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Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

In 1996, in accordance with 28 U.S.C. § 586, the United States Trustee Program (“USTP”) promulgated Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 (“1996 guidelines”). The USTP is revising the 1996 guidelines in phases and has drafted new proposed guidelines for reviewing applications for attorney compensation in larger chapter 11 cases (more than \$50 million in combined assets and liabilities, aggregated for jointly administered cases). The USTP invites public review of and comment on these proposed guidelines by January 31, 2012.

The 1996 guidelines remain in effect for the USTP review of applications for compensation in all cases. Only after the public comment period and upon publication of the proposed guidelines in final form in the Federal Register will applications for attorney compensation in larger chapter 11 cases be subject to review under the new guidelines. Until the USTP adopts other superseding guidelines, the 1996 guidelines will continue in effect for the review of applications filed under section 330 in (1) larger chapter 11 cases by those seeking compensation who are not attorneys, (2) all chapter 11 cases below the \$50 million threshold, and (3) cases under other chapters of the Bankruptcy Code.

A. GENERAL INFORMATION

1. 28 U.S.C. § 586(a)(3)(A) provides that United States Trustees may review “in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States Trustee except when circumstances warrant different treatment) applications filed for compensation and reimbursement under section 330 of title 11” United States Trustees may also file “with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.” *Id.* The Executive Office for United States Trustees promulgated guidelines, which apply to all cases filed after October 21, 1994.
2. Because the circumstances in certain chapter 11 cases warrant different treatment, these Guidelines (“Guidelines”) apply only when USTP attorneys review applications for compensation filed by attorneys employed under sections 327 or 1103 of the United States Bankruptcy Code (the “Code”) in chapter 11 cases where the debtor’s scheduled assets and liabilities combined exceed \$50 Million (aggregated for jointly administered cases).

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3. These Guidelines are statements of United States Trustee policies that the USTP will follow in the absence of controlling law or rules in a jurisdiction. Thus, the Guidelines do not supersede local rules, court orders, or other controlling authority but complement them to the extent possible.
4. Because only the court has authority to award compensation and reimbursement under section 330 of the Code, the Guidelines reflect standards and procedures in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure.
5. Applications that contain the information requested in these Guidelines will assist review by the court, the parties, and the United States Trustee. The Guidelines thus seek the disclosure of information relevant to awarding compensation and reimbursing expenses under section 330.
6. Because terms and conditions of employment approved by the court when the professional is retained will often affect later applications for compensation, these Guidelines also address disclosure of information in applications for retention filed under sections 327 and 1103 of the Code.¹
7. The United States Trustees shall use these Guidelines in all cases filed on or after [effective date].
8. Nothing in the Guidelines should be construed:
 - a. To limit the United States Trustee's discretion to request additional information or to refer any information received to any law enforcement authority of the United States or a state.
 - b. To limit the United States Trustee's discretion to determine whether to file comments or objections to applications.
 - c. To create any private right of action enforceable against the United States Trustee or the United States.

B. UNITED STATES TRUSTEE'S CONSIDERATIONS IN REVIEWING AND COMMENTING ON FEE APPLICATIONS

1. In determining whether to object to or comment on fee applications, the United States Trustee will be guided, in part, by the principles that follow. These principles, however, are

¹ Applications for retention are always filed under section 327, not section 328. Although certain terms of the engagement may be governed by section 328, the application itself is filed under section 327.

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not exclusive and in no way limit the discretion of the United States Trustee to object or comment.

2. In applying the Guidelines, the United States Trustee seeks to:
 - a. Ensure bankruptcy professional fees are subject to the same client-driven market forces, scrutiny, and accountability that apply in non-bankruptcy engagements.
 - b. Ensure adherence to the requirements of 11 U.S.C. § 330 so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the professional's own billing practices for bankruptcy and non-bankruptcy engagements and those of its peers.
 - c. Increase disclosure and transparency in the billing practices of professionals seeking compensation from the estate.
 - d. Increase client and constituent accountability for overseeing the fees and billing practices of their own professionals who are being paid by the estate.
 - e. Encourage the adoption of budgets and staffing plans developed between the client and professional to bring discipline, predictability, and client involvement and accountability to the bankruptcy process.
 - f. Increase the efficiency and decrease the administrative burden of review.
 - g. Maintain the burden of proof on the professional seeking compensation to establish that fees and expenses are reasonable and necessary even absent an objection.
 - h. Increase public confidence in the integrity of the bankruptcy compensation process.
3. The United States Trustee will consider the factors set forth in section 330 of the Code, including the following:
 - a. The time spent.
 - b. The rates charged.
 - c. Whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered.
 - d. Whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.
 - e. The professional's demonstrated skill and experience in bankruptcy.
 - f. Whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.
4. The Guidelines are intended to elicit information that will aid the parties in determining whether a fee application meets the requirements for reasonable and necessary fees and

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expenses required by section 330 of the Code. In applying section 330 to the review of fee applications, the United States Trustee will consider the following:

