

ORIGINAL

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

DISTRIBUTION CLERK

07 MAY 11 AM 7:30
GENERAL JURISDICTION DIVISION

CASE NO.: 06-025317 CA 22

In Re:

ENTERA, INC.,
a Florida corporation,

Assignor,

To:

KENNETH A. WELT,

Assignee.

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NOTICE OF HEARING
(Motion Calendar)

YOU ARE HEREBY NOTIFIED that the undersigned counsel will call up for hearing before the Honorable David Miller, Judge of the above styled Court, at the Miami-Dade Circuit Court, Room 4-3, 73 W. Flagler Street, Miami, Fl, 33130, on **Thursday, May 31, 2007 at 8:30 a.m.**, or as soon thereafter as same can be heard, the following:

**MOTION TO APPROVE PAYMENT OF INTERIM FEES AND
EXPENSES OF ASSIGNEE AND ASSIGNEE'S PROFESSIONALS**

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OFC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____

Respectfully submitted,



Steven J. Solomon, Esq.
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2525 Ponce de Leon Blvd., Suite 400
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Telephone: (305) 460-1000
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Attorney for Assignee

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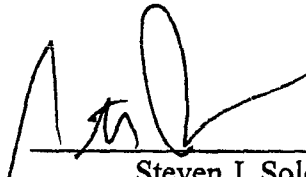
DOCUMENT NUMBER-DATE

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ADORNO & YOSS LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Notice of Hearing* was served upon the Assignee via e-mail this 8th day of May, 2007. The Assignee will serve, via U.S. Mail, upon all creditors and parties-in-interest of the Assignor's estate.



Steven J. Solomon

ORIGINAL

**IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA**

In Re:

**NTERA, INC.
a Florida corporation,**

GENERAL JURISDICTION DIVISION

CASE NO.: 06-025317 CA 20

Assignor,

To:

KENNETH A. WELT,

Assignee.

**MOTION TO APPROVE PAYMENT OF INTERIM FEES AND
EXPENSES OF ASSIGNEE AND ASSIGNEE'S PROFESSIONALS**

Pursuant to Florida Statutes §§727.109(8), 727.111(4) 727.113 and 727.114(2), any and all objections to this motion must be filed with the Circuit Court and served upon the Assignee, Kenneth A. Welt at 3790 North 28th Terrace, Hollywood, Florida 33020 and the Assignee's attorney, Steven J. Solomon, Esq., at Adorno & Yoss LLP, 2525 Ponce de Leon Blvd., Suite 400, Miami, Florida 33134-6012 or (305)503-8961 on or before 5:00 p.m. on May 28, 2007 ("Deadline Date"), which date is not less than twenty (20) calendar days (as computed under Rule 1.090(a) of the Florida Rules of Civil Procedure) from the date of this Motion. Any creditor or interested party who fails to file and serve a written response to this motion by the Deadline Date shall be deemed to have consented to the entry of an Order approving the payment of fee and reimbursement of expenses requested herein.

Pursuant to Fla. Stat. §§727.114(2), 727.108(6) and 727.109(c)(8), Kenneth A. Welt ("Assignee"), assignee for the benefit of creditors of Ntera, Inc., hereby files this Motion To Approve Payment of Interim Fees and Expenses of Assignee and Assignee's Professionals (the "Motion") for the period November 20, 2006 through March 31, 2007 (the "Application Period") and states as follows:

A. Overview of the Case

1. On November 20, 2006 ("Petition Date"), Ntera, Inc. (the "Assignor") assigned all of its assets to the Assignee for the benefit of creditors pursuant to Chapter 727, Florida Statutes. Thereafter, on November 27, 2006, the Assignee commenced this proceeding. The Assignee is charged with liquidating the assets of the Assignor for the benefit of its creditors pursuant to Florida Statutes §727.108.

2. Also on the Petition Date, an assignment for the benefit of creditors was commenced on behalf of the Assignor's affiliates, Ntera Holdings, Inc. (Case No. 06-025316 CA 22); Numind Software Systems, Inc. (Case No. 06-25319 CA 20); Intelligent Switching and Software, LLC (Case No. 06-25318 CA 11); and Radiant Telecom, Inc. (Case No. 06-25320 CA 32).

3. According to the schedules prepared by the Assignor, Tricon Holdings, LLC ("Tricon") asserts a first priority lien against substantially all assets of the assignment estate to secure an alleged outstanding debt of \$10,299,588.68. Pursuant to a settlement reached by and between the Assignee and Tricon, Tricon consented to the sale of the Assignor's equipment. To the extent Tricon holds a valid security interest against all or part of the sale proceeds, Tricon agreed to carve out a portion of its share of the sale proceeds to cover any and all allowed administrative expenses, fees and cost incurred by the Assignee and his counsel to administer this case and the related Assignor cases after application of all pre-assignment retainers. At this time, no determination as to the validity, priority or extent of Tricon's lien is being requested. All parties in interest, including the Assignee, expressly retain any claim against Tricon including, without limitation, the right to consent the validity, priority and extent of Tricon's lien against the sale proceeds.

