

**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 AMENDED FINAL REPORT REGARDING THE THIRD INTERIM
FEE APPLICATION OF RICHARDS, LAYTON & FINGER, P.A.**

This is the amended 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 Richards, Layton & Finger, P.A. (the “Application”).

BACKGROUND

1. Richards, Layton & Finger, P.A. (“RL&F”), was retained as counsel to the Debtors and Debtors-in-Possession. In the Application, RL&F seeks approval of fees totaling \$163,835.50 and expenses totaling \$17,876.29 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 sent RL&F an initial report based on our review. As of the filing of our original final report, we had not received a response from RL&F to our initial report.¹ However, shortly after filing our original final report, we received RL&F's response, and this final report is being amended to reflect that response.

DISCUSSION

3. In our initial report, we noted the following time entry in which the total time billed exceeds the amount of time recorded within the work description:

08/09/10	Attend to request of check for pro hacs for C. Cox and R. Levine (.1); Draft pro hac vice motion of R. Levine (.2); Draft pro hac vice motion of M. Kaufman (.2); Circulate both to Z. Shapiro for review (.1); Circulate pro hac vice motion of R. Levine to R. Levine for review and signature (.1); Circulate pro hac vice motion of M. Kaufman to M. Kaufman for review and signature (.1); Attend to request of check for pro hac vice motion of S. Litvinoff (.1); Draft pro hac vice motion of S. Litvinoff (.2); Circulate same to S. Litvinoff for review and signature (.1); Coordinate delivery of checks for pro hacs of C. Cox, R. Levine and S. Litvinoff to U.S. District Court (.1); Efile pro hac vice motion of C. Cox (.1); Efile pro hac vice motion of M. Kaufman (.1); Efile pro hac vice motion of S. Litvinoff (.1); Efile pro hac vice motion of R. Levine (.1); Coordinate delivery of all pro hac vice motions to chambers (.2); Update pro hac vice motion chart (.1);			
Paralegal	Jamie E. Schairer	2.50 hrs.	195.00	\$487.50

The time recorded within the work description calculates to 2.00 hours, rather than 2.50 hours, thereby creating an apparent overcharge of \$97.50.² In response to our inquiry, RL&F stated as follows:

¹We contacted RL&F multiple times by email concerning a response to our initial report. We advised RL&F by telephone and by email that we would be filing this final report on May 6, 2011, with or without RL&F's response.

²Without benefit of RL&F's explanation of this discrepancy, we recommended a reduction of \$97.50 in our original final report.

RL&F agrees that the sub-parts of Ms. Schairer's August 9, 2010 time entry total 2.0 hours, for a total cost of \$390.00. Accordingly, RL&F agrees to take a voluntary reduction in the amount of \$97.50.

We appreciate RL&F's response and recommend a reduction of \$97.50 in fees.

4. In our initial report, we noted total Westlaw charges of \$11,623.28 for the Application Period. As these Westlaw charges seemed somewhat high, we asked RL&F to confirm that they did not exceed actual cost.³ RL&F provided a response which we have attached as Response Exhibit 1. Based on RL&F's response, it appears to us that RL&F's method of calculating these Westlaw charges is in compliance with Local Rule 2016-2(e)(iii),⁴ and thus we have no objection to these expenses.

5. We noted several "overtime" or "working" meal charges for which more information was needed. See Exhibit A. In response to our request, RL&F provided additional information for each charge,⁵ which information we have attached as Response Exhibit 2. In addition, RL&F stated as follows:

A detailed chart including the requested additional information regarding each meal charge questioned by the Fee Auditor is attached hereto . . . (the "Supplemental Meal Chart"). As indicated in the Supplemental Meal Chart, RL&F agrees to take a

³Without benefit of RL&F's response, we were initially required to assume that these charges were billed at Westlaw's "Standard Charge" rate. Thus, in our original final report, we recommended that reimbursement for these charges be reduced to Westlaw's "Special Pricing Charge" rate, for a reduction of \$10,876.81 in expenses.

⁴Local Rule 2016-2(e)(iii) provides as follows: "The motion shall state the requested rate for copying charges (which shall not exceed \$.10 per page), *computer-assisted legal research charges (which shall not exceed actual cost)* and outgoing facsimile transmission charges (which shall not exceed \$1.00 per page, with no charge for incoming facsimiles) (emphasis added)."

