

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Sara Edmonds X

Date:
SEPTEMBER 11 and 14, 2001

Re:
FURRS
No. 11-01-10779 SA

Continuation of Emergency Hearing on Motion to Use Cash Collateral filed Sept. 6, 2001 by Debtor

Oral Ruling on Employment of Peter J. Solomon

Emergency Hearing on Adrian Baca's Motion to Compel Immediate Removal of Equipment

Attorney for Debtor: Robert Jacobvitz
Attorney for UCC: William Davis
Attorney for Met Life: Jennie Behles and Ron Silverman
Attorney for NM Tax and Rev: Don Harris
Attorney for Heller: Paul Fish
Attorney for Health and Welfare Trust Fund: Youngdahl
Attorney for Unions: Lee Pfeifer
Attorney for Adrian Baca: Robert Feuille
Attorney for Whitmire Distrib.: James Jacobsen
Attorney for NM Wine and Beverage: Michael Cadigan

Summary of Proceedings:

Exhibits _____

Testimony _____

EMERGENCY HEARING ON MOTION FOR USE CASH COLLATERAL CONT'D SEPT. 17, 2001 @ 9:00

MOTION TO COMPEL BY ADRIAN BACA - POSSIBLE SETTLEMENT

ORAL RULING ON EMPLOYMENT OF P. J. SOLOMON GIVEN ON RECORD - (NOTES ATTACHED)

J: Not reached an agmt w/the lenders on cash coll. order. Explain the status. Fair to say things are fragile at the company from the top down. Relationships between the dtr and the lenders partic. Heller's agent are strained at the moment. Parties are still talking. In order to go forward the dtr bel. it needs to reach an agmt. Cannot spend bulk of time to go forward. Can't spend money and time fighting w/lenders in order to do the job. Dtrs view that if it needs to reach an agmt to move forward in Ch. 11. Dtr needs firm budget that it can rely upon. May not get there in coming to an agmt. Dtr was very much hoping to get this matter resolved today bec. of the fragile nature of the situation. Lenders have asked to cont. until Monday so both parties can talk to ea. other and work something out. May be able to do that, but may not. Mr. Golleher and Mr. Mays feel strongly they were entitled to their consulting fee until time of closure. # of iss. still talking about. Proc. in good faith. Ask ct to cont. hrg until sometime on Monday to give us addit. time.

Ct: Mr. G. and Mr. M. not having been paid at closing the money to pay them is tied up in this cash coll. iss.?

J: Dtrs funds pursuant to the DIP order are deposited in the acct. Disburs. made get transf. from block acct. Funds are in block acct now.

Ct: To get money out the lenders have to approve it.

J: Part of the discussions.

F: Pretty much agree w/Mr. J. comments. I have to add it would not be constructive for other side to put forward what the diffic. are. Those often hurt rather than help. Two things I wanted to mention. A diffic. w/Golleher and Mays pymt is a week or two ago we were here in wind down motion. In that motion was that pymt. Almost every other party in int. obj. to the G and M. payment. Our understanding those aren't in cash coll. order. Should be on own merits. Diffic. putting that in as req. of our cash coll. Decis. we heard many people say that ought to be considered as a differ. iss. Not sure up for hrg today, but there was a m/filed that was partic. unhelpful. By people as for \$700k trust fund. Prob. w/that there is a signif. iss. as to whet. it is legit. owed. Iss. we think the court ought to seriously consider. Lenders position that if it is properly owed we do not obj. to being paid. If not, (were no eligible emp. Sept. 1) troubled by tone of motion. Asked to put on record our position on that.

Ct: Lenders also want cont.?

F: Yes.

Davis: Committee only has one concern. Is that the court not antic. that if they come to an agmt that not everyone agrees. Extend the lenders coll. to pre-pet. avoid. actions. Even if we get to point of where lenders and dtr agree if the provis. is still in there the UCC will still obj. to that provis. To the extent that provis. is in there the comm. would still obj.

Ct: Looking over costs will there be anything for unsec.?

D: If adv. proc. is successful, would be some. Our review of record sugg. there may be money in prefer. Whatever is val. of adv. proc. w/regard to the clms w/certain leases would go to unsec. Are a # of other trade prefer. \$2mil escrow amt. Bel. that is a prefer. Other assets that may be avail. to unsec.

