

Application of Debtors Pursuant to 11 U.S.C. § 327(a) for Authority to Employ and Retain Fox Rothschild LLP as Co-Counsel for the Debtors (the “Fox Retention Application”)

By the Fox Retention Application, the Debtors seek entry of an order authorizing them to employ Fox Rothschild LLP (“Fox”) as co-counsel to the Debtors, *nunc pro tunc* to December 8, 2008, in order to replace Bayard, P.A. (“Bayard”) as Delaware counsel to the Debtors. Bayard’s employment in these cases terminated after December 31, 2008.

By order dated August 25, 2008 (the “Bayard Retention Order”), the Court approved the Debtors’ retention of Bayard as co-counsel to the Debtors. Since such time, both of the primary Bayard attorneys working on the Debtors’ cases, Jeffrey M. Schlerf and Eric M. Suttty (together, the “Departing Attorneys”), have left Bayard to join Fox.¹ In addition to the Departing Attorneys’ familiarity with the Debtors and their chapter 11 cases, the Debtors believe that Fox is both well qualified and uniquely able to represent them efficiently due to the following reasons: (ii) Fox’s extensive bankruptcy knowledge and experience, particularly in Delaware courts, and (iii) Fox’s proximity to the Bankruptcy Court and ability to respond quickly to emergency motions or other matters.

According to the Fox Retention Application, Fox will provide the following services: (i) taking all necessary actions to protect and preserve the Debtors’ estates, including the prosecution of actions on the Debtors’ behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors’ estates; (ii) providing legal advice with respect to the Debtors’ powers and duties as debtors in possession; (iii) negotiating, preparing, and pursuing confirmation of a plan and approval of a disclosure statement; (iv) preparing all necessary or appropriate motions, applications, answers, orders, reports, and other papers in connection with administration of the Debtors’ estates; (v) appearing in Court to protect the interests of the Debtors; (vi) assisting the Debtors in connection with any disposition of the Debtors’ assets, by sale or otherwise; and (vii) performing all other necessary legal services in connection with the Debtors’ chapter 11 cases. The Debtors expect that Fox will work closely with White & Case LLP to ensure there is no unnecessary duplication of services to the Debtors.

Furthermore, the Debtors assert that Fox (i) has no connection with the Debtors, their creditors or other parties in interest in the reorganization cases except as disclosed in the Fox Retention Application, (ii) does not hold any interest adverse to the Debtors’ estates, and (iii) is a “disinterested person” as that term is defined by the Bankruptcy Code.

Fox partners charge between \$355 - \$575 per hour, its associates charge between \$240 - \$320 per hour, and its paraprofessionals bill at rates between \$125 - \$225 per hour. The Debtors assert that these rates are consistent with Fox’s regular hourly rates for similar services. Fox will apply to the Bankruptcy Court for compensation under the Bankruptcy Code for all services performed.

¹ Mr. Suttty joined Fox as of December 8, 2008, and Mr. Schlerf’s start date at Fox was January 1, 2009.