

**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 FIRST INTERIM
FEE APPLICATION OF ALVAREZ & MARSAL NORTH AMERICA, LLC**

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 First Interim Fee Application of Alvarez & Marsal North America, LLC (the “Application”).

BACKGROUND

1. Alvarez & Marsal North America, LLC (“A&M”), was retained as financial advisors to the Debtors and Debtors-in-Possession. In the Application, A&M seeks approval of fees totaling \$1,181,151.00 and expenses totaling \$25,019.79 for its services for the period from November 8, 2009 through March 31, 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, 2010, 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 A&M based on our review, and we received a response from A&M, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted that Director, Andrew Sagat, billing at an hourly rate of \$500.00, spent 14.4 hours for \$7,200.00 in fees on a check reconciliation. See Exhibit “A.” There is authority in this district for adjusting rates downward for routine tasks. “Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer’s barn.” *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3rd Cir. 1983). Thus, we asked A&M to explain why these tasks should be compensated at Mr. Sagat’s full hourly rate. A&M responded as follows:

- i. The tasks performed were not routine: The time entries detailed in Exhibit “A” of the Initial Report include reconciling various check reports, reviewing and revising a bank reconciliation report that covered 29 bank accounts and meeting with Advanta (the “Company”) personnel. These reports were created by the professional to facilitate a new cash forecast process which was developed and implemented by the same professional. The cash forecast process was a necessary new financial control for Advanta that is often required by creditors in bankruptcy. The activity detailed in the time entries was necessary to successfully implement this cash forecast process. The activity in question only became routine upon the transfer of the responsibility to Advanta employees in January 2010. This transfer took place as soon as it was feasible given the limited resources of the Company at the time. A&M decided it would neither be productive nor cost efficient to use a lower level professional to accomplish these tasks due to the time and cost it would require for a lower level professional to “get up to speed” on the company, its operations and the new process. The use of a lower level professional for these tasks would have still required supervision from and review by a mid-level professional.
- ii. A director level employee at A&M is not a senior partner: A director level employee at A&M is a mid-level professional, who customarily reports to a senior director and/or a managing director. Given the size of these cases and

the expected involvement of A&M, the staffing on this engagement at the time of these time entries included only a managing director and a director. A director level employee does not hold equity in A&M (which, for clarification, is a corporation) nor has decision making authority with respect to A&M matters or matters involving Advanta.

We understand the response, but believe the issue of whether or not Mr. Sagat owns equity in A&M is irrelevant. For purposes of clarification, we do not believe the *Ursic* court's statement was directed at partners because they own equity in the company, but rather because they ordinarily bill at higher hourly rates than other professionals and paraprofessionals in a firm. We note that Mr. Sagat's hourly rate of \$500 is approximately midway between the highest hourly rate of A&M's Managing Directors (\$775) and the lowest hourly rate of A&M's Consultants (\$350). Nevertheless, we accept A&M's response because it appears that, in this particular instance, the work in question was not routine and would have required Mr. Sagat's involvement. Thus, we have no objection to these fees.

4. We noted that on November 10, 2009, three A&M professionals attended the first day hearing. The total time spent was 11.6 hours, and total fees of \$7,522.00 were billed. See Exhibit "B." 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." Thus, we asked A&M to explain why it was necessary for each professional to be present at the hearing, and A&M responded:

- i. 3.9 hours for time spent at a pre-hearing meeting with Advanta management and counsel. A&M had been retained by Advanta for 3 business days prior to the date of the hearing on November 10, 2010. This meeting was intended to be an in-person "kick-off" meeting with Advanta and its other professional advisors to discuss upcoming case issues and other relevant restructuring matters. Joseph Bondi and Andrew Sagat attended this meeting as the central representatives of Advanta's restructuring advisory team. Nancy Shanik, an A&M managing director who was previously a senior executive at Citibank

with significant experience with bank regulatory matters, was specifically requested to attend by Advanta management because the case would involve numerous bank regulatory matters.

- ii. 3.7 hours for non-working travel to and from Wilmington, DE. Time was spent traveling to the location of both the pre-hearing meeting (discussed above) and the first day hearing (discussed below). For purposes of clarification, non-working travel time is billed at 50% of a professional’s billable rate, in accordance with protocols established by the U. S. Trustee.
- iii. 2.5 hours of non-working travel to the Advanta office in Spring House, PA. This travel was in the normal course of advising the Company, and not related to time spent traveling to or attending the first day hearing. In fact, it took place the day before the hearing. A&M personnel consistently travel to and from Advanta offices to support the Company in these matters. For purposes of clarification, non-working travel time is billed at 50% of a professional’s billable rate.
- iv. 1.5 hours for time spent at the first day hearing. Joseph Bondi, Andrew Sagat and Nancy Shanik were present at the first day hearing given the uncertainties that often surround a first day hearing. These A&M professionals were there to both be updated “first-hand” on any issues raised at the hearing, and support and advise management to the extent any issues arose. The filing of a Chapter 11 and the associated first day hearings can often be tense and nerve-racking situations for Company management. Accordingly, as restructuring advisors to Advanta, it was deemed necessary for these A&M professionals to be present.

We accept A&M’s response and have no objection to these fees.

5. We noted that on March 1, 2010, A&M professionals Bondi (\$775), Eisenberg (\$400), and Sagat (\$500) attended a creditors’ committee meeting. The total time spent, including preparation, was 14.3 hours, and total fees of \$8,107.50 were billed.

Bondi	3/1/2010	5.3	\$775.00	Prepare for and attend creditors committee meeting.	\$4,107.50
Eisenberg	3/1/2010	5.0	\$400.00	Prepare for and participate in meeting with UCC, FTI, Latham, Weil and Advanta regarding monthly status update.	\$2,000.00
Sagat	3/1/2010	4.0	\$500.00	Prepare for and participate in meeting with UCC, FTI, Latham, Weil and Advanta regarding monthly status update.	\$2,000.00

In light of the guideline cited above, we asked A&M to explain why it was necessary for each professional to attend the committee meeting. A&M responded as follows:

In response to ¶ 5 of the Initial Report, the following is the explanation of why it was necessary for each professional to be present at the creditors' committee meeting on March 1, 2010. The agenda for this meeting included the following topics:

- i. Liquidation Forecast Status Update– A&M prepared a financial update presentation to monitor and track financial results against a benchmark liquidation forecast prepared by Advanta and A&M in February 2010. This update presentation was presented and discussed at the Committee hearing. Given the scope of these forecasts and reports, which included asset realizations and timing, cash forecasting of operating expenses and professional fees, headcount planning and real estate planning, it was essential that both Andrew Sagat and Michael Eisenberg attend the March 1, 2010 meeting to ensure that we could support management in answering any related questions.
- ii. Chapter 11 Update – This section of the agenda primarily included a listing of motions pending, continued and expected to be filed at the April 7 hearing. Both Andrew Sagat and Michael Eisenberg were directly involved in the preparation and financial support of certain of these motions and were expected to be able to address any questions related thereto. Andrew Sagat was directly involved in the preparation and support of the Net Jets sale motion, the cash management motion, the employee wage motion, the motion to sell CRAIX shares and scenario analyses regarding motions to reject or assume / assign certain leases. Michael Eisenberg was directly involved in the employee wage motion and scenario analyses regarding motions to reject or assume / assign certain leases.
- iii. Other Items - This section of the agenda included updates related to FDIC matters, tax issues and next steps. Joseph Bondi, as managing director and the team leader for A&M, provided key insights on these higher-level case issues at the request of management, and acted as a liaison between senior personnel of the Committee's financial advisors and Advanta management. Andrew Sagat was available to provide any support to Mr. Bondi as necessary.

We accept A&M's response and have no objection to these fees.

6. We noted the following hotel charges for which more information was needed:

Andrew Sagat	12/3/2009	\$872.71	Marriott in Conshohocken, PA - 3 nights.
Andrew Sagat	12/8/2009	\$368.92	Marriott in Conshohocken, PA - 1 night.
Julie Hertzberg	11/17/2009	\$304.64	Marriott Hotel & Resorts in Charlotte - 1 night.

In response to our request, A&M provided additional information which we have attached as Response Exhibit "1." We accept A&M's response and have no objection to these fees.

CONCLUSION

7. Thus, we recommend approval of \$1,181,151.00 in fees and \$25,019.79 in expenses for A&M'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 August, 2010.



Warren H. Smith

SERVICE LIST
Notice Parties

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RESPONSE EXHIBIT "1"

Professional: Andrew Sagat
Date: 12/3/2009
Location: Marriott, Conshohocken, PA - 3 nights

	<u>Amount</u>	<u>Charges</u>	<u>Total</u>
Room Rate	\$249.00	3	\$747.00
State Tax	\$14.94	3	\$44.82
OCC Tax	\$4.98	3	\$14.94
Telecom	\$12.95	1	\$12.95
Beverage	\$2.83	1	\$2.83
Gift Shp Tax	\$0.17	1	\$0.17
Room Service ¹	\$50.00	1	\$50.00
Total			\$872.71

Professional: Andrew Sagat
Date: 12/8/2009
Location: Marriott, Conshohocken, PA - 1 night

	<u>Amount</u>	<u>Charges</u>	<u>Total</u>
Room Rate	\$249.00	1	\$249.00
State Tax	\$14.94	1	\$14.94
OCC Tax	\$4.98	1	\$4.98
Shula's (Restaurant) ¹	\$100.00	1	\$100.00
Total			\$368.92

¹Any meal costs above \$50 per person are not charged to the Company. [Both] of the charges were ... for dinners. The \$50 charge was for 1 person and the \$100 charge for 2.

Professional: Julie Hertzberg
Date: 11/17/2009
Location: Marriott @ Philadelphia Airport - 1 night²

	<u>Amount</u>	<u>Charges</u>	<u>Total</u>
Room Rate	\$239.00	1	\$239.00
State Oc	\$16.73	1	\$16.73
City Tax	\$19.60	1	\$19.60
Room Svc	\$29.31	1	\$29.31
Total			\$304.64

²This expense was mistakenly shown as “Marriott Hotel & Resort in Charlotte” on the fee statement. The invoice shows it is the Marriott at the Philadelphia Airport.

EXHIBIT "A"

Andrew Sagat	12/1/2009	1.2	\$ 600.00	Reconcile outstanding and cleared checks.
Andrew Sagat	12/1/2009	1.4	\$ 700.00	Review and make revisions to bank reconciliation.
Andrew Sagat	12/7/2009	2.1	\$ 1,050.00	Review bank reconciliations and make revisions with L. Preston (Advanta).
Andrew Sagat	12/7/2009	2.6	\$ 1,300.00	Reconcile outstanding and cleared checks.
Andrew Sagat	12/8/2009	1.3	\$ 650.00	Review actual cash information and revised bank reconciliations.
Andrew Sagat	12/14/2009	0.9	\$ 450.00	Reconcile outstanding checks for cash forecast.
Andrew Sagat	12/14/2009	1.1	\$ 550.00	Review bank reconciliation.
Andrew Sagat	12/15/2009	1.1	\$ 550.00	Reconcile checks to outstanding amounts for cash forecast.
Andrew Sagat	12/21/2009	0.8	\$ 400.00	Review and make revisions to bank reconciliation.
Andrew Sagat	12/23/2009	0.6	\$ 300.00	Review bank rec with L. Preston (Advanta).
Andrew Sagat	1/4/2010	0.7	\$ 350.00	Review and make revisions to bank reconciliation file.
Andrew Sagat	1/5/2010	0.6	\$ 300.00	Reconcile outstanding checks to check data for cash forecast.
		14.4	\$ 7,200.00	

EXHIBIT "B"

Andrew Sagat	11/10/2009	1.3	\$500	\$ 650.00	Prepare for and participate in meeting with Weil, RLF and Advanta regarding first day bankruptcy court hearing.
Andrew Sagat	11/10/2009	0.5	\$500	\$ 250.00	Attend bankruptcy court hearing.
Joseph Bondi	11/10/2009	1.3	\$775	\$ 1,007.50	Attend meeting with company and counsel regarding preparation for bankruptcy court hearing.
Joseph Bondi	11/10/2009	0.5	\$775	\$ 387.50	Attend bankruptcy court hearing.
Nancy Shanik	11/10/2009	0.5	\$695	\$ 347.50	Attend bankruptcy court hearing.
Nancy Shanik	11/10/2009	1.3	\$695	\$ 903.50	Attend meeting with Advanta, Weil and RLF regarding preparation for bankruptcy court hearing.
Andrew Sagat	11/9/2009	1.3	\$500	\$ 650.00	Non-working travel from New York to Advanta at 1/2 time.
Joseph Bondi	11/9/2009	1.2	\$775	\$ 930.00	Non-working travel from New York to Advanta at 1/2 time.
Andrew Sagat	11/10/2009	0.9	\$500	\$ 450.00	Non-working roundtrip travel from Advanta to Wilmington at 1/2 time.
Nancy Shanik	11/10/2009	2.8	\$695	\$ 1,946.00	Non-working travel from New York to Wilmington at 1/2 time.
		11.6		\$ 7,522.00	