

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

**In re:**

<b>MICHAEL D. VICK,</b>	)	<b>Case No. 08-50775-FJS</b>
	)	
<b>Debtor.</b>	)	<b>Chapter 11</b>
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**SECOND INTERIM FEE APPLICATION FOR APPROVAL  
AND ALLOWANCE OF COMPENSATION AND REIMBURSEMENT  
OF EXPENSES FOR DEBTOR'S CO-COUNSEL**

**Interim Application Period: October 1, 2008 through June 15, 2009**

Total Counsel Fees Requested:	\$224,108.10
Total Expenses Requested:	\$ 20,022.79
	\$244,130.89

**I. INTRODUCTION**

Kaufman & Canoles, a professional corporation (“Applicant”), is the co-counsel for Michael D. Vick, the debtor and debtor-in-possession (“Debtor”) in this case. The Applicant submits its second interim fee application for approval and allowance of compensation and reimbursement of expenses for the period from October 1, 2008, through June 15, 2009 (“Compensation Period”).

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## **II. JURISDICTION AND VENUE**

The Bankruptcy Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding as this term is defined in 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Application are 11 U.S.C. §§ 327, 328, 330, 331 and 503(b), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and Local Rules 2014-1 and 2016-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia.

## **III. CASE STATUS**

During the Compensation Period, a number of significant events have taken place, which are briefly outlined below.

First, several adversary proceedings were filed to recover property and money of the Estate.

Second, general administration activities took place. Given the nature and complexity of the assets of the Debtor, significant efforts were required to manage the Estate and its assets.

Third, a disclosure statement and plan, as amended, were filed and a contested confirmation hearing occurred.

Fourth, after an unsuccessful confirmation hearing, the Debtor was able to negotiate a settlement with the Official Committee of Unsecured Creditors and with Joel Enterprises, Inc. These negotiations were difficult and complex.

Finally, a number of the Debtor's assets have been successfully liquidated to create available cash for the Estate.

#### **IV. BACKGROUND**

In support of this Application, the Applicant submits billing statements for the Compensation Period, and represents as follows:

1. On July 7, 2008 the Debtor filed a Chapter 11 voluntary bankruptcy petition, as case number 08-50775-FJS (“Petition”) (Docket No. 1).

2. From the date the Petition was filed and throughout the end of the Compensation Period, the Debtor has operated as the debtor-in-possession pursuant to 11 U.S.C. § 1107 and 1108.

3. On July 7, 2008, the Applicant filed its application to be employed as co-counsel to the Debtor pursuant to sections 327(a) and 329 of the Bankruptcy Code (Docket No. 4). On August 26, 2008, the Bankruptcy Court entered an order on its docket granting the application to employ the Applicant as co-counsel to the Debtor (“Employment Order”) (Docket No. 129).

4. On July 16, 2008, the U.S. Trustee appointed the Committee (Docket No. 37). On July 30, 2008, the Bankruptcy Court entered an order on its docket granting the application to employ Wilcox & Savage, P.C. as counsel to the Committee (Docket No. 75).

5. This is the Applicant’s second interim application for compensation that covers the period from October 1, 2008 through June 15, 2009. During the Compensation Period, Applicant spent 773.7 hours advising and counseling the Debtor and assisting co-counsel with regard to various matters. Based upon ordinary hourly rates in effect at the time the services were rendered, subsequently discounted by 10% to address any possible noncompensatory activities, Applicant’s total fees are \$224,108.10. All fees and expenses are based on customary compensation charged by comparably skilled practitioners in non-bankruptcy cases by the Applicant.

6. This Application contains exhibits detailing the requested fees and expenses. **Exhibit A**, which is attached, provides a summary of total hours and fees by professional. **Exhibit B**, which is attached, provides a summary of hours by professional by matter category. **Exhibit C**, which is attached, is time detail by professional by matter category. In addition, Applicant incurred out-of-pocket expenses for which Applicant is seeking reimbursement in the total amount of \$20,022.79. **Exhibit D**, which is attached, is a detailed itemization of the expenses. The total of fees plus costs is \$244,130.89.

7. As of the date of this Application, Applicant has represented the Debtor, as co-counsel, on all aspects of his case. The fee statement attached as **Exhibit C** provides a detailed description of each activity category in which the Applicant assisted the Debtor. It includes asset recovery and disposition, various litigation matters, case administration, and plan and disclosure statement negotiations and preparation.

(a) Summary of Costs

Under this category, costs include court reporting and transcription fees, document reproduction charges, filing fees, travel expenses, PACER charges, computerized legal research charges, federal express/postage/courier/ and fax charges, and long distance telephone charges.

