

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
MORTGAGE LENDERS)	
NETWORK USA, INC., ¹)	Case No. 07-10146 (PJW)
)	
Debtor.)	

**MOTION OF THE DEBTOR PURSUANT TO SECTIONS 105(a), 327,
328 AND 330 OF THE BANKRUPTCY CODE FOR AN ORDER
AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY
AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED
BY THE DEBTOR IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves the Court for entry of an order authorizing the Debtor to employ and compensate certain professionals utilized in the ordinary course of the Debtor’s business (the “Motion”). In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are sections 105(a), 327, 328 and 330 of title 11 of the United States Code (the “Bankruptcy Code”).

¹ Debtor’s EIN: XX-XXX7394;
Debtor’s Address: Middlesex Corporate Center, 213 Court Street, 11th Floor, Middletown, CT 06457

Background

3. On the date hereof (the "Petition Date"), the Debtor commenced this case by filing voluntary petitions for relief under chapter 11 the Bankruptcy Code.

4. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11 filing, is set forth in detail in the Declaration of Daniel Scouler, as Chief Restructuring Officer of the Debtor, in Support of First Day Motions (the "Scouler Declaration") filed concurrently herewith and fully incorporated herein by reference.²

5. The Debtor has continued in possession of its property and has continued to operate and manage its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or an examiner in this case, and no official committee has yet been appointed by the Office of the United States Trustee.

The Debtor's Ordinary Course Professionals

7. The Debtor customarily retains the services of various attorneys, accountants, and other professionals in matters arising in the ordinary course of business, unrelated to the underlying Chapter 11 Case (each an "Ordinary Course Professional" and

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Scouler Declaration.

collectively, the “Ordinary Course Professionals”). A list of the Ordinary Course Professionals utilized or expected to be utilized by the Debtor is attached as Exhibit A hereto.³

8. In contrast, the Debtor has filed (or will file) individual retention applications for any professionals that the Debtor seeks to employ in connection with the conduct of this Chapter 11 Case (the “Chapter 11 Professionals”). The Chapter 11 Professionals will be permitted to be compensated and reimbursed only in accordance with procedures to be approved by this Court, and with the terms of the orders approving each Chapter 11 Professional’s employment.

9. The Ordinary Course Professionals will not be involved in the administration of this Chapter 11 Case. Rather, they will provide services in connection with the Debtor’s ongoing business operations or services ordinarily provided by in-house counsel to a corporation. As a result, the Debtor does not believe that the Ordinary Course Professionals are “professionals” as that term is used in section 327 of the Bankruptcy Code, whose retention must be approved by this Court.⁴ Nevertheless, out of an abundance of caution, the Debtor seeks an order authorizing the retention and payment of all Ordinary Course Professionals during the pendency of this Chapter 11 Case.

³ As discussed more fully below, the Debtor reserves the right to amend such list in the future in its sole discretion, pursuant to the procedures set forth herein.

⁴ See, e.g., In re First Merchants Acceptance Corp., Case No. 97-1500, 1997 Bankr. LEXIS 2245, at *8-9 (Bankr. D. Del. December 15, 1997); In re That’s Entertainment Mkt’g Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under section 327 of the Bankruptcy Code); In re Madison Mgmt. Group, Inc., 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); In re Sieling Assocs. Ltd. P’ship, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor’s ongoing business, require approval under section 327 of the Bankruptcy Code).

10. The Debtor anticipates employing, among others, certain of the Ordinary Course Professionals listed on Exhibit A to perform ongoing services during the pendency of this Chapter 11 Case. In particular, the Debtor intends to continue to employ a relatively large number of “loan default” attorneys. These attorneys are necessary to sustain the Debtor’s business as a servicer of mortgage loans. When a default occurs under a mortgage loan, the Debtor is obligated to retain attorneys to pursue appropriate legal remedies, which may include foreclosure proceedings. The Debtor is ultimately reimbursed for virtually all such legal services.