- a. **Comparable services standard:** whether the professional's rate in the application is reasonable, particularly as compared to the market measured both by the professional's own billing practices for bankruptcy and non-bankruptcy engagements and those of its peers and whether the applicant provided sufficient information to evaluate comparability.
- b. **Staffing inefficiencies:** whether there was unjustified or unjustifiable duplication of effort or services, including multiple professionals attending hearings or meetings, or whether the seniority or skill level of the professional was commensurate with the complexity, importance, and nature of the issue or task.
- c. **Rate increases:** whether the application contains rates higher than those disclosed and approved on the application for retention or any supplemental application for retention or agreed to with the client.
- d. **Transitory professionals:** whether a professional billed few hours with no evidence of benefit to the estate.
- e. **Routine billing activities:** whether a professional billed for routine billing activities that are typically not compensable outside of bankruptcy. Most are not compensable because professionals do not charge a client for preparing invoices, whether detailed or not. *Reasonable* charges for preparing interim and final fee applications, however, are compensable. Activities that the United States Trustee may object to as non-compensable include but are not limited to:
 - i. Redacting bills or invoices for privileged or proprietary information. Professionals whose compensation will be paid by the bankruptcy estate know at the inception that their billing records must be publicly filed and should prepare time entries and invoices accordingly.
 - ii. Entering, preparing, reviewing, or revising time records or invoices.
 - iii. Preparing and issuing the monthly statement in cases with a monthly compensation order.
- f. **Block billing or lumping:** whether the application contains entries over .5 hours without discrete tasks separately identified and billed.
- g. **Vague or repetitive entries:** whether the application contains insufficient information to identify the purpose of the work or the benefit to the estate. Phrases like "attention to" or "review file," without more, are generally insufficient.

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- h. **Overhead:** whether the application includes matters that should be considered part of the professional's overhead and not billed to the estate, such as clerical tasks and word processing.
- i. **Non-working travel:** whether the application includes time for non-working travel billed at the full rate.
- j. **Contesting or litigating fee objections:** whether the fee application seeks compensation for defending or explaining fee applications or monthly invoices that would normally not be compensable outside of bankruptcy.
- k. **Geographic variations in rates:** whether the professional increased the rate based solely on the geographic location of the case. The United States Trustee will not object to "non-forum" rates of professionals when the "non-forum" rates are based on the reasonable rates where they maintain their primary office, even if the locally prevailing rates where the case is pending are lower (*i.e.*, a professional may bill the same reasonable rate in any forum). Conversely, the United States Trustee will object if professionals increase their rates based on the forum where the case is pending when they bill a lower rate where they maintain their primary office.
- l. **Budgets and Staffing Plans:** whether budgets and staffing plans for hourly billing engagements have been agreed to between professionals and clients. A model budget and staffing plan is attached at **Exhibit B.**² The United States Trustee will also consider the following matters regarding budgets and staffing plans:
 - i. Whether professionals have periodically updated or amended their budgets and staffing plans as a case progresses and obtained client approval of all significant or material amendments.
 - ii. Whether budget estimates track project categories used in a particular case. Linking budgets to the project categories used in fee applications can facilitate the review of fee applications.
 - iii. Whether the application sufficiently explains any substantial upward variation (*e.g.*, 10% or more) between the client-approved budget and the fee application.
 - iv. Whether the application sufficiently explains any substantial upward variation between the number or identity of professionals between the client-approved staffing plan and the fee application.
- m. **Verified and other statements:** whether the client has provided a verified statement regarding its budgeting, review, and approval process for fees and expenses and

² The model forms included as exhibits to the Guidelines are not official forms and are simply templates offered as guidance to facilitate preparation and review of requested information.

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whether the professional has made similar representations and disclosures in the retention application and application for compensation.

- n. **Fee Enhancements:** If the application contains a request for a fee enhancement, whether the applicant has identified any facts or theories that, outside of bankruptcy, would enable a professional to compel its client to pay a professional fee in excess of the contractual amount due. This also includes any request for fees incurred in preparing, seeking, or defending an application for fee enhancement.
 - o. **Summer Associates:** whether the application includes fees for summer clerks or summer associates that are more properly the firm's overhead for recruiting and training.
 - p. **Burden of proof:** whether the applicant has provided sufficient information to satisfy its burden in the application even absent an objection.
5. In applying section 330 to the review of applications for reimbursement of reasonable, actual, and necessary expenses, the United States Trustee will consider the following:
- a. Whether the applicant has prorated expenses where appropriate between the estate and other cases (*e.g.*, travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.
 - b. Whether the expense is reasonable and economical. For example, travel should be in coach class, and first class and other above standard travel or accommodations will normally be objectionable.
 - c. Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.
 - d. Whether the expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate, or whether the professional has marked-up the expense. Expenses also include, but are not limited to, payments to contract or other "outsourced" professionals, vendors, and consultants. For any contract legal professionals, the applicant should disclose the actual expense, the "mark-up," if any, and the basis or justification for the mark-up.
 - e. Whether the expenses are or should be non-reimbursable overhead costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, telephone charges, lighting, heating and cooling, and library and publication charges.

