

THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.
BENNETT RECEIVABLES CORPORATION
BENNETT RECEIVABLES CORPORATION II
BENNETT MANAGEMENT AND DEVELOPMENT
CORPORATION

Case No. 96-61376
96-61377
96-61378
96-61379

Debtors

Chapter 11
Jointly Administered

ORDER APPOINTING FEE AUDITOR AND DIRECTING RELATED PROCEDURES AND
STANDARDS CONCERNING THE INTERIM PAYMENT OF COMPENSATION AND
CONSIDERATION OF FEE APPLICATIONS

On September 26, 1996, a hearing was held on this Court's Order to Show Cause filed September 5, 1996, concerning the appointment of a fee auditor. The Court, receiving no objection to its employment of a fee auditor, offered the parties the opportunity to submit proposed orders by October 4, 1996. Upon the receipt of two submissions, and after independent research by the Court into various fee auditors and proposals; and it appearing that the size, complexity and duration of these jointly administered chapter 11 cases has and will result in numerous and lengthy interim applications for payment of professional fees and reimbursement of expenses in significant amounts; and it appearing that the appointment under 11 U.S.C. §105(a) of a fee auditor is in the best interests of the Debtors' estates, their creditors and all parties in interest, because the Court and parties responsible for reviewing fee applications will not be able to efficiently expend resources sufficient to detect all instances in which fees sought may not be "reasonable compensation for actual, necessary services," and all instances in which the expense reimbursements sought may not be for

“actual, necessary expenses,” within the meaning of section 330(a) of the Bankruptcy Code; and the Court having core jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1) and (2); and that adequate notice of the Order to Show Cause and a reasonable time to submit proposed orders having been given; and sufficient cause appearing therefor,

IT IS ORDERED as follows:

1. Scope of Order

This Order applies to all professionals in these jointly administered cases employed or to be employed pursuant to 11 U.S.C. §§ 327, 328, or 1103.

2. Employment of the Auditor

The legal auditing firm of Stuart, Maue, Mitchell & James, Ltd., is hereby employed as the fee auditor (“Auditor”), as described in this Order, to act as special consultant to the Court in the area of professional fee review and analysis. The verified statement of Stuart, Maue, Mitchell & James, Ltd., dated October 11, 1996, has been filed in accordance with Bankruptcy Rule 2014(a) and Local Rule 214.1, a copy of which is attached and incorporated into this Order as “Attachment B.”

3. Procedure

Following discussion with the Auditor, the Court determines that it is necessary to establish a uniform procedure and format for the review and payment of professional fees. The procedure and format to be followed are detailed in this Order and “Attachment A,” which is attached and incorporated into this Order.

4. Duties of the Auditor

The duties of the Auditor shall be as follows:

(a) The Auditor shall review in detail all interim fee applications (“IFA’s”) filed by professionals in this case. Final fee applications shall also be subject to this Order.

(b) During the course of its review and examination, the Auditor may consult, as it deems appropriate, with each professional concerning such professional’s IFA for reasonable, actual and necessary fees and expenses. During this time, the Auditor may request additional verbal or written information regarding the IFA.

(c) During the course of its review, the Auditor may review any filed document in these cases. The Auditor shall be added to the Short List as defined in the Case Management Order of this Court, dated May 24, 1996. The Auditor shall continue to be served with all such papers.

(d) Each professional referred to in ¶1 shall serve a copy of each of its IFA’s upon the Auditor and all parties as required by the applicable provisions of the Case Management Order, and shall file the original with the Court. Service on the Auditor shall include an actual copy of each fee application, as well as a software version on a computer disk or diskette, in compliance with Attachment A of this Order.

(e) Commencing November 4, 1996, all professionals shall use project billing codes, which shall be developed by considering the Local Rules, project categories of the United States Trustee and the specific needs of this case. Determination of the billing codes will begin immediately upon the appointment of the Auditor and will be distributed upon completion to all parties subject to this Order. Prior to October 24, 1996, the Auditor shall contact or meet with each of the affected

professionals to discuss the use of Attachment A. The Auditor may reasonably modify the requirements of Attachment A to conform with the universe of professional activities in these cases, and the complexity of professional activities in these cases.

(f) The Auditor shall prepare and submit a report (“Report”) summarizing its findings within thirty (30) days after service upon it of an IFA by a professional, unless the Auditor requests additional reasonable time due to the length or complexity of the IFA.

