

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | |
|-----------------------------------------|----------------------------------|
| -----X | |
| IN RE: | : Chapter 11 |
| | : : |
| ARCAPITA BANK B.S.C.(c), et al., | : Case No. 12-11076 (SHL) |
| | : : |
| Debtors. | : Jointly Administered |
| | : : |
| -----X | |

**SUPPLEMENTAL DECLARATION OF MICHAEL A. ROSENTHAL
IN SUPPORT OF DEBTORS’ APPLICATION FOR AN ORDER APPROVING
THE EMPLOYMENT AND RETENTION OF GIBSON, DUNN & CRUTCHER LLP
AS COUNSEL FOR THE DEBTORS IN POSSESSION *NUNC PRO TUNC*
TO THE PETITION DATE**

I, Michael A. Rosenthal, declare and state as follows:

FOUNDATION

1. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP (“*Gibson Dunn*”). I am admitted to practice before the courts of the State of New York, the State of Texas, the State of Illinois, the United States District Court for the Southern District of New York, the United States District Court for the Northern District of Texas and the United States District Court for the Southern District of Texas. I submit this Declaration, pursuant to sections 327(a), 328, and 330 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”), in further support of the *Debtors’ Application for an Order Approving the Employment and Retention of Gibson, Dunn & Crutcher LLP as Counsel for Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 51] (the “*Application*”). The Court approved the Application by its *Order Pursuant to Sections 327(a), 330 and 331 of the*

Bankruptcy Code Approving the Employment and Retention of Gibson, Dunn & Crutcher LLP as Counsel for Debtors in Possession Nunc Pro Tunc to the Petition Date, dated May 15, 2012 [Docket No. 141] (the “**Retention Order**”). Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.¹

RATE INCREASE

2. The Retention Order requires Gibson Dunn to file a supplemental affidavit with the Court and provide ten business days’ notice to the Debtors, the United States Trustee, and any official committee of any increases in Gibson Dunn’s rates as set forth in paragraph 14 of the Application.

3. It is a fundamental tenet of modern bankruptcy practice that “attorneys or other professionals whose retentions have been approved by the Bankruptcy Court are to be compensated based on market rates....” *In re Drexel Burnham Lambert Group*, 133 B.R. 13, 15 (Bankr. S.D.N.Y. 1991). “In a reversal of the practice that had evolved under the former Bankruptcy Act...Congress directed Bankruptcy Courts to compensate lawyers at the market rate, reflected in rates generally accepted by the attorney’s clients, and not impose lower or different rates or charges simply because it is a reorganization proceeding.” *Id.* at 17 (emphasis added).²

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the Application.

² Numerous cases are in accord. *See, e.g., Stroock & Stroock & Lavan v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.)*, 127 F.3d 1398, 1404 (11th Cir. 1997) (holding that the court should rely on the market in determining whether fees are appropriate); *In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 848-56 (3d Cir. 1994) (noting that the purpose of section 330 of the Bankruptcy Code is to compensate professionals at the market rate for services); *Novelly v. Palans (In re Apex Oil Co.)*, 960 F.2d 728, 733 (8th Cir. [Footnote continued on next page]

4. Throughout these cases, the amounts charged to the Debtors for the particular services rendered have approximated the rates charged to other clients of Gibson Dunn for similar services. Indeed, if the firm's retention in these matters were not pursuant to the Bankruptcy Code, Gibson Dunn would have charged the Debtors, and expected to receive, on a current basis, an amount at least equal to the amounts requested in our fee applications for the professional services rendered.

5. During the last quarter of each year, Gibson Dunn reviews its rate structure for the following year. In setting these annual rates, Gibson Dunn, among other factors, evaluates the market and the firm's cost structure, including increases in operating costs. From an expense standpoint, some of the firm's expenses are locked in over a multi-year basis. Examples of this are long term office leases. Other expenses vary from year to year, such as associate attorney costs, the cost of infrastructure including staff, and the cost of insurance which continues to increase dramatically. Consistent with our philosophy, over the last twelve years, Gibson Dunn's average annual rate increases have been less than its average annual increases in operating expenses.

6. As a result of our approach, we often lag behind the market when it comes to rate increases. For example, according to Citibank's Flash Report of legal fees, Gibson Dunn's average rate increase from 2010 to 2011 was 3.1%, whereas the averages for other firms in the domestic regions in which our firm operates ranged from 3.6% in New York City to 4.7% in Texas.

[Footnote continued from previous page]

1992) (same); *In re Nucorp Energy, Inc.*, 764 F.2d 655, 658 (9th Cir. 1985) (same); *Gazes v. Roswick (In re Roswick)*, 231 B.R. 843, 860 (Bankr. S.D.N.Y. 1999) (same).

7. Attached hereto as Schedule A is a list of the proposed 2013 rates for every timekeeper that has billed time to the Debtors. Schedule A separately identifies the amount of the proposed increase attributable to each attorney's increased level of experience and the amount of the proposed increase attributable to increases in Gibson Dunn's base rates for attorneys with similar levels of experience. Each of these rates was and will be consistent with the rates charged to other clients of the firm and to the rates charged by comparably skilled practitioners in the relevant market.

