

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

ESTHER M. ROGERS

CASE NO. 02-65455

Debtor

Chapter 7

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APPEARANCES:

JAMES C. COLLINS, ESQ.  
Chapter 7 Trustee  
P.O. Box 713  
Whitney Point, NY 13862-0713

RAPPAPORT & RAPPAPORT  
Special Counsel to Trustee  
20 Hawley Street  
East Tower, Suite 200  
Binghamton, NY 13901

MARK L. RAPPAPORT, ESQ.  
Of Counsel

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

**MEMORANDUM-DECISION AND ORDER**

On March 31, 2005, the Court heard argument on the Application of James C. Collins, Esq., as chapter 7 Trustee (“Collins” or “Trustee”), for Compensation and Notice of Final Meeting of Creditors on the Final Account and Report of Trustee (“Final Application”). The Final Application is dated December 15, 2004, and was filed with the Clerk of this Court on February 28, 2005. The Final Application also requested attorney’s fees payable to Collins, who was appointed as attorney to the Trustee (“Trustee’s Attorney”) pursuant to an Order of the Court, dated May 20, 2004.

The Final Application seeks, *inter alia*, approval of the chapter 7 Trustee’s Final Report and Proposed Distribution to creditors. It also seeks approval of compensation to the Trustee in

the sum of \$13,194.70, plus expenses of \$271.73, pursuant to § 326(a) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”) and compensation to the Trustee’s Attorney in the sum of \$9,098.50 pursuant to Code § 330. The Final Application was served on all creditors as well as Esther Rogers (the “Debtor” or “Ms. Rogers”), Debtor’s counsel, Mark Rappaport, Esq. (“Rappaport”), and the U.S. Trustee. Objections to the Final Application were filed by the Debtor and Rappaport (hereinafter jointly referred to as the “Objectants”) on March 28 and 29, 2005, respectively. On March 30, 2005, the Trustee filed a Response to the Objections.

### **JURISDICTIONAL STATEMENT**

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

### **FACTUAL BACKGROUND AND DISCUSSION**

The Final Application indicates that Collins, in the course of his trusteeship, processed total receipts of \$430,698.08, disbursed a total of \$335,850.64, and has a balance on hand of \$94,847.44 *See* Final Application at 3. The Final Application also contains the Trustee’s Computation of Compensation allowable pursuant to Code § 326(a). *See id.* at 8.

Following oral argument on March 31, 2005, it is apparent that the thrust of the Objections to the Final Application focus on the Trustee’s alleged refusal to disburse funds to the Debtor that were clearly in excess of any amount necessary to pay all prepetition creditors in full,

the filing of allegedly frivolous motions designed to frustrate the Debtor and increase the Trustee's Attorney's fees, and the inclusion of blocks of time that were either unnecessary or excessive given the experience of Collins in the handling of similar matters over many years.

The Debtor contends that she suffered serious injuries in a prepetition motor vehicle accident as the result of which she was able to recover \$430,000 postpetition. After payment of her creditors in full, she can find no plausible explanation for why the Trustee in her bankruptcy case should receive some \$22,000 in compensation. The Debtor argues that the Trustee's compensation should be computed on no more than the \$25,000 he will distribute to her prepetition creditors. She is particularly critical of the Trustee's actions in attempting to reclassify her home mortgage which she asserts caused her "grief" as that debt was in no way connected to her personal injury claim.

The Trustee, in his response to the Objections, paints a vastly different picture of the Debtor's case, asserting that, in the first instance, his former special counsel, Alan Zalbowitz, Esq., ("Zalbowitz"), who had been retained by the Trustee pursuant to Court order in early 2003 to pursue the Debtor's personal injury claim on the Trustee's behalf in state court, failed to inform him as to the status of the claim until April of 2004. At that point, Zalbowitz contacted the Trustee and advised that he could no longer handle the Debtor's claim and that he had engaged Rappaport to substitute for him. The Trustee asserts that he advised Zalbowitz that in order for Rappaport to take over representation on the personal injury claim, certain affidavits and a proposed order would have to be prepared and submitted first to the U.S. Trustee and then to the Court. The Trustee also contends that he advised Zalbowitz that no resolution of the personal injury claim could be effected without first obtaining authorization from this Court.