(g) Each Report shall be in a format, selected by the Court and the Auditor, designed to quantify and present factual data relevant to whether the requested fees, disbursements and expenses meet the applicable standards of 11 U.S.C. §330, and the compensation guidelines as set forth herein.

(h) The Auditor shall file the Reports with the Court and serve a copy of same on the United States Trustee, and shall also serve a copy on the professional of the specific Report that pertains to that individual professional not later than fifteen (15) days prior to the hearing on said IFA as set forth in ¶6. All Reports of the Auditor shall be made available to any party in interest to examine or copy at their own expense. To facilitate this process, the Auditor shall provide an additional copy of all Reports to the Clerk of the Court, who will supply a docket number for each Report. Parties seeking a copy of a particular Report may contact the Clerk of the Court to obtain the specific docket number, and then should contact Copy Valet at (518) 472-1433 to request a copy of said Report.

5. Responses to the Report

Within seven (7) days after the Auditor files and serves the Report, the professional affected thereby may file with the Court a formal response to the Report. The formal response may include any additional information which the professional desires the Court to consider. Such formal responses shall be served upon the Court, the United States Trustee and the Auditor. This section is without prejudice to the right of any other party in interest to file and serve opposition to the IFA or the Report within the time fixed in Local Rule 913.1(c) or an Order of the Court.

6. Hearings on Fee Applications

Notwithstanding Federal Rule of Bankruptcy Procedure 2002(a)(7) and the Local Rules of this Court, hearings on fee applications shall not be scheduled less than 45 days after the date on which the fee application is served and filed by the professional. If additional time is requested by the Auditor to review a fee application due to its length or complexity, the hearing date may be extended for an additional reasonable period as determined by the Court.

7. Subsequent Fee Review Periods

The Auditor and professionals shall follow the procedure described above for each subsequent IFA submitted. Professionals shall file and serve IFA's no later than 90 days following the last day of the period for which compensation is sought.

8. Fees and Expenses of the Auditor

The fees and expenses of the Auditor shall be subject to application and review pursuant to 11 U.S.C. §330 and this Order, and shall be paid from the Debtors' estates as an administrative

expense under section 503(b)(2). The compensation of the Auditor for its services in accordance with this Order shall be the reasonable compensation requested for actual, necessary services rendered. The Auditor shall file with the Court an application for compensation of the Auditor's fees and for reimbursement of expenses at intervals to be determined by the Court. The Auditor's applications shall comply with the requirements of 11 U.S.C. §330 and this Order, and shall be served upon persons in compliance with the applicable provisions of the Case Management Order.

9. Standards Regarding Reimbursement of Fees

(a) Time Records

All professionals must keep accurate, contemporaneous time records in accordance with Rule 216.1 of the Local Rules of this Court and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses, issued on March 22, 1995, and reissued on January 30, 1996, except to the extent hereafter set forth.

All time records must represent the actual time required to perform the activity and shall be kept in time increments not to exceed 0.10 hours. "Rounding up" of time for minimum time increments of 0.25 hour is not permitted. If requested by the Auditor, the professionals shall submit copies of their original time records.

At a minimum, the task description should identify each service separately and in sufficient manner to permit the Court to ascertain the benefit derived from such service, and the time expended for each item of service. Time entries for conferences and telephone calls must identify the participants and the substance of the communication to be considered for compensation. If research is performed, a description of the research and its purpose is required. Time entries for

drafting documents should identify the document involved by title, date, author and subject matter.

If a number of separate tasks are performed on a single day upon the same matter, each task should become a single billing entry and should disclose the time spent for each such task. Activities “lumped” together in a single block of time may not be compensable.

(b) Travel Time

Travel time must be separately shown and will be allowed only at one-half normal rates unless the Court can be satisfied that work was performed during travel time. Travel for persons from home to their place of work and back will not be compensated.

(c) Paraprofessional Time

Paraprofessional time may be allowed if the services are regularly performed by a paraprofessional, or would have been performed by a professional if not done by the paraprofessional, and is otherwise compensable under §330 and these guidelines.

(d) Multiple Professionals

In instances where more than one professional or a professional and paraprofessional attend the same hearing, deposition, meeting, etc., on behalf of the same client, notations should be made so as to draw attention to them. An explanation should be made of the necessity of such multiple attendances, as well as an explanation of what each professional or paraprofessional actually did at the event.

(e) Legal Research

Time for research on law will be scrutinized. Training and education of any person at the expense of the estate will not be compensated.