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- f. Whether the expenses incurred “in-house” or by any affiliates of the applicant reflect the actual cost of such expenses to the applicant.
- g. Whether the applicant has adhered to allowable rates for expenses as may be fixed by any local rule or order of the court.
- a. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.
- b. Some larger or unusual expenses may require the submission of receipts.

C. CONTENTS AND FORMAT OF APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES

1. **General:** All applications should include sufficient detail to demonstrate compliance with the standards of 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The information sought below will facilitate review of the application and should be provided in every fee application, unless the United States Trustee determines the circumstances warrant different treatment.
2. **Electronic Records:** The billing records (detailed time entries) substantiating the application should generally be provided to the United States Trustee (and, if requested, to the court or any other party) in an open electronic data format that is searchable. Applicants are encouraged to consult with the United States Trustee if there is a question as to the need for electronic billing data in any particular case. The submission of electronic data does not substitute for the need to meet all of the requirements of the Code, local rules, and any applicable compensation or case management orders.
3. **Information about the Applicant and the Application:**
 - a. Name of applicant.
 - b. Name of client.
 - c. Petition date.
 - d. Retention date.
 - e. Date of order approving employment.
 - f. Time period covered by application.
 - g. Terms and conditions of employment and compensation, including source of compensation, retainer terms, if any, and any budgetary or other limitations on fees.

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- h. Draws on any retainer and amounts remaining.
- i. Interim or final application.
- j. The date and terms of any order allowing filing of interim applications more frequently than 120 days, if applicable.
- k. Whether the applicant seeks compensation under a provision of the Code other than section 330.
- l. For each professional and paraprofessional who billed or worked on the matter:
 - i. Name.
 - ii. Title.
 - iii. Primary department, group, or section.
 - iv. Date of first admission to the bar, if applicable.
 - v. Total fees billed included in application.
 - vi. Total hours billed included in application.
 - vii. Current hourly rate contained in application and current hourly rate for all other matters (if applicable).
 - viii. Highest, lowest, and average hourly rate billed in the preceding 12 months for estate-billed bankruptcy matters and all other matters (if applicable).
 - ix. Any increase in hourly rate during the application period and the number of rate increases since the inception of the case.

Exhibit E is a model form that may be useful in transmitting the information requested in C.3.l.

- m. The effect of any rate increases since the order approving retention on the fee application. That is, if a professional has increased rates during a case, the total compensation sought in the fee application (interim and final) should be calculated for comparison purposes under originally approved rates and current rates. The application should also indicate who approved the rate increase(s) for the client and when.
- n. Debtors only: An estimate of the fees and expenses for which approval is sought that the debtor would have incurred even absent the bankruptcy (*e.g.*, non-bankruptcy litigation, tax advices).

4. Information about prior interim applications:

- a. Date(s) filed and period covered.

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- b. Fees and expenses requested.
- c. Fees and expenses approved.
- d. Date of previous order(s) on interim compensation or reimbursement of expenses.
- e. Amounts requested in previous interim applications and cumulatively since case inception.
- f. Amounts allowed and disallowed or withdrawn in previous interim orders and cumulatively since case inception.
- g. Amounts of all previous payments.
- h. Amount of any allowed fees and expenses remaining unpaid.

5. Billing Format:

- a. Time and service entries should be reported in chronological order.
- b. Each time or service entry should include:
 - i. The timekeeper's name.
 - ii. Time spent on task.
 - iii. Hourly rate.
 - iv. Fees sought for each entry.
 - v. Description of task or service.
 - vi. Project category.
- c. Time should be recorded in tenths of an hour. A disproportionate number of entries billed in half-or whole-hour increments may indicate that actions are being lumped or not accurately billed.
- d. Services should be described in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a *de minimus* amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate.
- e. Time entries should be kept contemporaneously with the services rendered.
- f. Entries should give sufficient detail about the work, identifying the subject matter of the communication, hearing, or task and any recipients or participants.
- g. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.
- h. The project categories and sub-categories set forth in **Exhibit A** should be used to the extent applicable. Applicants are encouraged to consult with the United States

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Trustee regarding the need for the use of sub-categories or the need to formulate case-specific project billing with respect to a particular case.

- i. For each project category, the applicant should provide a brief narrative summary of the following information:
 - i. A description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested.
 - ii. Identification of each person providing services on the project.
 - iii. A statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

6. Budgets—Benchmarking the Fee Application to the Budget and Staffing Plan:

- a. While not binding, as set forth above, the United States Trustee will consider budgets and staffing plans in reviewing applications for compensation. Accordingly, if a budget and staffing plan has been adopted by a professional, the budget and staffing plan should be attached to the application. A model budget and staffing plan is attached at **Exhibit B**.
 - b. Fee applications should include a summary by project category of fees and hours budgeted compared to fees and hours billed. **Exhibit D** is a model form that may be useful in reporting fees sought in comparison to client-approved budgets.
 - c. If the fees sought in the application vary upward from the client-approved budget by more than 10%, the professional should explain the variation in the application.
 - d. If fees are sought in the application for professionals who did not appear on the client-approved staffing plan, the professional should explain in the application why the professional seeks compensation without having previously been identified in the staffing plan.
7. **Statement from the Professional:** The professional applicant should answer the questions below in the fee application. Most questions require only a yes or no answer. Professionals, however, are free to provide additional information if they choose to explain or clarify their answers.
- a. During the preceding 12 months, have you or your firm charged any client less than the hourly rates included in this application in other estate-billed bankruptcy engagements? Other bankruptcy engagements? Other engagements?

