

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

In re:) Chapter 11
)
PRIME SUCCESSION, INC., et al.,) Case No. 00-2969 (PJW)
)
) (Jointly Administered)
Debtors.)

**FIRST AND FINAL APPLICATION OF
MUNGER, TOLLES & OLSON, LLP
FOR COMPENSATION AND FOR REIMBURSEMENT OF EXPENSES**

Name of Applicant: Munger, Tolles & Olson, LLP

Authorized to Provide Professional Services to: Official Committee of Unsecured Creditors of Prime Succession, Inc.

Date of Retention: As of July 26, 2000

Period for which Compensation and Reimbursement is Sought: July 26, 2000 through November 8, 2000

Amount of Compensation Sought as Actual, Reasonable and Necessary: \$141,061.00

Amount of Expense Reimbursement Sought as Actual, Reasonable and Necessary:
\$23,461.45.

This is a(n): _____ interim _____ final application

Since the preparation of this fee application occurred after the Application Period (as defined herein), this application does not include any preparation time.

Previous Interim Fee Applications

None.

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non 503-b
5520 fee

Hearing only if Objections are filed
Objection Deadline: February 5, 2001 @ 4:00 p.m. Eastern Time

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

U.S. Bankruptcy Court
District of Delaware
JAN 16 2 17 PM '01

In re:) Chapter 11
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PRIME SUCCESSION, INC., et al.) Case No. 00-2969 (PJW)
) Jointly Administered
Debtors.)

NOTICE OF APPLICATION

PLEASE TAKE NOTICE that **Munger, Tolles & Olsen, LLP** as counsel to the Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession filed the attached First and Final Application for Compensation and for Reimbursement of Expenses (the "Application") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Fifth Floor, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Application must be in writing, filed with the Court, and served on or before 4:00 p.m., February 5, 2001, upon (i)) the Debtors, c/o Arthur J. Ansin, Prime Succession, Inc., 3940 Olympic Blvd., Suite . 500, Erlanger, KY 41018; (ii) Jeffrey D. Saferstein, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY 10019-6064 and Pauline K. Morgan, Esq., Young, Conaway, Stargett & Taylor, LLP, Rodney Square North, 11th Floor, P.O. Box 391, Wilmington, DE 19899; (iii) Thomas B. Walper, Esq., Munger, Tolles & Olsen, LLP, 355

South Grand Avenue, 35th Floor, Los Angeles, CA 90071 and (iv) Laura Davis Jones, Esq.
Pachulski, Stang, Ziehl, Young & Jones, P.C., 919 North Market Street, 16th Floor, Wilmington,
DE 19801; (v) Daniel K. Astin, Esq., Office of the United States Trustee, 601 Walnut Street,
The Curtis Center, Suite 950W, Philadelphia, PA 19106.

PLEASE TAKE FURTHER NOTICE that if **no objection is timely filed and served**, the Court may enter an order granting the requested relief in the Application with no further notice or hearing. If an objection is timely filed and served, a hearing on the Application will be scheduled at the convenience of the Court.

Dated: Wilmington, Delaware
January 16, 2001

PACHULSKI, STANG, ZIEHL, YOUNG & JONES, P.C.

Rachel S. Lowy Bar No. 3752
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and

MUNGER, TOLLES & OLSON, L.L.P.
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Attorneys for the Official Committee of Unsecured
Creditor

UNITED STATES BANKRUPTCY COURT

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PRIME SUCCESSION, INC., et al.,) Case No. 00-2969 (PJW)
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**FIRST AND FINAL APPLICATION OF
MUNGER, TOLLES & OLSON LLP
FOR COMPENSATION AND FOR REIMBURSEMENT OF EXPENSES**

TO: THE HONORABLE PETER J. WALSH
CHIEF UNITED STATES BANKRUPTCY COURT JUDGE:

Munger, Tolles & Olson LLP (“MTO”), co-counsel to the Official Committee of Unsecured Creditors (“Committee”) of Prime Succession Holdings, Inc., Prime Succession, Inc., (“Prime”) and certain of Prime’s subsidiaries, the above-captioned debtors and debtors in possession (each a “Debtor” and collectively, the “Debtors”), submits this first and final application (the “Fee Application”) for compensation and for reimbursement of expenses incurred on behalf of the Debtors. This Fee Application is for fees in the amount of \$141,061.00 and expenses in the amount of \$23,461.45 and is submitted pursuant to sections 330 and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), this Court’s Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and Order No. 32 of this Court’s Local Rules. MTO seeks compensation for legal services performed and reimbursement of expenses incurred during the period from July 26, 2000 through and including November 8, 2000 (the “Application Period”), as co-counsel to the Committee in these chapter 11 cases, and respectfully represents:

BACKGROUND

1. On July 12, 2000 (the "Petition Date"), concurrently with the filing of this Motion, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are jointly administered for procedural purposes only.

