

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.

Debtors

CASE NO. 96-61376

Chapter 11

Substantively Consolidated

APPEARANCES:

BAKER & BOTTS, L.L.P.

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HARRY GUTFLEISH, ESQ.

Of Counsel

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

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

The Court considers herein the Fourth Interim Fee Application (“Fourth Application”) of Baker & Botts (“B&B”), special counsel to Richard C. Breeden, as Trustee in the consolidated case (“Trustee”). The Fourth Application seeks payment of professional fees in the amount of \$75,753.00 and reimbursement of expenses in the amount of \$6,760.83 incurred during the period January 1, 1998 through June 15, 1998. A hearing was held before the Court with regard to the Fourth Application on October 22, 1998. At that hearing, the Court did not award any

compensation because it had not reviewed the Fourth Application prior to the hearing. Thereafter by letter dated December 2, 1998, the Court approved a provisional award for the Fourth Application in the amount of \$50,000 in fees and \$4,000 in expenses. Opposition to the Fourth Applications was interposed by the United States Trustee (“UST”) and a statement regarding the Fourth Application was submitted by the Official Committee of Unsecured Creditors (“Committee”).¹

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1134(b), and 157 (a), (b)(1), and (b)(2)(A).

FACTS ARGUMENTS AND CONCLUSIONS

Because the Fourth Application is requesting fees amounting to less than \$100,000, this application is not subject to review by the Court Appointed legal auditing firm. *See* Amended Order Appointing Fee Auditor and Directing Related Procedures and Standards Concerning the Interim Payment of Compensation and Consideration of Fee Applications filed by the Court on December 2, 1996 (“Court Guidelines”) at ¶ 16. However, in reviewing the Fourth Application, the Court has applied the same compensation guidelines as it would use in reviewing a similar

¹ On October 1, 1998, the UST filed her objection to the Fourth Application. In addition, on October 19, 1998, the Committee filed its statement regarding the Fourth Application.

application requesting fees in excess of \$100,000. *See id.*

The Court has reviewed the Fourth Application, the objection of the UST and the statement of the Committee. In her objections to the Fourth Application, the UST focuses her attention on the following: (1) interoffice conferences (2) charges relating to fee applications, (3) double billing, and (4) expenses for which the Trustee would like further substantiation.² The Court will discuss each of these objections individually.

Intraoffice conferences

_____The Court has reviewed Exhibit A attached to the UST's objection which highlights the practice complained of. The Court does not find these conferences inappropriate and will not make any adjustment.

Fee Application

The Fourth Application seeks total fees of \$12,515 in connection with the preparation and defense of B&B's Third Application. The UST argues that these fees are excessive. The figure in connection with preparation and defense of the Third Application encompasses approximately seventeen percent of all of the fees requested in the Fourth Application. The Court finds these amounts to be both excessive and impermissible and will disallow \$11,000 from those fees in

² The UST's objection reiterated her concern that the services of B&B were rendered primarily for the benefit of Shamrock Holdings Group, Inc. ("Shamrock"), an entity wholly owned by the within consolidated Debtor which filed its own Chapter 11 case on June 3, 1998. The UST asserted that no fees should be paid to B&B until an allocation of services between the two cases had been made. In a subsequent statement to the Court on April 13, 2000, B&B asserted that all fees and expenses awarded to it would be paid from the Shamrock case.

connection with the preparation and defense of the Third Application.

Double Billing

In its objection to the Fourth Application, the UST notes the double billing of one entry by M.C. Li. *See* United States Trustee Objection to Fourth Interim Fee Application of Baker & Botts, LLP, Special Counsel to the Trustee filed with the Court October 1, 1998 (“UST Objection”) at ¶ 7. The Court has reviewed the entry noted by the UST and agrees that this time entry was “double billed.” Therefore the Court will reduce B&B’s fees by \$420.

Expenses

In its objections to the Fourth Application, the UST requested that B&B provide further substantiation for expenses relating to photocopying, computer research services and facsimile services. These expenses total \$3,331.93. To date, the Court has not received any further substantiation for the above charges. As a result, the Court will disallow those expenses noted above until such time as B&B provides to the Court and the UST the documentation requested in the UST Objection.

In summary, the Court makes the following reductions to fees and expenses sought:

Fourth Application:

<u>Total Requested Fees</u>	_____	\$ 75,753.00
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Disallowances:

Fee Application	11,000.00
Double Billing	420.00
Provisional Fee Award granted on	50,000.00

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge