

October 18, 2021

VIA EMAIL (GARRITY.CHAMBERS@NYSB.USCOURTS.GOV)

Honorable James L. Garrity, Jr.
U.S. Bankruptcy Court
Southern District of New York
One Bowling Green
Courtroom 723
New York, NY 10004-1408

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RE: In re China Fisheries Group Limited (Cayman), et al., Case No.: 16-11895 (JLG)

Dear Judge Garrity:

As you may know, White & Case LLP serves as co-counsel to the Creditor Plan Proponents in the above-referenced cases. We write to request a conference with the Court tomorrow or as soon as the parties can thereafter be heard to address scheduling and discovery issues that have arisen in connection with the *First and Final Fee Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Compensation for Services Rendered as Chapter 11 Trustee for the Period From November 10, 2016 Through and Including June 24, 2021*, and *Second and Final Application of Former Chapter 11 Trustee William A. Brandt, Jr., for Reimbursement of Expenses for the Period March 1, 2020 Through and Including June 24, 2021* [Docket No. 2712] (together with the declarations filed in support (Docket Nos. 2713 and 2714), the “Application”), filed by William A. Brandt, Jr., the former chapter 11 trustee appointed in the chapter 11 case of CFG Peru Investments Pte. Ltd. (Singapore) (the “Trustee”).

By the Application, The Trustee seeks payment of a \$25,000,000 fee on a final basis for services he claims to have rendered to the debtors’ estates over a five-year period. He filed that Application on Friday, October 1, the last day such an application could be filed in order to be heard at the October 27 omnibus hearing (at which hearing the Application is currently noticed to be heard). The Application is over 5,700 pages in length and includes a proposed form of order with 80 pages of proposed findings of fact and conclusions of law. Upon receipt, White & Case worked diligently to review and analyze the Application and to confer with our clients regarding an appropriate response. Ultimately, we determined that the Application raised a myriad of legal and factual issues potentially in material dispute, including (1) the Trustee’s claim appears to be based on more than \$2 billion of alleged non-cash distributions and/or cash distributions that he opposed throughout the case; (2) the hours the Trustee claims to have spent on this matter – more than 3,000 hours per year in *each* of 2017, 2018, and 2019 – seem overstated, especially when such time was in addition to his responsibilities as Executive Chairman of his consulting firm and his role as Chapter 11 Trustee in the cases styled as *In re San Luis and Rio Grande Railroad, Inc., et al.*, No. 19-18905 (TBM) (Bankr. D. Col.) beginning in 2019; (3) without explanation, the Trustee has sought to retroactively increase his hourly rates to his current hourly rate for purposes of calculating the lodestar amount; and (4) there is no articulated basis in the Application for a 2.09x upward adjustment of the lodestar amount, especially in light of a number of disputed issues including the Trustee’s claimed role in the plan processes in these Cases.

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Given the voluminous nature of the Application and the issues listed above, on Friday, October 8, my colleague, Greg Pesce, requested from Trustee's counsel that the hearing on the Application be adjourned to the December omnibus hearing and that the objection deadline be extended accordingly. Mr. Pesce noted that this adjournment would allow our clients time to better understand the voluminous pleadings, to allow for discovery regarding the disputed factual issues raised by the Trustee in his application, and to allow the parties time to negotiate a potential narrowing or resolution of the relief requested. On Sunday, October 10, Trustee's counsel denied that request.

On the next business day, Tuesday, October 12, we sent a letter to Trustee's counsel outlining some of our substantive concerns with the Application and an initial set of discovery requests directed toward the concerns outlined in our letter. In response, the Trustee and his counsel began producing responsive documents on a rolling basis starting last Wednesday. His document production, now totaling over 9,000 pages of documents, apparently was completed last night (though as noted below we have not yet been able to load onto our reviewing platform the approximately 200 pages of documents produced on Sunday). On Friday, October 15, in anticipation of document completion, we had conferred with Trustee's counsel regarding the scheduling of a deposition of Mr. Brandt at some point after we were able to complete our review. According to counsel, however, the only days Mr. Brandt was available for deposition were today, Monday, October 18th or "maybe" for "part" of this Wednesday afternoon (the day our objection to the Application would otherwise be due). We believe that the Trustee's proposed schedule, which would require that we depose a witness before completing our document review and then filing an objection before discovery is complete, is not appropriate under the circumstances.

First, while the documents produced by the Trustee have now been uploaded to a ftp site, it will still take our team time to: (1) complete loading them on a searchable platform; (2) conduct the necessary searches to locate the relevant documents; (3) review the relevant documents for relevance and responsiveness; and (4) prepare for Mr. Brandt's deposition. We have been processing documents as they have been uploaded, but it simply was not possible for us to have completed that processing by this morning (and it may still take several more days). Second, as we told the Trustee's counsel last week, even had we been able to complete our document review on such an accelerated basis, we are not available to conduct a deposition today or Wednesday (I am committed to long-scheduled depositions in another bankruptcy matter on both of those days). Third, the Trustee's counsel has acknowledged that there is no scheduling conflict or other issue that would render the December omnibus hearing (or any other date in November or December) a non-viable option. Notwithstanding the foregoing, the Trustee still refuses to extend our objection deadline, to adjourn the hearing on the Application, or even to discuss any form of alternate schedule.

We are aware that the Court's local rules require that discovery disputes be presented at a chambers conference following good faith efforts to resolve the dispute. As noted above, the parties have met and conferred by e-mail and telephone on a number of occasions in a good faith effort to resolve this scheduling dispute, but have been unsuccessful. Given the fast approaching objection deadline, we respectfully request a conference tomorrow or as soon as the parties may thereafter be heard. In addition to copying on this email counsel for the Trustee, we have also copied counsel for the United States Trustee, who may wish to participate in the conference.

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Respectfully,

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