

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

	)	
<b>In re:</b>	)	
	)	
<b>SW BOSTON HOTEL VENTURE LLC,</b>	)	<b>Chapter 11</b>
<i>et al.</i>	)	<b>Case No. 10-14535-JNF</b>
	)	
<b>Debtors.</b>	)	
	)	<i>(Jointly Administered)</i>

**APPLICATION TO EMPLOY ARGUS MANAGEMENT CORPORATION AS FINANCIAL ADVISORS TO THE DEBTORS AND DEBTORS-IN-POSSESSION**

Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and MLBR 2014-1, SW Boston Hotel Venture LLC (“SW Boston”), General Trading Company (“General Trading”), Frank Sawyer Corporation (“Sawyer Corporation”), 100 Stuart Street LLC (“Stuart Street”) and Auto Sales & Service, Inc. (“Auto Sales” and together with SW Boston, General Trading, Sawyer Corporation and Stuart Street the “Debtors”), the above-captioned debtors and debtors-in-possession, respectfully request that this Court enter an order authorizing the Debtors to retain Argus Management Corporation (“Argus”) as their financial advisors in these jointly-administered Chapter 11 cases. In further support of this application, the Debtors aver as follows:

**JURISDICTION**

1. The Court has jurisdiction to consider and determine this application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Section 327(a) of the Bankruptcy Code and Rule 2014 and 2016 of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND**

3. On April 28, 2010 (the “Petition Date”), the Debtors each filed voluntary petitions under Chapter 11 the United States Bankruptcy Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

4. The Debtors continue to operate as debtors in possession pursuant to Sections 1107 and 1108 of the Code. As of the date of this application, no official committee of creditors has been appointed in any of the Debtors’ cases.

5. The W Boston Hotel and Residences project (the “Project”) opened on October 29, 2009, and comprises a 350,650 square foot, 26-story building located at 100 Stuart Street in the heart of Boston’s Theatre District. The Project contains the 235–room, four-star Hotel, the 122 condominium units, and a two-level underground parking garage with capacity for 142 vehicles (the “Garage”).

6. The Project was designed by the internationally-known architectural firm of William Rawn and Associates Architects, together with the architect of record TRO/Jung Brannen, Inc.

7. The Hotel is branded as a “W” Hotel – the only W Hotel in New England – and serves Boston’s many national and international business travelers and tourists. The Hotel is operated by Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”) through its affiliate, W Hotel Management, Inc. (the “Hotel Operator”). The Hotel includes a retail store operated by Wink Retail Group, Inc., an affiliate of Starwood, a signature restaurant operated by Cullinary Concepts (Boston) LLC (the “Restaurant Operator”) at a prominent location along Tremont Street, and will also include a second floor spa with a first floor entrance and related retail space on the Stuart Street side of the Project (the “Spa”). The Hotel is also planned to include a below-

grade theme bar/lounge with an entrance adjacent to the spa entrance on Stuart Street (the “Theme Lounge”). The Spa is in the final stages of construction and the Theme Lounge is planned to open in the fall. The Hotel Operator will operate the Spa and the Theme Lounge.

8. The Hotel restaurant, Market by Jean-Georges Vongrichen, is a 6,000 square foot, first-class, full-service restaurant that occupies the entire first floor of the Hotel along Tremont Street. Market is an important amenity for the city’s visitors and theatre-goers.

9. The condominium units consist of 122 studio, one (1), two (2) or three (3) bedroom luxury condominium units. The list prices for the condominium units range from \$600,000 to over \$4,000,000.

10. The Debtors filed these cases in order to preserve the value of their assets and their opportunity to reorganize.

#### **RETENTION OF ARGUS**

11. Subject to the approval of this Court, the Debtors have selected Argus to serve as their financial advisors in these Chapter 11 cases. The Debtors request the entry of an order authorizing them to employ and retain Argus subject to Sections 327(a) and 328 of the Bankruptcy Code and Rules 2014 and 2106 of the Federal Rules of Bankruptcy Procedure.

12. Argus’ personnel have extensive experience as financial and operational consultants in Chapter 11 bankruptcy proceedings and corporate reorganizations. The Debtors have selected Argus based upon Argus’ expertise in bankruptcy and corporate reorganization.

13. The Debtors propose to retain Argus to render various services, including, without limitation, the following:

- a. Consulting with the Debtors and their counsel with respect to the development and implementation of a plan to reorganize the Debtors’ business operations;
- b. Preparing or coordinating the preparation of such other analyses and reports as may be requested or required by the Debtors, the Court, the Debtors’ secured

creditors, and any official committees appointed in these jointly-administered Chapter 11 cases;

- c. Performing or coordinating the performance of an analysis of potential avoidance actions under Chapter 5 of the Bankruptcy Code;
- d. Preparing or coordinating the preparation of schedules and assets and liabilities of the Debtors as required by the Bankruptcy Code and Bankruptcy Rules;
- e. Preparing or coordinating the preparation of monthly operating reports and such other reports and information as may be required or requested by the Bankruptcy Code and Bankruptcy Rules for use by the United States Trustee;
- f. Advising the Debtors' senior management with respect to the performance of the business and recommending actions to improve the value of the Debtors' assets;
- g. Assisting in any negotiations with creditors; and
- h. Performing such other professional services as may be requested by the Debtors in order to facilitate the Debtors' reorganization.

