

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND**

(Baltimore Division)

IN RE

THORNBURG MORTGAGE, INC., *et al.*

Debtors.

CHAPTER 11 CASE NOS:

09-17787-DWK

09-17790-DWK

09-17791-DWK

09-17792-DWK

(Jointly Administered Under
Case No. 09-17787)

**THE UNITED STATES TRUSTEE'S MOTION
FOR PARTIAL TERMINATION OF
INTERIM COMPENSATION PROCESS FOR CHAPTER 11 PROFESSIONALS**

W. Clarkson McDow, Jr., the United States Trustee for Region Four, which includes the District of Maryland, Baltimore Division, files this Motion for Partial Termination of Interim Compensation Process for Chapter 11 Professionals and respectfully requests that the Court terminate the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals (the "Interim Compensation Order") entered in this matter on May 14, 2009 (dkt. no. 85) with respect to all professionals in the above-captioned cases first retained prior to the appointment of the Chapter 11 Trustee in this case.

In support of his Motion, the United States Trustee states as follows:

1. On May 1, 2009 (the "Petition Date"), TMST and several affiliated entities¹

¹ The Debtors in these Chapter 11 cases are (i) TMST, Inc. *f/k/a* Thornburg Mortgage, Inc. or TMA; (ii) Thornburg Acquisition Subsidiary, Inc.; (iii) Thornburg Mortgage Home Loans, Inc.; and (iv) Thornburg Mortgage Hedging Strategies, Inc. A related entity, Adfitech, Inc., also filed a petition and for some time was jointly administered with Debtors' cases. The Adfitech case has since been severed from these jointly administered cases.

(hereinafter collectively the “Debtors”) filed voluntarily petitions in this Honorable Court for relief under chapter 11 of the United States Bankruptcy Code.

2. On October 23, 2009, this Court ordered that a chapter 11 trustee be appointed in Debtors’ cases. The United States Trustee thereafter appointed Joel I. Sher as trustee (the “Trustee”) and Mr. Sher’s appointment was approved by this Court on October 28, 2009.

3. After the appointment of the Trustee, the role of Debtors’ counsel has been greatly reduced. Likewise, the role of the Creditors’ Committee’s professionals has also been reduced now that the Trustee is acting as the primary fiduciary in these cases.

4. Section 331 of the Bankruptcy Code generally restricts applications for payment by a debtor’s attorney or a professional employed under §§ 327 or 1103 of the Bankruptcy Code to every 120 days. Section 331 then allows payment based upon such an application only after notice and hearing.

5. On May 14, 2009, however, the Court entered an “Administrative Order Pursuant to Sections 105, 328 and 331 Establishing Procedures for Interim Compensation and Reimbursement of Professionals” (The “Interim Compensation Order”) which altered the procedures and restrictions set forth in § 331 and implemented an interim fee procedure for professionals substantially identical to that set forth in local form CCP-4. (*See* dkt. no. 85.)²

²In the motion for approval of this procedure, Debtors asserted that the procedures set forth in form CCP-4 and that were being requested in this case were adopted by this Court for complex chapter 11 cases by Administrative Order 02-03. (*See* dkt. no. 24 at ¶ 11.) That is not accurate. Administrative Order 02-03 does not address interim compensation at all and it only adopt forms CCP-1 through CCP-3. Administrative Order 02-03 makes no mention of form CCP-4 nor the procedures set forth therein.

6. In summary, the Interim Compensation Order sets forth the following procedure:

- i. Professionals may file fee statements once every month and the statement may be filed any time between the 15th and last day of the month following the month for which compensation is sought;
- ii. Once a statement for interim compensation is filed, certain parties, including the United States Trustee, are given 15 calendar days to lodge an objection; The objection must set forth “the specific items and amount of Fees and Expenses to which the Reviewing Party objections and the basis for the objection.”
- iii. If no objection to the statement is lodged within 15 calendar days, Debtor shall pay 80% of the fees sought and 100% of the expenses sought;
- iv. If an objection is lodged and not resolved informally, then Debtor shall only pay 80% of any unobjected-to portion of the fees and 100% of the unobjected to expenses.

(See dkt. no. 85.)

7. Although the procedure implemented under the Interim Compensation Order allows payment of fees on a monthly basis, it does not serve as a determination of whether such fees are ultimately allowed and all such fees remain subject to later objection and, if paid, disgorgement.

8. Since the implementation of the Interim Compensation Order, a number of professionals, including Debtors’ counsel, Debtors’ financial advisors, Counsel for the Creditors’ Committee and the Creditors’ Committee’s financial advisors, have filed monthly fee statements. Many of the fee statements are lengthy, seeks hundreds of thousands of dollars in compensation and contain voluminous pages of time records in varying degrees of detail.

9. As of November 30, 2009, at least the following fees had been paid out in accordance with the Interim Fee Order:

- i. Venable, LLP: \$1,160,693.00
- ii. Protiviti: \$811,289.00
- iii. Quinn, Emanuel, Urquhart, *et al.*: \$858,198.00
- iv. Tydings & Rosenberg: \$65,712
- v. JH Cohn: \$513,735
- vi. Orrick, Herrington & Sutcliffe: \$163,817.00³

10. The United States Trustee has a statutory duty to review professional fee applications in Chapter 11 cases and to file comments and objections when appropriate. 28 U.S.C. § 586(a)(3)(A).

11. The United States Trustee attempted to diligently review and analyze the monthly fee statements and has lodged objections in some cases. *See* Exhibits 1-2.

12. Nevertheless, given the amount of fee statements, the complexity of the fee statements, and the complexity of the issues being dealt with by the professionals in this case, it is unduly burdensome for the United States Trustee to review all of the fees statements in the time permitted for objection.

13. Additionally, termination of the Interim Fee Order will save the estate money by alleviating the monthly cost of preparing fee statements. For example, since the Interim Compensation Order was entered, Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel to the Creditors' Committee, has billed the estate \$74,705.50 to prepare its monthly fee statements.

³These amounts are taken from the monthly operating reports. The operating reports that would show payments made in December are not due until January 20, 2009. Presumably, however, additional payments were made in December.

14. Moreover, given the amount the professionals have been paid, reversion to the Code's normal 120 day application process would not have significant adverse impact on these professionals.

15. The United States Trustee does not request that the Interim Compensation Order be terminated with respect to the Trustee or professionals he has retained after his appointment as they are new to the case and have not had the benefit of receiving substantial payments prior to this time. Rather, the United States Trustee requests only that the Order be terminated as to all professionals first retained prior to the Trustee's appointment.

16. The United States Trustee also does not request that the Interim Compensation Order be terminated for any professional insofar as it applies to the case of *Adfitech, Inc.*, Case no. 09-17788.

17. Pursuant to Local Bankruptcy Rule 9013-2, the United States Trustee states that he is not filing a memorandum of law in support of this motion

WHEREFORE, the United States Trustee respectfully requests that the Court terminated the Interim Compensation Order with respect to all professionals first retained prior to the appointment of the Trustee in this case.

Respectfully submitted,

W. Clarkson McDow, Jr.
United States Trustee, Region Four

Date: January 7, 2010

By: /s/ Hugh M. Bernstein

Hugh M. Bernstein

Federal Bar Number: 23489

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2009, a copy of the foregoing motion will be sent via first class mail, postage prepaid to:

Those parties listed on the amended consolidated list of the 20 largest unsecured creditors (dkt. no. 58.) and to:

Jonathan P. Guy
Orrick, Herrington & Sutcliffe, LLP
The Columbia Center
1152 15th Street, N.W.
Washington DC 20075

Clifford A. Zucker
J.H. Cohn, LLP
333 Thornall Street
Edison, N.J. 08837

James C. Tecce
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP
51 Madison Avenue
New York, NY 10010

According to the Court's ECF records, electronic notice of this motion should be provided to the at least the following persons:

John P. Amato
Joel S. Aronson
George J. Bachrach
Herbert Baer
Hugh M. Bernstein
Todd Michael Brooks
Frederick W. H. Carter
Maria Ellena Chavez-Ruark
Gregory Cross
Deborah H. Devan
Roger L. Frankel
Stephen K. Gallagher
Edmund A. Goldberg
Richard Marc Goldberg
Charles R. Goldstein

Alan M. Grochal
Carol L. Hoshall
Joyce A. Kuhns
John Joseph Leidig
Joseph Orbach
William P. Pearce
David Rice
Susan Jaffe Roberts
Samuel Rosenthal
Todd David Ross
Mark A Salzberg
Alison M.C. Schrag
Jeffrey L. Schwartz
Randolph Stuart Sergent
Dennis J. Shaffer
Sumeet Sharma
Joel I. Sher
Bradley J. Swallow
US Trustee - Baltimore
James Patrick Ulwick
Richard Wasserman
Daniel Joseph Zeller
Mark A. Neal

/s/ Hugh M. Bernstein

Hugh M. Bernstein

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(Jointly Administered Under
Case No. 09-17787)

**NOTICE OF THE U.S. TRUSTEE'S OBJECTION TO SIXTH
MONTHLY FEE STATEMENT OF
QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP**

W. Clarkson McDow, Jr., the U.S. Trustee for Region Four, which includes the District of Maryland, Baltimore Division, pursuant to the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals (the "Interim Compensation Order") entered in this matter on May 14, 2009 (Dkt.# 85), respectfully gives notice of his Objection to the Sixth Monthly Application of Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP for Allowance of Compensation For Services Rendered and For Reimbursement of Expenses During the Period From October 1, 2009 Through October 31, 2009 (the "Sixth Monthly Statement") and in support thereof, states:

1. On May 1, 2009, TMST, Inc., formerly Thornburg Mortgage, Inc., and related debtors filed petitions for relief pursuant to Chapter 11 of the Bankruptcy Code and until October 27, 2009, those Debtors had acted as a debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. By order dated June 12, 2009, the Official Committee of Unsecured Creditors

was authorized to employ the law firm of Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP (“Quinn Emanuel”) as its counsel.

3. On November 25, 2009, Quinn Emanuel filed the Sixth Monthly Statement seeking payment of \$353,924.50 in compensation, and \$20,757.83 as reimbursement for expenses for the month of October 2009.

4. Pursuant to the Interim Compensation Order, the U.S. Trustee notes the following objections to the Sixth Monthly Statement (addressed by billing matter):

Case Management/Calendar Maintenance

5. In the Sixth Monthly Statement, Quinn Emanuel requests compensation of \$1,344.00 for matters related to case management and calendar maintenance. This entire matter consists of 4.20 hours by attorney Christopher Clark at a rate of \$320.00 an hour for reviewing the docket on various days, downloading documents from the docket and e-mailing copies of these documents to the “group.” These fees are excessive and non-compensable for three reasons.

6. First, reviewing the docket, downloading documents and e-mailing copies of these documents are ministerial tasks that should simply constitute non-reimbursable overhead or, at the very least, be performed by secretarial or administrative staff at a much lower rate than Mr. Clark’s \$320.00 an hour. There is no need for such ministerial acts to be performed by an attorney billing at a rate of \$320.00 an hour. *See, e.g., In re Brooks*, Case No. 04-13563, 2007 WL 1114091 at *6, *7 (Bankr. D.N.J) (reducing fees allowed for

ministerial tasks, such as “review docket and discover second claim filed and download,” from “the relatively high rate ... of \$320” an hour because such fees were unreasonable); *In re Fibermark, Inc.*, Case No. 04-10463, 2004 WL 2418317 at *7 (Bankr. D. Vt.) (“time devoted to administrative activities [including ‘retrieve and review docket’] constitutes overhead expenses and is not compensable from the debtor’s estate”).

7. Second, expenditures for these activities are unnecessary and do not benefit the estate since any attorney involved in the case could sign up for electronic notification of all such pleadings from the Court’s CM/ECF system.

8. Third, even if this type of work was reimbursable by the estate, it could not be reimbursed based upon the Sixth Monthly Statement because the time entries fail to adequately describe whether work performed was reasonable or necessary. *See, e.g., In re Baker*, 374 B.R. 489, 496-97 n.9 (finding that entries such as “Review Second Circuit Docket” and “Review Docket” are not adequately described”). Indeed, Appendix D to the Local Rules for the United States Bankruptcy Court for the District of Maryland specifically provides that descriptions such as “review of documents” and “review of pleadings” are insufficient. The mere statements of “review docket” and “retrieve pleadings” provides no information about why the docket was being reviewed or even what pleadings were being retrieved. Similarly, there is no information about why these unidentified documents were being e-mailed or to whom.¹

9. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the

¹The fact that any attorney involved in the matter should receive automatic e-mail notification of each pleading with a web-link likely renders the actions for which the Committee is billing duplicative as well.

extent it seeks reimbursement of \$1,344.00 for this billing task.