El Paso warehouse. Another asset would be over funded pension plan. Whet. taxes on dissol. would be re-characterized as penalties. All of those could be as high as \$10 or \$12mil. Ten cents could mean a signif. amt. Proposed orders the lenders have put forther - lenders extend their rights in coll. and then grant marshaling ag. prepet. recoveries. Everything that is loaned post Fleming closing is marshaled ag. prepet. recoveries. Takes assets that have no clm ag. and marshals them.

Ct: Whatever the merits of that are if there is an agmt that is reached between lenders and dtr that everyone needs to be prepared to litig. it. Bec. otherwise w /the passage of time the cont'd status of this ch. 11 becomes shaky. People need to know there are going to be empl. or move on. W/respect to Golleher and Mays and 40 other people that work at Furrs now. Keep pulse on what is going on. Explain what troubles are.

D: Are happy to do that. Prob. w/commun. w/committee. Meeting today to get guidance. Nobody gets a copy of what's proposed until we arrive here for the hrg. Hard to prepare.

Ct: Will take into consideration. If show up here Monday morning and haven't seen copy of agmt.

D: Not sched. another mtg until they have an agmt. If have an agmt and give us 24 hrs to look at it, would be a better hrg.

Ct: Not sched. to be here much next week. Program I was sched. to speak at on Monday was cancelled. Maybe saying we will be here Monday at least. If prov. deadline for lenders and dtr to get together and do something, that would be good. Puts everybody on ntc. Some kind of hrg going on that day. If I knew I was going to be here next week, your sugg. would make more sense. W/respect to talking to your comm. I understand the diffic. Get phone #'s for chair and vice-chair that will have to make some decis.

D: Meeting this afternoon and will get some guidance.

Silverman: Consistent w/MetLife, MetLife has done everything they can to supp. the dtr. Would like to let court know w/o prejudicing MetLife's rights prov. the bank lenders and unsec. and other parties were before you and supp. dtr. MetLife is willing to agree to that. No obj. to the pay of G. and M. Those folks have worked hard. Court ruled on approp. of their fee. MetLife is in favor of that being paid. If parties work hard today, may come to an agmt today and a budget. Rec'd e-mail from dtr of proposed form of order. My understanding is the dtr desperately needs money and needs confid. that it can pay people. Can't wait much longer. MetLife is not of the mind we need to wait much longer. Assuming we could find in favor of that we are prepared to sign on. Want to be clear on that. Might be sense of urgency lost by some parties.

Ct: I have a sense of urgency about this matter. If it gets conv. to 7, it gets conv. to a 7. Clear to me this is a crisis point. May be subst. assets getting lost if parties can't get together and get it worked out.

Harris: Given budget. On week 9/29 no taxes paid. Taxes collected by Furrs. Add on. Asked Mr. Wallach why not being paid. Say "no". All money swept into block accts. Setting aside \$700k that may never be due. Like party to arctic.

Ct: If the pymts req. to be paid, and the dtr doesn't propose to pay them may be a basis. Right now I don't see anyone getting paid anything. If funds are due the State of NM, the Tax and Rev. could file an action to put a hold on X # of \$. Sometime between rest of today and weekend gets worked out including

Tax and Rev.

Youngdahl: Court in Feb. ordered emp. benefits be cont'd. Payment is owing. Have partic. who have worked in store who are in hospitals and receiving treatments. In the first order supplementing I would ask the court to order that so we can assure folks they will be paid.

Ct: How do I do that?

Y: I antic. that ques. may be up. I'm not a bankr. lawyer. Filed memor. yesterday. He put in what he understands that to be.

Ct: Read motion and memor. Guess maybe there are ques. about how 506 (c) gets admin. around the country. Whet. surcharges can be waived by the dtr. Those are not iss. I can decide w/o looking at them carefully and w/o hrg from other side. I understand the urgency of this iss. w/respect to various members who have worked here. I may well agree w/the Unions or the funds - health and welfare fund reading of the applic. portions of bargain. agmt. If read agmt as whole not intended to include var. working folks getting health and welfare funds for Sept. Parties intended that the fund wouldn't be funded for Sept. I suspect they prob. did intend that. Unfortunately, due to circum. the way it was addr. I don't have enough of a factual background or legal background to make that decis. now. Where does that money come from. Don't have consent by lenders to use that money. Concedes is cash coll. I don't see that I have got that kind of omnipotent auth. Look at code and case law - Louisville State Bank vs. Radford. Variety of other cases dealing w/sec. clms. Cont. to be the case now in year 2001 as it was in 1978 when code was passed and 1998 when predecessor was passed and going back to England that sec. clms for whatever historical and econom. reas. may be have a very strong position w/everybody else. Treated as property rights. Saying more than you wanted to hear. Finish the thoughts. Prop. rights get partic. treatment under the law. Trump everybody else. Contract rights can be somewhat easily chg'd. Look at Buckner vs. U.S. Cont. to carry out that distinction and policy. Say policy rights have an elevated status in our legal system. Seems if I agree 100% of the funds position w/respect to how to interpret the contract the ques. is where does the money come from. Take stmt from Mr. Heller that it would be right and from Mr. Silverman that they would be right. If that is going to get funded, it ought to be funded now. Don't have power to do that. If Ms. Vaile that put this together can come up w/signif. auth. that tells me I have the right to do that at this stage I am not inclined to go back and ques. what the lenders have relied on. If some other auth. under 105, read cases - Judge McFeeley's decis. on Otero Mills. I don't see Otero Mills comes anywhere near allowing me to override prop. rights that are encumb. to lenders who are sec. or override the governing arrangements. That's my concern.

Y: Apprec. your concern. You entered an order in Feb. that said cont. these programs. If they knew what they had been lead to understand by company and court they would have made other decisions. Not fair. Mr. Mortensen said he didn't know. Relying on what lawyers said to him. Emp. have relied upon this. Needs to be paid and to w/draw that at this time seems to be cruel. Were good jobs but based on health insur. If court enters order and finds that should be paid. Mr. Fish said if you found it should be paid, his client would pay it. Union has a lot of relationships from MetLife.

Ct: Don't know if any of that can override. If no money to do that, then what happens. Whet. the relat. of what I ordered in Feb. w/VIP order is such that I should turn this money over. Need to talk about process for getting this partic. matter resolved.

Fish: What troubled me about hrg is it was squeezed in during hrg on Tues. Other evid. about when an emp. term. Does it go to next mo. Understand it

doesn't. My client is concerned if this truly part of wage pkg. we want it paid. Don't think it is. Set a hrg to focus just on this iss. Hear arguments about that contract. Ask court to do that sooner rather than later. If owed, and court denies we still pay. If entitled to it, let's pay it.

Ct: Concerns about chance of parties partic. in evid. portion. Came up quickly. Does it make sense to try and set something for Monday or Tues.

Y: Understand lenders to say if factually owed they are prepared to pay this. Don't get to ques. whet. court has auth. to pay it.

Silverman: We have not seen the papers filed yesterday. Cannot say at this point that we are willing to be paid on any grounds.

Ct: What is your fax #?

S: 212-752-5378. Counsel for health fund forgets. Bec. fund in one everyone comes to door who asks for money will get paid. MetLife is a co. that makes invest. for one reas. Pay out on insur. policies when they need it. Met isn't a co. that is for a profit adventure. When Met doesn't get paid back on it's money. Not give impress. they are a big invest. bank. Have to eval. the facts.

Ct: Somebody from Youngdahl needs to fax it to you. Ques. of timing.

Pfeifer: I understand the collective bargain. record was introduced on Tues. I have copies. Are other iss. related that might be sched. at same time. Severance pay and accrued vacation pay. Talking about separ. adjudication. Mr. W. gave Mr. Four the info. to eval. clms. If sched. a hrg on the contractual iss. might be approp. to set at same time. My impress. that everyone had come to agmt that union dues was to be paid. No obj. to that. Do by order now.

Wallach: Bel. the co. wired that money or sent ck yesterday.

P: If there is going to be a hrg on contractual iss. of health benef.

Behles: I did get a motion from union. I don't think the second part of my point was understood. Trying to have an emerg. cash coll. hrg to prov. for immed. needs to keep this dtr going. Been in ch. 11 for some mos. Needed to have these motions filed heretofore. I do know this. We are not prepared to addr. this sever. pay iss. Complicated. Cases are everywhere. Mr. Harris was aiming in right direction w/ques. Go back and get pay vouchers. If going to do anything other than on face, need to collect information. Not prepared to have a hrg on this next week. Diffic. Have a trial next week. Seems to me why it is so hard to deal w/iss. we get on table. Why we can't ntc this m/and get the necess. discovery and get a hrg on it. Money won't go anywhere. Urgency - apprec. people need their health benef. 10 days here or there is not the ques. Motion should have been filed earlier. Told we would get an acctg and didn't seen one. To try and get to our clients and find out what is going on. Get cash coll. iss. taken care of quickly. We need to knock these iss. down. Remember the reas. we are here is for cash coll.

