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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:  
**VSI LIQUIDATING CORPORATION,**  
Debtor.

Case No. 01-52615-MM and  
Case No. 01-52614-MM  
  
Jointly Administered Chapter 11 Cases

In re:  
**VCC LIQUIDATING CORPORATION,**  
Debtor.

**Memorandum Decision and Order on First  
and Final Application for Compensation  
by Special Counsel, Latham & Watkins**

**INTRODUCTION**

This matter is before the court on the First and Final Application for Compensation and Reimbursement of Fees and Expenses by Latham & Watkins, Special Counsel to the Debtors. Latham has requested an award of fees in the amount of \$234,280.50 and reimbursement of costs advanced in the amount of \$5,485.05. The United States Trustee opposes the application, arguing that Latham’s services exceeded the scope that it was authorized to perform, that Latham is not entitled to compensation for unauthorized services, that the scope of Latham’s employment should not be expanded retroactively, that the fees requested are excessive and unreasonable, and that Latham should be sanctioned for failing to disclose all of its connections to the debtors. Having considered the submissions of counsel and their arguments, the court finds as follows:

1 **BACKGROUND**

2 The debtors are corporations formed solely for the purpose of liquidating the assets of three  
3 related corporations that were engaged in the business of designing, engineering and marketing  
4 semiconductors and integrated circuits. Pre-petition, the corporations sought the assistance of an  
5 investment banking firm to achieve a merger or asset sale in hopes of avoiding the need to file for  
6 bankruptcy protection. After preliminary talks with several entities, QuickLogic Corporation emerged  
7 as a serious purchaser. Eventually, the parties determined that the sale could not be completed outside  
8 of bankruptcy because one of the predecessor corporations, whose stock was publicly traded, could not  
9 solicit the necessary approval of its shareholders due to the refusal of its independent public accountant  
10 to provide an audited financial statement. In April 2001, the parties entered into an Asset Purchase  
11 Agreement that expressly anticipated the filing of the debtors' chapter 11 reorganization petitions. The  
12 predecessor corporations agreed to sell substantially all assets free and clear of liens to QuickLogic in  
13 exchange for shares of QuickLogic common stock.

14 On May 22, 2001, the debtors instituted these jointly administered chapter 11 cases. By June 22,  
15 2001, the court authorized the asset sale to QuickLogic. The sale closed on August 1, 2001, with the  
16 debtors receiving 2,522,000 QuickLogic shares. Some ten months later, the court confirmed the debtors'  
17 Second Amended Joint Plan of Reorganization on June 20, 2002. Pursuant to the plan, a liquidating  
18 trust will sell enough QuickLogic shares to pay all creditors' claims, estimated at slightly over \$4.1  
19 million, in full plus interest. The remaining shares will be distributed to shareholders, providing them  
20 with a substantial return on their investment.

21 Several weeks after filing their petitions, but before the QuickLogic sale closed, the debtors filed  
22 an application to retain Latham & Watkins as special counsel under § 327(e) of the Bankruptcy Code.  
23 According to the employment application, the debtors wanted Latham to provide legal advice concerning  
24 all "corporate, securities, tax and related legal issues regarding the Sale." The application, filed on July  
25 10, 2001, provided a lengthy history of the negotiations with QuickLogic and emphasized that the sale  
26 had to be consummated quickly to avoid the risk of QuickLogic backing out. The debtors insisted that  
27 Latham was particularly well suited to provide urgently needed advice because Latham's pre-petition  
28 representation of the debtors, including the negotiation of the Asset Purchase Agreement, had provided

1 the firm with special knowledge of the transaction, and because Latham was skilled in corporate,  
2 securities and tax law. Near the end of the ten page employment application, the debtors indicated that,  
3 subject to court approval, they had agreed to pay Latham “all additional attorneys’ fees and costs  
4 incurred after the commencement of the case.”

5         Along with the employment application, the debtors submitted a Verified Statement of Proposed  
6 Special Counsel (“July 2001 Verified Statement”) and a proposed form of order. The July 2001 Verified  
7 Statement provided that the debtors wanted to employ Latham “to advise and represent them in  
8 connection with the Sale Transfer.” It appeared to disclose all of Latham’s connections with the debtors,  
9 creditors or other parties in interest, as Bankruptcy Rule 2014 requires. Specifically, the July 2001  
10 Verified Statement revealed that Latham had represented certain creditors in unrelated matters but, it  
11 maintained, Latham had no connection with the debtors other than its “prior representation of the  
12 Debtors.” Although the July 2001 Verified Statement disclosed that debtors had paid Latham nearly  
13 \$270,000 within the year preceding their bankruptcy filings, it did not mention any outstanding balance  
14 due to Latham for pre-petition services. The proposed order, which the court signed on July 12, 2001,  
15 authorized the debtors to employ Latham “for purposes and upon the terms and conditions set forth in  
16 the Application.”