(f) Administrative/Clerical tasks

Time spent performing administrative or clerical tasks such as addressing, stamping and stuffing envelopes, organizing files, photocopying, checking the docket, updating files, delivering papers or other similar tasks or “supervising” any of the foregoing, is not compensable, whether performed by a professional, paraprofessional or secretary.

(g) Local Rules

The Local Rules regarding professional compensation are incorporated into this Order. To the extent these requirements conflict with the Local Rules, these control.

10. Standards Regarding Reimbursement of Expenses

(a) Actual Cost

Expenses incurred from various vendors will only be reimbursed at actual cost. Actual cost is defined as the amount paid, net of any discounts, to a third-party provider of goods or services without enhancement.

(b) Documentation

Documentation must be submitted to substantiate all outside expenses. Receipts should be retained, and copies thereof shall be submitted with the fee application for all expenditures. Copies of actual vendor receipts must be submitted along with the fee application, not just charge account receipts (except for restaurant charges).

(c) Office Overhead

Items of expense considered overhead are part of the professional’s hourly rate and are not reimbursable. Overhead is generally defined as all continuous administrative or general costs or expenses incident to the operation of the firm which cannot be attributed to a particular

client or case. The term overhead includes office rent, secretarial time, secretarial overtime, word processing time, charges for after-hour and weekend air conditioning and other utilities, local transportation, local telephone, books, professional dues, and costs of meals or transportation provided to professionals or staff who work late or on weekends.

(d) Computerized Assisted Legal Research (CALR)

Reimbursable at actual cost; time submitted for computerized research shall be listed with sufficient detail for the Court to determine the substantive nature of the research and the reasonableness of the use of CALR and the time expended on that activity.

(e) Paraprofessional Services

May be compensated under §330 as long as work done is professional and not clerical.

(f) Photocopies

Charges must be disclosed on an aggregate and per page basis. Internal photocopies will be reimbursed at the rate of \$0.15 per page. Photocopies produced externally will be reimbursable at actual cost.

(g) Overnight Delivery

Reimbursable at actual cost, but must be shown to be necessary. This will not be a routine reimbursable cost.

(h) Messenger Service

Reimbursable at actual cost where shown to be necessary.

(i) Facsimile Transmission

Actual cost of long-distance telephone charges for transmissions are reimbursable, but must be identified as such, plus no more than the lesser of \$2.00/transmission or \$1.00/page, whichever is less, for outgoing transmissions only. Number of pages of each transmission shall be recorded. It should also be noted whether transmissions are outgoing or incoming.

(j) Automotive Transportation

Non-local mileage is reimbursable at the rate allowed by the Internal Revenue Code.

(k) Travel Expenses

Travel expenses (i.e. parking, tolls) are reimbursable at actual cost with showing of justification.

(l) Air Transportation

Air travel is reimbursable at regular coach fare only. Itineraries and copies of flight coupons must be submitted as appropriate documentation.

(m) Hotels

Due to wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise discretion and prudence in connection with hotel expenditures. Itemized hotel bills must be submitted as appropriate documentation. Reimbursement for suite, concierge level or deluxe accommodations will not be permitted.

(n) Meals

The cost of lunches while a party is away from the local area, or in the local area from another city, is not reimbursable except for unusual circumstances. Reimbursement may be sought for reasonable costs of breakfast and dinner while traveling. Per diem expenditures which

do not exceed that provided for U.S. Bankruptcy Judges on travel status will be deemed prima facie reasonable.

(o) Amenities

Charges for entertainment, newspapers, dry cleaning, shoe shines, alcoholic beverages and other non-lodging, non-meal expenses are not reimbursable.

(p) The following expenses are reimbursable at actual cost:

Postage, long distance telephone, filing fees, court reporter fees, witness fees, process service and UCC searches.

11. Statutory Rights and Obligations of Interested Parties Unaffected

This Order does not limit the statutory rights and obligations of the interested parties in these cases.

12. Service of this Order

The Court shall promptly serve a copy of this Order upon the Auditor, the United States Trustee, all professionals subject to this Order and parties identified in the Short List of the Case Management Order. A certificate of service shall be filed upon completion.

13. Limited Waiver of Fee Application Format Requirement

The Court shall waive the format requirements in Attachment A for all IFA's filed prior to November 4, 1996; therefore, it is not necessary that the professionals submit their fee applications in "ASCII" format if filed prior to this date; this waiver is limited to format only, and thus the

professionals may still be required to submit additional information, as requested by the Auditor, in order to comply with the requirements of this Order. IFA's submitted on or after November 4, 1996 are not covered by this waiver.

