

In the intervening months, Deloitte was asked by the Committee to perform a variety of assignments necessary for the Committee to do its job, including helping review proposals for debtor-in-possession financing and several key executive retention programs (none ultimately adopted), analyzing the value of unencumbered assets, and monitoring and verifying the Debtor's financial condition. This role in safeguarding the integrity and transparency of the process is important in any case. It is all the more vital in a case like this one where there were significant questions on the part of the Committee about the Debtor's management, plans, assets, and finances. All of these services were necessary for administration of the estate and were intended to and did bring value.

Ultimately, the Debtor's financial condition proved to be much more precarious than even the Debtor's management and reorganization professionals realized. This does not detract, however, from the value or necessity of the services performed. Deloitte added value, and it should be compensated for its services.

Responses to Specific Objections

A. Staffing

In various forms, each of the Objecting Parties contend that Deloitte utilized too many professionals in its representation of the Committee or utilized them inefficiently in ways which lent to duplication. This contention, however, is belied by review of the contemporaneous time records attached to the two fee applications filed by Deloitte. In representing the Committee, Deloitte utilized a core group of eight professionals,¹ who together account for

¹ Brian Convery, Anthony Forcum, Anthony Jackson, John Little, Tom Mason, Kyle Redfearn, John Solomon, and John Tittle. Mr. Mason, Mr. Solomon, and Mr. Redfearn were involved in one project—valuation of the Debtor's leasehold interests. Mr. Convery, Mr. Forcum, Mr. Jackson, Mr. Little, and Mr. Tittle were involved in other aspects of services for the Committee. The overlap between the two groups is nominal given the nature of the work being performed and when viewed separately is further evidence of Deloitte's efficient staffing.

roughly 73.9% of the total services performed by hours. Reliance on this group ensured a minimum of duplication or time spent in meetings to transition work.

At the same time, with its depth of resources, Deloitte was able to ensure efficient and cost effective staffing by calling upon additional professionals when a professional had skills appropriate to a particular task or where utilization of additional professionals was necessary to ensure that client needs could be met in a timely and efficient manner. Likewise, on occasion, Deloitte involved more than one professional at a meeting or function where such professional would add value or where efficiency so required. These meetings account for only a small portion of the total time for which Deloitte seeks to be compensated. Despite all of that, however, it is noteworthy that at the end of the day Deloitte utilized only twenty professionals in this case, including six who were involved exclusively on a project to value the Debtor's leasehold interests. Seventy-four percent (74%) of work was performed by persons below the level of senior manager and roughly ninety-one percent by non-partners. Given the wide range of tasks with which Deloitte was charged, what the time records submitted by Deloitte show is that Deloitte handled this engagement with exceptional efficiency and a minimum of unnecessary or duplicative effort.

B. Time

A variant of the objection that Deloitte utilized too many professionals is the argument that Deloitte invested too many hours in the case. Since the Objecting Parties state this objection without providing specifics, it is difficult to respond to the objection, except to say that Deloitte made professional judgments, based on the facts available to it at the time and its experience in a broad range of reorganization cases, about whether a particular task or function requested by the Committee was necessary and appropriate.

In every instance, the work performed by Deloitte was targeted and specific and designed to ensure that the Committee had an informed basis on which to proceed. Many of these activities resulted in direct benefit to the estate by, for example, enabling the Committee to successfully oppose efforts by the Debtor's management to implement a KERP plan which would have resulted in the irreversible outflow of millions of dollars from the estate early in the case. In other instances, such as with respect to the weekly and periodic reports provided to members of the Committee, the value of the services was in enabling the Committee to stay abreast in an informed manner regarding developments in the case. This was particularly important as the Debtor shifted from reorganization on a stand-alone basis to an expedited sale of its stores to a competitor. In each case, the activities undertaken by Deloitte ensured that the policy of "adequate representation" embodied in the Bankruptcy Code was met and that creditors had a meaningful place at the table.

C. Hourly Rates

MetLife and Heller also object to the Fee Application on the grounds that "the rates charged . . . are excessive [in] the view of financial condition of the Debtor and the prospects for recovery by the unsecured creditors." (Heller Obj., ¶ 3). Again, the time records attached to the fee applications filed by Deloitte belie any contention that this case was not efficiently staffed.

Although Deloitte is an international firm with globally-recognized expertise in reorganization work, it relied where possible on less expensive resources, as reflected in the fact that the blended hourly rate for services provided in its representation of the Committee is \$293.32. As previously addressed, moreover, with the Court, Deloitte's hourly rates are well within the comparable norms for similar sorts of services and, with the exception of Mr.

Forcum's rate (specifically approved by the Court), well within the range charged by the Debtor's own reorganization consultants, PriceWaterhouse Coopers.