Collins alleges that, notwithstanding his advice to his special counsel, the next communication he received from Zalbowitz was in early May 2004, when he was advised that the personal injury claim had, in fact, been settled for the sum of \$430,000, and that Rappaport had received the funds and deposited them in his trust account.

Collins further alleges that when he contacted Rappaport to advise him to turn over the settlement funds, he was informed that Rappaport had not yet collected the funds but that when they were collected he would turn over to the Trustee only enough of the funds to pay the Debtor's creditors, some \$22,000, and retain the balance of the funds in order to pay professional fees and remit the balance to the Debtor. Collins says he then contacted Zalbowitz, who was presumably still acting as special counsel, and advised him that unless Rappaport turned over the personal injury proceeds to Collins, he would file a turnover motion with regard to the proceeds and seek to surcharge Rappaport. The Trustee asserts that either that same day or the next he received a phone call from Rappaport indicating that the funds had cleared and that he would deliver a check drawn to the Trustee's order in the sum of \$430,000.<sup>1</sup>

The case docket reveals that Rappaport actually turned over the proceeds on or about the end of May 2004, after which the Trustee filed the following motions:

1. Motion to settle the Debtor's personal injury action for the sum of \$430,000, filed June 11, 2004.

Interestingly, Rappaport actually filed partial opposition to the Trustee's motion which, in essence, requested that the Trustee be directed to turn over approximately \$250,000 of the settlement proceeds to the Debtor. On the issue of why he had assumed representation of the

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<sup>1</sup>The case docket indicates that an Order granting an application to employ Rappaport as successor special counsel was finally granted on August 18, 2004.

Debtor in place of Zalbowitz without the knowledge or consent of the Trustee and, more importantly, the authorization of this Court, Rappaport opined that Zalbowitz had failed to advise him that Ms. Rogers was a chapter 7 debtor. Zalbowitz, for his part, filed an affidavit in support of Rappaport's position, acknowledging that he had failed to advise Rappaport of the Debtor's pending bankruptcy case when they executed a consent to change of attorneys on July 3, 2003, approximately nine months before Zalbowitz informed the Trustee that Rappaport had been substituted for him in the state court action.

2. Amended Motion filed July 26, 2004 seeking to settle the personal injury action and approving the legal fees and expenses of both Rappaport and Zalbowitz.

The Court signed an Order, dated September 13, 2004, which approved the settlement and authorized fees to Rappaport of \$94,778, plus expenses of \$3,000 and fees to Zalbowitz of \$47,389, plus expenses of \$500. The Order also directed the Trustee to pay all of the Debtor's prepetition medical bills and "to propose an immediate distribution to the Debtor of such proceeds as shall be unnecessary to pay all allowed claims in full and all administrative expenses in full."

3. Motion filed September 3, 2004, seeking to pay the Debtor the sum of \$150,000 of "the personal injury damage funds."

The Court signed an Order, dated September 27, 2004, which authorized the payment of \$150,000 to the Debtor.

4. Motion filed on October 12, 2004, seeking to reclassify the secured claim of Citifinancial in the amount of \$59,842.52 to a secured claim of \$39,000 and an unsecured claim of \$20,842.52.

In defense of his motion practice to re-classify the mortgage claim of Citifinancial, Collins argues that in order to insure that all unsecured creditors received a 100% payment on

their claims he had to “bifurcate” that claim. The motion was denied by an Order, dated December 13, 2004.

In addition to the foregoing Trustee motions, the Debtor filed a motion on October 19, 2004, seeking an order, *inter alia*, compelling the Trustee to pay all prepetition creditors, all prepetition medical providers, retain sufficient funds to pay the Trustee’s “Commissions/Fees” in a sum not to exceed \$5,000, and after payment of the foregoing, to turn over to the Debtor the balance of the funds being held by the Trustee. The Trustee opposed the motion and on November 3, 2004, the Court ordered the Trustee to pay to the Debtor an additional \$40,000, adjourning the balance of the motion to November 30, 2004. As indicated, the filing of the Trustee’s Final Report followed on February 28, 2005.

