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9 Attorneys for Heller Ehrman LLP,
Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**EX PARTE APPLICATION FOR
ORDER SHORTENING TIME FOR
HEARING ON MOTION FOR
APPROVAL OF COMPROMISE
RELATING TO RETENTION OF
ORRICK FIRM IN THE LRI MATTER**

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19 Date: May 8, 2009 [Requested]
Time: 10:00 a.m. [Requested]
Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
20
21 Judge: Honorable Dennis Montali

22
23 **TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY**

24 **JUDGE:**

25 Pursuant to Bankruptcy Local Rule 9006-1 for the Northern District of California, Heller
26 Ehrman, LLP (the "Debtor"), the debtor and debtor in possession in the above-captioned case,
27 hereby applies (the "Application") for an Order Shortening Time for a hearing on the Debtor's
28 *Motion for Approval of Compromise Relating to Retention of Orrick Firm in the LRI Matter* (the

1 “Motion”) such that the Motion may be heard on Friday, May 8, 2009 at 10:00 a.m.

2 This Application is based upon the matters set forth herein and in the accompanying
3 Declaration of John D. Fiero (the “Fiero Declaration”) filed concurrently herewith, as well as on the
4 matters set forth in the Motion and its accompanying Declaration of Jonathan Hayden (the “Hayden
5 Declaration”).

6 In further support of this Application, the Debtor states as follows:

7 1. **Necessity For Order Shortening Time.**

8 As is set forth in greater detail in the Motion and the Hayden Declaration, the Debtor, the
9 Official Committee of Unsecured Creditors (the “Committee”) and Orrick Herrington & Sutcliffe
10 (“Orrick”), among others, have entered into that certain Confidential Agreement Regarding Fees and
11 Costs and Mutual Release (the “Settlement Agreement”) described in the Hayden Declaration. The
12 Settlement Agreement resolves potential disputes between this estate and Orrick with respect to the
13 successor representation of Resource Investments, Inc. and Land Recovery, Inc. (collectively,
14 “LRI”) in connection with that certain litigation styled Resource Investments, Inc. and Land
15 Recovery, In. v. United States of America, No. 98-419L (the “Lawsuit”), which is currently pending
16 in the United States Court of Claims, including disputes related to the respective rights of this estate
17 and Orrick with respect to contingency fees earned and to be earned in the future on account of the
18 Lawsuit. The Settlement Agreement is the product of a lengthy, arm’s-length negotiation between
19 and among the Debtor, the Committee and Orrick, among others, and, as the Motion makes clear, it
20 provides substantial benefit to the estate. The Debtor and the Committee each support the
21 Settlement Agreement and the relief set forth in the Motion.

22 As the Motion and the Settlement Agreement also state, the Lawsuit has reached a critical
23 phase in the litigation process, in that the parties to the Lawsuit are required to file a pre-trial
24 stipulation (the “Pre-trial Stipulation”) by no later than Friday, May 29, 2009, less than one month
25 from now. The Pre-trial Stipulation is a complex and lengthy document, the careful preparation of
26 which is integral to preserving the rights of LRI in the Lawsuit, such that LRI would be significantly
27 prejudiced if they are not able to engage successor counsel in time to permit that counsel effectively
28 to participate in the drafting of the Pre-trial Stipulation. Orrick, as proposed successor counsel to

1 LRI, understandably desires to have certainty with respect to the resolution of potential disputes
2 between it and the estate relating to the Lawsuit prior to accepting the representation of LRI and
3 committing significant resources to the Lawsuit.

4 Bankruptcy Local Rule 9014-1(3)(A) would ordinarily require at least twenty (20) days
5 notice of an opportunity for hearing on the Motion. On that schedule, this Court could not hear and
6 determine the Motion prior to Thursday, May 21, 2009. The Debtor submits that such a schedule
7 would not permit Orrick, or any other proposed successor counsel, effectively to represent LRI in the
8 Lawsuit, and would result in a loss of the substantial benefits to the estate preserved in the
9 Settlement Agreement.

10 There have been no prior requests to modify the time requirements with respect to the
11 Motion.

12 For each of these reasons, the Debtor respectfully submits that it would be appropriate, and in
13 the best interests of the estate, to shorten time for a hearing on the Motion so that the hearing may be
14 set no later than Friday, May 8, 2009.

15 2. **Effect Of The Requested Time Modification.**

16 If this Application is granted, the period to notice a hearing on the Motion will be shortened
17 to seven days, so that that a hearing would be held on May 8, 2009 at 10:00 a.m. The shortened time
18 requested by this Application will not interfere with any other proceedings in this bankruptcy case.
19 To the contrary, shortening time will make it possible for Debtor to obtain the substantial benefits of
20 the Agreement.

21 3. **Proposed Schedule For Opposing The Motion.**

22 Consistent with the Court's preferences, the Debtor proposes that any opposition or response
23 to the Motion may be made orally at the hearing, if the opposing party so chooses.

24 4. **Communications With Other Interested Parties.**

25 This Application enjoys the support of the Committee and Orrick, of course. As set forth in
26 the Fiero Declaration, on May 1, 2009, John Fiero, counsel to the Debtor, left a message for Minnie
27 Loo at the Office of the United States Trustee, and requested a return phone call with consent to the
28 relief set forth in this Application. No return phone call has yet been received by Debtor's counsel.

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5. **Notice.**

To maximize the extent of notice, concurrent with the filing of this Application, on May 1, 2009, the Debtor will serve this Application and its supporting papers (with a copy of the Motion and its supporting papers) by electronic mail, facsimile, or overnight delivery upon the Office of the United States Trustee and all parties requesting special notice in this case.