17         The debtors’ amended schedules now reveal that the debtors owe Latham nearly \$390,000. This  
18 connection initially appeared in the debtors’ First Amended Schedule F, filed on July 20, 2001, at the  
19 bottom of a company prepared attachment to that document, where it was not brought to the attention  
20 of either the United States Trustee or the court. Not until May 2002, nearly a year after these cases were  
21 filed and shortly before confirmation of the debtors’ plan, did the debtors file a Second Amended  
22 Schedule F, which made it plain that Latham was an unsecured creditor of the debtors’ estates and was  
23 among the 20 largest creditors of both bankruptcy estates.

24         In its fee application, Latham seeks compensation for fees and expenses incurred from May 23,  
25 2001 through June 30, 2002. Although Latham & Watkins’ application originally represented that the  
26 amount of fees was \$243,391.50, the firm has amended its request to \$234,280.50. The firm explained  
27 that its database had become “corrupted” during the preparation of the exhibits to the original application  
28 and assured the court that the amended time records correctly reflect the firm’s time entries.

1 Surprisingly, despite these assurances, the amended time records still do not support Latham's updated  
2 request. The records document fees in the total amount of \$221,111.50. Each time entry bears an  
3 alphabetical designation that allocates it into a particular project category. Based on the descriptions set  
4 forth in Latham's original fee application, the project categories include: A – Asset Sale to QuickLogic;  
5 B -- SEC Regulatory Inquiries; C -- Tax Issues; D – Disposition of QuickLogic Shares to Debtor,  
6 Creditors & Shareholders; and E – Professional Retention Matters.

7 A review of the time records reveals that Latham has not complied with the Guidelines for  
8 Payment of Professionals, issued by the bankruptcy judges of this district. For example, attorney Lloyd's  
9 time appears to be billed in minimum increments of thirty minutes as opposed to six minute increments.  
10 Many entries also fall short of the requirement that time entries describe the person performing the  
11 services, the date performed, what was done and the subject involved. For example, "review  
12 correspondence" was the only description for a one and a half hour entry. On another occasion, Latham  
13 attributed two hours simply to "circulating" a draft letter. Finally, despite the Guidelines' direction to  
14 submit time records organized by project, Latham submitted its time records in chronological order.  
15 While each time entry is labeled with a letter designating a particular project category, the chronological  
16 format makes difficult to form a clear picture of what was accomplished in each project category. Even  
17 the amended time records appear surprisingly unreliable inasmuch as Section E - Professional Retention  
18 Matters has grown from \$3,574 to \$119,000 and appears to contain many entries unrelated to retention.

## 19 20 LEGAL DISCUSSION

### 21 **A. The Standards for Retention Are Clearly Delineated in Section 327**

22 Section 327 of the Bankruptcy Code governs the retention of professionals. Absent appointment  
23 under this section, a professional is not entitled to payment for services from a bankruptcy estate. *In re*  
24 *Federated Department Stores, Inc.*, 44 F.3d 1310, 1319-20 (6<sup>th</sup> Cir. 1995)(valid employment under § 327  
25 is a condition precedent to the decision to grant or deny compensation). The most frequently used  
26 provision, § 327(a), allows a trustee or debtor in possession, with court approval, to engage the support  
27 of a variety of professionals, including attorneys, to assist the trustee in carrying out the trustee's duties  
28 under the Code. 11 U.S.C. § 327(a). To qualify for appointment under this subsection, the professional

1 must not hold an interest adverse to the estate and must be a “disinterested person.” *Id.* Here, it is  
2 undisputed that Latham, as a pre-petition creditor of the debtors, does not qualify as a “disinterested  
3 person.” 11 U.S.C. § 101(14)(a). While the debtors did not disclose this relationship in the employment  
4 application, it is reasonable to assume that Latham’s creditor status is the principal reason that the  
5 debtors did not seek to employ Latham pursuant to § 327(a).

6 The debtors sought, and the court approved, Latham’s employment as special counsel pursuant  
7 to § 327(e). This subsection affords attorneys partial relief from the strict disinterestedness requirement  
8 of § 327(a). It provides,

9 The trustee, with the court’s approval, may employ, for a specified special purpose, other  
10 than to represent the trustee in conducting the case, an attorney that has represented the  
11 debtor, if in the best interest of the estate, and if such attorney does not represent or hold  
any interest adverse to the debtor or to the estate with respect to the matter on which such  
attorney is to be employed.

12 11 U.S.C. § 327(e). Thus, the Code allows for instances where an estate may benefit from the expertise  
13 of attorneys who are especially qualified to handle a particular matter even though the attorneys are not  
14 disinterested. To qualify for appointment as special counsel, attorneys must still be free of “any interest  
15 adverse to the debtor or to the debtor’s estate with respect to the matter on which such attorney is to be  
16 employed” and their retention must be in the estate’s best interest. *Id.* For purposes of the matter at  
17 hand, it is especially important to note that while § 327(e) allows for the employment of a potentially  
18 broader range of attorneys, it also substantially narrows the scope of services that special counsel is  
19 permitted to perform.

20  
21 **B. Special Counsel’s Scope of Employment Must Be Genuinely Special and Discrete.**

22 \_\_\_\_\_ The Code mandates that an appointment under § 327(e) must be for “a specified special purpose,  
23 other than to represent the trustee [or debtor-in-possession] in conducting the case.” Thus, Congress  
24 made it clear that it intended employment as special counsel to be reserved for matters that are genuinely  
25 special and discrete. The legislative history of § 327(e) echoes this narrow focus:

26 This subsection does not authorize the employment of the debtor’s attorney to represent  
27 the estate generally or to represent the trustee in the conduct of the bankruptcy case. The  
28 subsection will most likely be used when the debtor is involved in complex litigation,  
and changing attorneys in the middle of the case after the bankruptcy case has  
commenced would be detrimental to the progress of that other litigation.

1 See *In re Woodfield Gardens Associates*, 1998 WL 276453, at \*14 (Bankr. N.D. Ill. May 28, 1998),  
2 citing, H.R.Rep. No. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 328 (1977); S. Rep. No. 989, 95<sup>th</sup> Cong., 2d Sess. 38-39  
3 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5824-25. The reason for limiting the range of services  
4 that special counsel may perform is twofold. First, it ensures that attorneys who are in any way  
5 conducting a part of a debtor's bankruptcy case will have the requisite impartiality because they must  
6 seek employment pursuant to § 327(a). Second, it prevents duplication of services between general  
7 bankruptcy counsel and special counsel. *In re NRG Resources, Inc.*, 64 B.R. 643, 647 (W.D. La. 1986).

8 Because the sphere of employment under § 327(e) is finite, it is the responsibility of an applicant  
9 to set out clearly, in its application, the discrete tasks that it wants special counsel to perform. *In re*  
10 *Interstate Distribution Center Associates (A), Ltd.*, 137 B.R. 826, 832 (D. Co. 1992); *In re The Drexel*  
11 *Burnham Lambert Group, Inc.* 112 B.R. 584, 586 (S.D.N.Y. 1990); *In re DL Enterprises*, 89 B.R. 107,  
12 110 (C. D. Cal. 1988). This allows the court to determine whether the tasks to be performed are in fact  
13 special and discrete, and it limits the services for which counsel is entitled to receive compensation. See  
14 COLLIER ON BANKRUPTCY, ¶ 327.04[9][a] (15<sup>th</sup> ed. rev. 2002). Attorneys employed as special counsel  
15 may receive compensation only for services directly related to the scope of their retention. *Id.*, citing,  
16 *In re Imperial Corporation of America*, 181 B.R. 501 (S.D. Cal. 1995). See also *In re McGrath Mfg.*  
17 *Co. of Omaha Nebraska*, 95 F. Supp. 825, 836 (D. Neb. 1951)(compensation disallowed for time spent  
18 representing trustee in conduct of chapter X proceedings, in part, because the order of the court did not  
19 in fact appoint attorney for that purpose).

20 Here, it is clear that Latham did not, and does not, fully comprehend the limited role to which  
21 it acquiesced when it accepted employment as special counsel. The debtors restricted their employment  
22 request to their wish to have Latham provide corporate, securities and tax advice related to the "Sale."  
23 Because this description confined the debtors' request to those limited services necessary to close the  
24 impending asset sale to QuickLogic, it appeared to satisfy the "special" purpose criterion of § 327(e).  
25 See *In re Air South Airlines, Inc.*, 1998 WL 34020727, at \*6 (D. S. C. Jan. 16, 1998)(recognizing that  
26 a special purpose might include the closing of a corporate merger or sale where it is within reasonable  
27

1 prospect). With this understanding, the court approved Latham’s retention for the limited purpose  
2 described in the employment Application.

3 Nevertheless, Latham’s time records show that Latham performed services considerably beyond  
4 this narrow purpose. It is significant that out of five project categories delineated by Latham, only one  
5 is entitled “Asset Sale to QuickLogic.” The fact that Latham gave the QuickLogic sale its own separate  
6 category indicates that even Latham considers the four remaining categories to be unrelated to the sale.  
7 Additionally, Latham provided services long after the QuickLogic sale closed on August 1, 2001.  
8 Further, upon closer inspection, the individual time entries expose significant substantive departures  
9 from the authorized scope of employment. Latham attorneys reviewed motions, proposed court orders,  
10 notices and other communications in the bankruptcy proceedings. They conducted legal research  
11 concerning bankruptcy issues, provided extensive advice and revisions concerning the debtors’  
12 disclosure statement and plan of reorganization, drafted portions of the disclosure statement and the plan,  
13 reviewed and revised the liquidating trust documents that serve as the centerpiece to the debtors’  
14 reorganization and communicated with the bankruptcy examiner at the Securities and Exchange  
15 Commission about the use of a liquidating trust as part of the reorganization. Throughout the period  
16 covered by the fee application, Latham was in frequent and regular contact with the debtors’ bankruptcy  
17 counsel and appears to have worked hand in hand with general bankruptcy counsel.

18 If the debtors wanted Latham to perform additional services beyond closing the sale transaction,  
19 it was imperative for them to give the court a clear picture of those services by delineating each  
20 anticipated duty in the employment application. *Interstate Distribution*, 137 B.R. at 832. Latham argues  
21 that its application did just that. Latham asserts that the employment application explained the debtors’  
22 intent to have the sale proceeds distributed to a liquidating trust and, subsequently to creditors, consistent  
23 with a confirmed plan of reorganization. According to Latham, this explanation somehow provided the  
24 United States Trustee, and presumably the court, with “unequivocal notice that Latham’s retention . . .  
25 would include advising the Debtors with respect to corporate, securities, tax and related matters  
26 regarding *the disclosure statement and plan.*” (Emphasis added.) This argument is disingenuous at best.  
27 Had the application provided unequivocal notice, the court would not have approved Latham’s retention  
28 because these broad purposes clearly exceed the parameters of § 327(e). The court thoroughly reviewed

1 Latham's application at the time it was presented and has done so again for purposes of this ruling.  
2 Based on its review, the court finds that the application merely described the debtors' plans for the sale  
3 proceeds; it did not suggest that Latham would provide services beyond the immediate sale transaction.  
4 Certainly, nothing intimated that Latham would provide legal services with respect to the debtors'  
5 disclosure statement and plan.

6 At the hearing on this application, Latham acknowledged the existence of case law holding that  
7 § 327(e) professionals should not work on a disclosure statement or plan because it is part of conducting  
8 the bankruptcy case. However, counsel argued that those cases are distinguishable because to the extent  
9 Latham worked on the debtors' disclosure statement and plan, the work was also related to the  
10 QuickLogic sale. Counsel maintained that Latham's involvement with the sale made it the most  
11 knowledgeable and therefore, the best suited to provide such services. This argument is unpersuasive.

