

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
Solyndra LLC, *et al.*,¹)
) Case No.: 11-12799 (MFW)
)
) (Jointly Administered)
Debtors.)

**APPLICATION OF THE DEBTORS PURSUANT TO SECTION 327(e)
OF THE BANKRUPTCY CODE, RULE 2014 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014-1
FOR AUTHORIZATION TO EMPLOY AND RETAIN McDERMOTT WILL & EMERY
AS SPECIAL COUNSEL FOR THE DEBTORS AND
DEBTORS IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby seek entry of an order pursuant to section 327(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules” or “Del. Bankr. LR”) authorizing the Debtors’ retention and employment of McDermott Will & Emery (“McDermott” or the “Firm”) as counsel for the Debtors *nunc pro tunc* to the Petition Date (the “Application”). In support of the Application, the Debtors rely on (i) the *Statement Under Rule 2016 of the Federal Rules of Bankruptcy Procedure and Section 329 of the Bankruptcy Code*, and (ii) the *Affidavit of David D. Ransom in Support of Application of the Debtors Pursuant to Section 327(e) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and*

¹ The Debtors in these proceedings and the last four digits of each Debtor’s federal taxpayer identification number are as follows: Solyndra LLC (9771) and 360 Degree Solar Holdings, Inc. (5583). The Debtors’ address is 47488 Kato Road, Fremont, CA 94538.

Local Rule 2014-1 for Authorization to Employ and Retain McDermott Will & Emery as Special Counsel for the Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date (the “Ransom Affidavit”), which are being submitted concurrently with the Application. In support of this Application, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are sections 327(e), 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014(a).

Background

3. On September 6, 2011 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors, including their current and historical business operations and the events precipitating their chapter 11 filings, are set forth in detail in the *Declaration of W.G. Bill Stover, Jr., Senior Vice President and Chief Financial Officer, in Support of First Day Motions* (the “Stover Declaration”) filed concurrently with this Application and incorporated herein by reference.²

5. Although the Debtors’ manufacturing operations have been discontinued while the company evaluates its restructuring options, the Debtors are continuing in possession

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stover Declaration.

of their property and are managing their business as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or an examiner in this case, and no official committee has yet been appointed by the Office of the United States Trustee.

Relief Requested

7. By this Application, the Debtors seek to employ and retain McDermott as their special counsel with regard to governmental investigations of the Debtors and hearings in connection with those investigations, and litigation and proceedings involving the Debtors related to such investigations and hearings. Accordingly, the Debtors respectfully request the entry of an order pursuant to section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1 authorizing them to employ and retain McDermott as their special counsel under a general retainer to perform the legal services that will be necessary during these chapter 11 cases, pursuant to the terms set forth in this Application and the Ransom Affidavit, *nunc pro tunc* to the Petition Date.

8. The Debtors seek to retain McDermott as their special counsel because of the Firm's extensive experience and knowledge in areas in which the Firm will be engaged. In preparing for its representation of the Debtors in these cases, McDermott has become familiar with the present investigations and the Debtors' businesses and affairs and many of the potential legal issues that may arise in the context of those investigations and potential litigation.

9. Subject to Court approval in accordance with section 330(a) of the Bankruptcy Code, compensation will be payable to McDermott on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by McDermott. The principal attorneys and paralegals presently designated to represent the Debtors and their current standard hourly rates are:

a.	William F. Weld	\$825.00
b.	Stephen M. Ryan	\$775.00
c.	David D. Ransom	\$525.00
d.	Gene Litvinoff	\$525.00
e.	Jon P. Decker	\$425.00

10. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Other attorneys and paralegals may from time to time serve the Debtors in connection with the matters described herein.

11. The hourly rates set forth above are McDermott's standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate McDermott for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is McDermott's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, conference call charges, mail and express mail charges, special or hand delivery charges, document retrieval charges, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by McDermott to outside copying services for

use in mass mailings, travel expenses, expenses for “working meals,” computerized research, and transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime. McDermott will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to McDermott’s other clients. McDermott believes that it is fairer to charge these expenses to the clients incurring them than to increase the hourly rates and spread the expenses among all clients.

12. The professional services that McDermott will render to the Debtors include, but shall not be limited to, the following:

- a. providing legal advice to the Debtors with respect to governmental investigations of the Debtors and hearings in connection with those investigations, and litigation and proceedings against the Debtors related to such investigations and hearings;
- b. preparing on behalf of the Debtors necessary reports, applications, motions, answers, orders, and other legal papers;
- c. appearing at hearings related to any such investigations, litigation or proceedings; and
- d. such other services as may be specifically directed by the Debtors that may be necessary and proper with respect to any such investigations, litigation or proceedings.

13. McDermott represented the Debtors as special counsel prior to the Petition Date. To the best of the Debtors’ knowledge, except as otherwise disclosed in the Ransom

Affidavit submitted concurrently herewith, McDermott has not represented the Debtors' creditors, equity security holders, or any other parties in interest, or their respective attorneys, in any matter relating to the Debtors or their estates.

14. To the best of the Debtors' knowledge, McDermott does not hold or represent any interest adverse to the Debtors' estates, McDermott is a "disinterested person" as that phrase is defined in section 101(14) of the Bankruptcy Code, and McDermott's employment is necessary and in the best interests of the Debtors and their estates.

15. McDermott has received payments from the Debtors during the year prior to the Petition Date in the amount of \$23,829.60 in connection with its prepetition representation of the Debtors. McDermott will waive any amounts that it is owed by the Debtors for prepetition services provided to the Debtors.

16. The Debtors understand that McDermott hereafter intends to apply to the Court for allowances of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of this Court for all services performed and expenses incurred after the Petition Date.

17. The Debtors, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and further orders of this Court, propose to pay McDermott its customary hourly rates for services rendered that are in effect from time to time, as set forth in the Ransom Affidavit, and to reimburse McDermott according to its customary reimbursement policies, and submit that such rates are reasonable.

Notice

18. Notice of this Motion has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; and (ii) the Debtors' prepetition lenders; (iii) the creditors listed in the Consolidated List of Creditors Holding 35 Largest Unsecured Claims; and (iv) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

19. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the Application in all respects, and grant such other and further relief it deems just and proper.

Dated: September 16, 2011

PACHULSKI STANG ZIEHL & JONES LLP



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