Relief Requested

11. By the Motion, pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code, the Debtor seeks entry of an order by this Court authorizing the Debtor to (a) retain and employ the Ordinary Course Professionals on an “as needed” basis without the submission of separate, formal retention applications for each Ordinary Course Professional, and (b) establish procedures to compensate the Ordinary Course Professionals under sections 328, 330 and 331 of the Bankruptcy Code for postpetition services rendered and expenses incurred.

Basis for Relief

12. The Debtor cannot continue to operate its business as a debtor in possession unless it retains and pays for the services of the Ordinary Course Professionals listed on Exhibit A. The work of the Ordinary Course Professionals, albeit ordinary course, is directly related to the preservation of the value of the Debtor’s estate, even though the amount of fees and expenses incurred by the Ordinary Course Professionals represents only a small fraction of that value.

13. The operation of the Debtor's business would be severely hindered if the Ordinary Course Professionals were delayed in performing their work on behalf of the Debtor while the Debtor (i) submitted to this Court an application, affidavit and proposed retention order for each Ordinary Course Professional; (ii) waited until such order was approved before such Ordinary Course Professional continued to render services; and (iii) withheld payment of the normal fees and expenses of the Ordinary Course Professionals until they complied with the compensation procedures applicable to Chapter 11 Professionals.

14. Further, a number of Ordinary Course Professionals are unfamiliar with the fee application procedures employed in bankruptcy cases. Some Ordinary Course Professionals might be unwilling or unable to assume the administrative and cost burden of such procedures, and may therefore be unwilling to work with the Debtor if these requirements are imposed, forcing the Debtor to incur additional and unnecessary expenses to retain other professionals without such background and expertise and at potentially higher rates. The uninterrupted services of the Ordinary Course Professionals are vital to the Debtor's continuing operations and its ultimate ability to reorganize. More importantly, the cost of preparing and prosecuting these retention applications and fee applications would be significant, and such costs would be borne by the Debtor's estate.

15. Moreover, a requirement that the Ordinary Course Professionals each file retention pleadings and follow the usual fee application process required of the Chapter 11 Professionals would unnecessarily burden the Clerk's office, this Court and the U.S. Trustee's office with unnecessary fee applications while significantly adding to the administrative costs of

this case without any corresponding benefit to the Debtor's estate. This Motion proposes a procedure to alleviate such a burden.

16. Although some of the Ordinary Course Professionals may hold unsecured claims against the Debtor in respect of prepetition services rendered, the Debtor does not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtor, its estate, its creditors, or other parties in interest, and thus none would be retained who do not meet, if applicable, the special counsel retention requirement of section 327(e) of the Bankruptcy Code. By this Motion, the Debtor is not requesting authority to pay prepetition amounts owed to Ordinary Course Professionals.

Proposed Retention Procedure

17. The Debtor proposes that it be permitted to continue to employ and retain the Ordinary Course Professionals. Pursuant to the requirement imposed by Bankruptcy Rule 2014 and in order to provide the interested parties and this Court with appropriate comfort and assurances, each Ordinary Course Professional will be required to file with this Court, and to serve upon (i) proposed counsel for the Debtor, Pachulski Stang Ziehl Young Jones & Weintraub LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), Attention: Laura Davis Jones, Esq.; (ii) Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 Attention: Mark Kenney, Esquire (iii) counsel to Residential Funding Company (f/k/a Residential Funding Corporation); Dorsey & Whitney LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, Attention: Diane Malfeld, Esquire (iv) counsel to any Official Committee of Unsecured Creditors appointed in this case (subsequent to its appointment in this case) (collectively, the "Notice Parties"); and