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- b. During the preceding 12 months, have you or your firm charged any client more than the hourly rates included in this application in other estate-billed bankruptcy engagements? Other bankruptcy engagements? Other engagements?
 - c. Did you offer your client variations from your standard or customary billing rates, fees, or terms for services provided during the period covered by the application?
 - d. Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services provided during the period covered by the application?
 - e. Do any of the professionals included in this fee application vary their rate based on the geographic locale of the forum?
 - f. Does the fee application include time or fees related to entering, reviewing, or editing time records, invoices, and draft invoices, *etc.*? (This is limited to work involved in preparing time and billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application).
 - g. Does this application include time or fees for reviewing time records to redact any privileged or other confidential information?
8. **Verified Statement from the Client:**³ The client should provide a verified statement answering the questions below. Most questions require only a yes or no answer. Clients, however, are free to provide additional information if they choose to explain or clarify their answers.
- a. Did you review and approve a budget and staffing plan in advance for the professional covering the time period in this application?
 - b. If the fees sought vs. the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the professional?
 - c. Did you take steps to ensure the compensation sought in this application is comparable to the compensation paid to the professional or the professional's firm for bankruptcy and non-bankruptcy engagements?
 - d. Before this application was filed, did you review the professional's compensation and expenses sought in this application to ensure that they are reasonable and are for actual and necessary services?

³ A verified statement is either a declaration executed in accordance with 28 U.S.C. § 1746 or an affidavit conforming to the laws of the jurisdiction where executed.

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- e. Did you review the application to ensure that the professional has staffed the engagement with professionals of the appropriate seniority or experience commensurate with the complexity, importance, and nature of the problem, issue, or task addressed?
 - f. If the application includes any rate increases since retention or the last fee application, did you review and approve those rate increases in advance?
9. **Case Status:** The following information should be provided to the extent possible:
- a. A brief summary of the case, discussing key steps completed and key steps remaining until the case can be closed.
 - b. The amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.
 - c. Any material changes in the status of the case that occur after the filing of the fee application should be raised at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.
10. **Contents of Application for Reimbursement of Reasonable, Actual, and Necessary Expenses:** Any expense for which reimbursement is sought must be reasonable, actual, and necessary and must be of the kind customarily billed to non-bankruptcy clients. Expense applications should include the following information:
- a. Amount.
 - b. Description and pertinent detail (*e.g.*, copy costs, messengers, computer research, type of travel, type of fare, rate, destination, *etc.*).
 - c. Date incurred.
 - d. Who incurred the expense, if relevant.
 - e. Reason for expense.
 - f. Categorization of expenses according to standard expense categories on Exhibit A.

D. SUMMARY COVER SHEET, PROJECT BILLING SUMMARY, AND PROFESSIONAL STAFFING SUMMARY TO BE INCLUDED WITH APPLICATION

1. **Summary:** All applications should contain a summary cover sheet that provides the information below. **Exhibit C** is a model form that may be useful in transmitting this information.

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- a. Name of applicant.
- b. Name of client.
- c. Time period covered by application.
- d. Total compensation sought this period.
- e. Total expenses sought this period.
- a. Petition date.
- b. Retention date.
- c. Date of order approving employment.
- d. Total compensation approved by interim order to date.
- e. Total expenses approved by interim order to date.
- f. Total allowed compensation paid to date.
- g. Total allowed expenses paid to date.
- h. Blended rates in this application for all attorneys and for all timekeepers.
- i. Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
- j. Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
- k. Number of professionals included in this application.
- l. Number of professionals in this application not included in staffing plan approved by client.
- m. Difference between fees budgeted and compensation sought for this application period.
- n. Are any rates higher than those approved at retention? If yes, calculate the amount of compensation attributable to any rate increase.
- o. Number of “transitory” professionals included in application (fewer than 15 hours of work per 120-day interim period).
- p. Debtors Only: Estimate of compensation sought that would have been incurred irrespective of bankruptcy.

**DRAFT UNITED STATES TRUSTEE GUIDELINES
FOR REVIEWING APPLICATIONS FOR ATTORNEY COMPENSATION IN LARGER CHAPTER 11 CASES
FOR PUBLIC COMMENT THROUGH JANUARY 31, 2012**

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2. All applications should summarize fees and hours by project-task category and sub-category and expenses by expense category. **Exhibit D** is a model form that may be useful in transmitting this information.
3. All applications should summarize professionals (preferably in alphabetical order) included in the fee application by the professional's name, title, experience, rates, hours, fees, and primary practice group. **Exhibit E** is a model form that may be useful in transmitting this and other information.

