \$1,861,379.75 and reimbursement of expenses in the amount of in the amount of \$61,224.53.

**Berger Singerman LLP (Special Litigation Counsel to the Creditors Committee)**

54. On January 5, 2018, the Committee filed the *Application Pursuant to Sections 328 and 1103 of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Berger Singerman LLP as Special Counsel for the Official Committee of Unsecured Creditors, Nunc Pro Tunc to December 26, 2017* [Dkt. No. 223].

55. On January 18, 2018, the Court entered the *Order Pursuant to Sections 328(a) and 1103 of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Berger Singerman LLP as Special Counsel for the Official Committee of Unsecured Creditors, Nunc Pro Tunc to December 26, 2017* (the "Berger Singerman Employment Order") [Dkt No. 322]. Pursuant to the Berger Singerman Employment Order, the Committee was authorized to employ Berger Singerman as its special litigation counsel to render professional services to the Committee in connection with

certain SEC and related state regulatory investigations and enforcement actions. For its services, Berger Singerman agreed to be compensated on an hourly basis.

56. Berger Singerman filed the Berger Singerman Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from December 26, 2017 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$95,641.50 and reimbursement of actual and necessary expenses in the amount of \$1,536.17 [Dkt. No. 1685].

57. During the First Interim Fee Period, Berger Singerman filed two (2) monthly applications for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date	
		Fees	Expenses	Fees	Expenses
2/23/2018 648	12/26/2017- 1/31/2018	\$59,424.50	\$1,172.34	\$47,539.60	\$1,172.34
4/13/2018 1259	2/01/2018- 2/28/2018	\$36,217.00	\$363.83	\$28,973.60	\$363.83
<b>TOTAL</b>		<b>\$95,641.50</b>	<b>\$1,536.17</b>	<b>\$76,513.20</b>	<b>\$1,536.17</b>

58. The Fee Examiner's initial report regarding the Berger Singerman Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Vague Time Entries;
- b. Block Billing Entries; and
- c. Administrative Entries.

59. Berger Singerman and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and Berger Singerman reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the Berger Singerman Fee Application, the Fee Examiner

recommends allowance of fees in the amount of \$93,991.50 and expenses in the aggregate amount of in the amount of \$1,536.17.

**FTI Consulting, Inc. (Financial Advisors to the Creditors Committee)**

60. On December 22, 2017, the Committee filed the *Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisors to the Official Committee of Unsecured Creditors Nunc Pro Tunc to December 14, 2017* [Dkt. No. 138].

61. On January 18, 2018, the Court entered the *Order Authorizing Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors* (the “FTI Employment Order”) [Dkt No. 321]. Pursuant to the FTI Employment Order, the Committee was authorized to employ FTI to perform financial advisory services to the Committee. For its services, FTI agreed to be compensated on an hourly basis.

62. FTI filed the FTI Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from December 14, 2017 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$1,475,579.75 and reimbursement of actual and necessary expenses in the amount of \$9,726.21 [Dkt. No. 1809].

63. During the First Interim Fee Period, FTI filed three (3) monthly applications for compensation as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date		Voluntary Reduction	
		Fees	Expenses	Fees	Expenses	Fees	Non-Working Travel
2/23/2018 649, 1809	12/14/2017- 12/31/2017	\$339,067.00 <sup>8</sup>	\$313.00	\$271,676.00	\$313.00	\$0.00	\$24,491.75
4/13/2018 1258	1/01/2018- 1/31/2018	\$685,611.25	\$7,815.48	\$548,489.00	\$7,815.48	\$0.00	\$21,914.25
4/27/2018 1686	2/01/2018- 2/28/2018	\$450,901.50	\$1,597.73	\$360,721.20	\$1,597.73	\$0.00	\$3,675.00
<b>TOTAL</b>		<b>\$1,475,579.75</b>	<b>\$9,726.21</b>	<b>\$1,180,886.20</b>	<b>\$9,726.21</b>	<b>\$0.00</b>	<b>\$50,081.00</b>

64. The Fee Examiner's initial report regarding the FTI Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- d. Vague Time Entries;
- e. Mismatched Time Entries; and
- f. Administrative Entries.