(v) any party requesting special notice pursuant to Bankruptcy Rule 2002, a disclosure affidavit of such proposed professional (the "Affidavit," a form of which is attached as Exhibit B hereto) on the later of: (v) thirty (30) days after entry of an order of this Court granting the Motion; or (vi) prior to the date such Ordinary Course Professional provides any services to the Debtor. Such Affidavit shall set forth the following information: (a) a description of the effort(s) that were taken to search for connections with parties in interest; (b) a description of the proposed scope of services to be provided by the Ordinary Course Professional; (c) the rate(s) proposed to be charged for the services; (d) all information otherwise required to be disclosed pursuant to Federal Rule of Bankruptcy Procedure 2014; and (e) to the extent that the Ordinary Course Professional was not providing services as of the Petition Date, the date on which such services began postpetition. The Debtor will not make any payments to any Ordinary Course Professionals who have failed to file such an Affidavit.

18. The Debtor further requests that the Notice Parties will have ten (10) days from the date of the filing and service of the Affidavit (the "Objection Period") to object to the retention of the Ordinary Course Professional in question. Any such objection must be timely filed with this Court and served upon the Ordinary Course Professional, the Debtor, and the Notice Parties. If an objection is filed and cannot be resolved and/or withdrawn within twenty (20) days after service of such objection, this Court shall adjudicate the matter at a hearing scheduled by the Debtor at a mutually convenient time.⁵ If no timely objection is filed and

⁵ If, after a hearing, the retention of an Ordinary Course Professional is not approved, such professional may still apply to this Court, pursuant to sections 330 and 331 of the Bankruptcy Code, for compensation for all work performed on behalf of the Debtor from the Petition Date through the date of an order denying such retention.

received, or if an objection is withdrawn, the Debtor will be authorized to retain the Ordinary Course Professional on a final basis without further order of this Court.

19. The Debtor requests that it be authorized to employ and retain additional Ordinary Course Professionals, not currently listed on Exhibit A hereto, from time to time as necessary, without the need to file individual retention applications or have a further hearing by filing with this Court one or more supplements to Exhibit A (a "Supplemental Notice") and serving a copy of the Supplemental Notice upon the Notice Parties. The Debtor proposes that, as with the Ordinary Course Professionals set forth on Exhibit A, each additional Ordinary Course Professional be required to file and serve upon the Court and the Notice Parties an Affidavit on the later of: (a) thirty (30) days after the Supplemental Notice is filed; or (b) prior to the date such Ordinary Course Professional provides any services to the Debtor. The Notice Parties then would be given ten (10) days after service of each required Affidavit to object to the retention of such professional. Any objection will be handled pursuant to the procedures discussed above. If no objection is submitted, or the objection is withdrawn, the Debtor will be authorized to retain the professional as an Ordinary Course Professional on a final basis without further order of this Court.

Proposed Payment Procedure

20. The Debtor seeks authority to pay, without formal application to and order from this Court, one hundred percent (100%) of the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtor of an appropriate billing statement setting forth in reasonable detail the nature of the postpetition services rendered and expenses actually incurred; provided, however, that such interim fees and expenses do not exceed the

maximum authority under the authorized caps established herein. Further, the Debtor will not pay any fees and expenses to an Ordinary Course Professional unless (i) the professional has filed its Affidavit, (ii) the Objection Period has expired, and (iii) no timely objection is pending. If a timely objection is received, no payment will be made until such objection is (a) resolved and withdrawn, or (b) otherwise approved by the Court.

A. Monthly Payment Caps Proposed by the Debtor.

21. The Debtor proposes that it be permitted to pay, without formal application to this Court by any one Ordinary Course Professional, fees and expenses to each Ordinary Course Professional not to exceed the monthly caps for each such Ordinary Course Professional set forth on Exhibit A hereto.⁶

22. If in any given month the fees and expenses for any one Ordinary Course Professional exceeds the monthly cap for such professional set forth on Exhibit A, such Ordinary Course Professional shall be required to apply for approval by the Court of all such Ordinary Course Professional's fees and expenses for such month under sections 330 and 331 of the Bankruptcy Code; provided, however, that such Ordinary Course Professional shall be entitled to an interim payment of up to the amount of the applicable monthly cap as a credit against the invoices for such month ultimately allowed by the Court.

