

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

MEMORANDUM

September 1, 2009

To: Official Committee of Unsecured Creditors (the “Committee”) of Muzak Holdings LLC, *et al.* (the “Debtor”)

From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)

Re: **Summary of Pleadings Scheduled for the Hearings on September 8, 2009 and September 18, 2009**

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**SEPTEMBER 8, 2009 HEARING**

1. **“Lease Motion” – Motion of the Debtors for Entry of an Order (A) Authorizing the Debtors to Assume or Amend and Assume Certain Unexpired Leases of Nonresidential Real Property, (B) Setting Cure Amounts with Respect Thereto and (C) Extending the Time Period within which the Debtors Must Assume or Reject Certain Unexpired Leases of Nonresidential Real Property**

By the Lease Motion, the Debtors seek (a) authority to assume, or amend and assume certain unexpired leases of nonresidential real property (the “Assumed Leases”); (b) approve the cure amounts listed with respect to each of the Assumed Leases (the “Cure Amounts”); and (c) extend the time period within which the Debtors must assume or reject certain of the Assumed Leases (the “Extended Leases”) in accordance with the terms of stipulations between the applicable Debtor and lessor (the “Stipulations”).

The Debtors seek to assume a majority of their real property leases, contending that assumption of the Assumed Leases will enable them to maintain a presence in various business territories and effectively provide services to customers. The Debtors assert that the Assumed leases provide a variety of necessary and competitively priced benefits to the Debtors’ estates, including (i) strategically located offices to provide technical services to clients throughout the country; (ii) necessary office space for the Debtors’ continued management and sales operations; (iii) warehouse and storage space for the Debtors’ equipment; and (iv) costs saved by avoiding burdensome relocations. The Debtors note that the deadline for assumption or rejection of the Assumed Leases is September 10, 2009 (the “Assumption Deadline”) and request authority to assume certain of the Assumed Leases that would otherwise be deemed rejected after the Assumption Deadline.

The Debtors state that they negotiated more favorable terms for certain of the Assumed Leases in return for extending the lease obligations associated with such leases. The Debtors contend that the new favorable terms support the assumption of the amended Assumed Leases. The Debtors

Official Committee of Unsecured Creditors of Muzak Holdings LLC, *et al.*

October 12, 2009

Page 2

also assert that they do not owe any Cure Amounts for the Assumed Leases because they were current on all payments owed under the Assumed Lease as of the petition date, February 20, 2009, and have continued to make regular payments in the ordinary course of business.

The Debtors ask the Court to further extend the time period to assume or reject the Extended Leases because the Debtors believe that more favorable terms may be available with respect to such Extended Leases. The Debtors believe additional time to negotiate with the applicable landlords and explore the marketplace for alternatives would be beneficial to their estates. Accordingly, the Debtors posit that the lessors to the Extended Leases have, or prior to the Assumption Deadline will have, each provided a Stipulation pursuant to which the lessor consents to extend the time period in which the applicable Debtor must assume or reject such lease. The Debtors state that, with such Stipulations, they will have obtained the necessary consent of each lessor to extend the Assumption Deadline for the Extended Leases.

**2. “Assumption Motion” – Motion of the Debtors for Entry of an Order (a) Authorizing the Debtors to Assume Certain Unexpired Leases of Nonresidential Real Property and (b) Setting Cure Amounts with Respect Thereto**

By the Assumption Motion, the Debtors seek entry of an order (i) authorizing the Debtors to assume three leases (the “Leases”) of real property in the Washington, DC, Chicago, and St. Louis areas, respectively (the “Lease Territories”), and (ii) finding that the Debtors do not owe any cure amounts with respect to the Leases. The Leases will expire on: (i) July 31, 2011 for Washington, DC; (ii) January, 31, 2011 for Chicago; and (iii) March 31, 2011 for St. Louis.

The Debtors assert that the Leases enable them to provide sales, installation, and support services to their clients throughout the Lease Territories. The Debtors believe that the Leases provide benefits to the Debtors’ estates, including, strategically located office space and warehouse space as well as cost savings by avoiding relocations. Moreover, the Debtors assert that no cure payments are necessary because there are no outstanding prepetition amounts due under the Leases and all payments due under the Leases are current.

**SEPTEMBER 18, 2009 HEARING**

**1. “Home Office Lease Motion” – Motion of the Debtors for Entry of an Order Authorizing the Debtors to Amend and Assume an Unexpired Lease of Nonresidential Real Property with Lakemont Industrial Holding Company and Setting the Cure Amount with Respect Thereto**

By the Home Office Lease Motion, the Debtors seek entry of an order authorizing the Debtors to amend and assume an unexpired lease (the “Home Office Lease”) for the Debtors’ corporate

Official Committee of Unsecured Creditors of Muzak Holdings LLC, *et al.*

October 12, 2009

Page 3

headquarters, located at 3318 Lakemont Boulevard, Fort Mill, South Carolina, (the “Home Office”), with Lakemont Industrial Holding Company (“Lakemont”). The Debtors submit that the Home Office consists of approximately 100,000 gross square feet and functions as the “nerve center” of the Debtors’ business operations.

On August 27, 2009, the Debtors and Lakemont entered into a fourth amendment to the Home Office Lease (the “Fourth Amendment”) containing the following salient terms:

- Extension of Home Office Lease Term: The term has been extended for six (6) months, from August 31, 2019 to February 29, 2020.
- Free Months of Rent: The Debtors have secured ten (10) months of free rent over the term of the amended Home Office Lease.

The Debtors maintain that the Home Office Lease Motion satisfies the business judgment because (i) the Fourth Amendment provides the Debtors with ten (10) months of free rent in exchange for extending the lease term by only six (6) months, (ii) the Home Office is critical to the operation of the Debtors’ businesses, and (iii) absent assumption of the Home Office Lease, the lease will be deemed rejected. The Debtors submit that there are no outstanding defaults and, therefore, they do not owe any cure amounts.

**2. “KPMG Application” – Debtors’ Application for Entry of an Order Authorizing the Employment and retention of KPMG LLP as Accounting and Tax Advisor for the Debtors and Debtors in Possession *Nunc Pro Tunc* to July 27, 2009**

By the KPMG Application, the Debtors request entry of an order authorizing the employment and retention of KPMG LLP (“KPMG”) as accounting and tax advisor for the Debtors, *nunc pro tunc* to July 27, 2009, and in accordance with the terms set forth in that certain engagement letter between the Debtors and KPMG dated July 29, 2009 (the “Engagement Letter”).

***Services***

According to the KPMG Application, the Debtors seek to retain KPMG to provide accounting, financial reporting and tax advisory services, including, but not limited to, the following:

- Assistance in the preparation of the Debtors’ disclosure statement and plan of reorganization;
- Support in the claims reconciliation process;
- Assistance with planning and analysis relating to the Debtors’ emergence from chapter 11;

Official Committee of Unsecured Creditors of Muzak Holdings LLC, *et al.*

October 12, 2009

Page 4

- Assistance in the preparation of financial statements and footnotes for the period of emergence from chapter 11;
- Assistance with reviewing and documenting changes in accounting policies;
- Analysis and advice regarding tax attributes and treatment, including cancelled debt income and net operating loss carry forwards; and
- Assistance with other tax items at the request of the Debtors.

At the request of the Debtors, KPMG may render additional services deemed appropriate and necessary to benefit the Debtors' estates.

### ***Compensation***

According to the KPMG Application, KPMG intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court. The Debtors have agreed to compensate KPMG for professional services rendered at its normal and customary hourly rates, as follows:

<b>Title</b>	<b>Hourly Rate</b>
Partners and Managing Directors	\$600-650
Directors	\$500-550
Managers	\$400-450
Senior Associates	\$250-350
Associates	\$150-220
Para-Professionals	\$100

KPMG also will seek reimbursement for reasonable and necessary expenses incurred in connection with the services rendered to the Debtors. Further, as part of the overall compensation payable to KPMG, the Debtors have agreed to certain indemnification obligations. The Debtors submits that the indemnification provisions contained in the Engagement Letters are customary and reasonable for tax advisory engagements in chapter 11 cases.