P: Didn't mean to add to anxiety. Time set aside in early Oct.

Ct: File a m/w/severance pay iss. Concerned about sever. pay. Will take word about it. Deal w/it when it comes up. No time to deal w/it next week.

Y: Happy to have an evid. hrg Monday morn.

Ct: Given comments that Ms. Behles won't be here next week prepared to go

forward.

Y: Comments made Heller and MetLife.

Ct: Remember I said earlier I don't want to hear jury argument.

Y: Yes.

Ct: Are talking about health benef. that exist thru Sept., not Oct. Already halfway thru Sept. Ques. is how folks are being able to survive now. Paying bills now and going untreated. If get repaid down the road another thing.

Y: Some are not getting treatment they need.

Silverman: Was my understanding w/most of these pymts for Sept. the patients get treatment and the serv. prov. send in bills. I do think a hrg Monday or Tues. is entirely premature. Complicated iss. Incredible that we would litig. it on Mon.

Y: Get calls that Mr. Tapia is here for treatment does he have medical insurance.

Ct: First thing they ask me is do I have Federal Blue Cross/Blue Shield. Is of signif. and importance. Don't want to distract from cash coll. order.

Y: Fund covers several differ. employees. No extra money. Is a mo. by mo. fund.

Ct: Is extra money, but heard in connect. w/pension fund. I realize the employees aren't emp. any longer except for folks doing W2's. Don't have much stake in cash coll. order anymore. If W2's don't get iss., real pain the neck. Important the dtr be able to concentrate on getting the cash coll. order worked out. It will or won't happen. Prob. that I've got now is folks got caught is surprised. Don't have a basis for interrupting...bec. Mr. Feuille's client who want dtr to move things out of store. Have time to do that but not time to deal w/this iss. Think about this for a few min. Don't know. Sit down and I will have to figure this out. Don't expect dtr to partic. in this process. Between Heller and MetLife.

Silverman: Dtr is knowledgeable.

Ct: Didn't hear dtr contrib. much to that discuss. at all the other day. Iss. is what does contract require and maybe how adminis. I do not want the dtrs resources diverted from getting cash coll. Who else wants to talk about sched. of cash coll. order. We have got Monday afternoon sched. in another ch. 11. When do you want to come back here? Addr. to dtrs and two lenders.

Silverman: First thing Mon. morning if calendar is avail.

J: Will be avail. anytime.

Ct: What are you going to do w/respect to Mr. Davis.

D: After today's meeting I can present our position.

J: Ask Mr. Fish if he bel. that is suffic. time?

F: Not easy and not easy w/dealing w/people in New York right now. Just as optimistic.

Ct: 9:00 Monday morning. Cash coll. hrg will be cont'd til 9:00 Mon. morning.

Anything else on cash coll. hrg. Still thinking about sched. this other thing. Move on to second item. Ruling on P. J. Solomon emp. I have is a set of notes that constitute my oral ruling. May not be familiar, but will make notes avail. afterwards. (Notes attached to min. of this hrg.)

A. Baca iss. -

T: Think we have a resolution. Heller and Mr. Baca are negot. I think Mr. F. informs me that Heller is willing to remove the equip. Ques. is how long will it take. Relief req. Told a ques. of the timing of getting the trucks there.

Fish: Status of this equip. is it is part of lease that involves equip. in the warehouse. Whet. we are sec. creditor or a lessor in which case the dtr has not rejected the lease we have no right to the equip. In the spirit of trying to solve this prob. Heller is willing to remove the equip. Reserving every right. Timing wise what we would hope to do is w/in a week in normal course. No office of Heller Leasing in Anthony, Texas. Part of the prob. we have is getting folks there. Make arrangements to get it out of there. I can't say oh sure we will do it. Will do best we can.

Ct: Estimate?

Fish: Hope to do it w /in a week. Not a promise. W/travel prob. don't know how it will impact this. Hope by Monday I can tell Mr. Feuille.

Feuille: Mr. B. is trying to reopen the store. Emp. have lost their jobs. Has other tenants that are hurting bec. no traffic in that center right now.

