

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

	X	
	:	Chapter 11
In re:	:	
	:	Case No. 15-11402 (KJC)
NORTHSHORE MAINLAND SERVICES	:	Jointly Administered
INC., <i>et al.</i> ,	:	
	:	Re: D.E. 225
Debtors.	:	
	:	<b>Hearing Date: August 17, 2015, at 11:00 a.m.</b>
	X	<b>Obj. Deadline: August 10, 2015, at 4:00 p.m.</b>

**LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO  
DEBTORS’ APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF GLINTON SWEETING O’BRIEN AS  
SPECIAL BAHAMIAN COUNSEL, NUNC PRO TUNC TO THE PETITION DATE**

Andrew R. Vara, Acting United States Trustee for Region 3 (the “U.S. Trustee”), by and through his undersigned counsel, hereby objects on a limited basis to Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Glinton Sweeting O’Brien as Special Bahamian Counsel, *Nunc Pro Tunc* to the Petition Date (D.E. 255) (the “Application”), as follows:

**I.**

**JURISDICTION**

1. Pursuant to 28 U.S.C. § 1334 and applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and resolve this limited objection.

2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with monitoring the federal bankruptcy system. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that 11 U.S.C. § 307 gives the U.S. Trustee “public interest standing”); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

3. The U.S. Trustee has standing to be heard on the Application pursuant to 11 U.S.C. § 307.

## II.

### BACKGROUND

4. On June 29, 2015 (the "Petition Date"), the above-captioned debtors (the "Debtors") filed voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. On July 27, 2015, the Debtors filed the Application. Through the Application, the Debtors seek to retain Ginton Sweeting O'Brien ("GSO") as their special Bahamian counsel, effective as of the Petition Date.

6. With respect to GSO's proposed billing rates, the declaration of Roy W.M. Sweeting filed in support of the Application (the "Sweeting Declaration") explains:

With respect to all matters, the Debtors have, subject to Court approval, agreed to compensate GSO on an hourly basis at rates that *do not (and will not) exceed the rates that GSO customarily charges to its other clients for work of this type*. As of the Petition Date, the applicable rates for timekeepers for the matters that GSO is engaged to perform legal services were **\$800.00** for partners, **\$500.00** for associates and \$60.00 to \$110.00 for law clerks.

[D.E. 255-4], ¶ 4 (emphasis added). The Sweeting Declaration continues on to explain that GSO raised its customary rates with respect to its representation of the Debtors in this bankruptcy case, stating:

We were asked to represent the Debtors on an urgent basis and to provide a level and quantity of service that was anticipated to be, and has been, at or near the maximum capacity of our relatively small firm's output. We therefore requested hourly rates in excess of our usual rates of **\$600** per hour for partners and **\$300 - \$400** per hour for associates.

*Id.* at ¶ 14 (emphasis added). The Sweeting Declaration does not explain whether GSO increased its rates in similar fashion for each of its clients when it did so with respect to the Debtors.

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### III.

#### ARGUMENT

7. Section 327(e) of the Bankruptcy Code provides:

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(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. §327(e).

8. Section 328(a) of the Bankruptcy Code provides in part that a debtor may, with the Court's approval, employ a professional person under Section 327 "on any reasonable terms and conditions of employment [.]” 11 U.S.C. §328(a).

9. The starting point in a reasonableness inquiry is a reference to what is common in the marketplace. *See In re Insilco Technologies, Inc.*, 291 B.R. 628, 633-34 (Bankr. D. Del. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 229 (3d Cir. 2003) (“[S]ome reference to the market is not out of place when considering whether terms of retention are ‘reasonable’ in the bankruptcy context.”)). Reasonableness is market-driven, not market-determined, “especially in the realm of bankruptcy, where courts play a special supervisory role.” *In re United Artists Theatre Co.*, 315 F.3d at 230. Practices common in the marketplace are not automatically reasonable under Section 328. *See id.*

10. The reasonableness inquiry “must be tailored to Bankruptcy Code requirements, including the particular circumstances of a chapter 11 proceeding, the court’s supervisory role and the interests of the various constituents.” *In re Insilco Technologies, Inc.*, 291 B.R. at 634. Factors to be considered include whether (1) the terms of the proposed engagement agreement reflect normal business terms in the marketplace; (2) the debtor and the professional are sophisticated business entities with equal bargaining power who negotiated at arms’ length; (3) the terms of the retention are in the best interests of the estate; (4) creditors oppose the retention

provisions; and (5) any retainer is reasonable given the size, circumstances and posture of the case. *See id.*

11. The party seeking approval of a professional's employment has the burden of establishing that the professional's engagement or compensation agreement is reasonable. *See In re Hathaway Ranch Partnership*, 116 B.R. 208, 219 (Bankr. C.D. Cal. 1990) (citing *In re C & P Auto Transport, Inc.*, 94 B.R.682, 686 (Bankr. E.D. Cal. 1988)).

