

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

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APPEARANCES:

SIMPSON, THACHER & BARTLETT

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10 Broad Street

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Court considers herein the Second Application of Interim Compensation to Professor William L. Silber (“Professor Silber”) (“Second Application”). Professor Silber was appointed by Order of this Court on December 19, 1997, to provide expert analysis and testimony on behalf of Richard C. Breeden, as trustee in the consolidated estates of The Bennett Funding Group, Inc. (“Consolidated Estates”), in connection with an adversary proceeding commenced against, *inter alia*, L.I. Bridge Fund, LLC (“L.I. Bridge”). The Second Application seeks payment of professional fees in the amount of \$19,800 incurred during the period July 1998 through October

1998.<sup>1</sup> Originally scheduled for January 14, 1999, the Second Application came on for a hearing before the Court on January 28, 1999, in Utica, New York, at which time the Court approved a provisional award of \$15,000 in fees,<sup>2</sup> and the Second Application was adjourned to February 11, 1999, and again to February 25, 1999, in order to allow Professor Silber to provide an affidavit responding to the objection interposed by the United States Trustee (“UST”) on January 11, 1999.

### JURISDICTIONAL STATEMENT

The Court has core jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (b)(2)(A) and (O).

### FACTS AND ARGUMENTS

The Trustee commenced an adversary proceeding on September 27, 1996, seeking to avoid the sale of a warrant for 320,000 shares of stock in AmeriData Technologies, Inc. to L. I. Bridge in exchange for \$350,000 in cash. Less than four months after the sale, L.I. Bridge exercised the warrant and sold the underlying stock for approximately \$2.14 million. At the time of the trial of the adversary proceeding, the monies were being held in escrow by the other co-

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<sup>1</sup> According to the Statement of Hours Worked, the actual fees for which Professor Silber seeks payment involved services rendered between July 6, 1998, and July 28, 1998, totaling 21.5 hours, as well as 14.5 hours of services rendered September 28, 29 and October 1, 1998. The latter includes 7.0 hours of courtroom testimony.

<sup>2</sup> The Court signed an Order on February 8, 1999, approving interim compensation to Professor Silber in the amount of \$15,000.

defendant, European American Bank.

Professor Silber testified at the trial on October 1, 1998, providing expert testimony on the value of the AmeriData Warrant, concluding that it was worth between \$1 million and \$1.2 million on February 16, 1996, and was worth between \$1.3 million and \$1.4 million on March 21, 1996, based on his finding on the “binomial” model of option valuations.<sup>3</sup> According to the Second Application, he “developed various models to perform a valuation of the AmeriData Warrant, formulated an opinion as to the value of the AmeriData Warrant under various scenarios, prepared an expert report, and testified at trial as to the value of the AmeriData Warrant for the purpose of establishing that less than equivalent value was provided to the Debtors in exchange for the AmeriData Warrant.” *See* Second Application at ¶ 3.

In his objection, filed January 11, 1999, the UST asserts that the Second Application does not comply with the UST guidelines in that it does not provide “sufficient subject matter and time detail in order to determine the reasonableness of his request. \* \* \* Additionally, applicant’s time records appear to be rounded in hours, not in one-tenth increments . . . .”<sup>4</sup>

On February 22, 1999, Professor Silber filed an affidavit, sworn to on February 19, 1999, in connection with the UST’s objections to his Second Application. In it he explained that he “generally work[s] in one-half hour increments. To the extent that my time expended with respect

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<sup>3</sup> Bennett Management and Development Corporation, one of the consolidated debtors herein, conveyed the AmeriData Warrant to L.I. Bridge on March 21, 1996, and it was that conveyance which the Trustee sought to avoid as fraudulent.

<sup>4</sup> The UST also expressed the belief that a fee of \$550 per hour was not a “reasonable or customary rate” for the services performed by Professor Silber. However, the Court notes that in the Trustee’s application seeking the appointment of Professor Silber as an expert witness, it was clearly stated that Professor Silber’s hourly rate was to be \$550. *See* Trustee’s Motion Authorizing Trustee to Retain Professor William L. Silber, filed December 2, 1997, at ¶ 6.

to a specific task exceeds a half hour increment, I round my time downward to the nearest half hour. In that regard, with respect to short tasks, including short telephone calls, I generally do not bill the client.”

