

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____ x
In re: : Chapter 11
: :
FIRST MERCHANTS ACCEPTANCE : Case No. 97-1500(JJF)
CORPORATION :
Debtor. :
_____ x

FIRST AND FINAL APPLICATION OF McGLADREY & PULLEN, LLP
AS AUDITORS FOR THE DEBTOR, FOR ALLOWANCE OF COMPENSATION
FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES
INCURRED FROM JANUARY 8, 1998 THROUGH MARCH 16, 1998

Name of Applicant: McGladrey & Pullen, LLP

Authorized to Provide
Professional Services to: First Merchants Acceptance Corporation

Date of Retention: January 8, 1998

Period for Which Compensation
and Reimbursement is Sought: January 8, 1998 through March 16, 1998

Amount of Compensation For Services Sought
as Actual, Reasonable, and Necessary: \$ 216,708

Amount of Expenses Sought to Be Reimbursed
as Actual, Reasonable and Necessary: \$ 5,413

Total Amount of Fees and Expenses Sought to be
Reimbursed as Actual, Reasonable and Necessary: \$ 222,121

This is: an interim: X final application for an allowance of compensation and reimbursement of expenses incurred pursuant to 11 U.S.C § 330.

The total time expended during the period January 8, 1998 through March 16, 1998 for the preparation of this First Application is 26.7 hours and the corresponding compensation and expense reimbursement requested is \$3,027 and \$0 respectively. Fees for time spent and expenses incurred after March 16, 1998 on the preparation of this Application are not included.

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TO THE HONORABLE JOSEPH J. FARNAN, JR.,
CHIEF UNITED STATES DISTRICT JUDGE:

McGladrey & Pullen, LLP ("McGladrey & Pullen") hereby moves this Court for an Order awarding reasonable compensation for professional services rendered as auditor to First Merchants Acceptance Corporation ("Debtor") in the amount of \$216,708 together with reimbursement for actual and necessary expenses incurred in the amount or \$5,413 for the period commencing January 8, 1998 through and including March 16, 1998. In support of this Application, McGladrey & Pullen states as follows:

I. Summary

During the application period, the Applicant has performed significant work related to the audit of the Debtor's financial statements as of and for the year ending December 31, 1996 and has just begun working on the audit of the Debtor's financial statements as of and for the year ending December 31, 1997. These services are being rendered in order for the Debtor to be able to comply with the filing requirements of the United States Securities and Exchange Commission ("SEC").

The following exhibits are annexed to this First Application:

- Exhibit A: Summary of Professional and Paraprofessional Time and Fees by Project Code Category;
- Exhibit B: Detailed Description by Matter of the Services Rendered by Professionals for the period January 8, 1998 through March 16, 1998; and
- Exhibit C: Summary of Requested Reimbursement of Expenses for the period January 8, 1998 through February 28, 1998.

II. Background

First Acceptance Corporation ("FMAC") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on July 11, 1997. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor continued to operate and manage its properties, affairs and assets as debtors in possession. The Plan of Reorganization was confirmed on March 16, 1998.

No trustee or examiner has been sought or appointed in these cases. An official committee of unsecured creditors (the "Creditors' Committee") has been appointed.

III. Retention of Applicant

By Order dated January 15, 1998 (the "Retention Order"), the Court authorized First Merchants Acceptance Corporation to retain the Applicant as their Auditor effective January 8, 1998 on an hourly rate basis. The Retention Order conditioned the Applicant's compensation on approval by this Court.

IV. Jurisdiction and Notice

This Court has jurisdiction over these cases under 28 U.S.C. § 157(b)(2)(A), (M) and (O).

The relief requested hereunder is authorized under §§ 330 and 331 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2016 and this Court's Order under §§ 105(a) and 331 of the Bankruptcy Code Establishing Procedures For Interim Compensation and Reimbursement of Expenses for Main Professionals And Official Committee Members dated July 14, 1997 (the "Compensation Procedures Order").