E. APPLICATIONS FOR EMPLOYMENT

The following information should be disclosed in, or attached to, all applications for employment filed in accordance with sections 327 and 1103 of the Code:

1. The professional should answer the questions below. Most questions require only a yes or no answer. Professionals, however, are free to provide additional information if they choose to explain or clarify their answers.
 - a. Did you disclose to your client information regarding how your fees and terms for this engagement compare to other estate-billed bankruptcy engagements? Other bankruptcy engagements? Other engagements?
 - b. Did you offer your client variations from your standard or customary billing rates, fees, or terms?
 - c. Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?
 - d. During the preceding 12 months, have you or your firm charged any client less than the hourly rates quoted for this engagement in other estate-billed bankruptcy engagements? Other bankruptcy engagements? Other engagements?
 - e. During the preceding 12 months, have you or your firm charged any client more than the hourly rates quoted for this engagement in other estate-billed bankruptcy engagements? Other bankruptcy engagements? Other engagements?
 - f. Do any of the professionals included in this engagement vary their rate based on the geographic locale of the forum?
 - g. If you or your firm has a prior or existing relationship with the client (including a member of an official committee), do the terms and conditions of the proposed post-petition retention differ in any respect, including billing and compensation terms, from the prior retention? If so, describe the differences.

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2. With the application for employment, the professional should provide summary billing data comparisons between firm professionals in the bankruptcy practice group and all other practice groups combined, categorized by position held within the firm. This data is not specific to individuals in a firm but is rather the highest and lowest rate billed by any professional at every experience level or position (*e.g.*, sr. partner, partner, shareholder, member, counsel, associate, *etc.*) and an average rate for all professionals by experience level or position (*e.g.*, sr. partner, partner, shareholder, member, counsel, associate, *etc.*). The summary billing data should be reported for U.S. professionals only. The information should include the following for both bankruptcy practice groups and all other practice groups combined (to the extent applicable):
- a. Lowest hourly rate billed in the last 12 months.
 - b. Highest hourly rate billed in the last 12 months.
 - c. Average hourly rate billed in the last 12 months.

Exhibit F is a model form that may be useful in transmitting this information. The table below is a sample from Exhibit F.

| TITLE OR POSITION WITHIN FIRM (<i>e.g.</i> , Sr. Partner, Partner, Member, Shareholder, Counsel, Of Counsel, Assoc., Staff Atty. <i>etc.</i>) | LOWEST HOURLY RATE BILLED BY ANY PROFESSIONAL IN THAT POSITION (last 12 months) | | HIGHEST HOURLY RATE BILLED BY ANY PROFESSIONAL IN THAT POSITION (last 12 months) | | AVERAGE HOURLY RATE BILLED FOR ALL PROFESSIONALS IN THAT POSITION (last 12 months) | |
|--|--|-----------------------------|--|-----------------------------|---|-----------------------------|
| | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS |
| <i>Ex.</i> , Sr. Partner | | | | | | |
| <i>Ex.</i> , Counsel | | | | | | |
| <i>Ex.</i> Assoc. | | | | | | |
| <i>Ex.</i> , Paralegal | | | | | | |
| | | | | | | |

F. **SPECIAL FEE REVIEW PROCEDURES**

In a larger chapter 11 case where a number of professionals will be retained and the normal fee application and review process would be unduly burdensome, the United States Trustee will, in his or her discretion, recommend establishing a special fee review process, such as a fee review committee or an independent fee examiner. Either can assist the professionals, the court, and the United States Trustee in preparing or reviewing fee applications and can bring consistency, predictability, and transparency to the process. Although whether a committee or examiner is appointed is ultimately the court's decision, the United States Trustee will follow these Guidelines in connection with fee review committees and independent fee examiners, subject to the court's directions and orders.

1. **Timing.** Special fee review procedures should be established as early as practicable.
2. **Purpose.** An examiner or committee's primary purpose is ensuring that professional fees and expenses paid by the estate are reasonable, actual, and necessary, as required by the Code. Thus, an examiner or committee will monitor, review, and where appropriate, object to interim and final applications for fees and expenses filed by professionals who seek compensation from the estate. If a case has a monthly compensation order permitting the payment of fees and expenses before approval of interim or final applications, the examiner and committee will also monitor, review, and where appropriate, object to monthly invoices submitted for payment. The examiner or committee can also establish other measures to assist the court and the professionals in complying with the Code, the Federal Rules of Bankruptcy Procedure, local rules or general orders, the Guidelines, and other controlling law within the jurisdiction.
3. **Models.** Special fee review procedures can take one of several forms. The determination of the appropriate form for a particular case will be the product of consultation among the United States Trustee, the debtor, and any official committee, but it is ultimately the court's decision. There are several possible models, including a fee review committee, a fee review committee with an independent member, and an independent fee examiner.
 - a. **Fee Review Committee.** The court could appoint a Fee Review Committee, which should ordinarily consist of representatives of the debtor in possession, the unsecured creditors committee, any other official committee, and the United States Trustee. The representatives of the debtor in possession and the official committee(s) should not be retained professionals whose fees and expenses will be subject to review by the Fee Review Committee. One member of the Fee Review Committee should be designated as chairman, but that person's function should be administrative. Decisions should be reached by majority vote. If there is an even

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with retained professionals, to object to fee applications both interim and final, to object to monthly invoices if a case is governed by a monthly compensation order, and to undertake discovery in connection with contested fee matters.