Promptly after the Court considers this Application, the Debtor will serve notice of entry of the Court's order by electronic mail, facsimile, or overnight delivery upon the same parties

WHEREFORE, the Debtor respectfully requests that the Court grant this Application in its entirety and enter an Order:

1. Setting the hearing on the Motion for May 8, 2009 at 10:00 a.m.;
2. Providing that any opposition to the Motion may be made orally at the hearing; and
3. Directing the Debtor to serve notice of the entry of the order approving this

Application upon the Office of the United States Trustee and all parties requesting special notice in this case.

Dated: May 1, 2009

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero
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Miriam P. Khatiblou
Teddy M. Kapur
Attorneys for Heller Ehrman LLP,
Debtor and Debtor in Possession

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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:
14 Heller Ehrman LLP,
15 Debtor.

Case No.: 08-32514

Chapter 11

**DECLARATION OF JOHN D. FIERO
IN SUPPORT OF EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME FOR HEARING
ON MOTION FOR APPROVAL OF
COMPROMISE RELATING TO
RETENTION OF ORRICK FIRM IN
THE LRI MATTER**

Date: May 8, 2009 [Requested]
Time: 10:00 a.m. [Requested]
Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
Judge: Honorable Dennis Montali

23
24 I, John D. Fiero, declare:

25 1. I am an attorney at law duly licensed to practice in the State of California and
26 admitted to practice before this Court and am a member of Pachulski Stang Ziehl & Jones, LLP,
27 counsel to Heller Ehrman, LLP, the debtor and debtor in possession herein. The following is true of
28 my personal knowledge and, if called as a witness, I could and would testify competently thereto.

1 2. The Debtor has filed the following motion for which it seeks expedited consideration:
2 *Motion for Approval of Compromise Relating to Retention of Orrick Firm in the LRI Matter* (the
3 “Motion”).

4 Reasons for Shortening Time

5 3. The Debtor, the duly-appointed Official Committee of Unsecured Creditors (the
6 “Committee”) in this case, and Orrick Herrington & Sutcliffe LLP (“Orrick”), among others, have
7 entered into that certain Confidential Agreement Regarding Fees and Costs and Mutual Release (the
8 “Settlement Agreement”) described in the Declaration of Jonathan Hayden submitted concurrently
9 with the Motion. The Settlement Agreement resolves potential disputes between the Debtor, the
10 Committee and Orrick with respect to the successor representation of Resource Investments, Inc. and
11 Land Recovery, Inc. (collectively, “LRI”) in connection with that certain litigation styled Resource
12 Investments, Inc. and Land Recovery, In. v. United States of America, No. 98-419L (the “Lawsuit”),
13 which is currently pending in the United States Court of Claims, including disputes related to the
14 respective rights of the estate and Orrick with respect to contingency fees earned and to be earned in
15 the future on account of the Lawsuit.

16 4. The Settlement Agreement is the product of a lengthy, arm’s-length negotiation by
17 and among the Debtor, the Committee and Orrick, among others, and it provides substantial benefit
18 to the estate. The Debtor and the Committee each support the Settlement Agreement and the relief
19 set forth in the Motion.

20 5. The Lawsuit has reached a critical phase in the litigation process, in that the parties to
21 the Lawsuit are required to file a pre-trial stipulation (the “Pre-trial Stipulation”) by no later than
22 Friday, May 29, 2009, less than one month from now. The Pre-trial Stipulation is a complex and
23 lengthy document, the careful preparation of which is integral to preserving the rights of LRI in the
24 Lawsuit, such that LRI would be significantly prejudiced if they are not able to engage successor
25 counsel in time to permit that counsel effectively to participate in the drafting of the Pre-trial
26 Stipulation. Orrick, as proposed successor counsel to LRI, understandably desires to have certainty
27 with respect to the resolution of potential disputes between it and the estate relating to the Lawsuit
28 prior to accepting the representation of LRI and committing significant resources to the Lawsuit.

1 6. Bankruptcy Local Rule 9014-1(3)(A) would ordinarily require at least twenty (20)
2 days notice of an opportunity for hearing on the Motion. On that schedule, this Court could not hear
3 and determine the Motion prior to Thursday, May 21, 2009. The Debtor submits that such a
4 schedule would not permit Orrick, or any other proposed successor counsel, effectively to represent
5 LRI in the Lawsuit, and would result in a loss of the substantial benefits to the estate preserved in the
6 Settlement Agreement.

7 Previous Time Modifications Related to the Motion

8 7. No prior modifications of the time periods related to the Motion have been sought or
9 agreed-upon.

10 The Effect of the Requested Time Modification

11 8. Granting the Application will shorten to seven days the notice period for responding
12 to the Motion.

13 Efforts Made to Speak to the Respondents

14 9. The Application enjoys the support of the Committee, which also supports the
15 shortened time sought in the Application. I called and left a voice mail message for Minnie Loo
16 regarding the Debtor's request, but did not hear back from her prior to filing this declaration.

17 I declare under penalty of perjury that the foregoing is true and correct and that this
18 declaration was executed this 1st day of May, 2009 at San Francisco, California.

19 /s/ John D. Fiero
20 John D. Fiero

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11 **NORTHERN DISTRICT OF CALIFORNIA**
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13 In re:
14 Heller Ehrman LLP,
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Case No.: 08-32514

Chapter 11

CERTIFICATE OF SERVICE

16 Date: May 8, 2009 [Requested]
17 Time: 10:00 a.m. [Requested]
18 Place: U. S. Bankruptcy Court
235 Pine Street, 22nd Floor
San Francisco, CA
19 Judge: Honorable Dennis Montali

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