### **DISCUSSION**

Rule 2016-1(a) of the Local Rules of Bankruptcy Practice for the U.S. Bankruptcy Court for the Northern District of New York provides that

[a]pplications for compensation shall comply with all requirements, including those related to format, outlined in FRBP 2016(a) and the United States Trustee Fee Guidelines.<sup>5</sup>

Rule 2016(a) of the Federal Rules of Bankruptcy Procedure simply requires that anyone seeking compensation for services “file an application setting forth a detailed statement of (1) the services rendered, time expended . . . and (2) the amounts requested.”

The United States Trustee Fee Guidelines provide that time and service entries be arranged by project categories and include a description of the project, setting forth its necessity and benefits to the estate. *See* 28 C.F.R. Part 58 Appendix at (b)(4)(iii)(A). Furthermore, time entries are to be kept in time periods of tenths of an hour.

In this case, the UST objects to Professor Silber’s mode of time keeping. Certainly, a review of his Statement of Hours Worked falls short of what the Court normally expects of professionals seeking compensation for their services. For example, he identifies two hours spent

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<sup>5</sup> The Guidelines are reprinted in 28 C.F.R. Part 58, Appendix and are also available at [www.usdoj.gov/ust/fee0206.htm](http://www.usdoj.gov/ust/fee0206.htm).

in examining the deposition of L.I. Bridge's expert, Andrew Beaurline (Beaurline"), a member of the corporate finance department of Sucsy, Fisher & Co., a Chicago-based investment bank. Beaurline testified at the trial that the AmeriData Warrant was worth between \$300,000 and \$400,000 in mid-February 1996 and its value on March 21, 1996, was between \$450,000 and \$600,000. Professor Silber also indicates in his "Statement" that he also spent two hours reviewing Beaurline's report. Professor Silber identifies a total of six hours spent revising and redrafting his expert report and four hours preparing testimony with the Trustee's attorneys. In addition, he includes seven hours spent in "courtroom testimony."

The Court feels strongly that in most situations specificity is essential if the Court and other parties reviewing the fee applications are to have an understanding of the necessity of the work performed by the professionals. Not all efforts on the part of professionals ultimately benefit the estate. Nonetheless, the courts have always been cognizant that any determination of benefit cannot be rendered in hindsight.

The matter of Professor Silber's compensation, however, cannot be considered in a vacuum and, in the view of the Court, is entitled to some flexibility given the ultimate outcome of the litigation. The Second Application provides background concerning the nature of the litigation and Professor Silber's role in connection with it. Looking at the tasks performed by Professor Silber, it is clear that they do not lend themselves to time periods of tenths of an hour. Would the UST have Professor Silber make 20 entries in one tenth increments for his examination of the Beaurline deposition over a period of two hours and 15 entries for his discussions with members of the staff of Cornerstone Research, Inc. over a period of one and a half hours? The time for which he seeks compensation was not spent in writing letters or making telephone calls, activities

which lend themselves to tenths of an hour. Instead, it appears that his activities in preparation for the litigation were both focused and concentrated on his valuation analysis over a limited time period. For instance, over the three week period between July 6, 1998, and July 28, 1998, he devoted 21.5 hours to research, discussion and preparation of his report and his testimony at trial. His next time entries were made just prior to the trial on September 28, 1998, and September 29, 1998, when he identifies five hours spent reviewing Beaurline's report and discussing the reports with the Trustee's attorneys. Finally, on October 1, 1998, he spent 9.5 hours in preparing and giving his testimony at the trial. It was that testimony which ultimately resulted in a favorable decision by this Court on February 22, 1999. *See In re Bennett Funding Group, Inc.*, 232 B.R. 565 (Bankr. N.D.N.Y. 1999). Based on his testimony, the Court concluded that the sale price of the AmeriData Warrant was "far less than its intrinsic value of \$584,000 on March 21" and ordered that the funds held in escrow by European American Bank totaling in excess of \$2.1 million be turned over to the Consolidated Estates. *See id.* at 573.

Clearly, his services benefitted the Consolidated Estates. He is now seeking a total of \$19,800 in compensation for those services. Certainly, this amount appears more than reasonable given the ultimate outcome. Normally in reviewing fee applications, the benefit to the estate and the reasonableness of the services provided are less than clearcut. In those circumstances, it is essential that the party seeking compensation provide the Court and other interested parties with specifics, including detailed and itemized time records. In this case, the Court concludes that the statement provided by Professor Silber, as well as the favorable outcome resulting from his services, provides sufficient specifics to warrant an award of \$19,800 for the time period between July 1998 and October 1998.

Based on the foregoing, it is hereby

ORDERED that payment of the remaining balance of allowed fees in the amount of \$4,800 shall be made to Professor Silber from unencumbered assets of the Consolidated Estates.

Dated at Utica, New York

this 10th day of January 2003

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge