

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

IFC CREDIT CORPORATION,

Debtor.

Chapter 7

Case No. 09-B-27094

Hon. Jacqueline P. Cox

**Hearing Date: August 18, 2010**

**Hearing Time: 10:30 a.m.**

**Objection Deadline: August 16, 2010**

**NOTICE OF MOTION**

TO: (See Attached Service List)

**PLEASE TAKE NOTICE** that on **August 18, 2010 at 10:30 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Jacqueline B. Cox** U.S. Bankruptcy Court Judge, in Room 619, the courtroom usually occupied by her as a Courtroom in the U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, or in her absence, before such other Judge who may be sitting in her place and stead and hearing motions, and shall then and there present the **Second Interim Application of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC, as Special Counsel for the Chapter 7 Trustee, for Allowance of Compensation and Reimbursement of Expenses and Shortened Notice Thereof**, a copy of which is attached and herewith served upon you, and shall pray for the entry of an order in conformity with the prayer of said pleading.

Pursuant to the Court's Order Approving Case Management Procedures setting Omnibus Hearing Dates (Dkt. #703), this Motion was filed on or before fourteen (14) days prior to the next Omnibus Hearing on August 18, 2010. Accordingly, any objection(s) or response(s) to the Application must be filed on or before **August 16, 2010**.

**AT WHICH TIME AND PLACE** you may appear if you so see fit.

Shaw Gussis Fishman Glantz Wolfson &  
Towbin LLC

By: /s/ Marylynne Schwartz

**CERTIFICATE OF SERVICE**

Marylynne Schwartz certifies that she caused to be served the above and foregoing notice and attached pleadings upon the attached service list in the manner so indicated on this 4th day of August 2010.

/s/ Marylynne Schwartz

## SERVICE LIST

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UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

IFC CREDIT CORPORATION,

Debtor.

Chapter 7

Case No. 09-B-27094

Hon. Jacqueline P. Cox

**Hearing Date: August 18, 2010**

**Hearing Time: 10:30 a.m.**

**Objection Deadline: August 16, 2010**

**SECOND INTERIM APPLICATION OF SHAW GUSSIS FISHMAN GLANTZ  
WOLFSON & TOWBIN LLC, AS SPECIAL COUNSEL FOR THE CHAPTER 7  
TRUSTEE, FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT  
OF EXPENSES AND SHORTENED NOTICE THEREOF**

Shaw Gussis Fishman Glantz Wolfson & Towbin LLC (“Shaw Gussis”), special counsel for David Leibowitz, not personally, but as chapter 7 trustee (the “Trustee”) for the estate of IFC Credit Corporation (the “Debtor”), pursuant to Sections 330(a) and 331 of title 11, United States Code (the “Bankruptcy Code”), FED. R. BANKR. P. 2002(a)(6), 2016(a), and Local Bankruptcy Rule 5082-1, applies to the Court for the allowance of \$664,464.55<sup>1</sup> in compensation for approximately 1,953.2 hours of professional services rendered by Shaw Gussis as special counsel to the Trustee for the period beginning November 1, 2009 through and including June 30, 2010 (the “Application Period”) and the reimbursement of \$12,960.21 for actual costs incurred incident to those services. In support of this application (the “Application”), Shaw Gussis states as follows:

<sup>1</sup> As discussed herein, Shaw Gussis has, in the exercise of its billing judgment, voluntarily agreed to reduce the lodestar amount of \$685,015.00 by 3%.

### **Jurisdiction**

1. On July 27, 2009, the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. On that same day, the Office of the United States Trustee appointed David P. Leibowitz as interim chapter 7 trustee for the Debtor's estate (the "Estate"). The Trustee has since become the permanent Trustee.

2. This Court has jurisdiction over the Case pursuant to 11 U.S.C. §§ 157(b)(2)(A), (O) and 28 U.S.C. § 1334. This is a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Shaw Gussis Retention**

3. On August 20, 2009, this Court entered the Order Authorizing the Trustee to Employ Shaw Gussis Fishman Glantz Wolfson & Towbin LLC as Special Counsel to the Trustee, effective July 27, 2009 (the "Retention Order"). In the Retention Order, the Court authorized Shaw Gussis to provide the following services to the Trustee:

- (a) Investigate, assess and prosecute certain potential claims against Debtor's principals (the "Insider Claims");
- (b) Investigate, assess and potentially prosecute certain claims related to the Debtor's leasing activities (the "Leasing Matters");
- (c) Prepare applications, motions, complaints, orders and other legal documents as may be necessary in connection with the appropriate prosecution of the Insider Claims and Leasing Matters;
- (d) Represent the Trustee in negotiations concerning the Insider Claims and Leasing Matters; and
- (e) Take such actions and perform any and all other legal services on behalf of the Trustee which may be required to effectuate the foregoing.