14. Effect of this Order, and Objections to this Order

This Order shall be effective immediately on an interim basis and remains in effect unless and until this Court orders otherwise. Any objections to this Order shall be served upon the Court and the parties identified in ¶ 12, and shall be filed with the Clerk of the Court so that each such objection is filed and received no later than 4:30 p.m. on October 23, 1996. If no timely objections are filed, this Order shall become a final Order of the Court on October 24, 1996, without further notice or proceedings. If one or more timely objections are filed that specifically request a hearing and the reasons therefor, a hearing will be scheduled by the Court. If objections are filed without a specific request for a hearing, the Court may consider and rule upon the objections without a hearing.

15. Power of the Court

The Court shall at all times remain the final interpreter of the rules and guidelines of this Order, and shall retain authority to modify this Order upon notice to the parties identified in ¶12. The Court at all times retains final authority and responsibility to determine whether fees and expenses requested are reasonable and necessary fees and expenses under §330 and this Order.

16. Compliance with this Order

The parties and professionals subject to this Order shall comply with the directives and guidelines of this Order and Attachment A, subject to modification by the Court. To the extent that any other professionals are retained by the estates and approved by the Court, said professionals shall be required to follow the procedures set forth herein without further notice by the Court in order to receive compensation; provided, however, that any professional who at this time in good faith believes that its fees for their total involvement in this case will be less than \$100,000.00 will be exempted from this Order upon the filing of an affidavit to such effect with service to include the Auditor. Fee applications covering a time period of at least 90 days in an amount less than \$100,000.00 from any other party shall likewise not be subject to this Order.

IT IS SO ORDERED.

Dated at Utica, New York

this 15th day of October 1996

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

ATTACHMENT A

Pursuant to its Order of October 15, 1996, the Court appointed Stuart, Maue, Mitchell & James, Ltd. (“Auditor”) as special consultant to the Court in the area of professional fee analysis and review. This Attachment shall apply to any professional subject to that Order.

A. The following data and format is required for the fee entries in all Interim Fee Applications:

1. If the professional has more than one subject matter upon which it is working, separate billing matters must be maintained. Each subject matter must be on its own invoice. To the extent different professionals (i.e. different firms) work on the same subject matters, they must use the same subject matter heading and/or description for ease of identification and comparison by the Auditor. Matter names and numbers must remain constant once established.

2. In addition to the hard copies of the monthly billing statements, billing data must also be submitted on computer disk. Data pertaining to the professional’s fees must be in “comma separated delimited ASCII” format (described below) so it can be read directly into the Auditor’s computer system. The data elements must be separated by commas, and alphanumeric elements must be enclosed in quotation marks. Each billing entry should be an itemized entry (entry containing only one billable task, with one time value) and should be one row in a file with each row containing the following information:

<u>Data Element</u>	<u>Quotation Marks Needed</u>
Invoice Number	Yes
Entry Date	Yes
Billing Individual's Initials	Yes
Hours for this Entry	No
Description of the Service Provided	Yes
Fee Extension for the Entry	No

3. The following examples illustrate typical billing entries and how the entries should look in an ASCII format. The headings used below are for illustrative purposes only and should not be included in the one line ASCII file. It is also important to note that dollar signs and commas should not be used in the extension field when converted to ASCII format:

SAMPLE BILLING ENTRIES

INVOICE NUMBER:000500

<u>Date</u>	<u>Initials</u>	<u>Hours</u>	<u>Description</u>	<u>Amount</u>
04/24/92	RAM	1.00	Work on pleading	200.00
04/24/92	RD	8	Work on pleading(6.0) Draft letter to BUD Re: Filings (1.0) Research Re: Bankruptcy (1)	1,600.00
05/01/92	JB	7	Preparation for Deposition of Mr. X (0.5); Attend Deposition of Mr. X	1,050.00

BILLING ENTRIES IN SAMPLE ASCII FILE

<u>Invoice Number</u>	<u>Date</u>	<u>Individual</u>	<u>Hours</u>	<u>Description</u>	<u>Amount</u>
"000500"	"04/24/92"	"RAM"	1	"Work on pleading"	200
"000500"	"04/24/92"	"RD"	6	"Work on pleading"	1200
"000500"	"04/24/92"	"RD"	1	"Draft letter to BUD RE: Filings"	200
"000500"	"04/24/92"	"RD"	1	"Research RE: Bankruptcy"	200

"000500","05/01/92","JB",.5,"Preparation for Deposition of Mr. X.",75
 "000500","05/05/92","JB",6.5,"Attend Deposition of Mr. X",975

* Note that in the ASCII format, different categories are marked off by quotation marks (with the exception of the amount category and hours category) and are separated by commas. Note also that there are no spaces between the different categories. This note also pertains to the ASCII format for expenses, as shown below.