14. Argus will seek compensation based upon its normal and usual hourly billing rates, and will seek reimbursement of expenses. From time to time, Argus adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, Argus will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

15. Argus will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of services rendered. Argus reserves its right to seek an enhancement of its fees or a lodestar award greater than its normal hourly time charges, subject to this Court's approval in accordance with applicable law.

16. Argus has requested that the Debtors provide Argus with a \$75,000 post-petition retainer (the "Retainer") for services rendered or to be rendered in connection with the instant cases. Given the rapidity of the filing of these cases, the Debtors were unable to retain Argus prior to the Petition Date and were therefore unable to provide Argus with a pre-petition retainer.

The provision of a retainer for professionals retained by a debtor is the usual and accepted course in Chapter 11 proceedings. Grounds therefore exist to provide Argus with the requested post-petition retainer.<sup>1</sup>

17. The Retainer will be held by Argus as security during this case. Argus shall, upon the Court's approval, apply the Retainer to the allowed portion of its final compensation and expense reimbursement and return any unapplied portion to the Debtors. Argus is not owed any money by the Debtors on account of pre-petition services rendered to the Debtors.

18. During these cases Argus requests that it receive compensation for services rendered to the Debtors upon approval of this Court in accordance with any applicable interim compensation procedures established by the Court. Any reimbursement of compensation and expenses shall be subject to allowance by this Court upon appropriate application pursuant to Sections 330 and 331 of the Bankruptcy Code and any orders of this Court.

#### **DISINTERESTEDNESS OF ARGUS**

19. Argus has filed the affidavit of John G. Haggerty in connection with this application and in accordance with Federal Rules of Bankruptcy Procedure 2014 and 2016, and MLBR 2014-1 (the "Affidavit").

20. To the best of the Debtors' knowledge, Argus has not represented, nor does it now represent, any interest adverse to the Debtors with respect to the matters on which Argus is to be employed. Argus and its principals and employees are otherwise disinterested persons with respect to the Debtors, as that term is defined in the Bankruptcy Code.

21. Argus will further amend or supplement the Affidavit to any extent necessary.

---

<sup>1</sup> The Debtors motion for the use of cash collateral, which was granted by the Court, attached a budget that included the provision of the propose retainer, demonstrating the Debtors' ability to provide such a retainer (subject to the approval of this application).

**WHEREFORE**, the Debtors request that this Court enter an Order: (a) authorizing the employment and retention of Argus as financial advisors to the Debtors, on the terms set forth in this Application, (b) authorizing the Debtors to pay Argus a retainer of \$75,000, and (c) granting to the Debtors such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

AUTO SALES & SERVICE, INC., GENERAL  
TRADING COMPANY, FRANK SAWYER  
CORPORATION, 100 STUART STREET LLC and  
SW BOSTON HOTEL VENTURE LLC

Dated: May 10, 2010

By: /s/ Carol S. Parks  
President or authorized signatory

562681

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

<hr/>		)	
<b>In re:</b>		)	
		)	
<b>SW BOSTON HOTEL VENTURE LLC,</b>		)	<b>Chapter 11</b>
<i>et al.</i>		)	<b>Case No. 10-14535-JNF</b>
		)	
<b>Debtors.</b>		)	
<hr/>		)	<i>(Jointly Administered)</i>

**AFFIDAVIT OF JOHN HAGGERTY IN SUPPORT OF  
APPLICATION TO EMPLOY ARGUS MANAGEMENT CORPORATION AS  
FINANCIAL ADVISORS TO THE DEBTORS AND DEBTORS-IN-POSSESSION**

Pursuant to Fed. R. Bankr. P. 2014(a) and 2016, MLBR 2014-1, and 28 U.S.C. § 1746, I,  
John Haggerty, hereby state as follows:

1. I am a principal of Argus Management Corporation, 15 Keith Hill Road, Grafton, Massachusetts (“Argus”). I make this affidavit (the “Affidavit”) in support of the *Application to Employ Argus Management Corporation as Financial Advisors to the Debtors and Debtors-in-Possession* (the “Application”) filed by the above-referenced debtors and debtors-in-possession (the “Debtors”). I am generally familiar with the business of Argus and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

2. Argus maintains records of all of its clients, the matters on which it represents its clients, and the other parties which have a substantial role in such matters. Argus has reviewed such records and documents to determine Argus’ connections with the Debtors, and those entities listed by the Debtor as being either secured creditors or unsecured creditors.