8. The Debtors have consented to the rate increase described herein.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on December 17, 2012.

/s/ Michel A. Rosenthal
Michael A. Rosenthal

Schedule A

2013 Rates

Gibson Dunn Billing Rates (2013)
Arcapita Bank BSC (30561)
2012 Fee Arrangement: 2012 Standard Rates

| 2012 Fee Schedule | Arcapita Bank 2012 Rate | Gibson Dunn 2012 Rate | Prog | Rate Inc. | Gibson Dunn 2013 Rate |
|---------------------------|------------------------------------|----------------------------------|-------------|----------------------|----------------------------------|
| Partner | | | | | |
| Aleksander, Nicholas P.B. | 1,215 | 1,215 | 0 | 50 | 1,265 |
| Bannister, J. Alan | 995 | 995 | 0 | 5 | 1,000 |
| Barabas, James | 1,090 | 1,090 | 40 | 45 | 1,175 |
| Bolander, Bruce D. | 970 | 970 | 0 | 15 | 985 |
| Buffone, Steven P. | 1,045 | 1,045 | 0 | 45 | 1,090 |
| Campbell, Gregory A. | 1,090 | 1,090 | 0 | 85 | 1,175 |
| Collins, Michael J. | 855 | 855 | 10 | 30 | 895 |
| Cox, James Alexander | 1,130 | 1,130 | 0 | 45 | 1,175 |
| Diamant, Michael S. | 725 | 725 | 40 | 30 | 795 |
| Feldman, David M. | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Furman, David J. | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Karlan, Mitchell A. | 1,135 | 1,135 | 0 | 35 | 1,170 |
| Khalil, Emad H. | 985 | 985 | 0 | 5 | 990 |
| Lance, Andrew A. | 995 | 995 | 10 | 25 | 1,030 |
| Mehraban, Darius J. | 865 | 865 | 45 | 50 | 960 |
| Millet, Craig H. | 995 | 995 | 0 | 45 | 1,040 |
| Moloney, James J. | 945 | 945 | 10 | 25 | 980 |
| Pasternak, Arthur D. | 955 | 955 | 0 | 30 | 985 |
| Rippeon, Benjamin H. | 765 | 765 | 0 | 30 | 795 |
| Robe, Jean-Philippe | 980 | 980 | 0 | 40 | 1,020 |
| Rocher, Philip | 1,270 | 1,270 | 0 | 50 | 1,320 |
| Rosenauer, David B. | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Rosenthal, Michael A. | 1,045 | 1,045 | 0 | 45 | 1,090 |
| Santra, Saptak | 865 | 865 | 0 | 50 | 915 |
| Schonfeld, Mark K. | 995 | 995 | 10 | 25 | 1,030 |
| Schwartz, Jason C. | 890 | 890 | 10 | 55 | 955 |
| Smith, Douglas D. | 965 | 965 | 0 | 30 | 995 |
| Thomas Jr., C. William | 830 | 830 | 25 | 30 | 885 |
| Trinklein, Jeffrey | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Weigel, Robert L. | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Weiss, Janet M. | 1,025 | 1,025 | 0 | 25 | 1,050 |
| Williams, Matthew J. | 865 | 865 | 45 | 50 | 960 |
| Winter, Graham P. | 990 | 990 | 0 | 5 | 995 |
| Wise, John Eric | 865 | 865 | 45 | 50 | 960 |
| Of Counsel | | | | | |
| Brennan, Blaise F. | 695 | 695 | 0 | 20 | 715 |
| Kelsey, Matthew K. | 785 | 785 | 0 | 10 | 795 |
| Ledoux, Patrick | 855 | 855 | 0 | 25 | 880 |
| McPhee, Gillian | 730 | 730 | 0 | 30 | 760 |
| Associate | | | | | |
| Babcock, Christopher J. | 395 | 395 | 50 | 20 | 465 |
| Barnes, Victoria | 605 | 605 | 65 | 25 | 695 |
| Bernell, Brent L. | 395 | 395 | 50 | 20 | 465 |
| Brewer, Catherine D. | 445 | 445 | 70 | 20 | 535 |
| Burke, Kenneth J. | 475 | 475 | 95 | 25 | 595 |