12. The Court "may approve some of the terms and conditions proposed in an employment application while rejecting others." *In re Federal Mogul-Global, Inc.*, 348 F.3d 390, 398-99 (3d Cir. 2003) (citing *Zolfo, Cooper & Co. v. Sunbeam-Oster Co.*, 50 F.3d 253 (3d Cir. 1995)). The Court "must be allowed to review the reasonableness of a proposed hourly fee[.]" *In re Federal Mogul-Global, Inc.*, 348 F.3d at 400.

13. GSO's increased rates, if applied to the Debtors alone and to none of GSO's other clients, are not reasonable and should be denied. The Sweeting Declaration sets forth on the one hand that the rates it charges the Debtors "***do not (and will not) exceed the rates that GSO customarily charges to its other clients for work of this type.***" D.E. 255-4], ¶ 4 (emphasis added). Yet, on the other hand, the Sweeting Declaration admits to having ". . . requested hourly rates in excess of our usual rates of \$600 per hour for partners and \$300 - \$400 per hour for associates." *Id.* at ¶ 14 (emphasis added). The Declaration does not specify whether GSO's change in rates applied to all of its clients or whether under similar circumstances the increase in rates is common in the marketplace. GSO's explanation for the increase of its rates is that "[w]e were asked to represent the Debtors on an urgent basis and to provide a level and quantity of service that was anticipated to be, and has been, at or near the maximum capacity of our relatively small firm's output." *Id.* This reason alone, is insufficient to support a finding that the increased rate is reasonable.

14. A firm's rates should not increase solely because the client places the firm at its maximum capacity. Absent further justification, GSO should not be permitted to change the rates it is charging in these cases.

15. The U.S. Trustee reserves all rights to object to any and all GSO fee applications filed in these cases on any and all grounds, including, without limitation, with regard to the billing rate(s) charged in such fee applications.

**IV.**

**CONCLUSION**

16. Based on the foregoing, the U.S. Trustee respectfully requests that the Court (i) deny the Application unless (a) GSO's rates remain at the rate that GSO's usual rates, or (b) the Debtors establish a sufficient record of the additional justification for the increase in rates, and (ii) grant such other relief as the Court deems appropriate and just.

Dated: August 7, 2015  
Wilmington, Delaware

Respectfully submitted,

**ANDREW R. VARA**  
**Acting United States Trustee, Region Three**

By: /s/ Jane Leamy  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11  
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 Northshore Mainland Services, Inc., et al. : Case No. 15-11402 (KJC)  
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 :  
 Debtors. :

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that on August 7, 2015, the United States Trustee’s Objection to the Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Glinton Sweeting O’Brien as Special Bahamian Counsel, *Nunc Pro Tunc* to the Petition Date was caused to be served via electronic mail to the following persons:

<p>PACHULSKI STANG ZIEHL &amp; JONES                  Laura Davis Jones                  James E. O’Neill                  Colin R. Robinson                  Peter J. Keane                  919 North Market Street, 17th Floor                  Wilmington, DE 19801                  Email: <a href="mailto:ljones@pszjlaw.com">ljones@pszjlaw.com</a>  <a href="mailto:joneill@pszjlaw.com">joneill@pszjlaw.com</a>  <a href="mailto:crobinson@pszjlaw.com">crobinson@pszjlaw.com</a>  <a href="mailto:pkeane@pszjlaw.com">pkeane@pszjlaw.com</a></p>	<p>MILBANK, TWEED, HADLEY &amp; McCLOY LLP                  Paul S. Aronzon                  Mark Shinderman                  601 S. Figueroa Street, 30th Floor                  Los Angeles, CA 90017                  Email: <a href="mailto:paronzon@milbank.com">paronzon@milbank.com</a>  <a href="mailto:mshinderman@milbank.com">mshinderman@milbank.com</a></p>
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<p>Christopher M. Samis                  L. Katherine Good                  WHITEFORD, TAYLOR &amp; PRESTON LLC                  405 North King Street, Suite 500                  Wilmington, Delaware 19801</p>	<p>Michael Merchant                  RICHARDS LAYTON &amp; FINGER                  One Rodney Square                  Wilmington, DE 19801                  Email: <a href="mailto:merchant@rlf.com">merchant@rlf.com</a></p>

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/s/ Jane Leamy, Trial Attorney

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