4. This Court has jurisdiction over this proceeding in accordance with the provisions of Fla. Stat. §727.102 and Local Rule R-4-1 of the Florida Rules of Court for the Eleventh Judicial Circuit.

B. Background of Ntera

5. Prior to the Petition Date, the Assignor was engaged in the telecommunication business with its principal place of business located at 1020 N.W. 163 Drive, North Miami, Florida 33169 ("Ntera Premises"). The Assignor defaulted on certain obligations due its secured creditor and others prior to the Assignment. The weight of litigation and mounting debt was too insurmountable for the Assignor to continue in business.

6. The Assignor ceased doing business prior to the Petition Date. Upon accepting this assignment, the Assignee was charged with the responsibility of identifying and liquidating equipment purchased by the Assignor at an original cost of approximately \$19 million. The equipment, consisting primarily of switches and peripherals used in the telecommunication business was located in Miami, New York City and Los Angeles. With the assistance of counsel, the Assignee spent a substantial amount of time accounting for the equipment and identifying the manner in which the equipment should be sold in order to maximize creditor recovery. During this process the Assignee and his counsel were faced with numerous legal and logistical obstacles raised by the landlords in New York and Los Angeles, all of whom asserted liens against the equipment. Ultimately, the Assignee successfully negotiated with all parties in order to sell the equipment for the benefit of the estate's creditors.

7. Prior to the Petition Date, and in its heyday, the Assignor generated revenues of in excess of \$150 million and employed 300 people. As a result, the overhead required to support such an organization was very large. The Assignee dedicated 20 to 30 hours per week during the first several months of this case in order to understand the business, equipment, receivables, documents and litigation claims. The Assignee took possession of an enormous amount of books and records and supervised the process of vacating from the office space previously utilized by the Assignor.

8. As of the Petition Date, the Assignor was a party to at least 20 pending lawsuits. These lawsuits ranged from traditional collection and breach of contract claims to sophisticated patent infringement actions. Litigation was pending before various State Courts, Federal Courts and administrative bodies including the United States Patent and Trademark office, Federal

Communication Commission and the Internal Revenue Service. Both the Assignee and his counsel were required to spend a significant amount of time understanding these various lawsuits and communicating with both counsels for the Assignor and opposing parties. The Assignee judiciously analyzed the pending litigation to determine which, if any, could realize a benefit to the assignment estate. Nevertheless, in the interim, both the Assignee and his counsel advised litigants about the pending assignments and attempted to resolve claims responsibly.

9. In order to liquidate the Assignor's equipment, the Assignor retained the services of Stamper Auctions, Inc. and David R. Maltz and Company, Inc. (collectively, the "Auctioneers"). With the assistance of the Assignee, the Auctioneers conducted separate auction sales for the equipment located in Miami, New York City and Los Angeles. All auctions were conducted in Miami and interested parties could participate in person or via the internet. Separately, the Auctioneers sold all of the Assignor's furniture.

10. The Assignee and his counsel spent a significant amount of time preparing for the auctions and negotiating with creditors in order to present this Court with a consensual proposal. Numerous objections were filed by various parties in interest who claimed either a security interest or contractual right which allegedly interfered with the Assignee's right to sell the equipment free and clear. After conducting substantial due diligence, the Assignee was able to validate certain of these claims and negotiate sophisticated resolutions.

11. Based upon the books and records of the Assignor, the accounts receivable are nearly \$13 million. With the tremendous assistance of the Assignee's accountant, the Assignee and his counsel spent a substantial amount of time analyzing claims against third parties and the recovery of these outstanding accounts. The Assignee's accountant prepared various analyses of transactions involving the Assignor which will lead to the recovery of assets. The forensic work performed by the Assignee's accountant was essential to the Assignee's pursuit of accounts receivables.

12. The Assignee and his counsel also spent three days examining the designated representative of the Assignor in accordance with the Assignee's responsibilities pursuant to Florida Statute. Both prior to and subsequent to this examination, the Assignee and his counsel

communicated regularly with creditors holding substantial claims against the Assignor. The Assignee's counsel relied heavily upon the forensic work performed by the Assignee's accountant in preparing for and taking this examination.

13. Because of the large and active creditor body in this case, the Assignee and his counsel spent time regularly communicating with creditors. There are numerous creditors with claims in excess of \$1 million who actively provide input, attend hearings and require case updates. Because this process is for the benefit of the estate's creditors, the Assignee and his counsel conscientiously respond to creditor requests.