| 2012 Fee Schedule | Arcapita Bank 2012 Rate | Gibson Dunn 2012 Rate | Prog | Rate Inc. | Gibson Dunn 2013 Rate |
|--------------------------------|------------------------------------|----------------------------------|-------------|----------------------|----------------------------------|
| Chatterjee, Ayesha | 475 | 475 | 95 | 25 | 595 |
| Chianese III, Alfred J | 560 | 560 | 60 | 25 | 645 |
| Coppola, Robert L. | 560 | 560 | 60 | 25 | 645 |
| Domzalski, Shawn M. | 640 | 640 | 25 | 20 | 685 |
| Dykstra, Patrick C. | 705 | 705 | 15 | 35 | 755 |
| Finkelstein, Amanda J. | 560 | 560 | 60 | 25 | 645 |
| Galil, Yair Y. | 785 | 785 | 0 | 10 | 795 |
| Glowacki Jr., Kenneth A. | 695 | 695 | 0 | 20 | 715 |
| Gosnell Handler, Stephenie Ann | 475 | 475 | 95 | 25 | 595 |
| Graves, Jeremy Lee | 595 | 595 | 45 | 25 | 665 |
| Gunasekaran, Gayathri | 665 | 665 | 40 | 30 | 735 |
| Harrison, Claibourne S. | 930 | 930 | 0 | 35 | 965 |
| Harrison, Jeffrey K. | 445 | 445 | 70 | 20 | 535 |
| Hazle, Ebonie D. | 620 | 620 | 45 | 30 | 695 |
| Horowitz, Daniel | 620 | 620 | 45 | 30 | 695 |
| Jacobs, Sheera L. | 665 | 665 | 40 | 30 | 735 |
| Jarit, Lee Alexander | 720 | 720 | 15 | 40 | 775 |
| Kelly, Kathryn A. | 560 | 560 | 60 | 25 | 645 |
| Kim, Brian J. | 620 | 620 | 45 | 30 | 695 |
| Levin, Douglas G. | 515 | 515 | 40 | 25 | 580 |
| Liu, Serena G. | 620 | 620 | 45 | 30 | 695 |
| Martorana, Keith R. | 705 | 705 | 15 | 35 | 755 |
| McCord, Katherine A. | 560 | 560 | 60 | 25 | 645 |
| Medrano, Kevin A. | 620 | 620 | 45 | 30 | 695 |
| Miller, Kenneth Wayne | 720 | 720 | 15 | 40 | 775 |
| O'Grady, James B. | 705 | 705 | 15 | 35 | 755 |
| Parnes, Shelby E. | 665 | 665 | 40 | 30 | 735 |
| Patel, Sheel A. | 665 | 665 | 40 | 30 | 735 |
| Patterson, Krista Lynne | 720 | 720 | 15 | 40 | 775 |
| Reda, Justin J. | 665 | 665 | 40 | 30 | 735 |
| Reynolds, Ryan S. | 620 | 620 | 45 | 30 | 695 |
| Ross, Stewart R. | 720 | 720 | 15 | 40 | 775 |
| Ruiz, Vicente | 665 | 665 | 40 | 30 | 735 |
| Sentome, Vladimir W. | 705 | 705 | 15 | 35 | 755 |
| Shanks, Eleanor K. R. | 820 | 820 | 55 | 35 | 910 |
| Stevens, Lisa | 605 | 605 | 65 | 25 | 695 |
| Sun, Yi | 560 | 560 | 60 | 25 | 645 |
| Vojtisek, John-Paul | 735 | 735 | 30 | 20 | 785 |
| Vuillod, Olivier | 290 | 290 | 0 | 10 | 300 |
| Wasser, Lesley V. | 665 | 665 | 10 | 20 | 695 |
| Weisser, Joshua | 735 | 735 | 30 | 20 | 785 |
| Wong, Edwin | 875 | 875 | 55 | 35 | 965 |
| Zakhar II, Richard D. | 515 | 515 | 40 | 25 | 580 |
| Zygielbaum, Daniel A. | 445 | 445 | 70 | 20 | 535 |
| Paralegal | | | | | |
| Amponsah, Duke K. | 350 | 350 | 0 | 15 | 365 |
| Wolfe, Morgan | 255 | 255 | 0 | 10 | 265 |
| Friedman, Sasha | 255 | 255 | 0 | 10 | 265 |
| Gezgin, Nilhan | 410 | 410 | 0 | 15 | 425 |
| Gonzalez, Alma V. | 185 | 185 | 0 | 5 | 190 |
| Kutija, Iva | 290 | 290 | 0 | 10 | 300 |

| 2012 Fee Schedule | Arcapita Bank 2012 Rate | Gibson Dunn 2012 Rate | Prog | Rate Inc. | Gibson Dunn 2013 Rate |
|---------------------------|------------------------------------|----------------------------------|-------------|----------------------|----------------------------------|
| Plumley, Julia M. | 195 | 195 | 0 | 10 | 205 |
| Russell, Cari L. | 330 | 330 | 0 | 15 | 345 |
| Contract Paralegal | | | | | |
| Neill, Caroline | 330 | 330 | 0 | 15 | 345 |
| Other | | | | | |
| Jones, Mitchell L | 245 | 245 | 0 | 10 | 255 |
| Karnes, Christopher | 390 | 390 | 0 | 15 | 405 |
| King, Robert | 200 | 200 | 0 | 10 | 210 |
| Kurinsky, Erin E. | 185 | 185 | 0 | 5 | 190 |
| Lee, Fred | 385 | 385 | 0 | 15 | 400 |
| Peng, Simona | 245 | 245 | 0 | 10 | 255 |
| Raber, Steven | 210 | 210 | 0 | 10 | 220 |
| Scott, Spencer E. | 210 | 210 | 0 | 10 | 220 |

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