

NEXT FACTORS, INC.
880 Bergen Avenue, Suite 900
Jersey City, New Jersey 07306
(201) 659-0209

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re
WORLDCOM, INC., et al.,
Debtors.
-----x

Chapter 11 - Jointly Administered
Case No. 02-13533 (AJG)

OBJECTION TO MOTION FOR AN ORDER GRANTING LEAVE TO
WITHDRAW AS COUNSEL OF RECORD TO NEXT FACTORS, INC.

1. Next Factors, Inc. ("Next") objects to the motion of Douglas J. Pick & Associates ("DJP&A") for an order granting leave to withdraw as counsel of record to Next ("Pick Motion"). The affidavit of Douglas J. Pick ("Pick Affidavit") in support of the Pick Motion contains clear factual error and omits relevant facts necessary for the Court's consideration of the relief sought therein. The Pick Motion, if granted, will harm Next related to matters that are not in dispute between Next and DJP&A, and time is of the essence. Furthermore, the Pick Motion was presented in bad faith in that the true motivation was not a genuine and continuing payment dispute with Next but rather to further business objectives of DJP&A¹ via the protection of estate professionals.
2. Next agrees with and incorporates herein the enumerated paragraphs in the Pick Affidavit under Jurisdiction And Venue number 2 and Background numbers 3 through 6.

Pick Motion Disingenuous: The Unfiled Zabicki Motion & Refusal

¹ NY State Bar Association **The Lawyer's Code of Professional Responsibility** ("*NY Lawyer's Code*") CANON 2, ETHICAL CONSIDERATIONS EC 2-28 "The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials or influential members of the community does not justify rejection of tendered employment."

3. The Pick Affidavit is clearly false as to paragraph number 8 wherein Mr. Pick asserts that DJP&A "never ... appeared at any hearing on Next Factors' behalf in connection with this proceeding". Mr. Pick, himself, appeared on behalf of Next before this Court and spoke on the record at the confirmation hearing.² In the event that Mr. Pick argues now that DJP&A is "a different entity" with respect to Mr. Pick's appearance, the Pick Motion is rendered frivolous as Mr. Pick continues to exist.
4. The Pick Affidavit is intentionally disingenuous as to both the purportedly outstanding invoices ("Outstanding Invoices") and the true reason why Mr. Pick so desperately desires to withdraw as Counsel. The Outstanding Invoices relate to a motion prepared by Eric C. Zabicki, an associate of DJP&A, that was to be filed in the above proceedings ("Zabicki Motion").³ Mr. Pick refused to allow Mr. Zabicki to file the Zabicki Motion ("Refusal").⁴ Next asserts the Zabicki Motion was prepared in good faith by Mr. Zabicki and that there are no restrictions or prohibitions which would preclude an attorney from filing the Zabicki Motion.
5. The Pick Affidavit fails to inform the Court that the Outstanding Invoices relate to the Zabicki Motion, and that all such work billed by Mr. Zabicki was to be nullified by Mr. Pick's unilateral Refusal.
6. Mr. Pick fails to inform the Court that Next has always agreed to pay, and continues to stand ready to pay, the Outstanding Invoices provided that Mr. Pick withdraws his Refusal and the Zabicki Motion is zealously pursued.⁵ Next has paid DJP&A over \$50,000 for various

² Exhibit I, excerpt from the transcript of the confirmation hearing in these proceedings.

³ Exhibit A is the Zabicki Motion preceded by fax cover sheet from Mr. Zabicki. Exhibit B, preceded by a separate cover sheet, are the exhibits. Together exhibits A & B form the Zabicki Motion.

⁴ Exhibit C, Transcript of conversation between Mr. Pick and the president of Next, page 9 lines 35-6.

⁵ *NY Lawyer's Code C7* "A Lawyer Should Represent a Client Zealously Within the Bounds of the Law"

matters including in the above proceedings in the last two years. The Outstanding Invoices total approximately \$5,000.