⁵Because we were not initially provided with the names of the professionals incurring these charges, we were unable to ascertain whether the estate should reimburse these expenses. Thus, in our original final report, we were required to recommend disallowance of all of these meal charges, for a reduction of \$385.41 in expenses.

voluntary reduction in the amount of \$39.15 for a meal charge incurred on August 28, 2011. Each meal charge was incurred in Wilmington, Delaware.

With respect to the lunch charge incurred by paralegals Jamie E. Schairer and Marisa C. DeCarli on August 13, 2010, RL&F submits that such charge is both reasonable and reimbursable. At the request of attorneys working on the Chapter 11 Cases and the trial scheduled in Adv. Proc. No. 10-50795 (the “Trial”), Ms. Schairer and Ms. DeCarli were required to work through their lunch hour on August 13, 2010 to, among other things, (i) file several motions, an agenda and other pleadings and (ii) prepare binders and other materials, each in connection with the Trial which was scheduled to commence on August 16, 2010. More specifically, the hearing agenda for the Trial and all related pleadings in connection therewith were required to be filed *and* delivered to Judge Carey’s chambers by no later than 2:00 p.m. (Eastern Standard Time). Under these strict deadlines, Ms. Schairer and Ms. DeCarli simply did not have time to leave their desks to order, let alone eat, lunch. Under these unusual circumstances, paralegals order lunch in and charge the lunch to the client on whose behalf they are working through the lunch hour. Moreover, as the total lunch charge for two paralegals was only \$38.27, or less than \$20 each, RL&F submits that the charge is reasonable and reimbursable.

Ordinarily, we do not object to an overtime or late night dinner charge provided the professional incurring the charge billed at least three hours to the case on the date the charge was incurred. We appreciate RL&F’s proffered reduction of \$39.15. And we accept RL&F’s response with respect to each of the remaining dinner charges, with the exception of the following charges which we recommend be disallowed:

8/31/10	Marisa C. DeCarli	\$20.24	2.2 hours billed on 8/31/10
10/5/10	Zachary I. Shapiro	\$45.48	1.1 hours billed on 10/5/10
11/2/10	Jamie E. Schairer	\$17.61	1.8 hours billed on 11/2/10
11/3/10	Cathy Greer	\$13.59	1.3 hours billed on 11/3/10

With respect to the lunch charge of \$38.27, it does not appear to us that RL&F has demonstrated why this should be an expense of the estate. The employees in question would have had to purchase lunch or bring their lunch regardless of which case they were working on and regardless of whether

they had to work through their lunch hour. Thus, we also recommend disallowance of the \$38.27 lunch expense, for a total reduction of \$174.34 in expenses.

CONCLUSION

6. Thus, we recommend approval of \$163,738.00 in fees (\$163,835.50 minus \$97.50) and \$17,701.95 in expenses (\$17,876.29 minus \$174.34) for RL&F'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 10th day of May, 2011.


Warren H. Smith

SERVICE LIST
Notice Parties

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EXHIBIT A

8/9/2010	Mikimotos	Dinner for 1	Draft motion to strike	\$33.27
8/11/2010	Grottos	Dinner for 1	Preparation for 8/12/10 hearing and Advanta Bank Corp. trial	\$29.30
8/12/2010	Columbus Inn	Dinner for 1	Preparations in connection with Advanta Bank Corp trial, including finalizing evidentiary motions	\$46.28
8/13/2010	Cosi	Lunch for 2	Multiple filings and preparation of binders for Advanta Bank Corp. trial	\$38.27
8/24/2010	Columbus Inn	Dinner for 2	Prepare for filing 9019 motion setting adversary proceeding	\$39.15
8/25/2010	Mikimotos	Dinner for 1	Prepare for filing 9019 motion resolving adversary proceeding	\$23.13
8/31/2010	Kooma	Dinner for 1	File claims objections	\$20.24
10/5/2010	Mikimotos	Dinner for 1	Review and comment on solicitation procedures motion	\$45.48
11/2/2010	Mikimotos	Dinner for 1	ZIS - Review, revise and finalize for filing disclosure statement, plan and solicitation procedures motion	\$52.55
11/2/2010	Olive Garden	Dinner for 1	JZS - Efile chapter 11 plan, disclosure statement and solicitation procedures motion	\$17.61
11/3/2010	Grottos	Dinner for 1	CXG - File motion for authority to exercise ownership rights re: Ins. Policies	\$13.59