GENERAL RULES

- Each invoice should reference one and only one matter/case
- Fee information should be submitted in a separate file on the disk from the expense information

FORMAT RULES

- 0(zero) fill all dates. If a month, day or year is 9 or less then put a zero in front of it. Dates should be in the file in the format MM/DD/YY. Example: March 21, 1992 should be 03/21/92.
- All whole numbers can be put into the file without decimal points and trailing zeros.
- All alphanumeric fields should not be space padded on the beginning or end.
- Entries with multiple tasks, having a separate time value should be separate rows in the file. The time value should be eliminated from the task description, and each line should have its own appropriate hour and fee value (rate multiplied by the hour value).
- Each entry should have an hour value (the last task on the entry at 05/02/92 for JB does not).
- Dollar signs and commas should be omitted from numbers in the file.
- QUOTES SHOULD NOT BE USED IN DESCRIPTIONS.
- Invoice number must be distinct for each invoice and should be no longer than 10 characters.
- Individuals' initials can NOT exceed four characters. These initials may be

alphanumeric if necessary, but once established must remain constant.

4. The following data is required to be submitted on hard copy of each monthly billing statement pertaining to professional fees. This data should be identical to that provided on computer disk. Any write-downs, write-offs, or credits should be identified with the specific entry.

Invoice Number	Date of Invoice
Matter Number	Total Fees Billed
Matter Name	Total Hours Billed
All Itemized Fee Entries	

B. The following data and format is required for expenses in all Interim Fee Applications:

1. Data pertaining to the professional's expenses should also be itemized and in comma separated delimited ASCII format so that it can be read directly into the computer system. The data elements must be separated by commas and the alphanumeric elements must be enclosed in quotation marks. All data pertaining to expenses should be in a one row file with each row containing the following information:

<u>Data Element</u>	<u>Quotation Marks Needed</u>
Data Incurred	Yes
Invoice Number	Yes
Description of Expenses	Yes
Amount of Expenses	No
Individual Incurring Expense	Yes

The detailed description of the expense should always include the following if applicable:

- Name of vendor;
- Date(s) of service; and
- Other relevant data.

For inside photocopy charges, professional should list the number of copies for each transaction and the charge per page.

If the expense is for travel, the professional should itemize the cost according to the type of expense (i.e. hotel, meals, auto rental, air fare, mileage, etc.) and include the dates of travel within the description field.

2. The following example illustrates how an expense entry should appear in ASCII format. The headings are for illustrative purposes only and should not be included in the one line ASCII file. It is important to note that dollar signs and commas should not be used in the file with the expense amount.

TYPICAL EXPENSE ENTRY

<u>Invoice Number</u>	<u>Date Incurred</u>	<u>Individual</u>	<u>Description</u>	<u>Amount</u>
000500	04/25/92	RAM	Air fare to and from New York On 04/28/92-04/30/92	\$1,000.00

ASCII FORMAT

<u>Invoice Number</u>	<u>Date Incurred</u>	<u>Individual</u>	<u>Description</u>	<u>Amount</u>
"000500"	"04/25/92"	"RAM"	"Air fare to and from New York on 4/28/92-04/30/92"	1000

3. The following data is required to be submitted on each monthly billing statement for expenses. This data should be identical to that provided on computer disk. All itemized expense entries should be included on each invoice.

Invoice Number	Date of Invoice
Matter Number	Total Expenses Billed
Matter Name	All Itemized Fee Entries

Also included should be a summary of expense categories for each invoice and any write-downs, write-offs, or credits, which should be identified with the specific entry.

C. Supplemental Data to be Submitted

The following supplemental data shall be included within or submitted with any fee application. This data is necessary to augment the data provided on computer disk.

1. A summary of all billing matters, listing both name and matter number.
2. A separate listing of all billing individuals including both initials and full names, each individual's position within the firm (partner, associate, paralegal, etc.) hourly billing rates and dates of changes, if any.
3. A separate listing of all billing matters contained within the monthly statement or fee application listing the following information:

Invoice Number	Fees Billed for the Invoice
Matter Number	Expenses Billed for the Invoice
Matter Name	Date of Invoice

4. A schedule which summarizes the expense categories from all invoices and also for each billing matter.