Rappaport has interposed specific objections to the time blocks contained in the contemporaneous time records of the Trustee’s Attorney as being “excessive and unreasonable,” especially in light of Collins’ experience as a case trustee. In this case, Rappaport’s Affidavit cites to specific examples of “excessive and unreasonable hourly charges” contained in the Trustee’s Attorney’s “Time Sheets” which he contends, generally, were either unnecessary or excessive given the Trustee’s and the Trustee’s Attorney’s significant experience in similar matters.

Before analyzing Rappaport’s objections, the Court believes it would be helpful to examine the applicable case law relevant to Code § 326(a). Courts uniformly hold that § 326(a) is not an entitlement section in that the formula set out in the statute does not mandate an award of compensation to a trustee by rigid application of that formula. *See In re Guido*, 237 B.R. 562, 564 (Bankr. E.D.N.Y. 1999). The formula simply allows for a calculation of maximum

compensation. *Id.* The bankruptcy court exercises its discretion in determining the actual amount to award as compensation which amount cannot exceed the statutory maximum. *See id.*; *In re Frost*, 214 B.R. 295, 297 (Bankr. S.D.N.Y.1997). In applying its discretion, a court is generally guided by the standards set out in Code § 330, though in many instances trustees do not maintain the necessary time records to rigorously apply that section. *Id.*

In a factually similar case involving a personal injury settlement which resulted in a surplus to the debtors, U.S. Bankruptcy Judge Carl Bucki in the Western District of New York expressed concerns with the fact that the trustee in that case had included in his Code § 326(a) calculation fees paid to special counsel attributable “to that portion of the recovery that the trustee will return to the debtors.” *In re Butts*, 281 B.R. 176, 177(Bankr. W.D.N.Y. 2002). In analyzing the trustee’s request for compensation, the court pointed out that “the fees of special counsel are allocable in part to the creation of a fund for creditors, and in part to the creation of a surplus. As to the former, the estate has clearly benefitted, but as to the latter, the allocated value of services by special counsel may inure largely to the benefit of the debtors” given the fact that the settlement award<sup>2</sup> was significantly greater than the sum of all claims in the case. *Id.* at 180. Ultimately, Judge Bucki calculated the trustee’s Code § 326(a) compensation by including fees paid to special counsel to the extent that the services resulted in monies that benefitted the estate. *Id.* at 181 n.2; *compare Guido*, 237 B.R. at 565-66 (declining to award the trustee any compensation based on monies disbursed to special counsel and to the worker’s compensation

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<sup>2</sup> The terms of the settlement remained confidential and, therefore, the exact amount of the award was not stated in the decision.

insurance carrier).<sup>3</sup>

This Court agrees with the analysis found in *Butts* and the approach utilized in calculating the maximum cap for the Trustee's compensation. As noted by Judge Bucki, "the allowance of commissions is to be determined by considerations that are specific to a particular estate." *Butts*, 281 B.R. at 180. In this regard, he also recognized that in some instances it may be appropriate to include disbursements allocable to surplus in the calculation of the maximum cap pursuant to Code § 326(a). *Id.* Accordingly, Judge Bucki enhanced the trustee's compensation by \$800 asserting that the trustee in that case played some role, albeit minimal, in the settlement negotiations. *See id.* In the instant case, it is apparent that Collins played no role in the settlement negotiations due, in no small part, to the fact that special counsel failed to advise him that negotiations were occurring. In fact, the position of special counsel, as well as the Debtor, which prevailed throughout the entire case, was one directly contrary to the concept of property of the bankruptcy estate codified in Code § 541. From the instant that Rappaport, and to a lesser extent Zalbowitz, appeared on the scene, they adopted an adversarial posture toward the Trustee, rather than the attorney/client relationship imposed by Code § 327. It is obvious to the Court that

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<sup>3</sup> In a fax transmission to the Court, dated May 24, 2005, Collins objects to the Court's consideration of *In re Testaverde*, 317 B.R. 51, 54 (E.D.N.Y. 2004), which was brought to the attention of the Court by Rappaport in correspondence dated May 11, 2005. In that case, the district court concluded that distributions to the trustee's special counsel were not made to a "party in interest" as required by Code § 326(a). It is the Court's practice not to consider arguments from a party made subsequent to a matter being submitted for decision and the deadline for the submission of any memoranda of law having passed. However, the Court's own independent research is not limited by that deadline. In this case, the Court believes that the facts in *Testaverde* are easily distinguishable from the matter herein. In that case, the trustee's own law firm was appointed special counsel postpetition to pursue a fraudulent conveyance action against the debtor's former spouse. *See Testaverde*, 317 B.R. at 52-53. It is obvious from the facts that counsel was not appointed pursuant to Code § 327(e).

Rappaport believed that the only portion of the settlement proceeds over which the Trustee had any actual control were those funds necessary to pay existing creditors.

Rappaport's attitude toward the settlement fund is best summarized in his Attorney's Affidavit, sworn to on March 25, 2005, filed in opposition to the Final Application in which he asserts that the Debtor's negligence claim was only "'technically' the Trustee's claim." At another point in his Affidavit, Rappaport incredulously asserts that, "realizing that Mr. Collins was entitled to some Trustee's commissions and minimal legal fees, I suggested that I send him \$30,000 to \$40,000 and leave the remainder of the funds in my trust account until everything had been approved by the Court." It is obvious that before and after his appointment as special counsel, Rappaport viewed the Debtor, not the Trustee, as his client and, in fact, saw himself in an adversarial relationship with Collins from the outset.

Even accepting Rappaport's assertion that he was not even aware of the Debtor's bankruptcy until April of 2004, his conduct thereafter was the direct cause of the Trustee having to expend significant time and effort to gain control of what was clearly property of the estate. *See In re Cooper*, 263 B.R. 835, 837 (Bankr. S.D. Ohio 2001) (noting that "[p]repetition personal injury claims, as well as the settlement proceeds from such claims are property of the bankruptcy estate"). In addition, Code § 542(a) requires that an entity in possession of property of the estate is required to deliver said property to the Trustee. *Id.* Indeed, in *Cooper* the Court noted that the attorney in that case who, while aware of the bankruptcy case, had settled the personal injury claim without being appointed as special counsel to the trustee, "interfered with this Court's exclusive jurisdiction over property of the estate; violated the automatic stay by exercising control over the property for purposes of 11 U.S.C. § 362(a)(3); breached the debtor's duty to

cooperate with the trustee under 11 U.S.C. § 521(3) . . . .” *Id.* at 837-38.

In *Cooper* the court denied the debtor’s claim of exemption, entered judgment against him in the full amount of the settlement and revoked the debtor’s discharge. *Id.* at 838. The court went on to find the debtor’s attorney, who was aware of the bankruptcy and chose to exercise control over the settlement proceeds, liable, jointly and severally with the debtor, for the full amount of the settlement proceeds. *Id.* The court also pointed out that “a good faith belief on the part of the attorney that the proceeds were not property of the estate” was not a defense to the requirements found at Code § 542.<sup>4</sup> *Id.*

While arguably the Trustee engaged in some motion practice which, in hindsight, may have been ill-advised, it appears that he was reacting to an effort by Rappaport to bypass him altogether. In this case, the Trustee relates the difficulties he encountered in convincing Rappaport to turn over the settlement proceeds. He asserts that it was not until he contacted Zalbowitz and threatened to file a turnover motion, as well as surcharge Rappaport, that he obtained their cooperation.

This contested matter presents the Court with a conundrum. Had the Court been fully aware of Rappaport and Zalbowitz’s conduct in dealing with Collins at the time it considered their compensation as special counsel, it probably would not have approved the amount requested. It is likely that the Court could have considered application of Code § 328(a) in order to deviate from the contingent fee arrangement originally approved. Unfortunately, at this point, disgorgement is not a reasonable option, yet denying all compensation to the Trustee in excess

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<sup>4</sup> The court declined to address whether the trustee could recover her attorney’s fees from the debtor’s attorney, however, due to the trustee’s failure to demonstrate entitlement as a matter of law.

of that computed on only disbursements to creditors is equally unfair because it would ignore the efforts of the Trustee to rein in special counsels' conduct in order to preserve property of the estate. In the cases relied upon by Rappaport, the courts limited trustee compensation because to do otherwise would result in a windfall to the trustee financed on the back of the debtor who suffered the serious bodily injury. While it is true that, in the instant case, the Trustee had nothing to do with the significant monetary recovery for those serious injuries, it is equally true that the Trustee was required to exercise his fiduciary duties to preserve assets even if that meant expending time litigating with his own special counsel, which time that same special counsel is now strenuously opposing as a basis upon which to compensate the Trustee. The Court cannot endorse such an inequity.

Before addressing the objections to the Trustee's compensation, the Court will consider the objections raised with respect to the time incurred by Collins as Trustee's Attorney. As indicated, Rappaport has specifically objected to a number of hours included in the Trustee's Final Report and Proposed Distribution, dated December 15, 2004, without specific reference to the time entries. Rappaport objected to Collins having prepared a motion on June 9, 2004 to approve the settlement of the personal injury case, and then being directed by the Court to amend the motion to include compensation requested by special counsel, which amended motion the Trustee prepared and placed on the Court's August 26, 2004 motion calendar. The Trustee's Attorney's time records between July 5, 2004 and August 26, 2004 reflect some 11.7 hours that were devoted to the preparation of the amended motion. Rappaport argues that all of this time was unnecessary given Collins' experience. The Court does not entirely agree; however, it will reduce this time block by .3 hour devoted to "Research" and by .6 hour devoted to preparation

of the Order retiring Zalbowitz and retaining Rappaport. Between September 3, 2004 and September 23, 2004, Rappaport objects to some 22.4 hours during which the Trustee's Attorney was "vehemently" opposing the Debtor's efforts to compel the Trustee to distribute the proceeds of "her settlement." He cites specifically to an Order dated September 27, 2004, less than ½ page in length, for which the Trustee's Attorney alleged he devoted some 2 ½ hours of preparation. Actually, the Order which the Court believes was referenced in the Trustee's Attorney's time records, was dated September 13, 2004, and while it was more extensive than ½ page, the Court will reduce the requested time by 1 hour. As to the balance of the time reflected during that block, the Court does not share Rappaport's view that the time was both unnecessary and excessive. Between September 29, 2004 and October 1, 2004, Rappaport takes issue with 4.1 hours devoted, generally, by the Trustee's Attorney to "research on issue of ten(10) day constraint." Apparently, the Trustee's Attorney was referring to the appeal period that would have to expire following the entry of the September 27<sup>th</sup> Order before he could actually release the sum of \$150,000 to the Debtor as authorized by the Order. Again Rappaport asserts that an experienced Trustee's Attorney should not have required 4+ hours to resolve the matter. The Court agrees and will reduce the Trustee's Attorney's time by 2.1 hours. Between October 6, 2004 and December 17, 2004, the Trustee's Attorney logged some 18.6 hours, the most notable of which was approximately 5 hours in the preparation of and appearance on a motion objecting to the secured claim of Citifinancial, Debtor's mortgage holder, allegedly in an effort to bifurcate the claim. The Debtor asserts that all the motion accomplished was to "cause me grief in connection with my home that never should have been involved in the post personal injury settlement proceedings before this Court." The Court agrees that the Citifinancial motion was of questionable benefit

to the estate. The Court will disallow some 3.5 hours because it appears that the Trustee's Attorney's time records may include time allocated to unrelated matters during the same time block. The Court will make no further adjustments to that time block.

Rappaport and the Debtor also object to the "commissions" requested by the Trustee.<sup>5</sup> In calculating his final compensation pursuant to the formula set out in Code § 326(a), the Trustee utilized as a base the sum of \$198,894.06, which he asserts he arrived at by subtracting the actual refunds to the Debtor to date of \$190,000 plus an anticipated final refund of \$41,804.02 from total receipts of \$430,698.08.<sup>6</sup> See Trustee correspondence to the Court, dated April 22, 2005. These calculations include disbursements made to both Zalbowitz and Rappaport, totaling \$142,167.

Rappaport appears to rely solely upon *Guido* case, which limited trustee compensation under Code § 326(a) to monies actually disbursed to the unsecured creditors. He compares the requested compensation (\$13,194.70) to the payout to unsecured creditors (\$22,000) and notes that the Trustee, "had nothing to do with the successful recovery, (of the negligence claim), but is reaping a substantial recovery." Neither Rappaport nor the Debtor have raised specific objections to the Trustee's time records.<sup>7</sup> What the Trustee's time records do reflect is a

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<sup>5</sup> Code § 326(a) does not utilize the term "commissions;" the term referenced in the statute is "reasonable compensation."

<sup>6</sup>The Trustee's calculation acknowledges that he cannot claim statutory compensation on monies that he actually disburses to the Debtor.