Pick Motion Will Harm Next on Unrelated Matters Not In Dispute

7. Significantly, Next needs representation in the above proceedings for matters unrelated to the Zabicki Motion, the Refusal, and the Outstanding Invoices ("Unrelated Matters"). Mr. Pick is well informed that any subsequent work on behalf of the Unrelated Matters in the above proceedings would be paid by Next.
8. Next will be harmed if the Pick Motion is allowed. Next will be forced to expend time and money searching for replacement counsel and for the duplication of legal costs when replacement counsel would necessarily learn the facts and circumstances of the Unrelated Matters, as such work has already been performed by DJP&A and paid by Next. Furthermore, time is of the essence as the Unrelated Matters are being pursued by the estate and have already been scheduled.

Zabicki Motion, Pervasive Claims Trading, Conflict Of Interest

9. The Zabicki Motion explains that the entrance of over 50 different claims traders before and after the retention of the many professionals hired by the Debtors poses a significant probability that one or more of the professionals may have failed to identify and disclose a particular claims trader with respect to their initial and continuing duties related to conflict checks.
10. Next contends that a conflict check should require that each professional check not solely the single corporate name appearing on the docket for each particular claims trader, but also the names of parent and subsidiary ownership, affiliates, and those entities having beneficial ownership with respect to all traded claims.

11. The failure of a law firm to disclose a conflict of interest is a crime.⁶ The failure to disclose a conflict could result in the disgorgement of fees paid to such professional. Upon information and belief, the professional fees paid by the Debtor's estates to date exceed \$500 Million dollars. A disgorgement of even a fraction of fees in the above proceedings could be a significant amount of money benefiting creditors.

Zabicki Motion exposes Debtors' threats on Undisputed Claims to Extort Broad Release

12. A number of undisputed claims against the Debtors ("Undisputed Claims") are held by Next against which no objection has been filed, nor were such claims scheduled as disputed, unliquidated, or contingent. Such claims are clearly referenced in the Zabicki Motion.⁷ Inexplicably, the Debtors continue to withhold distributions on the Undisputed Claims.

13. The reorganized Debtors have demanded written releases from Next on behalf of Undisputed Claims which absolve post Effective Date conduct as well as possible claims not subject to discharge under Title 11 U.S.C. ("Broad Release").⁸

14. Significantly, instances of the demanded Broad Release would not have changed the amount of the claim. The sole effect of the Broad Release, besides causing further expense and delay for Next and fee income to the professionals, is wrapping the entire claim in an undeserved extra layer of protection. The Confirmed Plan and the Confirmation Order speak for themselves with respect to the release and discharge granted under the Bankruptcy Code by this Court. What possible further purpose could the demand for written settlement waivers serve the reorganized Debtors and their related parties? The reorganized Debtors and all those persons involved with or benefiting from a) the construction of the intercreditor

⁶ Exhibit H, excerpts from Bankruptcy Crimes 2002 by Stephanie Wickouski published by BeardBooks.

⁷ Exhibit A enumerated page 6 lines 4 – 9.

⁸ Exhibit D, release demanded by reorganized Debtors for causes not related to reorganization.

agreement⁹ (“Intercreditor Agreement”) or b) conflicts of interest would further benefit from a release of any claims related to 18 U.S.C. §§ 1961-68 (1994)¹⁰ and in particular §1964 Civil remedies.

15. The Debtors threatened to file objections on behalf of all of Next's claims, including the Undisputed Claims, if Next did not execute the Broad Release on various claims. It is well settled that each claim against a debtor is independent and *stands as it is incurred*, irrespective of any transfers of such claims. Next contends that demanding Broad Release from Next, particularly via the withholding of distributions and threatening objections on Undisputed Claims, constitutes extortion.
16. The withholding of distributions on Undisputed Claims is a pattern of behavior by the certain of the Debtors' professionals in other proceedings in this Court as well as other districts, at least with respect to claims traders such as Next who pose no conflict for such professionals.

Zabicki Motion casting light upon Title 18 U.S.C. violations - Cumulative Effect
17. The Zabicki Motion either provides or could result in the disclosure of evidence of criminal activity under Title 18 of the United States Code. Further, 18 U.S.C. § 3057 specifies actions requiree of U.S. Trustees and Bankruptcy Judges with respect to suspected crimes.
18. Upon information and belief Weil, Gotshal & Manges LLP, one of the Debtors' professionals, has been found to have failed to properly disclose conflicts in the United States Bankruptcy Court for the Southern District of New York¹¹ and was ordered to pay millions of dollars as a result.