23. As a routine matter prior to the commencement of this case, the Debtor carefully reviewed all billing statements received from the Ordinary Course Professionals to ensure that the fees charged were reasonable and that the expenses incurred were necessary.

⁶ One Ordinary Course Professional (Harper & Whitfield) will charge a flat fee of \$10,000 (rather than a monthly rate) to perform an audit of the Debtor's 401(k) plan in accordance with applicable law.

This type of review will continue postpetition and, coupled with the proposed monthly payment caps, will protect the Debtor's estate against excessive and improper billings.

B. The Debtor Proposes to File Periodic Statements of Payments Made.

24. The Debtor further proposes to file a payment summary statement with this Court not more than thirty (30) days after the last day of March, June, September and December of each year this Chapter 11 Case is pending, or such other period as this Court directs, and to serve such statement upon the Notice Parties. The summary statement will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the statement period; and (c) a brief statement of the type of services rendered.

Authority for the Requested Relief

25. Numerous courts, including courts in this district, have routinely granted the same or similar relief to chapter 11 debtors in other chapter 11 cases. See, e.g., In re Global Home Products LLC, et al., Case No. 06-10340 (Bankr. D. Del. April 10, 2006); In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. Jan. 4, 2006); In re Nobex Corp., Case No. 05-20050 (Bankr. D. Del. Dec. 22, 2005); In re FLYi, Inc., Case No. 05-20011 (Bankr. D. Del. Dec. 1, 2005); In re Federal Mogul Global, Inc., et al., Case No. 01-10578 (Bankr. D. Del. Oct. 1, 2001); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 26, 2001); In re United Artists Theatre Co., Case No. 00-3514 (Bankr. D. Del. Nov. 14, 2000); In re NRG Energy, Inc., Case No. 03-13024 (Bankr. S.D.N.Y. May 20, 2003); In re Allegiance Telecom, Inc., Case No. 03-13057 (Bankr. S.D.N.Y. May 15, 2003); In re Conseco, Inc., Case No. 02-B-49672 (Bankr.

N.D. Ill. Dec. 17, 2002); In re Worldcom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y. Sep. 4, 2002).

26. The Debtor and its estate will be well served by authorizing the retention of the Ordinary Course Professionals because of such professionals' past relationship with, and understanding of, the Debtor and its operations. It is in the best interest of all of the parties and the creditors to avoid any disruption in the professional services rendered by the Ordinary Course Professionals in the day-to-day operations of the Debtor's business.

Notice

27. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; and (ii) Residential Funding Company LLC. Following the first day hearing in this case, this Motion will be served on (a) creditors holding the twenty largest unsecured claims against the Debtor as identified in the Debtor's petition, or their legal counsel (if known); (b) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (c) the Ordinary Course Professionals. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

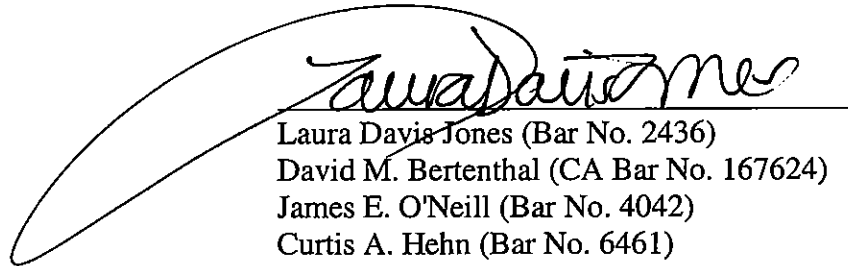
No Prior Request

No prior motion for relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: February 5, 2007

PACHULSKI STANG ZIEHL YOUNG JONES
& WEINTRAUB LLP

A large, stylized handwritten signature in black ink, which appears to read "Laura Davis Jones". The signature is written over a horizontal line.

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