

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

Window Select LLC,

Debtor.

**Case No. 23-20646-gmh
Chapter 11 (Subchapter V)**

**MOTION OF THE DEBTOR TO ESTABLISH ALTERNATIVE PROCEDURES FOR
INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF
PROFESSIONALS**

Window Select LLC (the “Debtor”), as a chapter 11 debtor (the “Debtor”), moves, pursuant § 331 of the Bankruptcy Code for establishment of alternative procedures for interim compensation and reimbursement of the expenses of Kerkman & Dunn (K&D), the Subchapter V Trustee Jennifer Schank, and any other professionals that the Court approves to be employed in the case (the “Professionals”) so. In support of this Motion, the Debtor respectfully states as follows.

Jurisdiction

1. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 17, 2023 (the “Petition Date”). An order for relief was entered on the same day.
2. The Debtor continues to manage its business and affairs as a debtor-in-possession pursuant to § 1184 of the Bankruptcy Code. A Subchapter V Trustee was appointed on February 21, 2023.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a) and § 157(a), and the order of reference in this district entered pursuant to § 157(a).

4. This is a core proceeding under 28 U.S.C. § 157(b)(1). It concerns the administration of the debtor's estate pursuant to § 157(b)(2)(A).

Background

5. A detailed description of the Debtor and its business, and the facts and circumstances leading to this bankruptcy case, are set forth in greater detail in the Declaration of Andrew Parsons filed on February 21, 2023. (ECF No. 17-1.)

Basis for Relief

6. Section 331 of the Bankruptcy Code permits professionals to apply for interim compensation not more than once every 120 days, *or more often if the court permits...*" (Emphasis added).

7. Congress provided for more frequent applications where the circumstances warrant it. *In re Shelly's Inc.*, 91 B.R. 803, 807 (Bankr. S.D. Ohio 1988); *In re Fitzsimmons Trucking, Inc.*, 124 B.R. 556, 561 (Bankr. D. Minn. 1991). In addition, the courts in this district have permitted such arrangements when attorney's fees will rapidly accumulate. *In re Archdiocese of Milwaukee*, *In re Archdiocese of Milwaukee*, Case No. 11-20059-svk (ECF No. 158). More recently, an alternative arrangement was approved contingent upon safeguards within the order against the debtor's future inability to make payments. *In re Michael A. Gral*, Case No. 16-21329-gmh (ECF No. 208).

8. Another circumstance permitting alternation of the 120- day period is where it imposes undue hardship. *In re Knudson Corp.*, 84 B.R. 668, 671 (BAP 9th Cir. 1998.)

9. Under the circumstances of this case, waiting out the 120-day period imposes an undue hardship on K&D. K&D is a small firm of five attorneys. The Debtor's case involves

more than 1,700 creditors, and complex legal issues. Both will demand a significant amount of time and attention to the exclusion of other cases.

10. K&D must continue to pay its monthly operating costs on a timely basis. If forced to wait the entire 120-day period, K&D may be unable to pay these expenses. As a small firm, K&D would be incurring an undue hardship if it is not permitted to seek, under the particular circumstances of this case and the timing of prior fee applications, allowance of its fees and expenses more frequently than § 331 typically allows.

11. Similarly, the Debtor expects that other professionals, including the Subchapter V Trustee will face similar demands.

12. The Debtor therefore respectfully requests that alternative guidelines be approved to permit Professionals to apply for compensation on a monthly basis (the “Alternative Guidelines”):

a. On or before the 15th day of each month, Professionals will file their monthly invoice for services for the previous month via the electronic court filing (“ECF”) system so the U.S. Trustee, the Debtor and all other interested parties receiving electronic notice shall receive it;

b. Within 7 days from the date of providing the invoice, the U.S. Trustee and any other interested parties receiving electronic notice may object to some or all of the invoice by filing an objection. If the U.S. Trustee or interested party objects, and the Professional does not agree with the objection, then the Professional may proceed to file a response in the usual form with the Court and the Court will proceed with a hearing;

c. If there is no objection, then the Professional may submit an order for interim approval and payment from the Debtor for all unopposed fees and upon entry of

the order the Debtor may pay the Professional the approved compensation; however, if the Debtor is unable to pay the request because of lack of funds, then no payment shall be made until funds are available.

d. The Professionals shall otherwise seek compensation on 120-day interim basis for compensation pursuant to rules governing fee applications in the usual form with the Court, regardless of payment, with notice to all interested parties, including those that are not receiving notice via ECF. All fees are subject to final approval and disgorgement.

13. The Alternative Guidelines contemplate Professionals filing their monthly invoices via ECF so that the U.S. Trustee and any interested parties receiving electronic notice shall be able to review, and if appropriate object to, the Professional's fee prior to payment. The Professionals will also email their monthly invoices to the Debtor. Any interested parties not receiving notice via ECF shall still receive notice with opportunity to object through the standard 120-day interim applications Professionals will file under the Alternative Guidelines.

Conclusion

Wherefore, the Debtor respectfully requests that alternative guidelines be approved for interim compensation as set forth above.

Dated: March 2, 2023.

/s/ Nicholas W. Kerkman

Jerome R. Kerkman
Evan P. Schmit
Nicholas W. Kerkman

P.O. Address:

839 N. Jefferson St., Suite 400
Milwaukee, WI 53202
Phone: 414.277.8200
Email: nkerkman@kerkmandunn.com

Proposed Attorneys for the Debtor

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

Window Select LLC,

Debtor.

**Case No. 23-20646-gmh
Chapter 11 (Subchapter V)**

**NOTICE OF DEBTOR'S MOTION TO APPROVE
ALTERNATE COMPENSATION GUIDELINES**

PLEASE TAKE NOTICE that Kerkman & Dunn, as proposed counsel for Window Select LLC, chapter 11 debtor-in-possession (the "Debtor"), has moved pursuant to 11 U.S.C. § 331 for approval of alternate compensation guidelines permitting Kerkman & Dunn (K&D), the Subchapter V Trustee William Wallo, and other professionals that the Court approves to be employed in this case, to apply for compensation on a monthly basis.

Copies of the Motions are attached. If you would like copies of any other documents, you can obtain them electronically from or at the office of the Bankruptcy Clerk of Courts whose address is listed below, or you can request a copy from the undersigned.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to approve the motion, or if you would like the Court to consider your views on the motion or hold a hearing on the motion, then you or your attorney must object no later than **March 21, 2023** by filing a copy of your objection with the Bankruptcy Clerk of Courts whose address is below and serve a copy to the Debtors' attorneys.

Bankruptcy Clerk of Courts
United States Courthouse and Federal Building
517 E. Wisconsin Avenue
Milwaukee, WI 53202

If you mail your Response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

If you do not want the Court to approve the motion or if you would like the Court to consider your views on it, then **you or your attorney must also appear at any hearing**. If you, or your attorney, do not take these steps, the Court may decide that you do not oppose the motion and may enter an order approving it without further notice or hearing.

Dated: March 2 2023

/s/ Nicholas W. Kerkman

Evan P. Schmit
Nicholas W. Kerkman
Kerkman & Dunn

Proposed Attorneys for the Debtor

P.O. Address:

839 N. Jefferson St., Suite 400
Milwaukee, WI 53202
Phone: 414.277.8200
Facsimile: 414.277.0100
Email: nkerkman@kerkmandunn.com