2. During the chapter 11 cases the Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner was appointed in these cases. Before the Petition Date an informal committee of certain significant holders of Prime's 10³/₄% senior subordinated notes ("Notes") was formed ("Unofficial Committee").

3. This Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Prime is a leading provider of funeral and cemetery products and services in the United States. Through its subsidiaries, Prime owns or operates 141 funeral homes and 19 cemeteries in 19 states, primarily in non-urban areas. For the fiscal year 1999, Prime's consolidated revenues were \$90.5 million.

5. As of the Petition Date, Prime employed approximately 1,160 people in funeral and cemetery operations, approximately 180 commissioned sales people and 15 telemarketing staff. None of the Debtors' employees are covered by a collective bargaining agreement.

6. During its fiscal year 1999, Prime experienced significant declines in revenues, cash flow and profits due primarily to a reduction in the nationwide death rate and the continuing slowdown in cremations, which produce higher gross profit margins for the Debtors. As a result of its deteriorating financial circumstances, as of September 30, 1999, Prime was in

default of certain negative covenants set forth in its credit agreement (the "Pre-Petition Credit Agreement") with a syndicate of financial institutions, The Bank of Nova Scotia, as administrative agent and Goldman Sachs & Co., as syndication agent (collectively, the "Pre-Petition Lenders"). As a result of the Debtors' non-compliance with the Pre-Petition Credit Agreement, the Debtors were also in default under the indenture governing the Notes.

7. After the Debtors' default under the Pre-Petition Credit Agreement, the Debtors worked with their financial advisors, the Pre-Petition Lenders and the Unofficial Committee and their respective advisors to negotiate a consensual restructuring of their indebtedness. After months of good faith negotiations among the parties, the Debtors obtained the agreement of the Unofficial Committee and the Pre-Petition Lenders to support a "pre-negotiated" plan of reorganization (the "Plan") which has been filed with the Court.

8. On July 26, 2000, pursuant to § 1102(a) of the Bankruptcy Code, the office of the United States Trustee ("UST") organized and appointed the Committee. The Committee included:

PPM America, Inc.
US Trust
American Express/IDS
Donald D. and Betty H. Taylor
Jeff Gamble

9. On that day, the Committee also elected to retain and employ MTO as its lead counsel herein and the law firm of Pachulski, Stang, Ziehl, Young & Jones to act as its co-counsel.

10. The Committee has been provided with this Application.

Terms and Conditions of Employment of Munger, Tolles & Olson LLP

11. Subject to Court approval, MTO seeks payment for compensation on an hourly basis, plus reimbursement of actual, necessary expenses incurred by MTO. The rates charged by MTO in these chapter 11 cases do not differ from the rates charged to MTO's non-bankruptcy clients. MTO maintains records of all time expended and expenses incurred in rendering services on the Debtors' behalf. The time records submitted as part of this First Fee Application detail the work performed by MTO during the Application Period. MTO attorneys and paraprofessionals prepare their time records substantially contemporaneously with the work performed.

12. A summary of the hours spent, the names of each professional and paraprofessional rendering services to the Committee, their regular, customary billing rates and the total value of time incurred in rendering services to the Committee is attached hereto as Exhibit A. Detailed time records reflecting the time recorded for such services, and billing categories are attached hereto as Exhibit B. A summary of MTO's relevant expense records is attached hereto as Exhibit C. All time entries and requested expenses are in substantial compliance with this Court's Local Rules.

**Summary of Services Rendered
During the Application Period**

13. As set forth in greater detail in MTO's computer time records, MTO advised the Committee on every aspect of their chapter 11 cases and on a variety of bankruptcy, corporate and litigation issues.

14. MTO made every effort to avoid duplicating the services performed by co-counsel to the Debtors. The professional services that MTO rendered to the Debtors during the Application Period include the following (organized according to project billing areas):

(i) **Case Administration.**

15. During the Application Period, MTO performed various tasks in connection with day-to-day case administration. MTO prepared and reviewed all papers filed in these cases, monitored the case docket and updated service lists and case records on a continual basis. This category also includes, organizational documents for the Committee, Committee meeting preparation, extensive review and analysis of the Debtors' former owner obligations and their impact on the reorganization and the analysis and monitoring of the claims made by the Attorney General of the State of Florida and their resolution.

16. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to case Administration during the Application Period in the total amount of \$47,444.50.

(ii) **Plan Implementation Documents.**

17. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to the review and comment on the Plan implementation Documents during the Application Period in the total amount of \$871.50.

(iii) **Financing and Bank Investigation.**

18. During the Application Period, MTO assisted the Debtors in obtaining final Court approval of its debtor-in-possession("DIP") financing from The Bank of Nova Scotia and Goldman Sachs, as Agents for a group of lenders (collectively, the "DIP Lenders"). In connection with the DIP financing, MTO negotiated with the DIP Lenders and reviewed and commented on various complex documents. MTO also along with its co-counsel was involved in the review of the Lenders prepetition security interest.

19. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to financing and the Bank Investigation during the Application Period in the total amount of \$6,972.00.

(iv) Committee Meetings.

20. MTO organized and attended several Committee meetings throughout the Application period. During these meetings MTO ensured that the Committee reviewed and took positions on matters critical to the reorganization process.

21. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to Meetings during the Application Period in the total amount of \$49,673.50

(v) Plan & Disclosure Statement.

22. During the Application Period MTO spent a substantial amount of time reviewing, revising, negotiating and commenting on the Disclosure Statement and Plan of Reorganization.

23. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to Plan & Disclosure Statement during the Application Period in the total amount of \$35,435.50.

(vi) Professionals.

24. During the Application Period, MTO did not prepare or file any interim fee applications and had only a few issues and discussions with the Committee on this subject.

25. MTO seeks compensation for its reasonable and necessary legal services rendered with respect to Fee Applications during the Application Period in the total amount of \$664.00.

Request For Compensation

26. The amount sought for the Application Period represents 378.40 hours of professional services rendered by MTO on behalf of the Debtors.¹

27. MTO requests compensation in the amount of \$141,061.00 for legal services rendered during the Application Period at a blended hourly rate of \$373 and seeks reimbursement for actual, necessary expenses during the same period in the amount of \$23,461.45

28. On the basis of the descriptions set forth in this Fee Application and the accompanying exhibits, MTO submits that the legal services rendered to the Committee and the expenses incurred on their behalf were necessary and have benefited the Debtors' estates.

29. MTO rendered the professional services for which it seeks compensation solely on behalf of the Committee and in compliance with its duties as their co-counsel. At all times, MTO organized its staff, delegated responsibility and coordinated services to maximize efficiency and avoid duplication. MTO incurred the listed expenses on the Debtors' behalf in accordance with its normal practices.

30. MTO has not received any payment or promise of payment for its services or expenses in connection with these chapter 11 cases other than those payments discussed in this Fee Application and the Walper Affidavit (as defined below).

¹ A list of the MTO partners, counsel, associates and paraprofessionals who have worked on these chapter 11 cases, including their hourly rates and the total hours of services rendered by each, is attached as Exhibit A.

**Bankruptcy Rule 2016 Affidavit and Certification
Under Order No 32 of this Court's Local Rules**

31. An affidavit pursuant to Bankruptcy Rule 2016 and a certification pursuant to Order No. 32 of this Court's Local Rules by Thomas B. Walper (the "Walper Affidavit"), a member of MTO, is attached hereto as Exhibit D.

Notice

32. Pursuant to this Court's Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, the First Fee Application will be served upon: (i) the Debtors, c/o Prime Succession, Inc., Attn: Arthur J. Ansin, 3940 Olympic Blvd., Suite 500, Erlanger, KY 41018; (ii) co-counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, Attn: Pauline K. Morgan, 11th Floor, Rodney Square North, P.O. Box 391, Wilmington, Delaware 19899; (iii) counsel for the Debtors, Jeffrey D. Saferstein, Esq., Paul Weiss, LLC, 1285 Avenue of the Americas, 25th Floor, New York, New York 10019; (iv) counsel to the Agents for the prepetition and postpetition lenders, Skadden, Arps, Slate, Meagher & Flom, Attn: Eric Ivester, 333 West Wacker Drive, Chicago, IL 60606 and Mayer, Brown & Platt, Attn: Raniero D'Aversa, 1675 Broadway, New York, NY 10019; and (v) the Office of the United States Trustee for the District of Delaware, 601 Walnut Street, Curtis Center, Suite 950, West Philadelphia, Pennsylvania 19106.

WHEREFORE, MTO respectfully requests that this Court:

- (a) award MTO compensation in the amount of \$141,061.00 for professional legal services rendered to the Committee.
- (b) authorize the reimbursement of \$23,461.45 of expenses incurred by MTO on the Committee's behalf; and