Quinn Emanuel Fee Application Preparation

10. In the Sixth Monthly Statement, Quinn Emanuel requests compensation of \$10,228.00 for matters related to preparation of its September fee application, despite the fact that the September fee application is nearly identical to those filed in prior months. Indeed, large portions of the Sixth Monthly Statement are entirely identical to prior applications and other portions are simply minor additions, updates or modifications to prior applications. Nevertheless, Quinn Emanuel billed almost 24 hours to preparing its September fee application, most by attorney Marc Palladino, a second year associate billing at \$480.00 an hour.²

11. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$10,228.00 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with its fee applications.

12. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the extent it seeks reimbursement of \$10,228.00 for this billing task.

²It is notable that the recommended hourly rate for an attorney of Mr. Palladino's experience in Appendix B to the Local Rules for the United States District Court for the District of Maryland is between \$150 and \$190 an hour - less than half of the \$480 an hour being charged here.

Litigation

13. In the Sixth Monthly Statement, Quinn Emanuel requests compensation of \$160,405.50 for matters it contends are related to “litigation.” There are numerous problems with numerous entries in this category as described below:

Insufficient Descriptions

14. It appears that this category includes work on multiple litigation matters. Nevertheless, many of the time entries fail to provide sufficient information to determine what matter is being billed. The following entries provide insufficient information to determine what the estate is being billed for and the reasonableness for each charge:

Date	Attorney/Employee	Description	Time	Amount
10/01/09	Jehan Aslam	Researched cases; drafted summary of cases and emailed C. Kercher re: summary	2.90	\$1,392.00
10/05/09	Christopher Kercher	Internal emails re: litigation	0.20	\$110.00
10/05/09	Daniel Holzman	Analyze CA	0.30	\$204.00
10/06/09	Amy Laaraj	Revise electronic titles of agreements	3.20	\$848.00
10/06/09	James Bandes	Electronically transfer data for expedited review	5.50	\$1,375.00
10/07/09	Jehan Aslam	Reviewed cases re: litigation theories	4.20	\$2,016.00
10/09/09	Jehan Aslam	Discussed research with C. Kercher	0.10	\$48.00
10/12/09	Greg Kanyicksa	Conf. S. Rand re: legal prepare material re: same	0.60	\$192.00
10/13/09	Daniel Holzman	Discuss litigation with Sascha Rand	0.10	\$68.00
10/14/09	Amy Laaraj	Update production index	1.80	\$477.00
10/14/09	Jehan Aslam	Emailed C. Kercher re: litigation theories	0.70	\$336.00
10/16/09	Amy Laaraj	Log document production received and send to litigation support for copy's and upload	0.40	\$106.00

Date	Attorney/Employee	Description	Time	Amount
10/16/09 ³	James Tecce	Call w/J.H. Cohn re litigation next steps	0.30	\$249.00
10/21/09	Sascha Rand	Review materials re: third party claims (1.7); various confs. C.Kercher; Sami Rashid re: same (1.0)	2.70	\$2,173.50
10/22/09	Daniel Holzman	Discuss litigation with Sascha Rand	0.20	\$136.00
10/23/09 ⁴	Christopher Kercher	Reviewed JH Cohn analysis	0.80	\$440.00
10/23/09	Daniel Holzman	Discuss potential litigation and strategy with Sascha Rand, James Tecce, and Chris Kercher	1.00	\$680.00
10/23/09	Daniel Holzman	Review litigation memo	0.30	\$204.00
10/23/09	Jahan Aslam	Emailed C. Kercher re: research on potential claims	0.10	\$48.00
10/23/09 ⁵	James Tecce	Review litigation theories (.3) and confs. w/ S. Rand and C. Kercher re Same (1.0)	1.30	\$1,079.00
10/23/09 ⁶	Sascha Rand	Conf. C. Kercher, J. Tecce, D. Holtzman re: strategic issues	1.00	\$805.00
10/24/09	MH1 ⁷	Review new data recieved from A. Laaraj.; Prepare and load new document production data and images to Concordance review db as per P. Chew request	1.80	\$270.00
10/25/09	Jehan Aslam	Researched case law in New York, Delaware, and New Mexico (2.5); emailed C. Kercher re: case law research (.7)	3.20	\$1,536.00
10/26/09	Amy Laaraj	Edit titles of electronic agreements per s. Rashid and search agreements per S. Rashid's list in preparation for document binder	4.30	\$1,139.50
10/26/09	Daniel Holzman	Review and comment on memo	1.20	\$816.00
10/26/09	Daniel Holzman	Discuss potential litigation with James Tecce	0.40	\$272.00

³This is only part of the entire entry.