**C. Application for Compensation and Reimbursement
Of Fees and Expenses for Assignee**

14. The Assignee is requesting an interim payment of \$65,000 which represents a monthly fee of \$15,000 ("Monthly Fee") for the Application Period. Prior the commencement of the assignment, the Assignee received a retainer in the amount of \$75,000. By this motion, the Assignee seeks approval of fees and authorization to apply the retainer against the fees earned, leaving a net retainer balance of \$10,000.

15. During the Application Period, the Assignee committed a substantial amount of time to this assignment proceeding. During the first three months of this case, the Assignee spent between 20 and 30 hours per week on matters relating to the administration of this estate. In addition, the Assignee's in-house accounting staff provided back-up assistance to the Assignee. If the Assignee was billing this estate at this standard hourly rate of \$275, the fee requested would be substantially greater than the Monthly Fee. At no point during the Application Period would the actual time invested by the Assignee equal less than the Monthly Fee (not even including the contribution offered by the Assignee's accounting staff).

**D. Application for Compensation and Reimbursement
Of Fees and Expenses for Assignee's Counsel**

16. Attached hereto as Exhibit "A" to this motion is the detailed time and expense report in support of this request for payment of fees and reimbursement expenses by Adorno &

Yoss LLP as counsel for the Assignee.¹ The fees earned and expense incurred by counsel for the Assignee in connection with this matter during the Application Period were in the amount of \$247,240.50 for attorney's fees and \$5,888.98 as costs, for a total sum of \$253,129.48. A&Y received a fee retainer in the amount of \$73,500, which shall be applied to the balance of the fees and costs requested herein. By this motion, the Assignee seeks approval of the fees earned and costs incurred and authorization to apply the retainer against the fees earned, leaving a net fee balance due of \$173,740.50 and reimbursement of costs due in the amount of \$5,888.98, for a total of \$179,629.48.

17. The Assignee's counsel provided the Assignee with advice and counsel on all legal issues which have arisen in this case, as well as providing to the Assignee on his statutory duties. As discussed elsewhere in this application, counsel for the Assignee worked closely with the Assignee on all legal issues concerning the liquidation of assets, drafts of numerous motions either requesting the Court's authority to proceed in a certain manner or in compliance with the Assignee's statutory duties. Counsel attended numerous hearings, communicated with numerous creditor constituents, analyzed and provided advice concerning numerous litigation matters, conducted an extensive statutory examination, successfully negotiated on the Assignee's behalf with landlords in Miami, New York City and Los Angeles. Advised the Assignee of significant issues relating to the Auction, successfully negotiated resolution of a settlement with Tricon to permit the sale of the estate's assets to go forward. Since the beginning of this case, counsel for the Assignee has been called upon to assist the Assignee with matters on a daily basis.

¹ The detailed time and expense report is voluminous. In the interest of conserving the estate's resources, counsel for the Assignee will provide this report only upon request by any party in interest. This report is attached to the original motion on file with this Court.

**E. Application for Compensation and Reimbursement
Of Fees and Expenses for Assignee's Accountant**

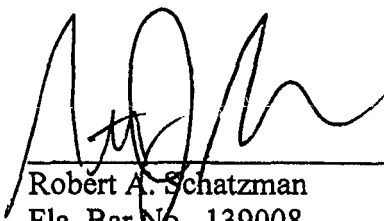
18. Attached hereto as **Exhibit "B"** to this motion is the detailed time and expense report in support of this request for payment of fees and reimbursement of expenses by Kapila & Company ("Kapila & Company"), as Accountants for the Assignee.² The fees earned and expenses incurred by the accountant for the Assignee in connection with this matter during the Application Period were in the amount of \$70,340.00. The Assignee's accountant did not receive a retainer. The Assignee's accountants prepared numerous and extensive analyses which have allowed the Assignee and his counsel to determine whether claims exist against third parties. These analyses have also allowed the Assignee to better understand the transactions between the Assignor and the related entities and more effectively pursue the collection of accounts receivable. The Assignee's accountant also preformed extensive tests on the Assignee's books and records by comparing their accuracy to banking records and source documents. From the detail work preformed, the Assignee has been able to draw many conclusions concerning the Assignor's business and focus on those areas in which the Assignee believe will create the greatest value to creditors.

^{2 2} The detailed time and expense report is voluminous. In the interest of conserving the estate's resources, counsel for the Assignee will provide this report only upon request by any party in interest. This report is attached to the original motion on file with this Court.

WHEREFORE, the Assignee, Kenneth A. Welt, respectfully requests that the Court enter an order, after final hearing upon notice to all creditors pursuant to Florida Statutes §727.114(2), 727.108(6) and 727.109(c)(8), providing that (a) the Assignee's motion for payment of interim fees and costs be approved in the manner set forth herein and (b) for such further relief as to the Court deems just and proper.

Dated this 8th day of May, 2007.

ADORNO & YOSS LLP



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