⁹ The agreement(s) whereby certain MCI Trade Creditors received a substantially higher recovery than similarly situated creditors in these proceedings.

¹⁰ The Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. §§ 1961-68 (1994).

¹¹ in re: The Leslie Fay Companies 93-41724 SDNY.

19. Among the Debtors' professionals is KPMG, LLP, who upon information and belief has received over \$140 Million dollars in fees in the above proceedings. According to the Internal Revenue Service, KPMG, LLP is an entity who has admitted engaging in criminal conspiracy¹² to commit fraud.

The Intercreditor Agreement and Other Disparity in Treatment

20. A peculiar element of the Confirmed Plan in these proceedings is the operation of the Intercreditor Agreement, whereby certain creditors enjoyed a substantially higher recovery than similarly situated creditors notwithstanding 11 U.S.C. § 1129(b). Beyond the Intercreditor Agreement, the Zabicki Motion seeks information which would expose differentiation in the treatment of claims traders in the timing and resolution of their claims.¹³ Furthermore, Mr. Pick was aware that an eventual objective of Next was the investigation of any correlation among the set of claims traders, conflicted parties, and beneficiaries of the Intercreditor Agreement with respect to disparities in treatment vis-a-vis other creditors.¹⁴

21. The cumulative effect of the extensive claims trading in the above proceedings, conflicts of interest, indisputable and alleged disparity of treatment among similarly situated creditors, as well as the prior conduct of certain of the professionals employed by the Debtors indicates that an investigation is needed.

Mr. Pick's "Not In Fact Or Law" Waffling, Refusal Justification Memo

22. Mr. Pick tells Next that his reason for his Refusal was that the Zabicki Motion was "not

¹² Exhibit G, Internal Revenue Service official release IR-2005-83, Aug. 29, 2005.

¹³ Exhibit A of the Zabicki Motion, paragraph 15.

¹⁴ Exhibit C, Transcript page 1 lines 30-33. Mr. Pick demonstrates his awareness that ultimate goals of Next extend beyond the Zabicki Motion as he clearly is discussing a topic which does not exist in the Zabicki Motion. Next does not comment now as to the accuracy of Mr. Pick's characterization. Page 4 lines 49-through page 5 line 2 further shows that Mr. Pick was informed that more is to come.

supported in fact or law".¹⁵ Yet, Mr. Pick also suggested that Next take the very same Zabicki Motion and find another attorney to file it.¹⁶ While it is not clear whether this exchange reveals that Mr. Pick a) is willing to falsely invoke a "not in fact or law" excuse or b) would actively encourage a person to persuade another member of the bar to file papers which Mr. Pick otherwise genuinely felt were "not in fact or law", it *is* clear that Mr. Pick's position on the Zabicki Motion is of dubious justification.

23. In discussion, Mr. Pick asserted the "not in fact or law" problem arose because evidence of a conflict omission was required prior to a request for a conflict check update.¹⁷ Next then posed the question to Mr. Pick: would he allow the Zabicki Motion to proceed if Next provided evidence of at least one instance where there was a conflict disclosure? Mr. Pick refused, casting further doubt on his Refusal.¹⁸
24. Mr. Pick was directed to prepare a written justification for his Refusal ("Refusal Justification Memo") as it related to his assertion that the Zabicki Motion was "not supported in fact or law".¹⁹ Mr. Pick was informed that the Refusal Justification Memo would be made public and thus available to the appropriate authorities.²⁰ Mr. Pick failed to prepare any Refusal Justification Memo.

Motivation of the Pick Motion, Business Objectives of Lawyers and Systemic Failure

25. The Pick Motion is motivated by Mr. Pick's desire to keep the numerous issues related to the Zabicki Motion as well as information likely to become disclosed outside of public view and scrutiny.

¹⁵ Exhibit C, Transcript page 6 lines 32.