65. FTI and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and FTI reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions. Accordingly, with regard to the FTI Fee Application, the Fee Examiner recommends allowance of fees in the amount of \$1,473,579.55 and expenses in the amount of \$9,375.35.

**Venable LLP (Counsel to the Fiduciary Committee of Unitholders)**

66. On February 16, 2018, the Unitholder Committee filed the *Application of the Fiduciary Committee of Unitholders for an Order, Pursuant to 11 U.S.C. §§ 328 and 1103, Fed.*

<sup>8</sup> FTI revised its invoice in support of the December 2017 Fee Application to supplement certain time entries and implement certain reductions agreed to with the Fee Examiner.



*R. Bankr. P. 2014, and Local Rule 2014-1, Authorizing and Approving the Employment and Retention of Venable LLP as Nunc Pro Tunc to January 23, 2018* [Dkt. No. 615].

67. On March 8, 2018, the Court entered the *Order Authorizing and Approving the Retention of Venable LLP as Counsel to the Fiduciary Committee of Unitholders Nunc Pro Tunc to January 23, 2018* [Dkt No. 719] (the “Venable Employment Order”). Pursuant to the Venable Employment Order, the Unitholder Committee was authorized to employ Venable as its general counsel. For its services, Venable is compensated on an hourly basis subject to the budget set forth in the Term Sheet.

68. Venable filed the Venable Fee Application for an interim allowance of compensation for professional services rendered and for reimbursement of actual and necessary expenses for the period from January 23, 2018 through February 28, 2018 requesting an allowance of compensation for professional services rendered in the amount of \$733,127.75 and reimbursement of actual and necessary expenses in the amount of \$27,134.27 [Dkt. Nos. 1682, 1683].

69. During the First Interim Fee Period, Venable filed one (1) monthly application for compensation covering two (2) months as follows:

Dated Filed/ Docket No.	Period Covered	Requested		Approved to Date		Voluntary Reduction	
		Fees	Expenses	Fees	Expenses	Fees	Non-Working Travel
3/29/2018 861	1/23/2018- 2/28/2018	\$733,127.75	\$27,134.27	\$586,502.20	\$27,134.27	\$85,957.75	\$30,204.25
<b>TOTAL</b>		<b>\$733,127.75</b>	<b>\$27,134.27</b>	<b>\$586,502.20</b>	<b>\$27,134.27</b>	<b>\$86,000.00</b>	<b>\$30,204.25</b>

70. The Fee Examiner’s initial report regarding the Venable Fee Application identified the following issues where further information was required to ascertain compliance with the Guidelines:

- a. Vague Time Entries;
- b. Block Billing Entries;

- c. Duplicate Entries;
- d. Mismatched Time Entries;
- e. Over/Under Billing Entries;
- f. Administrative Entries; and
- g. Expense-related issues (working meals, pre-petition expenses, and travel expenses, among other things).

71. Venable and the Fee Examiner engaged in a dialogue to address and resolve the issues raised by the Fee Examiner's initial report. Both the Fee Examiner and Venable reserve all of their rights with respect to future applications for compensation and recognize that the recommended reduction represents a compromise of the parties' various positions and takes into account the budget allocated to Venable. Accordingly, with regard to the Venable Fee Application, the Fee Examiner recommends allowance of fees in the amount of \$728,799.00 and expenses in the amount of \$25,901.57.

### **Conclusion**

For the reasons stated above, and in the absence of any objection to the Fee Applications of the Retained Professionals, the Fee Examiner recommends that the Court enter an Order, on an interim basis and subject to a final review at the conclusion of these Chapter 11 Cases, granting the interim fee requests of the Retained Professionals in the amounts set forth herein.

Dated: New York, New York  
July 2, 2018

Respectfully Submitted,

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