7. Fee Review Committees and Independent Fee Examiners should establish guidelines and requirements for the preparation and submission of fee and expense budgets by the retained professionals. Fee Review Committees and Independent Fee Examiners should also consider whether case-specific project billing codes should be developed to facilitate preparation and review of fee applications.
8. Fee Review Committees and Independent Fee Examiners should establish procedures to resolve fee disputes with retained professionals, while retaining the right to file and prosecute objections if disputes cannot be resolved.
9. The order appointing Fee Review Committees and Independent Fee Examiners should contain appropriate provisions exculpating and indemnifying Fee Review Committee members, the Independent Member, or the Fee Examiner from any liability arising out of their service.

###

EXHIBIT A

PROJECT CATEGORIES, SUB-CATEGORIES, AND EXPENSE CATEGORIES

| PROJECT CATEGORIES | |
|---------------------------|---|
| 1. | Asset Analysis and Recovery |
| 2. | Asset Disposition |
| 3. | Assumption-Rejection of Leases and Contracts |
| 4. | Avoidance Action Analysis |
| 5. | Budgeting (Case) |
| 6. | Business Operations |
| 7. | Case Administration |
| 8. | Claims Administration and Objections |
| 9. | Corporate Governance/Board Matters |
| 10. | Employee Benefits/Pensions |
| 11. | Employment Application Preparation and Defense (own) |
| 12. | Employment Application Review and Objections (other's) |
| 13. | Fee Application Preparation and Defense (own) |
| 14. | Fee Application Review and Objections (other's) |
| 15. | Financing and Cash Collateral |
| 16. | Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each separately by adv. no. and caption or title of motion or application and docket no. |
| 17. | Meetings with Creditors |
| 18. | Non-Working Travel |
| 19. | Plan and Disclosure Statement |
| 20. | Real Estate |
| 21. | Relief from Stay and Adequate Protection |
| 22. | Tax |
| 23. | Trustee-Examiner-CRO Motions |
| 24. | Valuation |

| SUB-CATEGORIES (WITHIN EACH PROJECT CATEGORY) | |
|--|---|
| 1. | Review/Analysis/Strategy |
| 2. | Pleading/Motion/Application/Objection/Briefing/Other Written Court Submission |
| 3. | Transactional Documents/Plan: Draft and Revise |
| 4. | Transaction: Closing/Post-Closing |
| 5. | Reporting: Accounting/Schedules and SOFA/MORs/Other |
| 6. | Research and Research Memoranda |
| 7. | Written Discovery and Document Production or Review |
| 8. | Deposition Preparation |
| 9. | Deposition 1 st Chair (take or defend) |
| 10. | Deposition 2 nd Chair (Attend) |
| 11. | Communicate-Meet (in firm) |
| 12. | Communicate-Meet (with client) |
| 13. | Communicate-Meet (external, including creditors' meetings and calls, including settlement meetings) |
| 14. | Hearing/Trial/Oral Argument Preparation |

EXHIBIT A

| | |
|-----|--|
| 15. | Hearing/Trial/Oral Argument/Court Conference 1 st Chair (Conduct) |
| 16. | Hearing/Trial/Oral Argument/Court Conference 2 nd Chair (Attend) |
| 17. | Experts/Consultants |
| 18. | Valuation/Liquidation Analyses |
| 19. | Testify |
| 20. | Non-working travel: local and non-local |

EXPENSE CATEGORIES¹

| | VENDOR, if any | UNIT COST, if applicable | AMOUNT |
|---------------------------------------|-----------------------|---------------------------------|---------------|
| Copies | | | |
| Outside Printing | | | |
| Telephone | | | |
| Facsimile | | | |
| Online research | | | |
| Delivery Services/Couriers | | | |
| Postage | | | |
| Local travel | | | |
| Out-of-town travel: Transportation | | | |
| Hotel | | | |
| Meals | | | |
| Ground Transportation | | | |
| Meals (local) | | | |
| Court fees | | | |
| Subpoena fees | | | |
| Witness fees | | | |
| Deposition transcripts | | | |
| Trial transcripts | | | |
| Trial exhibits | | | |
| Litigation Support vendors | | | |
| Experts | | | |
| Investigators | | | |
| Arbitrators/Mediators | | | |
| Other (please specify) | | | |

¹ Although certain expense categories may appear in the category list, the United States Trustee may still object to the inclusion of any expenses that should properly be deemed a professional's overhead, such as phones, postage, local meals, online research, etc.

