

Hearing Date: December 15, 2009 at 10:00 a.m.  
Objection Deadline: December 8, 2009 at 4:00 p.m.

Mark S. Indelicato  
Mark T. Power

**HAHN & HESSEN LLP**

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*Counsel for the Official Committee of Unsecured Creditors*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
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In re

Case No. 09 B 14267 (BRL)

Chapter 11

**CRABTREE & EVELYN, LTD.,**

Debtor.  
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**FIRST APPLICATION OF HAHN & HESSEN LLP,  
FOR ALLOWANCE OF INTERIM COMPENSATION AND  
REIMBURSEMENT OF EXPENSES INCURRED  
FOR THE PERIOD JULY 15, 2009 THROUGH SEPTEMBER 30, 2009**

**SUMMARY SHEET**

Name of Applicant:	<b>HAHN &amp; HESSEN LLP</b>
Authorized to Provide Professional Services to:	The Official Committee of Unsecured Creditors
Date of Retention:	August 26, 2009 (effective July 15, 2009)
Period for which Compensation and Reimbursement of Expenses is Sought:	July 15, 2009 through September 30, 2009
Amount of Compensation sought as actual, reasonable and necessary:	<b>\$163,820.95</b>
Amount of Expense Reimbursement sought as actual, reasonable and necessary:	<b>\$5,486.65</b>

This is an **interim** application.

**ATTORNEY/PARAPROFESSIONAL SUMMARY**  
**(July 15, 2009 – September 30, 2009)**

<b>Name of Professional Person</b>	<b>Position (Year Licensed to Practice)</b>	<b>Hourly Billing Rate</b>	<b>Total Billed Hours</b>	<b>Total Fees/ Compensation</b>
Mark S. Indelicato	Partner (1986)	\$745	68.10	\$50,734.50
Mark T. Power	Partner (1989)	\$745	39.60	\$29,502.00
Don D. Grubman	Partner (1980)	\$695	2.90	\$ 2,015.50
Joshua I. Divack	Partner (1980)	\$695	1.00	\$ 695.00
Janine M. Cerbone	Associate (2003)	\$460	112.00	\$51,520.00
Huria N. Patwardhan	Associate (2006)	\$350	40.50	\$14,175.00
Alison M. Papalexis	Associate (2009)	\$270	46.20	\$12,474.00
Ariele Strauss	Summer Associate	\$240	10.70	\$ 2,568.00
Harris Wiener	Summer Associate	\$240	24.70	\$ 5,928.00
Sandra Thompson	Paralegal (N/A)	\$245	24.30	\$ 5,953.50
Robert Tan	Paralegal (N/A)	\$225	3.10	\$ 697.50
<b>Total:</b>			<b><u>373.10</u></b>	<b><u>\$176,263.00</u></b>
Less Voluntary Reduction of:				12,442.05 <sup>1</sup>
<b>GRAND TOTAL:</b>				<b><u>\$163,820.95</u></b>
Blended Rate:		\$ 472.42		
Blended Rate excluding Paralegals:		\$ 490.63		

<sup>1</sup> Voluntary Reduction of fifteen percent (15%) of Partners' fees totaling \$82,947.00.

**COMPENSATION BY PROJECT CATEGORY**  
**(July 15, 2009 – September 30, 2009)**

<b>Project Category</b>	<b>Total Hours</b>	<b>Total Fees</b>
General; Case Administration	50.20	\$19,739.00
Creditors' Committee	156.60	\$85,193.00
Retentions	50.10	\$20,702.50
Executory Contracts	0.30	\$223.50
DIP Financing/Investigation of Secured Trade Creditors	87.30	\$39,320.50
Professional Fees	9.70	\$3,044.00
Claims Administration	18.90	\$8,040.50
Total:	<u>373.10</u>	<u>\$176,263.00</u>
Less Voluntary Reduction of:		12,442.05
<b>GRAND TOTAL:</b>		<b><u>\$163,820.95</u></b>

**EXPENSE SUMMARY <sup>2</sup>**  
**(July 15, 2009 – September 30 2009)**

<b>Expense Category</b>	<b>Service Provider (if applicable)</b>	<b>Total Expenses</b>
Carfare/Taxi Fare <i>[re: Attorney/Staff working after hours or traveling]</i>	Vital Transportation Inc.; Credit card/Petty cash reimbursement	\$1,110.52
Computer Research	LEXIS-NEXIS	\$653.99
Courier Service	Deluxe Delivery Systems, Inc.	\$122.96
In-House Duplicating <i>[at \$0.10 per page]</i>		\$909.40
Long Distance Telephone Charges		\$414.49
Meals <i>[re: Attorney/Staff working lunch and/or after hours]</i>	Seamless Web Professional Solutions	\$1,291.97
Overnight Delivery	Federal Express	\$190.60
Postage		\$111.59
Search Fees	PACER Service Center	\$115.60
Search-Other/UCC Fees	CSC	\$352.55
Special Copy <i>[re: outside duplicating charges]</i>	GLC Business Services	\$121.25
<b>Total:</b>		<b><u>\$5,486.65</u></b>

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<sup>2</sup> See Exhibit D for an itemization of expenses.

Mark S. Indelicato

Mark T. Power

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**FIRST APPLICATION OF HAHN & HESSEN LLP,  
FOR ALLOWANCE OF INTERIM COMPENSATION AND  
REIMBURSEMENT OF EXPENSES INCURRED  
FOR THE PERIOD JULY 15, 2009 THROUGH SEPTEMBER 30, 2009**

**Hahn & Hessen LLP** (“H&H”) or (the “Applicant”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Crabtree & Evelyn, Ltd. (“Crabtree”) or (the “Debtor”), respectfully represents:

1. This First Interim Fee Application is submitted in accordance with the Court’s Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals, dated July 29, 2009 (the “Interim Fee Order”).

2. Applicant seeks an interim allowance of compensation in the amount of \$163,820.95 for services rendered on behalf of the Committee from July 15, 2009 through and

including September 30, 2009 (the “Compensation Period”), and reimbursement of related out-of-pocket expenses in the amount of \$5,486.65. Applicant has not previously requested nor has it received any compensation for the services described in this application.

3. The attorneys at H&H with primary responsibility for the representation of the Committee in this case are Mark S. Indelicato and Mark T. Power, both of whom are partners at H&H. Mr. Indelicato is a 1982 graduate of New York University, The Stern School of Business and a 1985 graduate of Fordham University School of Law. Mr. Power graduated in 1985 from George Washington University and earned his Juris Doctor in 1988 from Boston College Law School. Mr. Indelicato and Mr. Power’s legal careers have both been in the area of bankruptcy and creditors’ rights.

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory bases for the relief sought herein are Sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2014.

### **Background**

5. On July 1, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for reorganization under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended, (the “Bankruptcy Code”). The Debtor was continued in the management and operation of its business as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On July 14, 2009, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Committee pursuant to Section 1102(a)(1) of the Bankruptcy Code. The members of the Committee are: Simon Property Group, Inc. (Co-Chair);

GGP Limited Partnership (Co-Chair); Alpha Logica, Inc.; Carole Hochman Design Group; Original Bradford Soap Works, Inc.; Orlandi, Inc.; and Vera Bradley Designs, Inc.

7. The members of the Committee selected Applicant to represent the Committee in connection with the performance of its duties in the Debtor's chapter 11 case to represent and protect the interests of all unsecured creditors of the Debtor. The Committee selected Applicant because of its expertise in matters of this nature and extensive experience in the representation of creditors' committees in chapter 11 cases. Pursuant to the Committee's application filed on August 5, 2009, the Court signed an order on August 26, 2009 authorizing Applicant's retention, effective as of July 15, 2009.

#### **Case Status**

8. On October 23, 2009, the Debtor filed a Plan of Reorganization Under Chapter 11 of the Bankruptcy Code ("Plan") and related Disclosure Statement ("Disclosure Statement") with this Court. A hearing is scheduled before this Court on November 19, 2009, for consideration and approval of the Disclosure Statement.

9. To the best of Applicant's knowledge, the Debtor is current with respect to the filing of monthly operating reports. No examiner or trustee has been appointed in the Debtor's chapter 11 case.

10. Any material changes in the case that occur after the filing of the within first interim fee application will be raised, orally or in writing, at the hearing to be held for the Court's consideration of the compensation to professionals sought herein.

#### **Interim Compensation**

11. The Interim Fee Order (See paragraph (j)) requires that professionals retained herein file their First Interim Fee Applications on or before November 16, 2009 and that

the First Interim Fee Application shall cover the Interim Fee Period from the Petition Date through and including September 30, 2009. Applicant's First Interim Compensation may be broken out as follows:

- (a) For the period from July 15, 2009 through July 31, 2009, Applicant incurred fees and expenses in the respective amounts of \$77,113.50 and \$1,931.47. A copy of Applicant's invoice for the month of July is annexed hereto as Exhibit "A".
- (b) For the period of August 1, 2009 through August 31, 2009, Applicant incurred fees and expenses in the amounts of \$50,448.00 and \$1,537.03, respectively. A copy of Applicant's invoice for the month of August is annexed hereto as Exhibit "B".
- (c) For the period of September 1, 2009 through September 30, 2009, Applicant incurred fees and expenses in the amounts of \$48,701.50 and \$2,018.15, respectively. A copy of Applicant's invoice for the month of September is annexed hereto as Exhibit "C".

As of the date of this Application, Applicant has not received any payment for its fees or expenses through September 30, 2009.

12. H&H reserves the right to amend this Application (up to the date and time of the scheduled hearing on professional compensation), to include any fees and/or expenses incurred during the Compensation Period but which have not been included herein because either charges have not yet been posted in H&H's billing system, or have not yet been billed by a third party vendor.

**Services Rendered During the First Interim Period**

13. Since its retention as Committee counsel, Applicant has continuously reviewed and monitored Crabtree's postpetition activities including their impact on the Committee members, other creditors and the Debtor and diligently communicated the results of such review to the Committee. Applicant regularly communicated the Committee's position regarding proposals, applications and motions made by the Debtor to Debtor's counsel and,



when necessary, appeared before the Court to inform the Court of the Committee's position with regard to same.

14. The following is a summary of the significant professional services rendered to the Committee by H&H during the Compensation Period. Applicant's services on the Committee's behalf concentrated in the following areas:

- A. Retention of Committee Professionals;
- B. Investigation into the Debtor's Business and Financial Affairs;
- C. Review of and Objection to Debtor's Motion for Postpetition Financing;
- D. Committee Meetings and Communications; and
- E. General Administrative Activities.

**A Retention of Committee Professionals**

15. At the Committee's request, Applicant prepared and, on or about August 5, 2009, filed with the Court and served the requisite pleadings for the Committee to retain H&H as its selected attorneys under a general retainer. Applicant also responded to certain concerns of the U.S. Trustee relating the Applicant's proposed retention and filed a Supplemental Affidavit addressing such concerns. On August 26, 2009, this Court entered an order authorizing Applicant's retention, effective as of July 15, 2009.

16. Applicant communicated with various financial advisory firms with respect to interviewing for the position of financial advisors to the Committee. At the request of the Committee, Applicant prepared and, on or about August 5, 2009, filed and served the requisite pleadings by which the Committee sought to retain Scouler & Company ("Scouler") as its financial advisors. Scouler's retention as advisors and forensic accountants, effective as of July 20, 2009, was approved by the Court's Order dated August 26, 2009.

**B. Investigation of the Debtor's Business and Affairs.**

17. Upon their retention, Applicant and Scouler conducted an investigation of the Debtor's operations in order to advise the Committee of the nature and status of the Debtor's business operations including its assets and secured debt to preserve the Committee's rights in the chapter 11 proceeding. In connection therewith, Applicant, with Scouler's assistance, reviewed and analyzed the Debtor's prepetition liens and other insider subsidiary/intercompany transactions.

18. Applicant reviewed and analyzed the Chapter 11 petition and ancillary documents, all "first-day" motions filed by the Debtor for orders authorizing various postpetition actions relating to, among other things, the Debtor's continued use of its cash management system, certain employee payments and benefits, employment of professionals to assist with the Debtor's reorganization efforts as well as documents relating to pending and potential litigation. Applicant also caused searches of the appropriate state and county filing offices in order to determine whether alleged security interests had been properly perfected.

19. Applicant was required to become familiar with all aspects of the Debtor's operations and financial history to adequately advise the Committee. In conjunction with Applicant's efforts, Scouler conducted a thorough review of the Debtor's books and records and consulted with Applicant and the Committee regarding the feasibility of a reorganization of the Debtor's operations.

20. Throughout the remainder of the Compensation Period, Applicant reviewed on behalf of the Committee each pleading filed by the Debtor and other parties in interest and summarized these motions for consideration by Committee at its meetings. Applicant engaged in numerous and extended telephone conversations with Debtor's counsel

regarding the Debtor's postpetition activities and responsibilities and informed and advised the Committee regarding various matters addressed with Debtor's counsel. When necessary, Applicant attended and participated in hearings before the Court's to address pending motion. For example, Applicant prepared for and attended hearings held on July 29, 2009 on certain of the Debtor's unresolved first-day motions, including the DIP financing; and on August 26, 2009 regarding, among other things, retention of professionals and a motion for relief from the automatic stay relating to settlement and/or continuation in State Court of a potential class action suit against the Debtor.

**C. Review of and Objection to Debtor's Motion for Postpetition Financing**

21. One of the Debtor's first-day motions was a motion (the "DIP Motion") for the Court's approval seeking postpetition financing from an affiliate of the Debtor's prepetition lender, Kuala Lumpur Kepong Berhad ("KLK"). KLK Overseas Investments Ltd. ("DIP Lender" or "KLKOI") provided the debtor in possession financing. The proposed arrangements included, among other things, KLKOI financing Crabtree's operations by providing a post petition facility in the principal amount of \$40,000,000 (the "DIP Facility") which would have been secured by a senior lien on all of its Debtor assets; the proposed financing also included an adequate protection claim to KLK for the use of its cash collateral. On July 2, 2009, the Court entered an interim order (the "Interim Order") on the DIP Motion, pending a final hearing on July 29, 2009. The Interim Order authorized the Debtor to borrow up to \$10,000,000 against the DIP Facility and granted KLK a superpriority claim as adequate protection for the use of its prepetition Cash Collateral.

22. After reviewing the DIP Motion and the Interim Order, Applicant directed Scouler to review and advise Applicant and the Committee on the merits of the proposed

financing. Ultimately, the Committee did not object to either the DIP Facility or the Debtor's use of cash collateral or KLK's being granted adequate protection for such use. However, it was determined that Applicant should prepare and file the Committee's Limited Objection to the proposed financing on the grounds that the motion contained numerous provisions that were neither reasonable nor 'standard and customary' and would benefit the DIP Lender to the detriment of general unsecured and other creditors. The Committee's motion was filed on July 22, 2009. Prior to the hearing on this motion, the parties negotiated a settlement in which the relief sought by the DIP Lender and KLK was curtailed. Subsequent to the July 29<sup>th</sup> hearing, the Court signed a Final Order on July 31, 2009 authorizing Debtor to obtain postpetition financing from the DIP Lender on the terms agreed to by the Committee. The Final Order included, among other things, provisions preserving the Committee's rights to further investigate the alleged liens of the Prepetition Lender and reserving funds to be used by Committee professionals towards such investigation.

**D. Committee Meetings and Communications**

23. Immediately after Applicant's retention, Applicant prepared the necessary documents outlining how the Committee would discharge its fiduciary duties, including proposed by-laws to govern all aspects of membership in the Committee. In connection with assisting the Committee to begin to function as a coordinated group, Applicant oversaw the selection process of the Committee's financial advisors.

24. Applicant attended and participated in each of the Committee meetings held during the Compensation Period covered by this Application, including formal meetings held by conference call on July 15, July 29, August 19, August 28 and September 3, 2009. The Debtors' representatives, counsel and professionals participated in an in-person meeting on

September 29, 2009 and responded to the inquiries of the Committee and Scouler regarding all aspects of their prepetition and postpetition activities including their short-term business plan. In addition to the formal meetings, Applicant, from time to time, engaged in informal telephone conferences with individual members of the Committee and Scouler regarding various aspects of the Debtors' case.

25. In general, the Committee's private meetings included discussion of any and all information presented by the Debtor's representatives and counsel regarding their operations, in particular, consideration of the terms of a proposed plan of reorganization; review of the Debtor's monthly operating reports and all documents relevant to the many motions made by the Debtor or third parties for relief from this Court. Also discussed at these meetings were Scouler reports regarding its analyses of the Debtors' financials and operations, including DIP financing reports.

26. Applicant engaged in its usual preparation for each Committee meeting, including preparing and circulating agendas with attached relevant handouts to each Committee member and frequent communications with the Committee regarding these topics through telephone conferences and e-mail memoranda between meetings. After each meeting, Applicant prepared minutes reflecting those matters discussed by the Committee.

**E. General Administrative Activities**

27. The foregoing summarizes a portion of Applicant's services performed on behalf of the Committee. Other services included, but were not limited to:

- review and analysis of the details of a potential class action involving former store managers, including negotiating certain terms of the proposed settlement

relating to concessions by the plaintiffs for the benefit of the estate and its creditors;

- review and comment on the Debtor's applications to retain additional professionals to assist in streamlining efforts and the proposed compensation of such professionals;
- responding to inquiries by creditors regarding their claims or the status of the chapter 11 case;
- review and analysis of requests for payment of administrative expense claims including the motion of Slover and Company in connection with the Debtor's use of copyrighted artwork for its product packaging;
- review and comment on monthly fee statements submitted by other professionals retained in the case;
- review and analysis of the Debtor's motions to reject unexpired leases and executory contracts; and
- review and analysis of the Debtor's business plan and budgets and negotiate terms of a proposed plan or reorganization acceptable to the Committee.

28. Applicant was available at all times to individual members of the Committee, the Committee's financial advisors, the Debtor's counsel and any other party in interest to address any issues pertinent to the proceedings.

29. At the end of the Compensation Period, Applicant and the Committee's financial advisors were continuing their investigation of the validity of the secured interests claimed by KKK. Discussions were also on-going with all interested parties regarding the terms of a consensual plan of reorganization.

**REQUEST FOR ALLOWANCE OF FEES  
AND REIMBURSEMENT OF EXPENSES**

30. Under all of the criteria normally examined in Chapter 11 reorganization cases, H&H's total requested compensation of ***\$163,820.95*** is reasonable in light of the work performed by H&H. The hourly rate for each attorney and paraprofessional who performed the foregoing services on behalf of the Committee is set forth in the prefixed Summary Cover Sheet. The foregoing services are detailed in Exhibits "A", "B" and "C" annexed hereto, which are computer-generated invoices taken from the timesheets maintained by the individuals who performed services during the Compensation Period. The invoices further detail the dates of and description of the services for which H&H seeks compensation, and the hours spent in performance of such services.

31. In certain instances, H&H's time records may indicate that two or more attorneys attended the same meeting or hearing. Where more than one attorney attended a meeting or hearing, it was due in part to the expertise related to a specific issue that one particular attorney was handling and/or because one attorney was more familiar with specific topics to be discussed or presented at the meeting or hearing. Applicant made every effort to minimize such dual attendance while at the same time assuring that the interests of the Committee and the creditor body were adequately represented. Applicant, therefore, believes that the time for each attorney at such meetings and/or hearings is properly compensable.

32. Pursuant to the standards set forth in § 330 of the Bankruptcy Code, H&H submits that the compensation requested for its actual and necessary services and expenses is reasonable, based upon the nature, extent and value of such services, the time spent thereon, and the costs of comparable services other than in a case under the Bankruptcy Code.