The Applicant expended the following:

Process Service and Witness Fees	\$ 581.46
Document reproduction charges	\$11,462.30
Media Reproduction	\$ 91.75
Filing fees	\$ 1,274.00
Travel Expenses	\$ 1,274.90
PACER charges	\$ 288.00

Computerized legal research charges	\$ 1,849.44
Federal express/postage/courier/fax charges	\$ 3,181.89
Long distance telephone charges	\$ 19.05
TOTAL	\$20,022.79

The Applicant customarily charges \$0.15 per page for photocopying expenses related to cases, such as this one. The Applicant's photocopying machines automatically record the number of copies made when the person that is doing the copying enters the client's account number into a device attached to the photocopier. The Applicant summarizes each client's photocopying charges on a daily basis.

The Applicant charges \$ .80 per page for out-going facsimile transmissions. There is no additional charge for long distance telephone calls on faxes. The charge for outgoing facsimile reflects the Applicant's calculation of the actual cost incurred by the Applicant for the machines, supplies and extra labor expenses associated with sending telecopies and is reasonable in relation to the amount charged by outside vendors who provide similar services.

Regarding providers of on-line legal research (e.g., Lexis and Westlaw), the Applicant charges a significantly reduced usage rate.

The Applicant believes the foregoing charges are at the market rates that the majority of law firms charge clients for such items. **Exhibit D**, which is attached, contains an itemization of expenses by category. These requested expense categories are customarily charged to non bankruptcy clients of the Applicant.

8. The services for which compensation is requested were rendered on behalf of the Debtor and compensation is sought pursuant to 11 U.S.C. §§ 327, 328, 330, 331 and 503(a),

Federal Bankruptcy Rule 2014 and 2016, Local Rule 2014-1 and 2016-1 and in compliance with the Employment Order and the Guidelines of the Office of the United States Trustee for the Eastern District of Virginia – Norfolk Division (hereinafter the “Guidelines”).

9. All quarterly fees have been paid to the U.S. Trustee.

10. Except as the Applicant may be entitled to receive compensation in this Application, the Applicant neither has arrangements with any other parties to pay the Applicant for the services of Applicant to the Debtor, nor has Applicant received any funds from any other parties whatsoever for the services rendered to the Debtor. Further, the Applicant neither has made any arrangement to share any compensation received by order of the Bankruptcy Court with any party whatsoever, nor does Applicant have any arrangements for sharing of any compensation hereinafter awarded, except as between members and/or regular associates of Applicant’s firm.

#### **V. EVALUATING STANDARDS**

11. The fees billed by the Applicant for the Debtor for professional services rendered during the Compensation Period total \$224,108.10. In accordance with 11 U.S.C. §330, this amount was calculated using hourly rates for the professionals involved and providing a 10% discount off the Applicant’s standard hourly rates.

12. The Applicant is familiar with, and has prepared this Application with the intention of complying with the applicable standards set forth in the Bankruptcy Code, the Federal Bankruptcy Rules, the Local Rules, orders the Bankruptcy Court and the Guidelines.

13. Applicant’s professionals and paraprofessionals devoted 773.7 hours of time to representing the Debtor during the approximately eight and one half months encompassed by the Compensation Period. The rates charged to the Debtor represent 90% of the Applicant’s

customary hourly rates charged to clients both inside and outside of the bankruptcy context. Accordingly, the value of those services is \$249,009.00, representing an average hourly rate of \$243.67. The rates and fees charged are easily within the range of fees routinely charged for comparable services in bankruptcy and non-bankruptcy cases by major law firms in the Eastern Virginia area.

14. Pursuant to 11 U.S.C. §§ 327, 328, 330, 331 and 503(b) and the Employment Order, the Bankruptcy Court, after notice and a hearing, may award “reasonable compensation” to professionals retained by the Debtor for “actual, necessary services rendered” on an interim basis. See 11 U.S.C. §§ 330, and 331. In considering the reasonableness of the fees requested by a professional, courts review the services in light of the six (6) factors found in 11 U.S.C. § 330(a)(3), and in this district also utilize the *Barber* factors and what has become known as the “lodestar” approach. In re Great Sweats, Inc., 113 B.R. 240 (Bankr. E.D. Va. 1990). The *Barber* factors nearly subsume the factors in § 330(a)(3). First, courts apply the “lodestar approach, which is the product of reasonable hours multiplied by a reasonable rate. The courts then use the *Barber* factors to determine whether the hours and rate are reasonable. The following factors (*Barber* factors) are used in evaluating the reasonable rate and reasonable hours for the professionals’ compensation request:

- (a) time and labor expended by the professional;
- (b) novelty and difficulty of the questions raised;
- (c) skill required to properly perform the legal services rendered;
- (d) attorney’s opportunity cost in pursuing the matter;
- (e) professional’s customary fee for like work;
- (f) attorney’s expectations at the outset of the matter;

- (g) time limitations imposed by the client or circumstances;
- (h) amount in controversy and the results obtained;
- (i) experience, reputation and ability of the attorney;
- (j) undesirability of the case within the legal community in which the case arose;
- (k) nature and length of the professional relationship between attorney and client; and
- (l) attorney's fee awards in similar cases.