11/30/2010	Mikimotos	Dinner for 1	ZIS - Revise amended schedules	\$26.54
				\$385.41

RESPONSE EXHIBIT 1

RL&F notes that all of the charges questioned by the Fee Auditor in paragraph 4 of the Initial Report were on account of online legal research using Westlaw. Such online legal research was performed on behalf of, and for the benefit of, the Debtors. Moreover, and for the reasons set forth below, RL&F submits that all such charges either comply or substantially comply with Local Rule 2016-2(e)(iii) and are reimbursable.

As a preliminary matter, online legal research providers, such as Westlaw (each, a "Research Provider"), offer two basic types of subscription plans. The first and most commonly used type of subscription plan is the traditional subscription plan (each, a "Traditional Plan"). Firms that subscribe to Traditional Plans are generally charged some discounted percentage of standard usage rates ("Usage Rates") by the Research Provider. In order to recoup the amounts charged by the Research Provider to the firm, the firm will typically pass such amounts onto the client on whose behalf the online legal research was performed.

The second type of subscription plan is the flat rate plan (each, a "Flat Rate Plan"). Firms that subscribe to Flat Rate Plans are charged a flat fee (each, a "Flat Fee") over a set time period regardless of such firm's actual usage ("Actual Usage") during such period. The Flat Fee does not vary so long as the firm utilizes the databases (i) within its subscription and (ii) to the extent of such subscription. As with firms that subscribe to Traditional Plans, firms that subscribe to Flat Rate Plans generally charge their clients a discounted percentage of Usage Rates on account any legal research performed on behalf of any such client. As a general matter, economies of scale enable firms that use Flat Rate Plans to charge their clients a greater discounted percentage of Usage Rates than firms that use Traditional Plans.

As is disclosed in each of RL&F's monthly fee applications, RL&F utilizes Flat Rate Plans with its Research Providers, including Westlaw, instead of Traditional Plans. RL&F utilizes Flat Rate Plans because doing so allows RL&F to charge its clients a greater discounted percentage of Usage Rates than if RL&F utilized Traditional Plans. In other words, due to the extent of RL&F's usage of Researcher Providers, including Westlaw, RL&F can take advantage of economies of scale and utilize Flat Rate Plans and thereby provide significant cost savings to its clients.

As is also disclosed in each of RL&F's monthly fee applications, RL&F charges all of its clients, including its bankruptcy clients, a discounted percentage of Usage Rates on account of Research Provider charges, including Westlaw charges. This discounted percentage is estimated based on the historical amount of usage of the applicable Research Provider ("Estimated Usage"). RL&F estimates this percentage so that it results in RL&F charging its clients the amounts necessary to recoup the applicable Flat Fees. Due to the administrative burden of calculating this percentage, however, it is not calculated on a monthly basis. The percentage is, however, adjusted periodically based on Estimated Usage of the applicable Research Provider. Given that this percentage is calculated based on Estimated Usage rather than Actual Usage, often times the aggregate amount charged to RL&F's clients does not precisely equal the applicable Flat Fees. In fact, over the last

five years, the amount RL&F charged its clients on account of Research Provider charges, including Westlaw charges, was in fact less than the applicable Flat Fees. Thus, in these instances, the amount RL&F charged its clients was *less than* RL&F's actual cost. With that said, during any given time period where Actual Usage exceeds Estimated Usage, the amount RL&F charges its clients may actually exceed the amount of the applicable Flat Fees. RL&F submits that these instances are rare. Importantly, preventing RL&F from employing its current structure would result in increased costs for its clients, including the Debtors.