4. On October 26, 2009, U.S. Bank National Association stipulated to allowing the Trustee to pay Shaw Gussis a retainer of \$50,000 from the assets of the Estate.

5. On January 20, 2010, this Court entered the Order Clarifying the Retention Order, which authorized Shaw Gussis to perform the following additional services to the Trustee:

- (a) Contested matters, including but not limited to, matters related to the automatic stay and motions to dismiss the case, as directed by the Trustee;
- (b) Advise the Trustee on financing issues and perform services pertaining to financing issues as directed by the Trustee;
- (c) Investigate and perform asset recovery as directed by the Trustee;
- (d) Analyze the Debtor's assets and perform discovery as directed by the Trustee;
- (e) Prepare and pursue claims objections as directed by the Trustee; and
- (f) Perform services pertaining to election matters.

**SERVICES RENDERED BY SHAW GUSSIS**

6. Throughout the Application Period, Shaw Gussis rendered in excess of 1,953.2 hours of legal and paraprofessional services to the Debtor having a discounted value of \$664,464.55, for an average hourly rate of approximately \$340.19. Shaw Gussis provided professional services to the Trustee which were consistent in scope to those authorized in the Retention Order. All of the services for which compensation is requested were services which, in the exercise of Shaw Gussis's reasonable billing judgment, were necessarily rendered after due consideration of the expected costs and anticipated benefits of such services.

7. In an effort to provide the Court and parties in interest with understandable information concerning the amount and nature of Shaw Gussis's services during the Application Period, and in compliance with Local Bankruptcy Rule 5082-1, Shaw Gussis has classified its services into eighteen separate categories of services as follows:

<b>Description</b>	<b>Total Hours</b>	<b>Total Fees Incurred</b>
Case Administration	50.5	\$20,890.00
Cash Collateral	165.00	\$65,218.50
Courtsquare/M&T	63.8	\$24,903.50
CoActiv	38.9	\$14,931.50
Directors and Officers Insurance Issues (“ <u>D&amp;O Issues</u> ”)	490.1	\$167,033.50
DZ Bank	6.4	\$2,494.00
Election	117.3	\$40,929.00
Fee Applications	26.2	\$8,300.50
First Chicago	131.6	\$43,572.00
General Lift Stay	8.7	\$3,290.50
Jurisdictional Appeals	258.1	\$84,089.00
Lakeland Bank	20.0	\$6,056.00
Leasing Issues	131.8	\$40,244.00
Ludwig & Levinson	324.0	\$121,374.50
Motion to Dismiss	102.2	\$35,178.50
Northside	3.5	\$1,453.50
Preferences	10.2	\$3,197.50
Susquehanna	4.9	\$1,859.00
<b>Sum</b>	<b>1,953.2</b>	<b>\$685,015.00</b>
<b>Less 3% Discount</b>		<b>(\$20,550.45)</b>
<b>Total</b>		<b>\$664,464.55</b>

8. Detailed invoices (the “Invoices”) for each time category are attached as Exhibit A to this Application. The following is a separate description of each of the Shaw Gussis categories, which generally describe the tasks performed. The Invoices provide detailed descriptions of all services rendered in each of the above categories and the timekeeper, date and amount of time expended in each category. Summary charts for each category setting forth each professional who rendered services, the total time and value of services, and the total dollar value are provided herein.

**Case Administration**

9. Shaw Gussis expended 50.5 hours of professional services having a value of \$20,890 in connection with services pertaining to general case administration. Services rendered by Shaw Gussis in this category generally included, among other things: (a) communicating with creditors regarding their claims and evaluating those claims; (b) reviewing the Trustee’s reports; (c) participating in hearings, meetings, telephone conferences and other activities where multiple subject matters were discussed, analyzed or otherwise acted upon; (d) drafting, filing, serving and presenting various motions, pleadings and orders not covered by specific categories; and (e) maintaining charts and files of pending matters and case status items.

10. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	23.4	\$11,090.00
Allen J. Guon	19.2	\$7,288.50
Terence G. Banich	2.8	\$1,059.50
John W. Guzzardo	4.5	\$1,305.00
Marylynn Schwartz	0.6	\$147.00

**Cash Collateral**

11. Shaw Gussis expended 165.0 hours of professional services having a value of \$65,218.50 in connection with services pertaining to cash collateral. Shaw Gussis’s efforts resulted in a cash collateral order that authorized the Trustee to return over \$2 million to West Suburban Bank (“WSB”) and allowed the Trustee to use over \$350,000 to fund the estate’s administrative expenses. Shaw Gussis’s services in this category included, among other things: (a) negotiating and drafting the terms of a potential postpetition financing and/or cash collateral agreement with George Washington State Bank and WSB; (b) reviewing and commenting on various monthly and annual budgets; (c) negotiating, drafting, filing, serving and presenting a motion to use cash collateral of WSB; (d) drafting, filing, serving and presenting a lease disposition notice; (e) assisting in the reconciliation of WSB cash collateral to be returned to WSB and used by the Trustee; and (f) responding to objections to the WSB cash collateral motion and disposition notice.

12. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Robert M. Fishman	1.0	\$600.00
Ira Bodenstein	26.0	\$12,321.00
Robert W. Glantz	2.4	\$1,140.00
Terence G. Banich	0.6	\$228.00
Allen J. Guon	135.0	\$50,929.50

**Courtsquare/M & T Issues**

13. Shaw Gussis expended 63.8 hours of professional services having a value of \$24,903.50 in connection with services pertaining to Manufacturers Traders & Trust Company, successors by merger to Courtsquare Leasing Corporation (“M & T”). Services rendered by Shaw Gussis in this category generally included, among other things: (a) reviewing and analyzing the M & T loan documents; (b) analyzing lien rights and residual issues; (c) preparing, serving and presenting a motion for a Rule 2004 subpoena of M & T and subsequently reviewing responsive documents; (d) researching, drafting and serving the M & T complaint; (e) preparing a draft motion for preliminary injunction and motion for turnover; and (f) participating in settlement discussions to resolve outstanding issues between the Estate and M & T.

14. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.



<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	6.6	\$3,135.00
Peter J. Roberts	0.7	\$315.00
Terence G. Banich	2.0	\$760.00
Allen J. Guon	54.4	\$20,664.50
John W. Guzzardo	0.1	\$29.00

**CoActiv**

15. Shaw Gussis expended 38.9 hours of professional services having a value of \$14,931.50 in connection with services pertaining to CoActiv Capital (“CoActiv”). Services rendered by Shaw Gussis in this category generally included, among other things: (a) reviewing the CoActiv discovery request; (b) reviewing and analyzing CoActiv loan documents; (c) analyzing possible lien rights and potential claims; (d) preparing a draft CoActiv complaint; (e) drafting an end-of-lease transition proposal; and (f) participating in settlement discussions to resolve outstanding issues between the Estate and CoActiv.

16. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	1.9	\$889.50
Allen J. Guon	29.5	\$11,195.00
Terence G. Banich	7.5	\$2,847.00

**D & O Issues**

17. Shaw Gussis expended 490.48 hours of professional services having a value of \$167,033.50 in connection with services pertaining to D & O issues. These D & O issues included the Trustee’s adversary complaint for injunctive relief against certain lenders who

were pursuing litigation against the debtor, Rudolph Trebels and Marc Langs in other jurisdictions, to prevent the expenditure of legal fees and expenses incurred by Trebels and Langs in defense of the litigation to the detriment of the Estate's interest in the D & O Policy.

18. Shaw Gussis professionals initially performed legal research and drafted an objection to Greenwich Insurance Company's motion for leave to pay Trebels's and Langs's defenses expenses. Shaw Gussis professionals then performed legal research and drafted the adversary complaint seeking to stay the third-party litigations. Shaw Gussis professionals also performed legal research and drafted the Trustee's motion for a temporary restraining order and motion for preliminary injunction. Defendants filed objections to the requests for injunctive relief. Shaw Gussis professionals researched and filed an omnibus reply in support of the Trustee's motion. Shaw Gussis professionals then prepared for the hearing on the Trustee's motion, examined witnesses and presented arguments at hearing.

19. Shaw Gussis professionals conducted an intensive factual investigation (which continues to this day) that included issuing 2004 Subpoenas, interviewing witnesses and reviewing documents. Shaw Gussis professionals also assisted with the formulation of the Trustee's legal strategy with regards to the Estate's claims against Trebels and Langs, including legal research, the drafting of legal memoranda and participation in strategy discussion sessions with the Trustee and employees of the Debtor. Shaw Gussis professionals drafted and filed the Trustee's complaint against Trebels and Langs. This complaint sets forth the Trustee's claims that Trebels and Langs breached their fiduciary duties and that Trebels unjustly enriched himself through certain improper actions.

20. Shaw Gussis professionals also engaged in extensive negotiations with Greenwich, the lender defendants and counsel for Trebels, in efforts to come to a global resolution of coverable claims under the D & O policy, the Trustee's complaint and the third-

party litigation.

21. Finally, Shaw Gussis professionals conducted a factual investigation, conducted legal research, and drafted and filed response briefs in connection with the Trustee's motion to disqualify Vincent Borst as counsel for Trebels and disgorge fees paid by the D & O policy to Borst in Trebels's defense. A ruling on the Trustee's motion for disqualification and disgorgement is pending as of this filing.

22. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	96.0	\$45,287.00
David B. Goodman	59.9	\$28,254.50
Terence G. Banich	1.1	\$415.00
Allen J. Guon	8.2	\$3,099.50
John W. Guzzardo	288.1	\$81,891.00
Marylynne Schwartz	22.5	\$5,512.50
Gina Diaz	6.2	\$1,116.00
Melissa Westbrook	8.1	\$1,458.00

**DZ Bank**

23. Shaw Gussis expended 6.4 hours of professional services having a value of \$2,494.00 in connection with services pertaining to Deutsche Bank AG ("DZ"). Services rendered by Shaw Gussis in this category generally included, among other things: (a) analyzing the DZ loan portfolio, DZ's potential lien rights and potential claims; (b) researching DZ lease assignment and perfection issues; and (c) preparing a Rule 2004 subpoena.

24. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	1.0	\$475.00
Allen J. Guon	5.4	\$2,019.00

**Election**

25. Shaw Gussis expended 117.3 hours of professional services having a value of \$40,929.00 in connection with services pertaining to election issues, which ultimately led to the resolution of the disputed election. Services rendered by Shaw Gussis in this category generally included, among other things: (a) reviewing election issues for the 341 meeting; (b) reviewing the claims register and schedules with an eye toward election issues; (c) researching potential claim objections against various creditors; (d) researching caselaw on disputed trustee elections; (e) reviewing and responding to First Chicago’s motion to resolve the disputed election; (f) analyzing discovery needs for the election dispute, preparing and serving discovery requests; and (g) drafting, filing and presenting a motion to compel to require certain creditors to respond to the discovery requests.

26. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	26.6	\$12,463.00
Terence G. Banich	3.4	\$1,292.00
Allen J. Guon	24.2	\$9,103.00
Gordon E. Gouveia	63.1	\$18,071.00

**Fee Applications**

27. Shaw Gussis expended 26.2 hours of professional services having a value of \$8,300.50 in connection with preparing, filing, serving and presenting: (a) Shaw Gussis’s first interim fee application; and (b) Shaw Gussis’s motion to expand services.

28. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	4.5	\$2,092.50
Terence G. Banich	0.3	\$109.50
Allen J. Guon	6.0	\$2,248.50
John W. Guzzardo	6.6	\$1,782.00
Marylynn Schwartz	8.8	\$2,068.00

**First Chicago**

29. Shaw Gussis expended 131.6 hours of professional services having a value of \$43,572.00 in connection with services pertaining to First Chicago Bank & Trust (“First Chicago”). The First Chicago litigation began when Shaw Gussis filed a complaint to: (i) avoid First Chicago’s purported security interest in certain leases; (ii) avoid and recover certain preferential transfers made by the Debtor to First Chicago; and (iii) avoid and recover certain post-petition transfers made from certain lessees to First Chicago. First Chicago answered the complaint and alleged sixteen affirmative defenses. Shaw Gussis filed a motion to strike the affirmative defenses and, as a result, First Chicago voluntarily agreed to withdraw several of the affirmative Defenses. First Chicago and the Trustee have also exchanged discovery requests and extensive responses.

30. Services rendered by Shaw Gussis in this category generally included, among other things: (a) drafting, distributing and following up on a demand letter responding to First Chicago’s letter to lessees demanding improper payment; (b) researching, drafting, filing and serving the First Chicago complaint and motion for turnover; (c) reviewing and responding to settlement proposals; (d) reviewing and researching First Chicago’s answer; (e) researching issues related to First Chicago’s ability to bring a third-party claim for malpractice against Lowis & Gellen and attending the hearing regarding same; (f) drafting and responding to discovery requests; and (g) researching, drafting, filing, serving and presenting a motion to strike First Chicago’s affirmative defenses.

31. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	6.5	\$3,072.50
Terence G. Banich	14.8	\$5,541.50
Allen J. Guon	56.8	\$21,183.50
Kimberly A. Bacher	1.3	\$377.00
John W. Guzzardo	16.7	\$4,843.00
Marylynne Schwartz	33.3	\$8,158.50
Patricia Fredericks	0.5	\$90.00
Melissa Westbrook	1.7	\$306.00

**General Lift Stay**

32. Shaw Gussis expended 8.7 hours of professional services having a value of \$3,290.50 reviewing, analyzing and responding to various lift stay motions.

33. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	0.6	\$283.00
Allen J. Guon	7.9	\$2,949.50
Gordon E. Gouveia	0.2	\$58.00

**Jurisdictional Appeals**

34. Shaw Gussis expended 258.1 hours of professional services having a value of \$84,089.00 in connection with services pertaining to jurisdictional appeals. These services pertained to a number of different appellate matters — but all were in direct relation to First Chicago’s argument that the initial petition filed by the Debtor without the signature of an attorney, but amended less than 24 hours later to include an attorney’s signature, was void *ab initio*.

35. First Chicago and Askounis & Darcy, P.C. (“Askounis”) appealed this Court’s denial of First Chicago’s and Askounis’s Motions to Dismiss. Indeed, First Chicago filed two such appeals for this same order — one as of right and one seeking permission to appeal an interlocutory order. Shaw Gussis professionals conducted legal research and filed motions to consolidate the appeals in order to streamline the appeal process. Shaw Gussis professionals then conducted legal research and filed a motion to dismiss First Chicago’s appeal as of right and filed objections to First Chicago’s and Askounis’s request for leave to appeal an interlocutory order. First Chicago and Askounis filed responses to the Trustee’s motion to dismiss the appeals and objections. Shaw Gussis professionals then conducted legal research, and drafted and filed a reply brief. Without oral argument, the district court granted the

Trustee's motion to dismiss the appeal and denied First Chicago and Askounis leave to appeal the interlocutory orders.

36. First Chicago then appealed to the Seventh Circuit the district court's granting of the motion to dismiss the appeal as of right. The Seventh Circuit requested that the parties brief the jurisdictional issues, *i.e.* the finality of the order denying First Chicago's motion to dismiss. Shaw Gussis professionals performed legal research and drafted a motion to dismiss First Chicago's Seventh Circuit appeal. First Chicago's Seventh Circuit appeal is still pending.

37. Notwithstanding the pendency of their Seventh Circuit appeal on the theory that this bankruptcy case is void *ab initio*, First Chicago also filed an appeal of this Court's order Authorizing an Omnibus Procedures for Settling Lease Claims, entered April 15, 2010 (the "Procedures Order Appeal"). First Chicago's legal basis for the Procedures Order Appeal was again, that the initial petition filed by the Debtor without the signature of an attorney, but amended less than 24 hours later to include an attorney's signature, was void *ab initio*. Shaw Gussis professionals performed legal research and moved to transfer the Procedures Order Appeal to the district court that previously heard the appeal on First Chicago's motion to dismiss. Shaw Gussis professionals then conducted legal research and drafted and filed a motion to dismiss First Chicago's appeal as of right to hear the Procedures Order Appeal and a reply in support of the motion. The Procedures Order Appeal is still pending before the district court.

38. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.



<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	14.5	\$6,886.50
David B. Goodman	1.5	\$712.50
Peter J. Roberts	0.4	\$176.00
Terence G. Banich	14.2	\$5,363.00
Allen J. Guon	66.1	\$25,076.00
John W. Guzzardo	153.9	\$44,525.00
Gina Diaz	7.5	\$1,350.00

**Lakeland Bank**

39. Shaw Gussis expended 20.0 hours of professional services having a value of \$6,056.00 in connection with services pertaining to the Lakeland Bank litigation. Services rendered by Shaw Gussis in this category generally included, among other things: (a) reviewing the adversary complaint filed by Lakeland Bank; and (b) drafting a response to the adversary complaint.

40. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	1.1	\$516.50
Allen J. Guon	0.7	\$261.50
Carrie E. Davenport	18.2	\$5,278.00

**Leasing Issues**

41. Shaw Gussis expended 131.8 hours of professional services having a value of \$40,244.00 in connection with services pertaining to general leasing issues. Specifically, Shaw Gussis sought to correct the issues that resulted from vendors improperly demanding payment

directly from lessees. Services rendered by Shaw Gussis in this category include, among other things: (a) examining issues related to lessees' nonpayment of leases and vendor interference; (b) drafting and distributing stay violation notices for all interfering vendors and fielding subsequent responses; and (c) negotiating with parties for turnover and/or recovery of lease payments.

42. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	2.3	\$1,090.50
Robert W. Glantz	0.5	\$237.50
Allen J. Guon	48.3	\$18,129.00
John W. Guzzardo	0.2	\$54.00
Kimberly A. Bacher	19.9	\$5,771.00
Marylynn Schwartz	55.7	\$13,614.50
Kevin M. Hyde	4.9	\$1,347.50

**Ludwig and Levinson**

Shaw Gussis expended 324.0 hours of professional services having a value of \$121,374.50 in connection with services pertaining to Ludwig and Levinson. In November 2009, creditors Arthur Levinson and Leonard Ludwig obtained relief from the automatic stay to permit them to foreclose on the common stock of two of the Debtor's then-subidiaries: FP Holdings, Inc. and Pioneer Capital Corporation of Texas. Critical to their lift-stay motion was Mr. Ludwig's testimony that a subsidiary of FP Holdings, Inc. – First Portland Corporation – had no assets whatsoever other than its ownership in a bankruptcy-remote entity. Ludwig and Levinson subsequently filed an adversary proceeding, asserting that they recently discovered that

First Portland Corporation owns \$111 million in assets and seek, among other things, a declaration that assets belong to them, and not the Estate. The Trustee has filed a motion to dismiss the complaint on the basis that the doctrine of judicial estoppel prevents the FPC Entities from obtaining the relief sought. The motion to dismiss has been fully briefed and the Court has taken the matter under advisement.

Shaw Gussis's services in this category included, among other things: (a) preparing for and attending an evidentiary hearing on Ludwig's motion to lift the stay; (b) researching, analyzing and strategizing regarding the Trustee's position on the lift stay motion; (c) reviewing a Rule 2004 discovery request, preparing a discovery response and drafting objections; (d) researching, strategizing and beginning to draft a complaint against Ludwig and Levinson; (e) researching, drafting, serving and presenting a motion to dismiss; (f) drafting, serving and presenting a motion for a protective order; (g) evaluating Ludwig's settlement proposal and preparing counter-proposal; and (h) preparing to respond to discovery and drafting a response to the motion to compel.

43. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	23.1	\$10,971.50
David G. Goodman	0.6	\$285.00
Terry G. Banich	137.4	\$51,849.00
Allen J. Guon	125.3	\$47,365.00
Kimberly A. Bacher	1.3	\$377.00
John W. Guzzardo	36.3	\$10,527.00

**Motion to Dismiss**

44. Shaw Gussis expended 102.2 hours of professional services having a value of \$35,178.50 in connection with services pertaining to the Trustee’s objection to First Chicago’s motion to dismiss. In November of 2009, First Chicago Bank filed its motion to dismiss this chapter 7 case on the grounds that the Debtor’s initial petition that was not signed by an attorney, but amended less than 24 hours later to include an attorney signature, was void *ab initio*. Askounis & Darcy, P.C. also filed its own motion to dismiss for the same reasons. Shaw Gussis responded by performing research and drafting and filing an objection to the motions to dismiss. First Chicago filed a reply that the Trustee asserted mischaracterized certain facts and legal authority, to which Shaw Gussis performed legal research and drafted and filed a sur-reply. Shaw Gussis prepared for the hearing on the motions to dismiss and appeared before this Court and presented argument in opposition to the motions.

45. Services provided by Shaw Gussis in this category generally included, among other things: (a) reviewing First Chicago’s and Askounis’s motion to dismiss pleadings; (b) researching, drafting, filing, serving and presenting: (1) the Trustee’s objection to the motion to dismiss and (2) a sur-reply responding to First Chicago’s reply supporting its motion to dismiss.

46. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	28.2	\$13,125.00
Allen J. Guon	20.0	\$7,325.50
Terence G. Banich	1.0	\$365.00
John W. Guzzardo	51.1	\$14,021.00
Melissa Westbrook	1.9	\$342.00

**Northside Community Bank**

47. Shaw Gussis expended 3.5 hours of professional services having a value of \$1,453.50 in connection with services pertaining to Northside Community Bank (“Northside”). Services rendered by Shaw Gussis in this category generally included, among other things: (a) reviewing Northside leases; and (b) reviewing and responding to Northside’s request for a Rule 2004 examination.

48. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Ira Bodenstein	1.3	\$617.50
Allen J. Guon	2.2	\$836.00

**Preferences**

49. Shaw Gussis expended 10.2 hours of professional services having a value of \$3,197.50 in connection with services pertaining to preferences. Services rendered by Shaw Gussis in this category generally included, among other things: (a) drafting, filing, serving and amending: (1) the complaint against Askounis, (2) the initial disclosures for the Askounis adversary, and (3) the Askounis discovery requests; and (b) participating in settlement negotiations with Askounis to resolve outstanding issues.

50. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Peter J. Roberts	0.4	\$180.00
Terence G. Banich	1.1	\$418.00
Allen J. Guon	3.4	\$1,292.00
Gordon E. Gouveia	0.2	\$58.00
Marylynne Schwartz	5.1	\$1,249.50

**Susquehanna**

51. Shaw Gussis expended 4.9 hours of professional services having a value of \$1,859.00 in connection with services pertaining to Susquehanna Commercial Finance, Inc. (“Susquehanna”).

52. The chart below is a summary of the total amount of time entered by each timekeeper during the Application Period, as well as the corresponding dollar value of those services.

<b>Professional</b>	<b>Hours</b>	<b>Amount</b>
Allen J. Guon	4.9	\$1,859.00

**Summary of Services Rendered By Professional**

53. In summary, the total compensation sought for each professional with respect to the aforementioned categories is as follows:

<b>Professional</b>	<b>Position</b>	<b>Average Hourly Rate<sup>2</sup></b>	<b>Hours</b>	<b>Amount</b>
Robert Fishman	Member	\$600.00	1.0	\$600.00
Ira Bodenstein	Member	\$471.61	263.6	\$124,316.00
Robert Glantz	Member	\$475.00	2.9	\$1,377.50
David Goodman	Member	\$471.81	62.0	\$29,252.00
Peter J. Roberts	Member	\$447.33	1.5	\$671.00
Allen Guon	Member	\$377.04	617.5	\$232,824.50
Terry G. Banich	Member	\$377.27	186.2	\$70,247.50
Carrie E. Davenport	Associate	\$290.00	18.2	\$5,278.00
Gordon E. Gouveia	Associate	\$286.41	63.5	\$18,187.00
John Guzzardo	Associate	\$285.16	557.5	\$158,977.00
Kimberly Bacher	Associate	\$290.00	22.5	\$6,525.00
Kevin M. Hyde	Associate	\$275.00	4.9	\$1,347.50
Marylynne Schwartz	Associate	\$244.05	126.0	\$30,750.00
Gina Diaz	Paralegal	\$180.00	13.7	\$2,466.00
Patricia Fredericks	Paralegal	\$180.00	0.5	\$90.00
Melissa Westbrook	Paralegal	\$180.00	11.7	\$2,106.00

54. The hourly rates charged by Shaw Gussis compare favorably with the rates charged by other Chicago metropolitan firms having attorneys and paralegals with similar experience and expertise as the Shaw Gussis professionals providing services to the Trustee in connection with the Case. Further, the amount of time spent by Shaw Gussis with respect to the Case is reasonable given the difficulty of the issues presented, the time constraints imposed by the circumstances, the amounts at stake, the sophistication and experience of opposing counsel and the ultimate benefit to the Estate.

<sup>2</sup> This average hourly rate is a blended rate taking into account invoices billed in 2009 and 2010.

55. Whenever possible, Shaw Gussis has conscientiously attempted to avoid having multiple attorneys appear or confer on behalf of the Debtor. In certain circumstances, however, it was necessary for more than one Shaw Gussis attorney to appear in Court at the same time. Also, Shaw Gussis only appeared on matters within the scope of the Retention Order. Similarly, on certain occasions, Shaw Gussis had more than one attorney attend a meeting to strategize on issues that had particular import on multiple areas of the Case. To the greatest extent possible, meetings, court appearances, negotiations and other matters were handled on an individual basis.

56. Given the complexity of the issues involved, it was necessary for more than one Shaw Gussis attorney to be involved in certain meetings and court appearances. In order to avoid any concern over duplication of effort, Shaw Gussis has, in the exercise of its reasonable billing judgment, voluntarily agreed to a three percent (3%) discount to all compensation requested, in lieu of specific reductions.