Notice of this Application was given to parties in accordance with the Compensation Procedures Order.

V. Interim Compensation and Disbursements Received to Date

McGladrey & Pullen has submitted an invoice to the Debtor for the period January 8, 1998 through February 28, 1998. This invoice contained a detailed description of time and expenses incurred by McGladrey & Pullen. The Compensation Procedures Order calls for professionals to submit a monthly statement by the 25th day of the following month. However, due to McGladrey & Pullen only beginning to provide services during the month of January, 1998, the services rendered and expenses incurred in January were combined with the February invoice.

McGladrey & Pullen expects to receive, on an interim basis, 80% of the fees requested in the combined invoice for the months of January and February, as well as full payment of expenses included in that invoice. McGladrey & Pullen also expects to receive 80% of the fees that will be requested in the invoice for the period March 1, 1998 through March 16, 1998, as well as 100% of the expenses included in that invoice.

By this Application, McGladrey & Pullen seeks an Order allowing the compensation and reimbursement of expenses detailed in the attached exhibits and incurred during the period January 8, 1998 through and including March 16, 1998 (the "Period"). The total compensation and reimbursement of expenses sought for the Period is \$216,708 and \$5,413, respectively. This calculates to a blended hourly rate of \$131. No understanding exists between the Applicant and any other person for a sharing of the compensation sought by this First Application.

VI. Description of Services Rendered

Deloitte & Touche, the Debtor's former auditor, has withdrawn its audit opinion regarding the December 31, 1996 financial statements and has refused to issue an opinion on the restated financial statements. The SEC has taken the position that no quarterly reports on Form 10-Q may be filed until audited restated December 31, 1996 financial statements are made available. It was critical for the Applicant to be hired and to begin work on the audits in order to meet SEC filing deadlines as well as to allow the bankruptcy process to continue without major delays.

The Applicant was hired effective January 8, 1998 to render the following services:

1. Issue an opinion on the Debtor's consolidated balance sheet as of December 31, 1996;

2. Issue an opinion on the Debtor's consolidated financial statements as of and for the year ending December 31, 1997;
3. Provide other accounting and reporting assistance necessary to assist the Debtor with Exchange Act filings on Forms 10-Q and 10-K;
4. Report or testify regarding the above services as necessary.

It was later determined by the Debtor and Debtor's counsel that an audit of the financial statements as of and for the year ending December 31, 1996, not just the balance sheet, was needed in order to comply with SEC filing requirements. Thus, the Applicant expanded its services to include this requirement.

During the application period, the Applicant has performed significant work related to the audit of the Debtor's financial statements as of and for the year ending December 31, 1996 and has just begun working on the audit of the Debtor's financial statements as of and for the year ending December 31, 1997.

Performing an audit of a company's financial statements involves gathering extensive information from the personnel of that company. In this matter, this step was complicated by the fact that there was a lack of access to employees who generated the original financial information due to those employees no longer being employed by the Debtor as well as difficulty in locating necessary historic financial information, such as reconciliations, supporting schedules and memos. In addition, it was necessary to extensively use the Applicant's information technology consultants due to the heightened audit sensitivity to the integrity of the data files given the information technology manipulation that led to the December 31, 1996 financial statements restatement and ultimately, the filing of Chapter 11 bankruptcy as well as lack of available time the Debtor's

employees and consultants were able to provide to generate computer reports needed for the audits.

In accordance with Generally Accepted Auditing Standards, an audit of a company's financial statements requires extensive planning of the audit and performing extensive audit procedures as well as several levels of review. In performing an audit of a company which provides financing, such as the Debtor, there are areas which require special attention. These areas includes the static pool analysis, which relates to loan loss experience, and the securitization of the loans. Due to situation at hand, *i.e.*, the subject company having filed bankruptcy, lapse of time between the period being audited and when the audit is taking place, and the former auditor's having withdrawn their opinion, the audit risk was increased, thus the requirements of the audit were increased.