⁴This is only part of the entire entry.

⁵This is only part of the entire entry.

⁶This is only part of the entire entry.

⁷No attorney or paralegal with these initials is identified in the Sixth Fee Application so it is not possible to determine who billed this time. The hourly rate for this biller works out to \$150 an hour. The only person identified in the Sixth Fee Application billing at that rate is Patricia Chew.

Date	Attorney/Employee	Description	Time	Amount
10/26/09	Daniel Holzman	Review organizational documents	0.20	\$136.00
10/26/09 ⁸	James Tecce	Review and revise memorandum outlining litigation theories	1.30	\$1,079.00
10/28/09	Sascha Rand	T/c with committee member re: strategic issues	0.80	\$644.00
10/29/09	Christopher Kercher	Reviewed indenture	3.50	\$1,925.00
10/29/09	Daniel Holzman	Analyze indenture and exchange emails with Chris Kercher regarding the same	1.20	\$816.00
10/29/09	Daniel Holzman	Review and comment on memo	1.00	\$680.00

The Claims Memo

15. Included in the “litigation” matter of the Sixth Monthly Statement, Quinn Emanuel requests approximately \$82,000 for drafting, researching, reviewing, discussing and revising something called the “Claims Memo.” This fee consists of approximately 137 hours of work by 5 different attorneys.

16. Without more information supporting the reasonableness of \$82,000.00 in fees devoted to the Claims Memo and the benefit this memo provided to the estate, the U.S. Trustee cannot determine the reasonableness of this fee request and, therefore, objects to the payment of this fee at this time.

Changing Electronic Titles

17. On October 6, 2009, Amy Laraaj, a paralegal billing at a rate of \$265.00 an hour, spent 3.2 hours “Revis[ing] electronic titles of agreements” and on October 26, 2009,

⁸This is only part of the complete entry.

she spent 4.3 hours (or some unidentified portion thereof) doing the same thing.⁹

18. First, it is entirely unclear what is meant by these entries or even what “agreements” are at issue.

19. Second, it is inconceivable that it should take 7.5 hours to change the titles of any agreements.

20. Third, it is incomprehensible how changing titles to agreement could benefit the estate.

21. Finally, it is unimaginable that changing titles of agreements requires the skill of someone who charges \$265.00 an hour.¹⁰

22. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$160,405.50 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with the litigation matters

23. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the extent it seeks reimbursement of \$160,405.50 for this billing task.

Creditors’ Committee Meetings

24. In its Sixth Monthly Statement, Quinn Emanuel requests compensation of

⁹It appears Ms. Laaraj billed an additional 2.8 hours for this task on October 5, 2009 which is billed to “Committee Administration.”

¹⁰It is again notable that under the guidelines of the United States District Court for the District of Maryland, an appropriate billing rate for a paralegal is between \$95 and \$115. See Appendix B to Local Rules for the United States District Court for the District of Maryland.

\$11,644.00 for its participation in four committee meetings (one on October 5, 2009, one on October 8, 2009, one on October 13, 2009 and one on October 27, 2009).

25. At the October 5, October 8 and October 13 meetings, three attorneys, billing at a combined rate of \$1,990.00, participated in the meetings.

26. At the October 27 meeting, 6 attorneys, billing at a combined rate of \$3,865.00, participated in the meeting.

27. It was not necessary for more than one attorney to participate in these meetings and the additional attorneys did not benefit the estate.¹¹

28. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$11,664.00 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with Committee meetings.

29. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the extent it seeks reimbursement of \$11,664.00 for this billing task.

