

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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In re:

SOUTHEAST WAFFLES, LLC  
dba WAFFLE HOUSE,  
DEBTOR.

Case No. 3:08-bk-07552  
Chapter 11 Case  
Judge Lundin

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**OBJECTION DEADLINE: SEPTEMBER 15, 2008**  
**HEARING DATE: OCTOBER 7, 2008, 9:00 A.M. CDST, COURTROOM TWO,**  
**CUSTOMS HOUSE, 701 BROADWAY, NASHVILLE, TENNESSEE**

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**UNITED STATES TRUSTEE'S OBJECTION TO APPLICATION TO APPROVE  
EMPLOYMENT OF LATTIMORE|BLACK|MORGAN & CAIN, PC AS  
FINANCIAL ADVISORS FOR DEBTOR (DOCKET NO. 20)**

The United States Trustee for the Middle District of Tennessee, Region 8, ("UST"), in furtherance of his duties under 28 U.S.C. § 586, hereby objects to the Application to Approve Employment of Lattimore Black Morgan & Cain, P.C. ("LBMC") filed August 25, 2008, as financial advisors for the Debtor in connection with the bankruptcy case. In support of this Objection, the UST states as follows:

**BACKGROUND**

1. On August 25, 2008, the Debtor filed a voluntary petition for relief under chapter 11, Title 11, United States Code ("Bankruptcy Code").
2. No Official Committee of Unsecured Creditors has been appointed in this case.
3. The Debtor continues to operate its business as a debtor-in-possession in accordance with 11 U.S.C. § 1107(a) and § 1108.
4. A motion for appointment of a trustee is scheduled for hearing on October 1, 2008. A motion for appointment of an examiner is also scheduled for hearing on October 1, 2008.

5. On August 25, 2008, the Debtor filed an Application to Approve Employment of Lattimore Black Morgan & Cain, P.C. as financial advisor to the Debtor. LBMC will provide analytical and restructuring alternatives to the Debtor as well as assist the Debtor with tax, operational, strategic advice; and broad financial and accounting services in connection with the bankruptcy case. In the past, LBMC has served as the Debtor's auditor and prepared independent auditors' reports.

#### OBJECTION

6. The UST objects to the retention of LBMC pursuant to § 327(a) of the Bankruptcy Code because LBMC may not be "disinterested" in accordance with 11 U.S.C. § 101(14) and, therefore, may have an interest adverse to the estate.
7. Specifically, the UST has concerns with the testimony provided by James L. Shaub, II, CEO of the Debtor-in-possession, at the interim cash collateral hearing September 9, 2008, addressing the Independent Auditors' Report for Southeast Waffles, LLC as of May 31, 2007 and June 1, 2006.
8. During Mr. Shaub's cross-examination, the witness did not refute Accrued expenses and other current liabilities as shown on the audited Statement of Assets, Liabilities and Members' Deficit that were understated by approximately \$1 million due to unrecorded past due payroll taxes.
9. In light of the \$1 million tax deficit, any net earnings indicated on the Statements of Revenues, Expenses and Changes in Members' Deficit would be significantly impacted and reduced to a loss. Accordingly, the Independent Auditors' Report prepared by LBMC for Southeast Waffles, LLC as of May 31, 2007 and June 1, 2006 maybe flawed and inaccurate.

10. Upon information and belief, LBMC has provided Southeast Waffles, LLC a number of Independent Auditors' Reports.
11. According to Mr. Shaub's testimony, the Debtor suffered from previous tax withholding problems in or around 2005.
12. Given Mr. Shaub's testimony, coupled with the previous pre-petition tax problems of the Debtor, and the Independent Auditors' Reports prepared for Southeast Waffles, LLC, the UST submits that the estate may have a cause of action against LBMC.
13. The estate, and someone independent from LBMC, should further examine and investigate the Independent Auditors' Reports for Southeast Waffles, LLC as of May 31, 2007 and June 1, 2006 to determine to what extent LBMC represents an interest adverse to the estate.

WHEREFORE, the UST requests the Court not approve the retention of Lattimore Black Morgan & Cain, P.C. at this time; and for such other relief as is necessary.

RICHARD F. CLIPPARD  
UNITED STATES TRUSTEE, REGION 8  
Middle District of Tennessee

Dated: September 15, 2008

/s/ Teresa C. Azan (TN BPR #14075)  
TERESA C. AZAN  
Trial Attorney for the U.S. Trustee  
Office of the United States Trustee  
UNITED STATES DEPARTMENT OF JUSTICE  
318 Customs House, 701 Broadway  
Nashville, TN 37203  
Tel: (615) 736-2254 (ext. 229)  
Fax: (615) 736-2260  
Email: [teresa.azan@usdoj.gov](mailto:teresa.azan@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the attached document was sent (1) via electronic notice to parties who are ECF Filers and Consenting Users and (2) via electronic notice to ECF Filers and Consenting Users who represent parties on September 15, 2008.

/s/ Teresa C. Azan (TN BPR #14075)  
TERESA C. AZAN

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