In order for RL&F to ensure that the amounts charged to its bankruptcy clients, including the Debtors, equals the applicable Flat Fees, RL&F's accounting department would be required to calculate the precise discounted percentage of Usage Rates on a monthly basis. Further, at least with respect to its bankruptcy clients, this calculation would need to be performed on an extremely expedited time frame so that the actual cost to the client could be included in each of RL&F's monthly fee applications. The time-consuming nature of such a process would render it impracticable and would result in significant additional overhead expenses for RL&F, which, in turn, would result in RL&F's attorneys and other professionals charging higher hourly rates. By calculating the discounted percentage of Usage Rates based on Estimated Usage rather than Actual Usage, (i) RL&F has historically charged its clients *less than* the applicable Flat Fees or (ii), in the rare instances where the amounts RL&F charges its clients exceeds the applicable Flat Fees, RL&F submits that the amounts RL&F saves in reduced overhead expenses ultimately results in a significant cost-savings to its clients that more than offsets the difference between the amount charged and the applicable Flat Fees.

Alternatively, RL&F could use a Traditional Plan for all of its clients or its bankruptcy clients. However, as is set forth above, using a Traditional Plan rather than a Flat Rate Plan would prevent RL&F from taking advantage of economies of scale and would thus force it to charge its clients a higher percentage of Usage Rates. Such a result would increase costs for RL&F's clients and act as a disincentive for such clients authorizing RL&F to utilize Research Providers. Accordingly, RL&F submits that all the Westlaw charges questioned by the Fee Auditor either comply or substantially comply with Local Rule 2016-2(e)(iii) and are reimbursable.

RESPONSE EXHIBIT 2

Supplemental Meal Chart

Date of Meal	Meal & # of People	Name of Professional(s) / Position	Meal Log Entry	Relevant Time Entries	Amount Charged
8/9/10	Dinner for 1	Zachary I. Shapiro, Associate	Draft motion to strike	Draft and revise Braverman motion in limine (6.2); Participate in call re: same (.5); Review and comment on draft motion to preclude/compel (.6); Correspondence with D. Hoehne re: page limits for pre-trial briefs (.2); Correspondence with M. Ramos re: same (.1); Correspondence with C. Jang re: same (.1)	\$33.27
8/11/10	Dinner for 1	Jamie E. Schairer, Paralegal	Preparation for 8/12/10 hearing and Advanta Bank Corp. trial	Draft agenda for 8/16/10 - 8/18/10 evidentiary hearing (.6); Circulate same to Z. Shapiro for review (.1); Prepare binder re: same (1.9); Revise agenda for 8/16/10 - 8/18/10 evidentiary hearing per comments from Z. Shapiro (.4); Update binder (.3)	\$29.30
8/12/10	Dinner for 1	Zachary I. Shapiro, Associate	Preparations in connection with Advanta Bank Corp trial, including finalizing evidentiary motions	Review and revise motion to compel/preclude (6.5); Review and revise motion to expedite re: motion to preclude (1.6); Review and revise Braverman motion in limine (3.0); Review and revise motion to expedite re: Braverman motion in limine (1.1)	\$46.28

8/13/10	Lunch for 2	Jamie E. Schairer, Paralegal	Multiple filings and preparation of binders for Advanta Bank Corp. trial	Efile motion in limine to preclude testimony of M. Braverman (.2); Efile emergency motion for expedited hearing on same (.3); Efile notice of proposed order (.2); Retrieve FDIC's pre-trial brief (.2); Efile joinder to pre-trial brief of committee (.2); Draft amended agenda (1.2); Efile same (.1); Assist with preparation of trial binders for Judge Carey (1.3); Retrieve order shortening notice and objection periods re: motion to preclude or compel discovery from FDIC (.1); Circulate same to distribution (.1); Retrieve order approving expedited hearing on motion in limine to preclude testimony of M. Braverman (.1); Circulate same to distribution (.1); Coordinate service of motion to preclude or compel discovery from FDIC, motion to shorten notice and objection periods re: motion to preclude or compel discovery from FDIC, motion in limine to preclude testimony of M. Braverman, emergency motion for expedited hearing on motion in limine to preclude testimony of M. Braverman, notice of proposed order, joinder to pre-trial brief of committee, joint pre-evidentiary hearing memorandum, amended 8/16/10 - 8/18/10 evidentiary hearing agenda, order shortening notice and objection periods re: motion to preclude or compel discovery from FDIC and order approving expedited hearing on motion in limine to preclude testimony of M. Braverman (2.4); Draft multiple affidavits of service re: same (1.4); Efile multiple affidavits of service re: same (.3)	\$38.27
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		Marisa C. DeCarli, Paralegal	Multiple filings and preparation of binders for Advanta Bank Corp. trial	File motion to compel discovery from the FDIC (.1); File memorandum of law in support of same (.1); File motion to shorten notice of same (.1); Email (x2) Z. Shapiro regarding service of same (.1); Meeting with M. Ramos and Z. Shapiro regarding coordinating copies of same to chambers (.2); Draft cover pages for filed under seal motions (.1); Coordinate same to chambers (.3); Coordinate same to clerk of court (.3); File joint pre-evidentiary hearing memorandum (.2); Coordinate copies of same to chambers (.2); Multiple call and emails with L. Hoilett (Weil) regarding transcriber for trial next week (.3); Multiple e-mails with N. Hunt regarding same (2); Multiple calls and meetings with Z. Shapiro regarding same (.4)	Included in amount above.
8/24/10	Dinner for 2	Zachary I. Shapiro, Associate	Prepare for filing 9019 motion settling adversary proceeding	Call with D. Hoehne re: status of 9019 motion resolving ABC adversary proceeding (.1); Correspondence with D. Hoehne re: same (.1); Review and comment on same (3.0); Correspondence with T. Semmelman re: motion to shorten re: same (.2)	\$39.15
		Marisa C. DeCarli, Paralegal	Prepare for filing 9019 motion settling adversary proceeding	This charge was erroneously billed to this matter. RL&F submits that the expense charged to the estates on account of Mr. Shapiro's meal is reimbursable. However, RL&F accepts a reduction in the amount of \$39.15, which was the amount billed to the estates on account of Ms. DeCarli's and Mr. Shapiro's meals.	Included in the amount above.

8/25/10	Dinner for 1	Zachary I. Shapiro, Associate	Prepare for filing 9019 motion resolving adversary proceeding	Review FDIC's comments to settlement agreement (.2); Call with D. Hoehne re: same (.2); Correspondence with J. Casey re: same (.1); Review and prepare for filing 9019 motion re: same (2.5)	\$23.13
8/31/10	Dinner for 1	Marisa C. DeCarli, Paralegal	File claims objections	Assist in preparation to file second omnibus objection to claims stock ownership (.3); File Second Omnibus Objection to Claims Stock Ownership Claims (Non-Substantive) (.2); serve same (.1); emails to and from Z. Shapiro re: same (.2); assist in preparation to file Third Omnibus Objection to Claims (Substantive) (Reclassified and Recategorized) (1.0); File same (.2); Serve same (.2)	\$20.24
10/5/10	Dinner for 1	Zachary I. Shapiro, Associate	Review and comment on solicitation procedures motion	Review and comment on solicitation procedures motion (1.1)	\$45.48
11/2/10	Dinner for 1	Zachary I. Shapiro, Associate	ZIS - Review, revise and finalize for filing disclosure statement, plan and solicitation procedures motion	Review, revise and finalize plan for filing (2.1); Review, revise and finalize disclosure statement for same for filing (1.6); Review motion to approve disclosure statement and solicitation procedures (.7); Call with V. Vron and Garden City re: issues with same (.5); Finalize motion to approve disclosure statement for filing (.8); Finalize notice of disclosure statement hearing (.4)	\$52.55

11/2/10	Dinner for 1	Jamie E. Schairer, Paralegal	JZS - Efile chapter 11 plan, disclosure statement and solicitation procedures motion	Efile chapter 11 plan (.2); Efile disclosure statement re: same (.3); Circulate both to distribution (.1); Efile solicitation procedures motion (.4); Circulate same to distribution (.1)	\$17.61
11/3/10	Dinner for 1	Cathy Greer, Paralegal	CXG - File motion for authority to exercise ownership rights re: Ins. Policies	Provide paralegal support re: preparation for filing (1.0); File motion for authority to exercise ownership rights over certain insurance policies (.2); Coordinate service of same (.1)	\$13.59
11/30/10	Dinner for 1	Zachary I. Shapiro, Associate	ZIS - Revise amended schedules	Call with J. Ganesh re: filing schedules and statements (.2); Conference with P. Heath re: same (.1); Prepare for filing of same (2.5)	\$26.54