3. Based upon my review as described in this affidavit, in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, neither I nor any shareholder or associate of Argus, insofar as I have been able to ascertain, has any connections or relationships with the

Debtors, their creditors or any other parties-in-interest, or their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee except as disclosed or described herein including that the Debtors have filed an application to employ Hanify & King, Professional Corporation (“H&K”) as their counsel in this Chapter 11 case. Argus has been retained in matters in which H&K has been or is involved, or in other cases in which Argus has represented other parties-in-interest, including but not limited to: In re GPX International Tire Corporation, In re The Ground Round, Inc., et al. and In re Gitto/Global Corporation.

4. Because of the size and diversity of Argus’ practice, it is possible that Argus may represent or may have represented other creditors, equity security holders, or parties-in-interest or their respective attorneys and accountants, but does not represent any such entity in connection with the Debtors. With respect to the party listed above, Argus has not and will not represent such parties in any matters related to the Debtors’ bankruptcy cases.

5. Argus does not represent, nor is it represented by, any other authorized professional specifically in connection with this case or on a regular basis or in connection with a substantial matter in another case.

6. The Debtors may retain various professionals during the pendency of this case. Argus will take steps not to unnecessarily duplicate the efforts of any other professional retained in these cases. In that regard, Argus will coordinate with all other professionals retained in these cases to ensure that Argus does not unnecessarily duplicate work being performed by other professionals.

7. Insofar as I have been able to ascertain, based on the review as described above, Argus, the shareholders and associates thereof do not hold or represent any interest adverse to

that of the Debtors' estates. Notwithstanding the disclosure contained in paragraph three, I believe that I and each shareholder and associate of Argus is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14). Furthermore, insofar as I have been able to ascertain, neither Argus nor any shareholder or associate thereof is connected with any Bankruptcy Judge in the District of Massachusetts, or the United States Trustee or any person employed in the Office of the United States Trustee, so as to render the appointment of Argus as counsel for the Debtors inappropriate under Fed. R. Bankr. P. 5002(b).

8. Argus and I have conducted, and will continue to conduct, research into any relationships we may have with the Debtors and their creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although Argus has undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtors or parties-in-interest, it is possible that such contacts have not been revealed. To the extent any such contacts are discovered, Argus will notify the Court by filing and serving a supplemental affidavit.

9. Any compensation, fee or allowance which may be claimed by me or by Argus will belong wholly to the law firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

10. Argus will seek compensation based upon its normal and usual hourly billing rates, and will seek reimbursement of expenses. From time to time, Argus adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, Argus will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

11. Argus has requested that the Debtors provide Argus with a \$75,000 post-petition retainer (the "Retainer") for services rendered or to be rendered in connection with the instant cases. Given the rapidity of the filing of these cases, the Debtors were unable to retain Argus prior to the Petition Date and were therefore unable to provide Argus with a pre-petition retainer. Subject to the Court's approval of Argus as counsel to the Debtors, the Retainer will be held by Argus in its Client Funds Account as security during this case. The Retainer is not intended to be applied until all alternative sources of payment have been exhausted.

12. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstances relating thereto.

13. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

/s/ John G. Haggerty  
John G. Haggerty  
Argus Management Corporation  
15 Keith Hill Road  
Grafton, Massachusetts 01519  
Tel: (508) 838-1828

Dated: May 10, 2010

::ODMA\PCDOCS\DOCS\562349\1

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

\_\_\_\_\_  
)  
**In re:** )  
)  
**SW BOSTON HOTEL VENTURE LLC,** )  
*et al.,* )  
)  
**Debtors.** )  
\_\_\_\_\_

**Chapter 11  
Case No. 10-14535-JNF**

*(Jointly Administered)*

**DECLARATION REGARDING ELECTRONIC FILING**


**PART I - DECLARATION OF PETITIONER**

I, John Haggerty, hereby declare under penalty of perjury that the information contained in the *Affidavit of John Haggerty in Support of Application to Employ Argus Management Corporation as Financial Advisors to the Debtors and Debtors-in-Possession* (the "Document") filed electronically is true and correct.

I understand that this DECLARATION is to be filed with the Clerk of Court electronically with the electronic filing of the Documents. I understand that failure to file this DECLARATION may cause the Documents to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-7(a) all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated: May \_\_, 2010

Signed:   
\_\_\_\_\_  
John Haggerty



further notice is necessary or required; and after due deliberation and good and sufficient cause appearing therefore, it is hereby **DETERMINED, ORDERED AND ADJUDGED**, that:

1. The Application is hereby approved and granted in its entirety.
2. The Debtors are hereby authorized to retain Argus Management Corporation on the terms and conditions set forth in the Application.
3. The retention of Argus Management Corporation is approved as of the Petition Date.
4. The Debtors are authorized to pay Argus a retainer of \$75,000.
5. The fees to be paid to Argus Management Corporation, and expenses to be reimbursed, shall be as allowed and determined by this Court.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
Joan N. Feeney  
United States Bankruptcy Judge

562810