### **Disbursements Incurred During Compensation Period**

33. A summary of H&H's out-of-pocket expenses incurred in connection with its services during the Compensation Period is set forth in the prefixed Cover Sheet and a detailed breakdown of such expenses is presented in Exhibit "D" annexed hereto. H&H believes its expenses are reasonable and were necessarily made. H&H requests reimbursement thereof in the sum of **\$5,486.65**.

34. In providing a reimbursable service, H&H does not make a profit on that service and does not include in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment or capital outlay. H&H reserves the right to request in subsequent applications reimbursement for expenses actually incurred during the Compensation Period but which do not appear on the annexed Exhibits because either charges have not yet been posted in H&H's billing system, or have not yet been billed by a third party vendor.

### **Notice**

35. Notice of this Application has been provided to the Notice Parties, as identified in the Interim Fee Order including the Office of the United States Trustee. Applicant anticipates approval of its requested compensation by the Committee which will be provided (by its Co-Chairs) with a copy of this application before or simultaneously with its filing with the Court.

### **Conclusion**

36. Applicant believes that it provided the Committee with the best representation possible in the within bankruptcy proceeding. The major portion of Applicant's extensive practice is specialization in debtor-creditor relations. Applicant represents creditors'



interests in reorganization, bankruptcies and common law compositions. The individual attorneys performing the services for which Applicant seeks compensation concentrate their practice in this field and are experts in this area of law. Applicant further believes that it conducted its representation of the Debtor in an efficient and expeditious manner under the circumstances of the case.

**WHEREFORE**, Applicant respectfully requests that the Court enter an order:

(a) granting Applicant's requested fees in the amount of **\$163,820.95** and reimbursement of related out-of-pocket expenses in the amount of **\$5,486.65** as first interim compensation for the period of July 15, 2009 through and including September 30, 2009; (b) authorizing and directing the immediate payment to H&H of the allowed amounts; and (c) granting such other and further relief as the Court deems to be just and proper.

Dated: New York, New York  
November 16, 2009

**HAHN & HESSEN LLP**

By: /s/ Mark S. Indelicato  
Mark S. Indelicato  
A Member of the Firm

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New York, NY 10022  
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*Counsel for The Official  
Committee of Unsecured Creditors*

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**CRABTREE & EVELYN, LTD.,**

Chapter 11

Debtor.

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**AFFIDAVIT PURSUANT TO SECTION 504  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2016**

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK    )

MARK S. INDELICATO, being duly sworn, deposes and says:

1. I am a Member of the firm of Hahn & Hessen LLP (“H&H”), which maintains offices at 488 Madison Avenue, New York, New York 10022.
2. This affidavit is submitted in support of the foregoing *First Application of Hahn & Hessen LLP for Allowance of Interim Compensation and Reimbursement of Expenses Incurred For the Period July 15, 2009 through September 30, 2009* (the “Application”) as counsel to the Official Committee of Unsecured Creditors (“Committee”) appointed in the chapter 11 case of Crabtree & Evelyn, Ltd., Debtor.
2. I have personally performed many of the services rendered by H&H and am thoroughly familiar with all other services performed on behalf of the Committee by the lawyers and paraprofessionals in my firm.
3. The facts contained in the Application are true and correct to the best of my knowledge, information and belief.
4. The fees and disbursements requested in the Application are in accordance with practices customarily employed by H&H and generally accepted by H&H’s clients.

5. No agreement or understanding exists between H&H and any other person or persons or parties to share in any compensation received in connection with this case except as with respect to the terms of partnership agreements with members of H&H.

6. To the best of my knowledge, information and belief, the Application substantially complies with the Local Rules.

/s/ Mark S. Indelicato

Mark S. Indelicato

Sworn to before me on  
this 16th day of November, 2009

/s/ Cecilia Celli

CECILIA CELLI

Notary Public, State of New York

No. 03-3597860

Qualified in Putnam County

Commission Expires June 30, 2011