<sup>7</sup> While in many cases of chapter 7 trustee compensation, contemporaneous time records do not exist, making application of Code § 330 nearly impossible, that is not the case here. The Trustee maintained time records included with the Final Application, which detail his services as trustee between September 18, 2002 and December 15, 2004. Those records reflect a total of 136.7 hours.

significant amount of time devoted to obtaining the cooperation of both Zalbowitz and Rappaport in getting possession of the personal injury proceeds.

As noted previously, Code § 326 is simply “a method of fixing maximum compensation to which the Chapter 7 trustee is entitled. It does not provide grounds for or a method of allowance of compensation. Compensation is determined, and allowed, pursuant to Code § 330(a).” *In re Vogt*, 250 B.R. 250, 257 (Bankr. M.D. La. 2000). With this in mind, the Court will apply the approach utilized in *Butts* to calculate the disbursements serving as a basis for the maximum compensation to which the Trustee is eligible pursuant to Code § 326(a):

Payments to Unsecured Creditors	\$24,870.00 <sup>8</sup>
Expenses of Special Counsel	3,500.00
Trustee’s Attorney’s Fees	8,075.50
Disbursements to Special Counsel	<u>62,553.00<sup>9</sup></u>
<u>Total Eligible Disbursements</u>	\$98,998.50

Applying the formula contained in Code § 326(a),

25% of \$ 5,000	\$1,250.00
10% of \$50,000	5,000.00
5% of \$43,998.50 <sup>10</sup>	<u>2,200.00</u>
<u>Maximum Compensation</u>	\$8,450.00

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<sup>8</sup> The actual amount disbursed by the Trustee, as set forth in his Final Application, is \$24,862.91.

<sup>9</sup> This figure represents 44% of the attorney’s fees paid to special counsel attributable to the estate’s benefit on an assumed payment to the Debtor totaling \$240,000 (To date she has received \$190,000). Fifty-six percent of the attorney’s fees totaling \$142,167 equals \$79,614. Thus, the Court calculates a total of \$427,062.50 (\$240,000 + \$98,998.50 + \$79,614 + \$8,450), recognizing that any additional surplus should be turned over to the Debtor after all payments have been made.

<sup>10</sup> This is calculated by subtracting \$55,000 from the total disbursements of \$98,998.50 pursuant to the formula found in Code § 326(a).

The Court acknowledges that in this case the amount of disbursements to unsecured creditors was minimal and the Trustee's involvement in the settlement process virtually nonexistent. Notwithstanding the case law that suggests that in a surplus money estate where the sole asset is a personal injury recovery, calculation of the trustee's compensation should be limited to funds actually paid to creditors, one should not ignore the impact of Code § 330. In this case, the Trustee did maintain contemporaneous time records and those records document time that needs to be considered in determining reasonable compensation, within the maximum limits of Code § 326(a).

In this case, the Trustee was compelled to incur additional hours, all of which were adequately documented and necessarily expended in pursuance of his fiduciary duties, even though he did not put any additional funds in the pockets of the unsecured creditors. While the Court is sensitive to the concerns of the Debtor, the party whose serious injury led to the monetary recovery that created the bankruptcy estate, it cannot ignore the role of the Trustee in administering that estate and the award of appropriate compensation for that administration. Accordingly, it concludes that an award of the maximum compensation of \$8,450 is warranted under the unique circumstances of this case.

Turning to the Application of the Trustee's Attorney, the Court has previously indicated its adjustments and they are summarized as follows:

7/5/04 - 8/26/04	Reduction: .9 hour
9/3/04 - 9/23/04	Reduction: 1 hour
9/29/04 - 10/1/04	Reduction: 2.1 hours
10/6/04 - 12/17/04	Reduction: 3.5 hours

Total Reduction: 6.6 hours @ \$155.00 per hour = \$1,023.00

Thus, the Court will award Collins, as attorney for the Trustee, an attorney's fee of

\$8,075.50 (\$9,098.50-\$1,023).

The Final Application as modified herein is approved and the Trustee is directed to submit an order allowing compensation and reimbursement of expenses and determining claims and objections of the Trustee for review by the United States Trustee and signature by the Court.

**IT IS SO ORDERED.**

Dated at Utica, New York

this 11th day of July 2005

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge