

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

In re:	:	Chapter 11
	:	
ADVANTA CORP., et al.,	:	Case No. 09-13931 (KJC)
	:	
Debtors.	:	(Jointly Administered)

**FEE AUDITOR’S FINAL REPORT REGARDING THE THIRD
INTERIM FEE APPLICATION OF FTI CONSULTING, INC.**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Third Interim Fee Application of FTI Consulting, Inc. (the “Application”).

BACKGROUND

1. FTI Consulting, Inc. (“FTI”), was retained as financial advisor to the Official Committee of Unsecured Creditors (the “Committee”). In the Application, FTI seeks approval of fees totaling \$571,038.00 and expenses totaling \$8,492.59 for its services from August 1, 2010 through November 30, 2010 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2011, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the

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

DISCUSSION

3. In our initial report, we noted certain instances in which multiple FTI professionals attended the same meetings and conference calls. See Exhibit “A.” Paragraph II.D.5. of the U.S. Trustee Guidelines provides: “If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.” Similarly, Local Rule 2016-2(d)(ix) provides: “The activity descriptions shall individually identify all meetings and hearings, each participant, the subject(s) of the meeting or hearing and the participant’s role; . . .” We asked FTI to explain why it was necessary for each professional to be present at these conferences, and FTI’s response is included as Response Exhibit “1.” We accept FTI’s response and have no objection to these fees.

4. We noted that on August 10, 2010, Senior Managing Director Andrew Scruton (\$885) and Director Ji Yon Park (\$585) attended a mediation. The total time spent was 14.00 hours, for total fees of \$10,590.00.

08/10/10	JYP	6.00	3,510.00	Attend mediation with the FDIC re: litigation (partial attendance)
08/10/10	AS	8.00	7,080.00	Mediation with Judge Drain.

In light of the Guideline cited above, we asked FTI to explain why it was necessary that both professionals attend the meeting. FTI responded as follows:

The mediation related to a potential settlement with the FDIC, as receiver of Advanta Bank Corp. (“ABC”), of the FDIC’s filed claim against the estate (\$170 million+ in total asserted amount) and the Debtors’ claim against ABC. FTI had

performed significant analysis of the various potential settlement and litigation scenarios with respect to these FDIC issues. Given FTI's extensive knowledge on the matter and involvement in prior negotiations, it was important for FTI to attend the mediation in order to evaluate potential offers and counter-offers and to develop appropriate negotiation strategy with counsel throughout the mediation session. Andrew Scruton was involved in the strategy discussion and Ji Yon Park was involved in the modeling of scenarios. As another data point, the Debtors' financial advisor, A&M, also attended the meeting.

We accept FTI's response and have no objection to these fees.

5. Ordinarily, if a professional bills three or more hours on a case in one day, we do not object to the individual's reimbursement request for an overtime meal or late night taxi home. However, we noted \$114.23 in overtime meal and transportation charges which were incurred on dates when it appeared that the professional in question billed minimal or no time to the case. See Exhibit "B." We asked FTI to explain why the estate should reimburse these expenses, and FTI's response is included as Response Exhibit "2." Because we found FTI's response to be very confusing, as it refers to hours worked on the "previous day", "previous week", or "following week," we asked FTI for copies of the receipts for these expenses. FTI then advised us that it was amenable to writing off one of the meal expenses totaling \$35.78 because the expense had been incorrectly coded, but FTI was unable to produce copies of receipts for the remaining \$78.45 in expenses.¹ Accordingly, we are unable to verify that the expenses were incurred on the dates indicated by FTI in Response Exhibit "2." Thus, we must recommend disallowance of all of the charges listed, for a reduction of \$114.23 in expenses.

¹FTI states on Response Exhibit "2" that it does not require its employees to submit receipts for expenses in amounts less than \$25. However, FTI's policy does not comport with Local Rule 2016-2(e)(iv): "Receipts or other support for each disbursement or expense item for which reimbursement is sought must be retained and be available on request."

CONCLUSION

6. Thus, we recommend approval of \$571,038.00 in fees and \$8,378.36 in expenses (\$8,492.59 minus \$114.23) for FTI's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 13th day of April, 2011.


Warren H. Smith

SERVICE LIST
Notice Parties

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EXHIBIT “A”

a. We noted that on August 13, 2010, Senior Managing Directors William J. Nolan (\$885) and Andrew Scruton (\$885), along with Consultant Iris Chen (\$355), participated in a conference call with the Committee. The total time spent, including preparation time, was 3.10 hours, and total fees of \$2,478.50 were billed.

08/13/10	IC	0.50	177.50	Conference call with UCC re: litigation (partial attendance).
08/13/10	WJN	0.50	442.50	Prepare for and participate in UCC conference call re: settlement (partial attendance).
08/13/10	AS	2.10	1,858.50	Prepare for and participate in calls on FDIC settlement discussions.

b. We noted that on September 28, 2010, Senior Managing Director Andrew Scruton (\$885), Director Ji Yon Park (\$585), and Consultant Kristina Creagh (\$355) attended a meeting with Latham & Watkins professionals. The total time spent, including preparation, was 10.30 hours, and total fees of \$6,775.50 were billed.

09/28/10	KC	1.00	355.00	Prepare for meeting with Latham
09/28/10	KC	2.00	710.00	In-person meeting with Latham and UCC chair.
09/28/10	JYP	0.50	292.50	Discussion with Latham re: next steps.
09/28/10	JYP	2.00	1,170.00	Prepare for and participate in meeting with UCC chair re: upcoming committee meeting.
09/28/10	AS	4.80	4,248.00	Prepare for and participate in working meetings with Counsel preparing for other meetings and reviewing plan and executive claims.

c. We noted that on October 1, 2010, October 19, 2010, and October 25, 2010, Senior Managing Director Andrew Scruton (\$885), Director Ji Yon Park (\$585), and Consultant Iris Chen (\$355) attended meetings with the Committee and its counsel. The total time spent was 41.70 hours, and total fees of \$24,259.50 were billed.

10/01/10	IC	5.00	1,775.00	In-person meeting at Latham with UCC members to discuss plan and executive claims
10/01/10	IC	1.50	532.50	Prepare for in-person meeting with UCC members
10/01/10	JYP	5.00	2,925.00	Committee meeting to discuss key issues
10/01/10	AS	5.50	4,867.50	Prepare for and participate in committee meeting to discuss key case issues.
10/19/10	IC	1.00	355.00	Pre-meeting with Counsel to discuss executive claims and intercreditor issues.
10/19/10	IC	3.50	1,242.50	In-person committee meeting to discuss intercreditor issues.
10/19/10	IC	1.50	532.50	Prepare for in-person meeting with UCC members re: executive claims
10/19/10	JYP	1.00	585.00	Pre-meeting at Latham to prepare for committee meeting
10/19/10	JYP	3.50	2,047.50	Committee meeting re: plan process and related issues.
10/19/10	AS	3.90	3,451.50	Meeting with Committee and follow up with Counsel.
10/25/10	IC	0.50	177.50	Pre-meeting with Counsel
10/25/10	IC	2.50	887.50	In person UCC meeting re executive claims
10/25/10	IC	1.00	355.00	Prepare for in-person meeting with UCC members
10/25/10	JYP	1.00	585.00	Planning call with counsel
10/25/10	JYP	0.50	292.50	Pre-meeting with counsel

10/25/10	JYP	2.00	1,170.00	Committee meeting re: plan process and related case issues.
10/25/10	AS	2.80	2,478.00	Calls with Counsel and Committee on plan terms and treatment of executive claims

EXHIBIT "B"

08/19/2010	Scruton, Andrew	Taxi - Office to home (overtime).	13.22	0.6 hrs
09/08/2010	Chen, Iris	Taxi - Office to home (overtime).	9.50	0.0 hrs
09/09/2010	Chen, Iris	Taxi - Office to home (overtime).	10.00	0.0 hrs
09/16/2010	Chen, Iris	Taxi - Office to home (overtime).	10.82	0.0 hrs
09/17/2010	Chen, Iris	Taxi - Office to home (overtime).	12.38	0.0 hrs
09/18/2010	Chen, Iris	Taxi - Home to office (overtime weekend).	10.98	0.0 hrs
09/18/2010	Chen, Iris	Taxi - Office to home (overtime weekend).	11.55	0.0 hrs
09/08/2010	Chen, Iris	Meals - Working dinner (overtime).	35.78	0.0 hrs
			114.23	

RESPONSE EXHIBIT “1”

Multiple people attending meetings and conference calls

a. It is necessary for FTI to attend most meetings and calls with core engagement members to ensure everyone is up-to-speed on case issues, which will ensure efficiency and cost-effectiveness. If any of the core members did not participate in meetings, a follow up meeting at a later date would be required to educate such a member on key issues, which would be inefficient and repetitive. The core members include: Mr. Scruton (lead SMD), Ms. Park (day to day manager), and Ms. Chen (day to day analyst).

b. This case involves specific issues that require the expertise of FTI’s specialists. Engaging specialists ensures that such issues are addressed on the most effective and efficient manner and that FTI can provide the best services to the client. To the extent that meetings and calls involved discussions of specific issues requiring FTI’s specialists, then the specialists were invited to attend. To that end, Mr. Nolan’s participation on calls was necessary to address FDIC/regulatory issues.

c. There were certain instances where FTI utilized non-core staff to perform specific tasks when core team members did not have enough time to perform such tasks. During the third interim application period, Ms. Creagh (analyst) was asked to prepare and update subcon/recovery model. She was invited to attend meetings to discuss the model with the counsel and client.

d. As mentioned earlier, it is FTI’s internal practice to try to limit meeting attendance at 4 professionals at a time. However, when it is important for more than 4 professionals to attend, all professionals would attend and FTI may voluntarily write off the time associated with additional professionals, if deemed appropriate. In certain instances, FTI has written off time when more than 3 professionals attended a meeting.

e. Please see below for FTI’s detailed responses to the meeting entries flagged by the Fee Auditor. We believe all of the fees are justifiable.

21	10/01/10	Chen, Iris	5.0	1,775.00	In-person meeting at Latham with UCC members to discuss plan and executive claims.	Core team member
21	10/01/10	Chen, Iris	1.5	532.50	Prepare for in-person meeting with UCC members.	Core team member
21	10/01/10	Park, Ji Yon	5.0	2,925.00	Committee meeting to discuss key issues	Core team member
21	10/01/10	Scruton, Andrew	5.5	4,867.50	Prepare for and participate in committee meeting to discuss key case issues	Core team member
			17	10,100.00		
21	10/19/10	Chen, Iris	1.0	355.00	Pre-meeting with Counsel to discuss executive claims and intercreditor issues	Core team member
21	10/19/10	Chen, Iris	3.5	1,242.50	In-person committee meeting to discuss intercreditor issues.	Core team member
21	10/19/10	Chen, Iris	1.5	532.50	Prepare for in-person meeting with UCC members re: executive claims	Core team member
21	10/19/10	Park, Ji Yon	1.0	585.00	Pre meeting at Latham to prepare for committee meeting.	Core team member
21	10/19/10	Park, Ji Yon	3.5	2,047.50	Committee meeting re: plan process and related issues.	Core team member

21	10/19/10	Scruton, Andrew	3.9	3,451.50	Meeting with Committee and follow up with Counsel.	Core team member
			14.4	8,214.00		
21	10/25/10	Chen, Iris	0.5	177.50	Pre-meeting with Counsel.	Core team member
21	10/25/10	Chen, Iris	2.5	887.50	In person UCC meeting re: executive claims.	Core team member
21	10/25/10	Chen, Iris	1.0	355.00	Prepare for in-person meeting with UCC members.	Core team member
21	10/25/10	Park, Ji Yon	1.0	585.00	Planning call with counsel.	Core team member
21	10/25/10	Park, Ji Yon	0.5	292.50	Pre-meeting with counsel.	Core team member
21	10/25/10	Park, Ji Yon	2.0	1,170.00	Committee meeting re: plan process and related case issues	Core team member
21	10/25/10	Scruton, Andrew	2.8	2,478.00	Calls with Counsel and Committee on plan terms and treatment of executive claims.	Core team member
			10.3	5,945.50		

RESPONSE EXHIBIT “2”

In all these instances, the date of the expense entries was manually entered incorrectly into the system. We identified the entries where more than 3 hours of work was performed for the correct day but no expense was recorded. We believe these expenses are reimbursable.

08/19/2010	Scruton, Andrew	Taxi - Office to home (overtime).	\$13.22	0.6 hrs	This expense entry was entered into the system six days after it was incurred. Mr. Scruton worked 5.7 hours on the previous week (8/13/10) but no taxi expense was recorded for this day.
09/08/2010	Chen, Iris	Taxi - Office to home (overtime).	9.50	0.0 hrs	This expense entry was entered into the system one day after it was incurred. Ms. Chen worked 3.0 hours on the previous day (9/7/10) but no taxi expense was recorded for this day.
09/09/2010	Chen, Iris	Taxi - Office to home (overtime).	10.00	0.0 hrs	This expense entry date was entered incorrectly into the system. Ms. Chen worked 6.7 hours on the following week (9/15/10) but no taxi expense was recorded for this day.
09/16/2010	Chen, Iris	Taxi - Office to home (overtime).	10.82	0.0 hrs	This expense entry date was entered incorrectly into the system. Ms. Chen worked 13.5 hours on the following week (9/23/10) but no taxi expense was recorded for this day.
09/17/2010	Chen, Iris	Taxi - Office to home (overtime).	12.38	0.0 hrs	This expense entry date was entered incorrectly into the system. Ms. Chen worked 11.7 hours on the following week (9/24/10) but no taxi expense was recorded for this day.

09/18/2010	Chen, Iris	Taxi - Home to office (overtime weekend).	10.98	0.0 hrs	This expense entry date was entered incorrectly into the system. Ms. Chen worked 5.9 hours on the following week (9/25/10) but no taxi expense was recorded for this day.
09/18/2010	Chen, Iris	Taxi - Office to home (overtime weekend).	11.55	0.0 hrs	This expense entry was entered into the system one day after it was incurred. Ms. Chen worked 5.9 hours on the following week (9/25/10) but no taxi expense was recorded for this day.
09/08/2010	Chen, Iris	Meals - Working dinner (overtime).	35.78	0.0 hrs	This expense entry was entered into the system one day after it was incurred. Ms. Chen worked 3.0 hours on the previous day (9/7/10) but no meal expense was recorded for this day.
			\$114.23		

Fee Auditor's Note: We found this response from FTI's to be confusing, as it refers to hours worked on the "previous day", "previous week", or "following week", so we asked FTI for copies of the receipts for these expenses as back-up.