15. The professional services rendered by Applicant are outlined above and are set forth with particularity in **Exhibit C**. During the Compensation Period, the Applicant's attorneys and paraprofessionals expended substantial hours in providing the professional services needed by the Debtor. Moreover, several complex legal issues have arisen in the case, including litigation and settlement and plan negotiations. The Applicant addressed and resolved those issues in an effective and efficient manner. The amount requested is reasonable in light of the nature, extent and value of the services rendered.

16. The hourly rates for the individual attorneys and paraprofessionals listed in this Application are the 90% of normal and customary rates charged to clients involved in this size and type of case and, Applicant submits, those rates and fees are less than or similar to those charged for like services by other firms of a size and expertise comparable to the Applicant. The time and attention Applicant professionals have devoted to this case, however, likely could have been spent in the representation of other clients at standard rates. The time spent is reasonable in light of the complexity and contentiousness of the case. Applicant expected at the onset of this



engagement to be compensated in accordance with its standard hourly rates, subject to approval of its fees and expenses by the Bankruptcy Court.

17. The Applicant attorneys and paraprofessionals have a high degree of experience in all of the substantive areas where they have been called upon to render services in this case. The Applicant has called upon its most experienced bankruptcy lawyers, such as Mr. Campsen, and Mr. Lewandowski, who have specific experience in bankruptcy cases, to render the advice necessary to allow the Debtor to perform his duties in these cases. Accordingly, Applicant submits that its fees charged in this case are comparable to the fees normally requested for similar services rendered in chapter 11 cases of this size and complexity, based on the time expended and the hourly rates customarily charged, by major law firms involved in bankruptcy cases in the Eastern District of Virginia.

18. The Applicant submits that the actions taken were necessary and the results it has achieved, thus far, in this case has been beneficial to both the Debtor and the Debtor's creditors. The Applicant further submits that the results have been achieved as a consequence of the Applicant's professional skills and diligence in providing services to the Debtor and his estate, and that the services in question were provided in a reasonable amount of time commensurate with the complexity, importance and nature of each task. There was no unnecessary duplication of services or services that were not reasonably likely to benefit the Debtor's assets or not necessary to the administration of the case.

19. Furthermore, based upon the results obtained by the Applicant within the time frame of this Application and the rates charged by the Applicant for the services performed, the compensation requested is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases.

## **VI. FIRST INTERIM FEE APPLICATION**

20. On November 11, 2008, K&C filed the first interim fee application for approval and allowance of compensation and reimbursement of expenses for Trustee's counsel ("First Interim Fee Application"). It covered the period of July 7, 2008 through September 30, 2008 (Docket No. 276). On December 29, 2008, the Bankruptcy Court entered an order approving the relief sought by the First Interim Fee Application awarding fees totaling \$161,275.00 and expenses totaling \$13,154.98 pursuant to an interim order awarding fees and expenses (Docket No. 381).

21. Assuming the Bankruptcy Court approves the amounts sought in this Application, the total approved fees will be \$385,383.10 and the total expenses will be \$33,177.77.

## **VII. PRAYER FOR RELIEF/CONCLUSION**

Based upon the foregoing, the Applicant respectfully requests that the Bankruptcy Court to enter an order allowing and approving:

A. Compensation for professional services rendered to Debtor as counsel and related costs to Applicant in the sum of \$244,130.89.

B. Allowing immediate payment of fees from funds currently held on behalf of the debtor-in-possession; and

C. For such other and further relief as the Bankruptcy Court deems just and proper under the circumstances.

Dated: July 7, 2009

**KAUFMAN & CANOLES,  
a professional corporation**

By: /s/ Dennis T. Lewandowski  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 7<sup>th</sup>, 2009, a copy of the foregoing Application was mailed by first-class, postage pre-paid U.S. Mail, without exhibits, and sent by electronic-mail, with exhibits, to the parties listed below, and also sent by electronic-mail to all creditors and parties-in-interest who are included in the Bankruptcy Court's ECF e-mail notification system.

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