12 The pivotal issue is whether it is enough for special counsel's services to be related to the  
13 identified special purpose for which the attorney was retained or whether the services must also be  
14 unrelated to the conduct of a bankruptcy case. The answer is found, initially, in the Code. Section  
15 327(e) provides that special counsel may only be retained for "a specified special purpose, *other than*  
16 *to represent the trustee [or debtor-in-possession] in conducting the case.*" (Emphasis added). This  
17 language explicitly provides that the special purpose cannot include conducting the case. It is no  
18 surprise then that courts have uniformly concluded that the services rendered by special counsel may not  
19 rise to the level of conducting the case. *In re DeVlieg, Inc.*, 174 B.R. 497, 504 (N.D. Ill. 1994); *In re*  
20 *Tidewater Memorial Hosp.*, 110 B. R. 221, 227-28 (E.D. Va. 1989). Some courts, however, have  
21 particularly emphasized that a special or narrow purpose is not enough; it is also crucial that the services  
22 are not part of the trustee's general duties in conducting the case. *In re Neuman*, 138 B.R. 683, 686  
23 (S.D.N.Y. 1992); *Woodfield Gardens*, 1998 WL 276453, at \*14. If the services to be performed overlap  
24 with general bankruptcy services, employment of special counsel is not appropriate, regardless of any  
25 particular knowledge that special counsel might bring to the case. *Woodfield Gardens*, 1998 WL 276453,  
26 at \*15. Following this line of authority, even services related to consummating the QuickLogic sale are  
27 not compensable unless the services are also unrelated to the conduct of the debtors' bankruptcy case.

28

1 It makes no difference that the services Latham performed were beneficial to the estate or that  
2 Latham was best-suited to perform some of the tasks. To perform work that was part of conducting the  
3 bankruptcy case, Latham needed to be employed under § 327(a). While § 327(a) certainly allows for  
4 the hiring of general corporate, securities and tax counsel, it is clear that Latham's lack of  
5 disinterestedness disqualified Latham from employment under that section. It is the applicant's burden  
6 to establish that the professional is qualified for the type of employment that the professional is to  
7 undertake and to describe adequately the scope of the expected employment. The failure to do so in this  
8 case is not the fault of the United States Trustee. Debtors and special counsel have only themselves to  
9 blame.

10  
11 **C. The Requirements for Nunc Pro Tunc Authorization Are Not Met.**

12 Anticipating the possibility that the court might find that its services exceeded the authorized  
13 scope of employment, Latham also asks the court to expand the scope its employment retroactively.  
14 Latham seeks to enlarge the substantive scope of its employment to include all services rendered and  
15 to enlarge the time period of its employment to include all services rendered after the debtors filed their  
16 bankruptcy petitions and before the date on which its application was filed.

17 Bankruptcy courts in this circuit may use their equitable powers to approve, retroactively,  
18 valuable but previously unauthorized services that have been performed by a professional. *In re Atkins*,  
19 69 F.3d 970, 973 (9<sup>th</sup> Cir. 1995). While the ultimate decision to approve employment retroactively is  
20 a discretionary one, there are certain minimum requirements before such approval may be granted. First  
21 and foremost, the professional must satisfy the criteria for employment pursuant to § 327. *Id.* at 975.

22 If the professional was not qualified to perform the specific services rendered at the time they were  
23 rendered, there is no logical basis for granting approval retroactively. However, qualification under  
24 § 327, alone, is not enough. In the Ninth Circuit, retroactive approval is only permitted under  
25 "exceptional circumstances." *Id.* To establish the requisite exceptional circumstances, the professional  
26 must 1) satisfactorily explain their failure to receive judicial approval prior to rendering services, and  
27 2) show that their services benefitted the bankrupt estate in a significant manner. *Id.* at 974. *See also*  
28 *In re Occidental Fin. Group, Inc.*, 40 F.3d, 1059, 1062 (9<sup>th</sup> Cir. 1994); *In re THC Fin. Corp.*, 837 F.2d

1 389, 392 (9<sup>th</sup> Cir. 1988). Once these minimum requirements are satisfied, there are a variety of other  
2 factors that the court may, but need not, consider. *Id.* at 976 (citing with approval the list of other factors  
3 discussed in *In re Twinton Properties Partnership*, 27 B.R. 817, 819-20 (Bankr. M.D. Tenn. 1983)).

4 Applying these standards to Latham’s request for retroactive approval, the court finds that  
5 Latham’s request to expand the substantive scope of its employment to include all services rendered is  
6 not well-taken. Latham, as a pre-petition creditor of the debtors, was never qualified to perform the type  
7 of bankruptcy-related services that comprise the bulk of its fee request. If legal services contribute to  
8 the conduct of the bankruptcy case, counsel must qualify for employment under § 327(a).

