

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:) Case No.: 12-40164
) Chapter 7
BURTON DOUGLAS MORRISS,)
) Judge: Kathy A. Surratt-States
)
)
Debtor.)
)

**REPLY TO RESPONSE OF THE UNITED STATES TRUSTEE TO THE FIRST
AMENDED APPLICATION FOR ORDER PURSUANT TO 11 U.S.C. SECTION 327 OF
THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION
OF LANE LAW FIRM AS COUNSEL FOR THE DEBTOR *NUNC PRO TUNC* TO
JANUARY 9, 2012**

Lane Law Firm, LLC (“Lane Law Firm” or the “Applicant”), counsel of record for Burton Douglas Morriss, Inc., the Debtor (“Morriss” or the “Debtor”), hereby submits this reply to the Response of the United States Trustee (the “UST”) to the First Amended Application for Order Pursuant to 11 U.S.C. Section 327 of the Bankruptcy Code Authorizing the Employment and Retention of Lane Law Firm as Counsel for the Debtor *Nunc Pro Tunc* to January 9, 2012 (the “Amended Application”) and in support hereof, respectfully represents as follows:

1. First, the UST and chapter 7 trustee suggest that the Amended Application was filed late. It was not. The Court’s Order entered on June 29, 2012 provided Applicant 15 days to file an amended application. Fifteen days was July 14, 2012, a Saturday. Accordingly, pursuant to Federal Rule of Bankruptcy Procedure 9006(a), the Amended Application clearly was not due until Monday, July 16, 2012. Further, pursuant to L.B.R. 9006-1)(A), insofar as the Order was served by electronic transmission, an additional three days are added to the prescribed

period. Thus, the Amended Application was not due until Tuesday, July 17, 2012. The Amended Application was filed timely on Monday, July 17, 2012.

2. Second, the Amended Application set forth new and detailed information concerning the prior services rendered by Applicant and Mr. Lane to the Debtor prior to the petition date. In fact, the Amended Application provided specifically the additional information that the UST requested at the hearing on June 18, 2012. Nevertheless, rather than respond to the additional information, the UST's Response is essentially just a restatement of the UST's response to the original retention application, and the chapter 7 trustee's response is merely a joinder in that response.

3. The Amended Application, Affidavit of Mr. Lane and the fee statements attached thereto, set forth in detail the work performed by Applicant on behalf of the Debtor and certain related entities going all the way back to the year 2000. To the extent the Amended Application was not clear that the work described therein was the only work Applicant and Mr. Lane have performed for the Debtor or any related entities for the past 12 years, let me be clear: Other than the work described in the Amended Application, Affidavit and fee statements, neither Mr. Lane nor Lane Law Firm have provided any other services to the Debtor or any entities related to the Debtor. Furthermore, except to the extent that Applicant is still counsel of record for the Debtor, Mr. Lane and Lane Law Firm currently are not representing the Debtor or any related entities in any matter, and they have no plans to do so.

4. The UST's Response states that the Amended Application fails to state whether Applicant is owed any monies from prior legal work for the Debtor or any related entities. To the extent that answer was not clear from the Amended Application, the answer is no¹.

5. The UST's Response also states that the Amended Application fails to identify

¹ As the fee statements indicate, Jacobs Partners LLC, owes Lane Law Firm approximately \$5,700 for work performed as local counsel in the Nixon Securities Litigation.

whether the \$12,000 pre-petition retainer was from funds belonging to the Debtor or from a related entity. As stated, in the Applicant's Rule 2016 Statement, original retention application, fee application and the Amended Application, Applicant received the pre-petition retainer via wire transfer from Jacobs Partners, LLC. It is Applicant's understanding, based on communications with Debtor and other counsel, that the source of the funds used for the retainer were from funds belonging to the Debtor.

6. Further, the UST Response misleadingly argues that the \$29,275 in legal fees and \$763.68 in expenses that Applicant is seeking were for services rendered post-conversion, and that therefore, such fees are not compensable because Applicant was never retained by the chapter 7 trustee. In fact, Applicant is not seeking reimbursement for the approximate \$8,000 in fees for services rendered to the Debtor post-conversion. All of the fees and expenses for which Applicant is seeking reimbursement were rendered to the Debtor, as debtor-in-possession, in his chapter 11 case prior to the conversion date.

7. Lane Law Firm submits that Amended Application makes it clear that Lane Law Firm is a disinterested person within the meaning of the Bankruptcy Code. Except for the limited representations disclosed in the Amended Application, Applicant did not represent the Debtor or any related entities in the four years prior to the petition date. As disclosed in the Amended Application, for an approximate two-week period in late 2011, Applicant represented the Debtor and certain related parties as local counsel in the Nixon Securities Litigation. That representation consisted essentially of preparing for and appearing at a deposition in St. Louis. That representation created no conflict and did not render Applicant a non-disinterested person.

8. Further, as disclosed in the Amended Application, Applicant assisted in the preparation of barebones petitions for the related entities that are now in receivership. That limited representation did not create a conflict and did not render Applicant a non-disinterested

person. It is common, and indeed the norm, for one law firm to represent a debtor and its related entities and subsidiaries in large and complex chapter 11 proceedings. In fact, that is typically the only economically feasible method of representation in such cases. The fact that there may be transactions and transfers between those various entities, and that one debtor may be a creditor of another, does not render counsel for the debtor a non-disinterested person.

9. Applicant further submits that disgorgement is not appropriate because Applicant has not been afforded due process. There has never been an adversary proceeding filed seeking disgorgement of the pre-petition retainer. Such a proceeding is necessary to provide applicant its due process. In fact, neither the UST nor the chapter 7 trustee ever even filed a motion seeking disgorgement of the pre-petition retainer. Rather, they merely raised it in their objections to Applicant's fee and retention applications almost as an afterthought. Applicant clearly is entitled to proper due process before it is stripped of a \$12,000 pre-petition retainer that was almost fully expended prior to the commencement of this bankruptcy proceeding, especially where the UST has raised issues as to whether or not the retainer was even paid from funds of the Debtor. If the funds were not property of the Debtor, then this Court would lack jurisdiction to order disgorgement.

WHEREFORE, Applicant respectfully requests that Court enter an order: (i) finding that Lane Law Firm is a disinterested person; (ii) authorizing the retention and employment of Lane Law Firm as counsel to the Debtor *nunc pro tunc* to the Petition Date (iii) reverse the order for disgorgement of the pre-petition retainer; (iv) reverse the order denying Lane Law Firm's application for compensation and reimbursement of expenses and (v) for such other and further relief as this Court deems just and proper.

Dated: July 30, 2012

Respectfully submitted,

LANE LAW FIRM, LLC,
Attorney of Record for Debtor

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on July 30, 2012, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record and that a copy was served via electronic transmission upon the Debtor.

/s/ Les L. Lane