¹⁶ Exhibit C, Transcript page 7 lines 4-5 and lines 14-16.

¹⁷ Exhibit C, Transcript page 5 lines 9-11.

¹⁸ Exhibit C, Transcript page 8 lines 9-18 and lines 37-40.

¹⁹ Numerous locations in Ex C including Page 8 line 53 through page 9 line 2, as well as letters.

²⁰ Exhibit C, Transcript page 6 lines 32-40.

26. Next asserts that the selfish concerns of Mr. Pick have trumped his professional obligation to zealously represent Next.²¹ The transparent purpose of Mr. Pick's refusal is to avoid upsetting the apple cart, or killing the golden goose with respect to the tremendous fees generated in the bankruptcy industry. The concerns that Mr. Pick faces as a businessman within the bankruptcy industry are universal and expose a systemic flaw in the structure and de facto operation of the United States Bankruptcy Courts. The effect is that counsel will routinely go to great efforts to avoid the disclosure of any evidence which could cause any fellow professional ill consequences.²²

Conclusion and Request For Relief

27. The only reason provided in support of the Pick Motion is non payment of fees. Next stands ready to pay those fees and thus the Pick Motion is without support. Next will be harmed if the Pick Motion is allowed.

28. Next requests that the Pick Motion be denied.

29. Next requests that the Court order Mr. Pick to explain his Refusal or in the alternative directing DJP&A to file the Zabicki Motion.

30. Next requests that the Court rule that the Zabicki Motion is supported in fact and law, and could be filed without violating any rules of the Court.

31. Next requests that the Court appoint an examiner not currently associated with the bankruptcy and reorganization industry that is empowered to:

A. For the set of claims traders and beneficiaries of the Intercreditor Agreement

²¹ The consequence of the automatic refusal to take actions which might lead to ill consequences towards a fellow member of the bar is that the Court and the public is harmed. The radical step of abandoning a client for the protection of opposing counsel, abbreviated as ACPOC Syndrome, is sadly not uncommon.

²² Seemingly in violation of *NY Lawyer's Code* EC 2-28

("Potential Conflict"), coordinate a conflict update among all professionals of the Debtors. Such conflict check shall define each Potential Conflict to be inclusive as to the parent / subsidiary and affiliate relationships existing for each Potential Conflict. Furthermore, the beneficial ownership as to each claim traded by each Potential Conflict shall have the effect of enlarging the Potential Conflict set by the inclusion of each such beneficial owner. For each member of the Potential Conflict set for which a Debtor professional was also employed, the examiner would confirm evidence of contemporaneously informed and granted releases by each conflicted party and the Debtors. Upon information and belief, a written release describing the issues affecting each party to a conflict is required by the bar associations of most if not every state²³ notwithstanding any additional statutory requirements.

B. Investigate any correlation between the identities of conflicted parties and 1) beneficiaries of the Intercreditor Agreement and 2) any disparity in the manner of treatment of distributions among claims traders and conflicted parties and vis-a-vis all general unsecured creditors,

C. Publicly report to this Court his findings.

32. Next requests any other relief that the Court feels is just and proper.

Dated: Jersey City, New Jersey
October 3, 2005

Next Factors, Inc., pro se

By:



David O'Donnell, president

²³ *NY Lawyer's Code* DR 5-105 [§1200.24] Conflict of Interest; Simultaneous Representation. (A) - (E)

LIST OF EXHIBITS

Appended to Affidavit of Next Factors, Inc.'s President

- A: Zabicki Motion with Fax Cover Sheet
- B: Exhibits for Zabicki Motion with Fax Cover Sheet
- C: Transcript of Discussion between Next and Douglas Pick
- D: Example of Settlement Agreement Incorporating Broad Release
- E: Letters From Eric Zabicki To Marcia Goldstein of Weil Gotschal and Brian Benjet of MCI Concerning Settlement Agreements
- F: Letter From Next To Marcus Parsons of MCI Concerning Settlement Agreements
- G: Printout From IRS.gov Concerning KPMG LLP
- H: Excerpts From Bankruptcy Crimes 2002
- I: Excerpts From Transcript of October 15, 2003 Hearing