Court Hearings

30. In the Sixth Monthly Statement, Quinn Emanuel requests payment of fees in the amount of \$32,179.00 for attending court hearings. Of this, all but \$520.00 are for hearings relating to the U.S. Trustee's motion to have a Chapter 11 Trustee appointed.¹²

¹¹According to billing records of the Committees' local counsel, two additional attorneys from the firm of Tydings & Rosenberg participated in the October 8 meeting on behalf of the Committee and one additional attorney from the firm of Tydings & Rosenberg participated in the October 13 and 27 meetings on behalf of the Committee.

¹²This includes only fees incurred during the actual hearings. Travel to and from the hearings is billed separately and, thus, is objected to separately.

31. The court held four days of hearings on this matter: October 7, 2009, October 20, 2009, October 21, 2009 and October 23, 2009.

32. Each of these hearings was attended by two lawyers from Quinn Emanuel, James Tecce and Daniel Holzman, billing at a combined rate of \$1,510.00. However, only Mr. Tecce actually participated in any of the hearings and, thus, two attorneys represent an excessive and unnecessary expense. This is particularly true for the October 23, 2009 hearing which consisted only of the Court rendering its opinion.

33. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$32,179.00 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with the attending court hearing.

34. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the extent it seeks reimbursement of \$32,179.00 for this billing task.

Non-Working Travel

35. In the Sixth Monthly Statement, Quinn Emanuel billed \$26,694.00 for traveling from New York to hearings in Baltimore.

36. As an initial matter, this case is pending in Baltimore and there is competent counsel located in Baltimore. While the Committee should certainly be free to choose whatever counsel it desires, the estate should not be burdened with additional travel expense because the Committee chose to engage non-local counsel.

37. In any event, even if travel time is reimbursable, Quinn Emanuel incurred travel time for more attorneys than necessary. Of the travel time sought, \$8,296.00 were incurred as a result of attorney Daniel Holzman attending hearings on the U.S. Trustee's motion to appoint a Chapter 7 Trustee. As discussed above, only one attorney was needed at those hearings.

38. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$26,694.00 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with non-working travel.

39. Accordingly, the U.S. Trustee objects to the First Monthly Statement to the extent it seeks reimbursement of \$26,694.00 for this billing task.

Rule 2004 Investigations

40. In the Sixth Monthly Statement, Quinn Emanuel requests compensation of \$23,427.00 for matters related to Rule 2004 Investigations. This fee involved six different attorneys who spent more than 52 hours on this matter. Yet as of today, not a single 2004 exam has taken place.¹³

41. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$23,427.00 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with the Rule 2004

¹³Quinn Emanuel billed an additional \$52,273.50 to this matter in September 2009.

investigations.

42. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement to the extent it seeks reimbursement of \$52,273.50 for this billing task.

Committee Administration

43. In the Sixth Monthly Statement, Quinn Emanuel requests compensation of \$16,802.50 for matters related to “Committee Administration.” There are a number of deficiencies with this request.

44. According to the Sixth Monthly Statement, attorney Marc Palladino billed 5.8 hours (\$2,784.00) to draft and revise the minutes of the October 5 Committee meeting. According to Quinn Emanuel’s bills, however, that meeting only lasted 1.8 hours. Without further explanation justifying the time spent on this task, it is difficult to understand how drafting the minutes could require 5.8 hours.

45. In addition, the Sixth Monthly Statement reflects that attorney Daniel Holzman spent 2.1 hours (\$1,428.00) on October 7 and 8, 2009, reviewing and commenting on those minutes thereby bringing the total time and cost of preparing the minutes for the October 5 meeting to 7.9 hours and \$4,212.00 respectively.

46. According to the Sixth Monthly Statement, attorney Mark Palladino billed 9.1 hours (\$4,368.00) drafting and revising the minutes of the October 13 Committee meeting. The bills, however, reflect that the meeting only lasted 1 hour, so it is again difficult to understand how drafting the minutes could require 9.1 hours.

47. In addition, the Sixth Monthly Statement reflects that attorney Daniel Holzman spent 1.7 hours on October 16, 2009, reviewing and commenting on those minutes thereby bringing the total time and cost of preparing the minutes for the October 13 meeting to 10.8 hours and \$5,524.00 respectively.

48. On October 5, 2009, paralegal Amy Laaraj spend 2.8 hours “Edit[ing] electronic titles of agreements in mailsite” for a cost of \$742.00. *See supra*, ¶¶ 17-21 for analysis regarding this issue.

49. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$16,802.50 is more than a reasonable and necessary amount for Quinn Emanuel to have billed in connection with the Committee Administration.

50. Accordingly, the U.S. Trustee objects to the First Monthly Statement to the extent it seeks reimbursement of \$67,917.50 for this billing task.

Adfitech

51. In its Sixth Monthly Statement, Quinn Emanuel requests compensation of \$62,970.50 for matters related to Adfitech.

52. Without additional detail on the benefit to the estate of these charges the U.S. Trustee is unable to determine the reasonableness of these fees.

53. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that \$62,970.50 is more than a reasonable and

necessary amount for Quinn Emanuel to have billed in connection with Adfitech.

54. Accordingly, the U.S. Trustee objects to the First Monthly Statement to the extent it seeks reimbursement of \$62,970.50 for this billing task.

Reservation of Rights

55. In addition to the objections noted above, the U.S. Trustee questions the reasonableness and benefit to the estate of \$353,924.50 in attorneys' fee billed over a span of just 30 days and, accordingly, reserves the right to object to any and all matters in response to any interim or final fee application filed by Quinn Emanuel.

WHEREFORE, the U.S. Trustee objects to the Sixth Monthly Statement.

Respectfully submitted,

W. Clarkson McDow, Jr.
United States Trustee, Region Four

Date: December 1, 2009

By: /s/ Hugh M. Bernstein

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**NOTICE OF THE U.S. TRUSTEE'S OBJECTION TO SIXTH
MONTHLY APPLICATION OF J.H. COHN LLP AS
FINANCIAL ADVISOR AND FORENSIC ACCOUNTANTS TO
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR INTERIM COMPENSATION
AND REIMBURSEMENT OF EXPENSES
INCURRED FOR THE PERIOD OCTOBER 1 THROUGH OCTOBER 31, 2009**

W. Clarkson McDow, Jr., the U.S. Trustee for Region Four, which includes the District of Maryland, Baltimore Division, pursuant to the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals (the "Interim Compensation Order") entered in this matter on May 14, 2009 (Dkt.# 85), respectfully gives notice of his Objection to the Sixth Monthly Application of J.H. Cohn LLP for Interim Compensation and Reimbursement of Expenses Incurred for the Period October 1, through October 31, 2009 (the "Sixth Monthly Statement") and in support thereof, states:

1. On May 1, 2009, TMST, Inc., formerly Thornburg Mortgage, Inc., and related debtors filed petitions for relief pursuant to Chapter 11 of the Bankruptcy Code and until October 27, 2009, those Debtors had acted as a debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. By order dated June 12, 2009, the Official Committee of Unsecured Creditors was authorized to employ the firm of J.H. Cohn LLP (“JH Cohn”) as its financial advisors and forensic accountants.

3. On November 16, 2009, JH Cohn filed the Sixth Monthly Statement seeking payment of \$189,845.50 in compensation, and \$6,884.18 as reimbursement for expenses for the month of October 2009.

4. Having conducted a preliminary review of the time entries submitted for this billing matter, the U.S. Trustee submits that the amount sought is more than a reasonable and necessary amount.

5. For the most part, the time entries do not provide sufficient information to determine what it is that JH Cohn is working on or why the time being expended is necessary.

6. Additionally, some of the work performed appears unnecessary and duplicative of work performed by others. For example:

- i. On October 7, 2009 Clifford Zucker reviewed and analyzed board of directors minutes for 2.3 hours at a billing rate of \$600 an hour for a total cost of \$1,380.00 in connection with “litigation consulting.” These appear to be the board minutes that were used as evidence in connection with the U.S. Trustee’s motion to appoint a Chapter 11 Trustee. While it might make sense for the Committee’s attorneys to review these minutes in connection with that motion, it is unclear why the Committee’s financial advisor needs to review and/or analyze these minutes.
- ii. On October 10, 2009, Mr. Zucker spent 0.5 hours on telephone calls with Committee counsel (unidentified) regarding “litigation options.” This appears to be work more appropriately performed by the Committee’s attorneys and performance of such work by its financial

advisors is duplicative and unnecessary.