McGladrey & Pullen seeks compensation of \$205,749 for 1,543.1 hours for the audit of the December 31, 1996 financial statements and of \$7,932 for 89.8 hours for the audit of the December 31, 1997 financial statements.

Detail is included in Exhibit B1 for the audit of the December 31, 1996 financial statements and in B2 for the audit of the December 31, 1997 financial statements.

VII. Chapter 11 Case Administration

The Applicant has incurred \$3,027 representing 26.7 hours spent during the Application Period in preparing this Application and related invoices pursuant to the Administration Order and entered by this Court. The detail of this time is included in Exhibit B3.

The Applicant generally does not charge for time spent in preparing monthly invoices. However, the Applicant, in preparing billing statements or fee applications in a bankruptcy case,

compiles all the available information and drafts detail summaries of the work it has performed by individual. These tasks are not performed for non-bankruptcy clients, where either a short one paragraph description is provided together with a broad summary of time and expenses incurred, or fees are agreed upon prior to the commencement of work.

VIII. Valuation of Services

McGladrey & Pullen professionals and paraprofessionals have expended a total of 1,660.1 hours in connection with this case during the approximately two month period. McGladrey & Pullen utilized these professionals due to their areas of expertise.

The hourly rates and amount of time spent by each person is set forth on the chart attached hereto as Exhibit A. No time is billed for the significant amount of non-working travel time in connection with these cases. The hours set forth on Exhibit A are McGladrey & Pullen's normal hourly rates of compensation that it regularly charges other clients in non-bankruptcy related matters. McGladrey & Pullen thus seeks an Order allowing it \$216,708 for services rendered during the period January 8, 1998 through and including March 16, 1998.

In accordance with the factors enumerated in 11 U.S.C § 330, the amount of compensation requested herein is fair and reasonable given (a) the complexity of these cases; (b) the time expended; (c) the nature and extent of the services rendered; (d) the value of such services; and (e) the costs of comparable services other than in a case under Title 11.

IX. Description of Out-Of-Pocket Expenses

As with all major professional services firms, the Applicant's overhead expenses are substantial. A significant portion of fees which the Court awards the Applicant will merely defray such significant overhead expenses already incurred and paid during the pendency of this case. The limited costs which the Applicant seeks reimbursement of are not in the nature of Applicant's overhead and were necessarily incurred as a result of this engagement. Such costs are not, therefore, implicit in the Applicant's hourly rates.

The Applicant has only applied for reimbursement of actual and necessary out-of-pocket disbursements in accordance with section 330(a)(2) of the Bankruptcy Code, the Bankruptcy Rules and the Guidelines. The expenses listed on Exhibit C were actual and necessary expenses incurred by the Applicant in connection with its service to the Debtor. The Applicant would typically bill all such expenses to its non-bankruptcy clients. Reimbursement is not being requested for photocopying charges, telephone and telecopier charges.

The amount of expenses for which the Applicant seeks reimbursement totals \$5,413, as shown in Exhibit C.

X. Conclusion

WHEREFORE, the Applicant respectfully requests the Court to enter an order (i) awarding the Applicant the sum of \$216,708 as compensation for services rendered, and \$5,413 as reimbursement for actual and necessary expenses incurred during the course of the Applicant's provision of auditing and accounting services to the Debtor during the Application Period; (ii) authorizing and directing the Debtor to promptly pay the 20% holdback amount (totaling

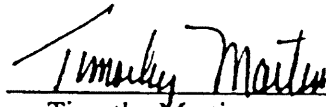
\$43,342) to McGladrey & Pullen in accordance with the Compensation Procedures Order; and
(iii) granting such other and further relief as the Court deems appropriate.

Dated: Chicago, Illinois

April 28, 1998

McGladrey & Pullen, LLP
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By:



Timothy Martin
Partner