D. Unnecessary Work

The United States Trustee, in a similar vein, objects to what she describes as "excessive and/or unnecessary" work or "clerical" work, of which a limited number of examples are stated. *Deloitte strongly disagrees with this characterization.*

The "excessive and/or unnecessary" work identified by the United States Trustee includes reviewing memoranda generated by Committee counsel, preparation of reports for the Committee, preparation of materials for testimony, and participating at functions where other Committee professionals were present. (UST Obj. ¶ 2). All of this work is basic and required. Reviewing the work product of other Committee professionals was essential for Deloitte to remain knowledgeable about the case and to participate meaningfully in providing advice to the Committee. It is, moreover, the type of exchange of information that takes place in every case between legal and non-legal professionals. Likewise, communicating information to the Committee is a basic function and absolutely necessary for the Committee to do its job. It is unclear how the Committee could discharge its obligations otherwise. Being prepared to provide expert testimony similarly is a part of what reorganization and financial consultants do in bankruptcy cases and is one of the functions for which Deloitte specifically was retained. Finally, it is not unusual that Deloitte would have been present at meetings or proceedings where other Committee professionals also were present. Deloitte had a unique function as the Debtors' reorganization consultants and had expertise not possessed by other professionals. Although it worked to avoid any duplication, its role was such that duplication rarely occurred. Instead, in the typical instance, the different skills of the professionals worked in tandem.

Deloitte also disputes the characterization of time spent on necessary administrative tasks as "clerical." However, in the interest of adhering fully to the spirit of the Bankruptcy Code, Deloitte is prepared to reduce the fees requested by an appropriate amount to account for the items identified by the United States Trustee.

E. Valuation Work

The Objecting Parties also raise specific questions about whether the valuation work performed by Deloitte is compensable. There, again, the answer plainly is yes.

The valuation work for which Deloitte seeks compensation consists of two discrete and non-overlapping projects. At the commencement of this case, the Committee asked Deloitte to undertake to value the Debtor on a "going concern" basis to assist the Committee in understanding the Debtor's financial conditions and prospects and to allow the Committee to explore and respond to various reorganization options. Work in this category consists of \$59,263.50 of the total fees in this category and represents 210.2 hours of work. Given significant questions on the part of the Committee about the Debtor's business plan and the difficulty in obtaining consistent information from the Debtor's management, this work was absolutely essential in order for the Committee to fulfill its fiduciary duties.

Once it became clear that reorganization of the Debtor on a stand-alone basis was unlikely and that reorganization instead would occur through sale of the stores, the focus of the Committee and Deloitte shifted to an effort to determine what assets would be available for unsecured creditors in a sale scenario. The second project included in the valuation task category consists of a valuation performed in the summer of 2001 of the Debtor's leasehold interests which the Committee asked Deloitte to perform because the Committee and its counsel believed that leaseholds represented significant value not subject to perfected liens of secured creditors.

The Committee requested, and Deloitte undertook, this work because it believed that it was vital to have an informed understanding of the value of the leaseholds before entering into litigation and/or negotiations over an appropriate allocation of value to unsecured creditors.

In performing this work, Deloitte adhered to rigorous professional standards imposed by the public bodies regulating real-estate appraisals. Because of externally imposed time constraints, much of this work had to be performed quickly. It had to be performed, moreover, without a definitive answer from the Debtor's management on accounting discrepancies that could have had a significant impact on the outcome. Nonetheless, the average cost of the valuations falls well within market parameters. At the end of the day, the issue became moot when the Court granted a postpetition lien in the leaseholds to secured lenders. This, however, does not take away from the necessity of the work to insure the integrity of the process or of the value of the work—which, in fact, has been cited and relied upon by MetLife in papers filed with the Court and which found more than \$20 million in value which otherwise might have been left on the table.

F. Fees and Expenses Incurred Prior to March 14, 2001

Finally, Heller, MetLife, and the United States Trustee object to allowance of any fees incurred before Deloitte filed its retention papers on March 14, 2001. Although the Court considered the issue of ex facto retention in June 2001 in connection with approval of Deloitte's engagement and later issued a bench ruling in December 2001 limiting Deloitte's retention, Deloitte believes that ruling should be reconsidered by the Court for reasons it will address in detail in papers to be filed on that subject. Until the Court is able to consider and dispose of the issue, Deloitte, accordingly, reserves its rights to seek fees and expenses associated with the period before March 14, 2001.

WHEREFORE, PREMISES CONSIDERED, Deloitte & Touche LLP and Deloitte Consulting L.P. respectfully request that the Court enter an order (i) overruling the objections to the Fee Application, (ii) allowing the fees and expenses sought therein, and (iii) granting them such other and further relief as the Court finds to be just and equitable under the circumstances.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing pleading has been served via facsimile upon the parties on the attached service list on this 29th day of January 2002.



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