9 Latham requests leniency because its services significantly benefitted the estate, it had no interest  
10 adverse to the estate and the plan anticipates paying one hundred cents on the dollar to all creditors with  
11 a significant distribution to the equity holders. While all these factors favor Latham, they do not change  
12 the outcome. The degree to which Latham’s services benefitted the estate goes to the issue of whether  
13 exceptional circumstances exist but it does not alter the fact that Latham was not qualified to perform  
14 many of the services it rendered. Similarly, the fact that the plan is expected to provide full payment to  
15 creditors is immaterial to whether Latham has satisfied the Code’s requirements for providing advice  
16 concerning the conduct of a bankruptcy case. The Code is clear that to retroactively authorize the  
17 substantive expansion that Latham requests, Latham must qualify for employment under § 327(a). Its  
18 lack of disinterestedness precludes such a finding. The substantive scope of Latham’s employment will  
19 not be broadened beyond the scope originally approved by this court; namely, those limited services  
20 necessary to close QuickLogic’s purchase of the debtors’ assets.

21 The next question is whether Latham’s employment should include the services it provided  
22 during the seven week period before the employment application was filed. The court’s July 12, 2001  
23 order authorized the debtors to employ Latham “for the purposes and upon the terms and conditions set  
24 forth in the Application.” As a result, the court must look to the terms and conditions of the employment  
25 application to determine whether Latham’s employment has already been approved retroactive to the  
26 petition date. Paragraph 7 of the application provides that, subject to court approval, the debtors agreed  
27 to pay special counsel “all additional attorneys’ fees and costs incurred after the commencement of the  
28 case.” While the location of this provision, near the end of the ten page application, did little to call

1 attention to this “term” of employment or its retroactive effect, the court will stand by its July 12, 2001  
2 order that incorporated that term by reference. In retrospect, this case highlights the pitfalls of allowing  
3 an order to incorporate other documents by reference.

4 Because the court has concluded that Latham’s employment has already been approved from the  
5 petition date, it is unnecessary to address the issue of whether Latham has satisfactorily explained the  
6 seven week delay before the debtors requested approval of its employment. Nevertheless, it warrants  
7 mention that Latham’s explanation for the delay appears to be less than satisfactory. Latham is a large,  
8 sophisticated firm with a bankruptcy practice. Because the debtors were an existing client of Latham  
9 at the time they filed their bankruptcy petitions, they presumably had already undergone some scrutiny  
10 for conflicts. Additionally, Latham worked closely with general bankruptcy counsel in preparing its  
11 retention application. Certainly, debtors’ general bankruptcy counsel was aware of the need to get an  
12 employment order in place quickly. Indeed, time records submitted by both firms indicate that Latham’s  
13 employment application was under discussion within days of the petition date. Both firms can  
14 reasonably be charged with knowledge that the application should have been submitted before post-  
15 petition services were rendered. In this context, it is incredible that a conflicts check consumed seven  
16 weeks.

17  
18 **D. Sanctions for Failure to Disclose Creditor Status Are Not Warranted.**

19 Bankruptcy courts have a duty to ensure that attorneys who represent a debtor do so in the best  
20 interests of the bankruptcy estate. *In re Park-Helena*, 63 F.3d 877, 880 (9<sup>th</sup> Cir. 1995). To enable the  
21 courts to fulfill this obligation, the Federal Rules of Bankruptcy Procedure require attorneys to disclose,  
22 in their application for employment, all of their connections with the debtor, creditors, or any other party  
23 in interest. Fed. R. Bankr. P. 2014(a). The disclosure rules are strictly applied. *Id.* at 880-81. Thus,  
24 even a negligent or inadvertent omission may result in sanctions, regardless of any actual harm to the  
25 estate. *Id.* *In re Maui 14K, Ltd.*, 133 B.R. 657, 660 (Bankr. D. Haw. 1991). However, the decision to  
26 deny fees as a sanction for violation of the disclosure rules is a discretionary one. It is not required.

27 At the hearing before this court, counsel from Latham could not precisely explain why Latham  
28 did not disclose its creditor status in the July 2001 Verified Statement in support the employment

1 application. Nevertheless, he insisted that the non-disclosure was inadvertent. General bankruptcy  
2 counsel went so far as to blame the non-disclosure on a misunderstanding between the senior level  
3 attorneys at both firms who knew of Latham's creditor status and some junior level attorneys at debtors'  
4 bankruptcy firm who actually drafted the employment pleadings.

5 Latham rendered its services pursuant to a valid court order approving its employment for the  
6 limited purpose of closing the QuickLogic sale. Even if a full disclosure had been properly made, it  
7 would not have precluded Latham from being retained as special counsel. It is sanction enough that  
8 Latham's creditor status precludes it from receiving compensation for the majority of the time it  
9 expended on debtors' behalf.

10  
11 **E. Further Reductions for Excessive Time Are Not Warranted.**

12 Section 330 of the Bankruptcy Code mandates that any award of compensation to a professional  
13 must be reasonable and can only be allowed for actual, necessary services. 11 U.S.C. § 330 (a)(1)(A).  
14 Implicit in this statutory mandate is the bankruptcy court's obligation to review every application by  
15 professionals who seek compensation from the bankruptcy estate and to determine whether the fees  
16 requested fall within the parameters of the statute. To facilitate performance of its statutory duties, the  
17 United States Bankruptcy Court for this District has promulgated a set of fee Guidelines that provide a  
18 consistent set of rules that puts counsel on notice of the standards the court uses to evaluate whether  
19 requests for fees fall within the parameters of § 330. While the Guidelines are not part of the court's  
20 Local Rules, they reflect established common law principals. As a result, non-compliance with the  
21 Guidelines may result in disallowance of compensation.

22 The United States Trustee is correct that Latham's time entries related to the asset sale reveal  
23 several departures from the Guidelines. Nevertheless, the court recognizes that Latham was hired as  
24 special counsel. Because special counsel may not be as familiar with this district's rules governing  
25 bankruptcy fee applications, the court will allow some leeway in this regard. In light of the substantial  
26 monetary reductions resulting from the performance of unauthorized services, the court finds that  
27 additional reductions would not be appropriate.

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**CONCLUSION**

After reviewing the entire fee application, the court concludes that the fees requested for the services rendered in Project Category A represent a reasonable fee for the actual, necessary services that Latham rendered and was authorized to perform. The court only authorized Latham to perform those services necessary to close the QuickLogic asset sale. To the extent Latham’s work went beyond this authorized scope or was otherwise related to the conduct of the debtors’ bankruptcy cases, Latham is not entitled to fees. Latham’s compensable time generally is included within the project billing category “A” in the amount of \$34,918.50, and the court will allow an additional amount for work related to Latham’s retention for a total fee award of \$40,000. Costs are allowed as prayed.

Good cause appearing, **IT IS ORDERED:**

The First and Final Application for Compensation and Reimbursement of Fees and Expenses by Latham & Watkins, special Counsel to the Debtors is allowed in the amount of \$40,000 in fees and \$5,485.05 in costs, for a total of \$45,485.05.

DATED: \_\_\_\_\_

UNITED STATES BANKRUPTCY JUDGE

1 Case No. 01-55899

2  
3 **UNITED STATES BANKRUPTCY COURT**  
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

5 **CERTIFICATE OF SERVICE**

6 I, the undersigned, a regularly appointed and qualified Clerk in the office of the  
7 Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San  
8 Jose, California hereby certify:

9 That I am familiar with the method by which items to be dispatched in official mail from the  
10 Clerk's Office of the United States Bankruptcy Court in San Jose, California processed on a daily basis:  
11 all such items are placed in a designated bin in the Clerk's office in a sealed envelope bearing the address  
12 of the addressee, from which they are collected at least daily, franked, and deposited in the United States  
13 Mail, postage pre-paid, by the staff of the Clerk's Office of the Court;

14 That, in the performance of my duties, on the date set forth below, I served the  
15 **MEMORANDUM DECISION AND ORDER** in the above case on each party listed below by  
16 depositing a copy of that document in a sealed envelope, addressed as set forth, in the designated  
17 collection bin for franking, and mailing:

18 Michael S. Lurey  
19 Jonathan S. Shenson  
20 Latham & Watkins  
21 633 West Fifth Street, Suite 4000  
22 Los Angeles, CA 90071-2007

23 John W. Murray  
24 Murray & Murray  
25 19330 Stevens Creek Blvd.  
26 Cupertino, CA 95014-9200

27 In addition, I am familiar with the Court's agreed procedure for service on the United States  
28 Trustee, by which a copy of any document to be served on that agency is left in a designated bin in the  
Office of the Clerk, which bin is collected on a daily basis by the United States Trustee's representative.  
In addition to placing the above envelopes in the distribution bin for mailing, I placed a copy of the  
**MEMORANDUM DECISION AND ORDER** in the United States Trustee's collection bin on the  
below date.

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

Executed on:

\_\_\_\_\_  
Clerk