EXHIBIT B

BUDGET AND STAFFING PLAN TEMPLATE

Case Name and Number _____

Professional/Firm _____

Dates and Time Period Covered _____

Date Retention Approved _____

Date Budget Approved by Client _____

Client's Signature _____

A budget approved by the client in advance should generally be attached to each interim and final fee application filed by the professional. If the fees sought in the fee application vary upward by more than 10% from the budget or if fees are sought for professionals who do not appear on the staffing plan, the fee application should include a narrative explanation for the variance

| PROJECT CATEGORY | ESTIMATED HOURS | ESTIMATED FEES |
|--|------------------------|-----------------------|
| Asset Analysis and Recovery | | |
| Asset Disposition Analysis | | |
| Assumption-Rejection of Leases and Contracts | | |
| Avoidance Actions | | |
| Budgeting (Case) | | |
| Business Operations | | |
| Case Administration | | |
| Claims Administration and Objections | | |
| Corporate Governance/Board Matters | | |
| Employee Benefits/Pensions | | |
| Employment Application Preparation and Defense (own) | | |

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EXHIBIT B

| PROJECT CATEGORY | ESTIMATED HOURS | ESTIMATED FEES |
|---|------------------------|-----------------------|
| Employment Application Review and Objections (other's) | | |
| Fee Application Preparation and Defense (own) | | |
| Fee Application Review and Objections (other's) | | |
| Financing and Cash Collateral | | |
| Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each separately by adv. no. and caption or title of motion or application and docket no. | | |
| Meetings with Creditors | | |
| Non-Working Travel | | |
| Plan and Disclosure Statement | | |
| Real Estate | | |
| Relief from Stay and Adequate Protection | | |
| Tax | | |
| Trustee-Examiner-CRO Motions | | |
| Valuation | | |
| TOTAL | | |

EXHIBIT B

PROFESSIONALS ANTICIPATED TO WORK ON THE MATTER DURING THE BUDGET PERIOD

| NAME | TITLE | PRIMARY PRACTICE GROUP OR SECTION OR CONTRACT/TEMP. | RATE DISCLOSED IN RETENTION APPLICATION | PRIMARY PROJECT CATEGORIES IN WHICH PROFESSIONAL WILL WORK |
|-------------|--------------|--|--|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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EXHIBIT C

SUMMARY OF FEE APPLICATION COVER SHEET

| | |
|---|--|
| Name of applicant | |
| Name of client | |
| Time period covered by application | |
| Total compensation sought this period | |
| Total expenses sought this period | |
| Petition date | |
| Retention date | |
| Date of order approving employment | |
| Total compensation approved by interim order to date | |
| Total expenses approved by interim order to date | |
| Total allowed compensation paid to date | |
| Total allowed expenses paid to date | |
| Blended rate in this application for all attorneys and all timekeepers | |
| Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed | |
| Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed | |
| Number of professionals included in this application | |
| Number of professionals in this application not included in staffing plan approved by client | |
| Difference between fees budgeted and compensation sought for this application period | |
| Are any rates higher than those approved at retention? If yes, calculate the amount of compensation attributable to any rate increase | |
| Number of "transitory" professionals included in application (fewer than 15 hours of work per 120-day interim period) | |
| Debtors Only: Estimate of compensation sought that would have been incurred irrespective of bankruptcy | |

Case Name and Number:

Applicant's Name:

Date of Application:

Retention, Interim Fee, or Final Fee:

EXHIBIT D

COMPENSATION REQUESTED BY PROJECT CATEGORY AND SUB-CATEGORY

| PROJECT CATEGORY | SUB-CATEGORY ¹ | HOURS BUDGETED | FEES BUDGETED | HOURS BILLED | FEES SOUGHT |
|---|-------------------------------------|----------------|---------------|--------------|-------------|
| Asset Analysis and Recovery | (e.g., Review/Analysis/Strategy) | | | | |
| | (e.g., Research) | | | | |
| Sub-total | | | | | |
| Asset Disposition | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Assumption-Rejection of Leases and Contracts | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Avoidance Action Analysis | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Budgeting (Case) | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Business Operations | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Case Administration | | | | | |
| | | | | | |
| Sub-total | | | | | |
| Claims Administration and Objections | | | | | |

¹ Because budgeting may not be done at the sub-category level, the budgeted columns for sub-categories may be marked n/a or left blank.

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Retention, Interim Fee, or Final Fee: _____

EXHIBIT D

| PROJECT CATEGORY | SUB-CATEGORY ¹ | HOURS BUDGETED | FEES BUDGETED | HOURS BILLED | FEES SOUGHT |
|--|---------------------------|----------------|---------------|--------------|-------------|
| Subtotal | | | | | |
| Corporate Governance/Board Matters | | | | | |
| Subtotal | | | | | |
| Employee Benefits/Pensions | | | | | |
| Subtotal | | | | | |
| Employment Application Preparation and Defense (own) | | | | | |
| Subtotal | | | | | |
| Employment Application Review and Objections (other's) | | | | | |
| Subtotal | | | | | |
| Fee Application Preparation and Defense (own) | | | | | |
| Subtotal | | | | | |
| Fee Application Review and Objections (other's) | | | | | |
| Subtotal | | | | | |
| Financing and Cash Collateral | | | | | |
| Subtotal | | | | | |
| Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each | | | | | |

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Retention, Interim Fee, or Final Fee: _____

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EXHIBIT D

| PROJECT CATEGORY | SUB-CATEGORY ¹ | HOURS BUDGETED | FEES BUDGETED | HOURS BILLED | FEES SOUGHT |
|---|---------------------------|----------------|---------------|--------------|-------------|
| separately by adv. no. and caption or title of motion or application and docket no. | | | | | |
| Subtotal (for each adversary or contested matter) | | | | | |
| Meetings with Creditors | | | | | |
| Subtotal | | | | | |
| Non-Working Travel | | | | | |
| Subtotal | | | | | |
| Plan and Disclosure Statement | | | | | |
| Subtotal | | | | | |
| Relief from Stay and Adequate Protection | | | | | |
| Subtotal | | | | | |
| Tax | | | | | |
| Subtotal | | | | | |
| Trustee-Examiner-CRO Motions | | | | | |
| Subtotal | | | | | |
| Valuation | | | | | |
| Subtotal | | | | | |
| TOTAL | | | | | |

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Retention, Interim Fee, or Final Fee: _____

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EXHIBIT D

EXPENSE REIMBURSEMENT REQUESTED SUMMARY BY CATEGORY

| | VENDOR, if any | UNIT COST, if applicable | AMOUNT |
|--|----------------|--------------------------|--------|
| Copies | | | |
| Outside Printing | | | |
| Telephone | | | |
| Facsimile | | | |
| Online research | | | |
| Delivery Services/Couriers | | | |
| Postage | | | |
| Local travel | | | |
| Out-of-town travel: Transportation Hotel Meals Ground Transportation | | | |
| Meals (local) | | | |
| Court fees | | | |
| Subpoena fees | | | |
| Witness fees | | | |
| Deposition transcripts | | | |
| Trial transcripts | | | |
| Trial exhibits | | | |
| Litigation Support vendors | | | |
| Experts | | | |
| Investigators | | | |
| Arbitrators/Mediators | | | |
| Other (please specify) | | | |

Case Name and Number: _____

Applicant's Name: _____

Date of Application: _____

Retention, Interim Fee, or Final Fee: _____

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EXHIBIT E
SUMMARY OF PROFESSIONALS INCLUDED IN THIS APPLICATION
(For Retention Application and Fee Application)

| | | | | Fee Applications Only | | | | For Retention Applications and Fee Applications | | | | | | | |
|------|-------------------|----------------|-------------------------|-----------------------|---------------------|------------------------|--------------------------|---|-------------------|---|-------------------|---|-------------------|--|-------------------|
| NAME | TITLE OR POSITION | DEPT. OR GROUP | DATE OF FIRST ADMISSION | TOTAL FEES | HOURS BILLED | \$ RATE INCREASE | NUMBER OF RATE INCREASES | CURRENT HOURLY RATE BILLED | | LOWEST HOURLY RATE BILLED (last 12 months) | | HIGHEST HOURLY RATE BILLED (last 12 months) | | AVERAGE HOURLY RATE BILLED (last 12 months) | |
| | | | | IN THIS APPLICATION | IN THIS APPLICATION | SINCE LAST APPLICATION | SINCE CASE INCEPTION | IN THIS APPLICATION | ALL OTHER MATTERS | ESTATE- BILLED BANKRUPTCY WORK | ALL OTHER MATTERS | ESTATE- BILLED BANKRUPTCY WORK | ALL OTHER MATTERS | ESTATE-BILLED BANKRUPTCY WORK | ALL OTHER MATTERS |
| | | | | | | | | | | | | | | | |
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Case Name and Number: _____
Applicant's Name: _____
Date of Application: _____
Retention, Interim Fee, or Final Fee: _____

EXHIBIT F

SUMMARY OF COMPARABLE COMPENSATION BY PROFESSIONAL CATEGORY FOR BANKRUPTCY GROUP AND ALL OTHER PRACTICE AREAS

(For Retention Application and Fee Application)

| TITLE OR POSITION WITHIN FIRM <i>(e.g., Sr. Partner, Partner, Member, Shareholder, Counsel, Of Counsel, Assoc., Staff Atty. etc.)</i> | LOWEST HOURLY RATE BILLED BY ANY PROFESSIONAL IN THAT POSITION* | | HIGHEST HOURLY RATE BILLED BY ANY PROFESSIONAL IN THAT POSITION* | | AVERAGE HOURLY RATE BILLED FOR ALL PROFESSIONALS IN THAT POSITION* | |
|---|---|-----------------------------|--|-----------------------------|--|-----------------------------|
| | (last 12 months) | | (last 12 months) | | (last 12 months) | |
| | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS | BANKRUPTCY GROUP | ALL OTHER PRACTICE AREAS |
| | | | | | | |
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*U.S. professionals only.

Case Name and Number: _____

Applicant's Name: _____

Date of Application: _____

Retention, Interim Fee, or Final Fee: _____