- iii. On October 14, 2009 Mr. Zucker prepared for Charles Goldstein's deposition, reviewed document production and prepared questions for that deposition. He also reviewed and analyzed the transcript of Anne Drue-Anderson's trial testimony. Again, this is legal work to be performed by Committee Counsel, not its financial advisors.
- iv. On October 15, 2009, Mr. Zucker traveled from New York to Baltimore to attend Charles Goldstein's deposition at a proposed cost to the estate of \$4,680.00 plus train fare. It is unclear why the Committee's financial advisors needed to attend this deposition, particularly when its Counsel also attended.
- v. Despite attending the above-described deposition, Mr. Zucker spent an additional hour on October 19, 2009 reviewing the transcript of the deposition.
- vi. On October 7, 2009, Howard Konicov attended the hearing on the U.S. Trustee's motion to appoint a Chapter 11 Trustee for 5.1 hours plus 2.5 hours travel time at a proposed cost to the estate of \$4,560.00 plus train fare. Additionally, on that same day, Mr. Konicov met with Committee Counsel for 1.5 hours to prepare for that hearing at an additional proposed cost of \$900. It is unclear why the financial advisors need to attend this hearing or advise the Committee's counsel on this issue.¹
- vii. On October 20 and 21, 2009, Mr. Konicov again traveled to Baltimore and attended hearings on the U.S. Trustee's motion to appoint a Chapter 11 Trustee at a proposed cost to the estate of \$9,960.00 plus train fare.
- viii. On October 23, 2009, two members of JH Cohn, Mr. Konicov and Irv Schwartzbaum, sat in on the Court's ruling by telephone at a total proposed expense to the estate of \$1,433.00.
- ix. On October 27 and 28, 2009, Virginia Cosenza spent 3.1 hours (at a proposed cost to the estate of \$1,007.50) reviewing and indexing the Thornburg April through September board minutes. These are the same

¹It is notable that the Committee's only real involvement in the hearings was the presentation of evidence and argument as to why a trustee should not be appointed for Adfitech. The evidence and argument revolved around Adfitech's separate nature from the remaining debtors. As such, the Committee did not even address issues of a financial nature at all.

board minutes that were offered into evidence during the hearing on the U.S. Trustee's motion to appoint a Chapter 11 Trustee. First, it is unclear why this needed to be done at all by the Committee's financial advisors. Second, these minutes are not voluminous and reviewing them should take nowhere near 3.1 hours.

7. Accordingly, the U.S. Trustee objects to the Sixth Monthly Statement.

Reservation of Rights

8. In addition to the objections noted above, the U.S. Trustee questions the reasonableness and benefit to the estate of \$189,845.50 in financial advisors' fees billed over a span of just 30 days and, accordingly, reserves the right to object to any and all matters in response to any interim or final fee application filed by JH Cohn.

WHEREFORE, the U.S. Trustee objects to the Sixth Monthly Statement.

Respectfully submitted,

W. Clarkson McDow, Jr.
United States Trustee, Region Four

Date: December 1, 2009

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND**

(Baltimore Division)

IN RE

THORNBURG MORTGAGE, INC., *et al.*

Debtors.

CHAPTER 11 CASE NOS:
09-17787-DWK
09-17790-DWK
09-17791-DWK
09-17792-DWK

(Jointly Administered Under
Case No. 09-17787)

**ORDER GRANTING
THE UNITED STATES TRUSTEE'S MOTION
FOR PARTIAL TERMINATION OF
INTERIM COMPENSATION PROCESS FOR CHAPTER 11 PROFESSIONALS**

Upon consideration of the United States Trustee's Motion for Partial Termination of Interim Compensation Process for Chapter 11 Professionals and respectfully requests that the Court terminate the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals, it is hereby **ORDERED**:

1. That the Motion is **GRANTED** and that, except as provided in paragraph 2, the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals (the "Interim Compensation Order"), entered at case 09-17787, dkt. no. 85, is hereby terminated with respect to any professional whose employment

was approved prior to October 23, 2009.

2. The Interim Compensation Order shall remain in effect with respect to fees and expenses incurred by professionals in the case of Adfitech, Inc., case no. 09-17788.

cc:

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George J. Bachrach
Herbert Baer
Hugh M. Bernstein
Todd Michael Brooks
Frederick W. H. Carter
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[END OF ORDER]