Ct: How soon?

Feuille: What I just heard is not unreasonable. I do think if they could commence removal w/in a week is reasonable. Prob. w/contract w/someone in the area. Aren't going to sell it until detached. For bond most of the equip. is attached to equip. Could suffer damages to his premises.

Ct: Purpose of bond is Heller won't be good for damages.

Feuille: Normal to req. w/construction contracts.

Ct: Testimony today?

Feuille: From Mr. Baca on damages and cost of atty fees. Loss of rent - \$26k a mo.

Ct: Set out in emerg. motion?

Feuille: Some. Atty fees bec. of the way it has developed. He attempted to negot. w/Furrs and Heller. Each time was foiled. We attempted to put in direct contact w/Heller. When estab. contact between negot. of dtr and Heller needed to be between attys. If conduct removal w/o harming the premises could do w/o incurring damages to premises. If done improperly could be as much as \$80k - \$100k. Mr. Baca is suffering - premises is suffering but suffering abil. to attract customer base.

Ct: Sounds like economic damage. Taking test. for purposes of hrg is talking about damages largely. Based on practicalities it takes time to get this moved out. I would think if there were damages done and done by somebody working at Heller's req., Heller ought to be good for that. I don't think there needs to be a bond. Approp. as follows: Mr. Fish to make arrangements to get this stuff removed. Mr. Fish contacting you on Monday may be diffic. - otherwise emp. Say somebody will be there to move that stuff out. About as

quickly as it can be done. W/respect to that also I will given stmts of Mr. Fish will say the stay will be modif. as of right now to allow Heller to deal w/that equip. W/respect to whatever damages may flow that will be subj. to a clm being filed as may be approp. Can file clm ag. dtr or Heller. Will be litig. That iss. doesn't need to be decided on emerg. basis. W/o prejudice. About as fast as we can get relief to Mr. Baca. Expect things to go from there. If a prob., give me a call. Way we need to get this matter resolved.

Feuille: Will expect a call from Mr. Fish. If a prob. w/that time frame, may need to come back to you.

Ct: I'm expecting the message you will get on Mon. is someone will be there as late as Tues. or Wed. Prepare order Mr. Feuille.

Feuille: Been an order entered req. Furrs to vacate the premises on the third Thurs. of Aug. Should dtr have rights in equip. or should they sell the equip. Mr. B. is asking me to ask you if that right would apply or if that right could be applied so Mr. B. could overbid the last bid.

Ct: Won't rule on that. If dtr was supp. to clear out by 31 and hasn't, will have to clear out. Don't know if dtr is trying to sell this stuff. If they are need to abide by orders in place. If Heller is trying to sell it, rights of first refusal apply to Heller. Don't think I can do that.

Feuille: Agree w/you.

Ct: Can always ask. Will deny that. As soon as I can get Mr. B. store vacated.

Fish: Not aware of right of first refusal.

Ct: Only thing left is sched. the hrg in connect. w/the fund. Can't litig. next Mon. or Tues. Dtrs and sec. lenders time would be much better spent trying to reach consensus on cash coll. Not going to req. this be heard on Mon. or Tues. Don't know situation on Wed., Thurs. and Fri. This matter needs to be sched. at some future time. PH Oct. 4, 2001 @ 9:00 on a trailing docket. Ms. Behles prepare the notice.

On 22 May 2001 the Court conducted final hearings on the motion to approve the employment of Peter J. Solomon Co. ("Solomon") and to engage the services of George Golleher, Greg Mays and Thomas Dahlen. Present were Robert H. Jacobvitz and Richard Levin for the debtor in possession ("Debtor", "company" or "DIP"), William F. Davis and I. William Cohen for the Unsecured Creditor Committee ("UCC" or "Committee"), Paul M. Fish for Heller Financial as lender and as agent for other secured creditors, Ronald Andazola for the United States Trustee ("UST"), Jennie Deden Behles for Metropolitan Life Insurance Company, and Martin Craddock from Desert Feather. 1334 and 157; core; FFCL 7052.

The Solomon motion seeks to employ an investment banker for the DIP; the Court will approve the motion as detailed below.

The final understanding on the Solomon engagement is reflected in a revised engagement letter submitted by Messrs Davis and Thuma (for the UCC and the Debtor respectively), which contains concessions negotiated by the UCC. The revised engagement letter also addresses a number of the objections raised by the UST. This ruling anticipates the execution of that revised engagement letter and the filing of the letter as a separate exhibit in the "pleadings" file in this case.