57. Many of the issues presented by the Case have been legally and factually complex and the amounts at stake significant. The results of Shaw Gussis's efforts in this regard have inured to the benefit the Estate and to the interests of its prepetition creditors. Given the criteria set forth in § 330, namely (a) the nature, extent and value of the services; (b) the time spent; (c) the rates charged for such services; (d) the performance of the services within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed; and (e) the reasonableness of the services based on the compensation charged by comparably skilled practitioners in other bankruptcy and non-bankruptcy matters, Shaw Gussis respectfully submits that the requested interim compensation represents a fair and reasonable amount that should be allowed in full.



**EXPENSES**

58. The aggregate amount of expenses for which reimbursement is being sought is \$12,960.21. All of the expenses for which reimbursement is requested are expenses which Shaw Gussis customarily recoups from all of its clients. An itemization of the expenses is attached hereto as Exhibit B. The types of costs for which reimbursement is sought are listed below:

Internal Photocopy	10¢ per page
Commercial Photocopy	actual cost
Commercial Messenger	actual cost
Conference Calls	actual cost
Filing Fees	actual cost
Pacer	actual cost
Postage	actual cost
Process Serving	actual cost
Purchases	actual cost
Subpoena	actual cost
Transcripts	actual cost
Transportation	actual cost
Westlaw	actual cost
Witness Fees	actual cost

59. The specific expenses for which reimbursement is requested during the Application Period are as follows:

Internal Photocopy	\$992.90
Commercial Photocopy	\$4,087.86
Commercial Messenger	\$142.24
Conference Calls	\$118.30
Filing Fees	\$1,000.00
Pacer	\$618.48
Postage	\$441.71
Process Serving	\$560.00
Purchases	\$142.66
Subpoena	\$110.00
Transcripts	\$117.00
Transportation	\$196.75
Westlaw	\$4,300.31
Witness Fees	\$132.00
<b>TOTAL</b>	<b>\$12,960.21</b>

60. All expenses incurred by Shaw Gussis incidental to its services were customary and necessary. All expenses billed to the Trustee were billed in the same manner as Shaw Gussis bills non-bankruptcy clients. Further, the expenses for which reimbursement is sought constitute the types and amounts previously allowed by bankruptcy judges in this and other judicial districts.

**PAYMENTS RECEIVED BY SHAW GUSSIS TO DATE**

61. To date, Shaw Gussis has not received any compensation for its services to the Trustee during the Application Period. On or about June 23, 2010, the Trustee paid Shaw Gussis a retainer in the aggregate amount of \$50,000, which Shaw Gussis intends to apply against the fees allowed in its final fee application.

62. On January 13, 2010, the Court entered an order approving Shaw Gussis's First Interim Fee Application and allowing Shaw Gussis a total of \$120,251.47 for fees and expenses. [Dkt. No. 508]. The Debtor has since paid Shaw Gussis the remaining balance allowed by this Court.

63. The Trustee has reviewed this Application and supports its approval.

**COMPLIANCE WITH 11 U.S.C. § 504**

64. Other than as provided for and allowed by 11 U.S.C. § 504, there is no agreement between Shaw Gussis and any other firm, person or entity for the sharing of division of any compensation paid or payable to Shaw Gussis.

**NOTICE**

65. Sixteen days' notice of this Motion was provided to the Debtor, the Office of the United States Trustee and all parties requesting notice in this case. In light of the nature of the interim relief requested, the number of active parties in this case, the time and expense involved in sending notice to all of the Debtor's creditors, and the efficiency involved in hearing this

Application at the August omnibus hearing, Shaw Gussis requests that this Court find the notice provided for herein sufficient and waive and dispense with any further notice requirements, pursuant to Rules 2002(a), 2002(i), and 9007 of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, Shaw Gussis requests the entry of an order, substantially in the form attached hereto, that:

- (a) Allows Shaw Gussis \$664,464.55 in interim compensation for the Application Period;
- (b) Allows Shaw Gussis \$12,960.21 in expense reimbursement for the Application Period;
- (c) Authorizes and directs the Trustee to pay Shaw Gussis the entire amount of such allowed fees and expenses;
- (d) Waives other and further notice of the hearing with respect to this Application; and
- (e) Provides Shaw Gussis with such additional relief as may be appropriate and just under the circumstances.

Dated: August 4, 2010

Respectfully submitted,

Shaw Gussis Fishman Glantz Wolfson &  
Towbin LLC

By:  /s/ Marylynne Schwartz

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