The primary issue, argued by the UST, is that the indemnification provisions violate the fiduciary obligations of Solomon to the estate. The DIP argues that these provisions are now the standard in the industry, and substitute for insurance, the cost of which would otherwise be passed on to the estate in one form or another. In this instance, UCC wanted and obtained the same treatment for its investment banker Chanin, and secured creditors not object, and it is their money at risk. While the Court has some concerns about how the indemnity process works, the facts that the major parties with stakes in the outcome and assets at risk consent to this arrangement, and that this sort of arrangement is fairly commonplace in the industry, is sufficient in this case to permit it.

The UST also argues that the disclosures concerning Solomon's disinterestedness are insufficient and at the same time suggest impermissible conflicts of interest. The Court finds that the total disclosure provided by Solomon is sufficient, and does not demonstrate any actual conflicts of interest that preclude it from serving the estate as a §327(a) professional.

The UST also argues that Solomon should not be authorized compensation under §328(a), so that Solomon's fees will essentially be paid on some sort of interim (perhaps hourly) basis and perhaps that Solomon's compensation will be subject to closer scrutiny than contemplated by the language "...terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." From the evidence presented, the Court finds that the compensation arrangements for investment bankers are more appropriately comprised of the type of fees described in the engagement letter rather than hourly fees. For that reason, a non-hourly compensation arrangement, such as the one proposed, is appropriate. However, it is also reasonable to permit the Debtor and the creditors an opportunity to review the work of and actual compensation to Solomon before the case is closed, to assure themselves that Solomon has performed the work it was supposed to have performed. This review is not limited to merely a determination of whether there occurred "developments not capable of being anticipated" at this time, it is intended to allow the Debtor

and the creditors to assure themselves that Solomon has in fact done the job it has promised to do. And this is precisely what §330 contemplates.

Note the structure of subchapter II (entitled "Officers") of chapter 3 of the Code. §§321 - 325 deal with the qualifications and appointment of a trustee, and § 326 deals with limitations on - that is, the rates of - the trustee's compensation. Paralleling that structure, § 327 deals with the qualifications and employment of professional persons and §328 deals with limitations on - that is, the rates of -- the professional person's compensation. §§ 330 and 331 then deal with actual allowance and payment to trustees and professionals. § 326 specifies the (maximum) compensation for the trustee for every case; §328(a) permits the employment of the professional on any reasonable terms and conditions, but explicitly provides that the Court may allow compensation different than originally allowed "if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." In other words, as with the "published" rates for trustees, §328(a) sets the rates that will govern compensation decisions for the rest of the case barring some fairly unusual event. And this limitation applies to all the professionals, including but not limited to those expecting to be compensated on a lodestar basis (hours times rate).

The approach to compensation embodied in §328(a) is useful in at least two ways. First, it allows everyone in the case to better anticipate and budget for the expenses of each of the professionals. Second, it allows each of the professionals to more accurately anticipate the amount and time of the income the professional expects to receive.

Section 328(a) therefore informs the fee application process provided for in §330. Indeed, the first sentence of §330 states that an award compensation to a professional is subject to §328. At the same time, there is no question that approval of compensation arrangements under §328(a) does not preclude the necessity for a fee application, notice to creditors and parties in interest, and review and approval by the Court.

In this particular application, Solomon must also seek approval of its expenses, including the reimbursement of any of the professionals for which it seeks reimbursement of fees.

The compensation for Solomon essentially is for the investment banking services. If those services are performed, then the fact that Solomon may have in the course of its work done some of the sort of work that PwC was hired for, should not be a basis for decreasing Solomon's compensation. (Indeed, it may not be a basis for decreasing PwC's compensation either, but that is not an issue the Court is addressing in this decision.)

Therefore the Peter J. Solomon Co. agreement with the Debtor, in the form of the revised engagement, is approved, with the additional proviso that at the end of its engagement, Solomon is to file an application for Court approval of its compensation (albeit the compensation may have already been paid) prior to the close of the case.

The approval process will include a review of the expenses of Solomon, particularly any bills for professionals.

RHJ has submitted a proposed order, approved by counsel for UCC, UST, and secured creditors; it only needs Ex A attached to it.