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Re: The Bennett Funding Group, Inc.  
Case No. 96-61376  
Chapter 11 Substantively Consolidated

### **LETTER ORDER**

The Court has reviewed the Trustee's motion seeking to appoint Conway, DelGenio, Gries & Co., LLC ("CDG") to provide evaluations of Castle Office Systems, Inc. and Mid-State Raceway, Inc., which motion appeared on this Court's August 26, 1999 motion calendar. At that time, the Court adjourned the motion to its September 9, 1999 motion term and requested a supplemental pleading from CDG because of the nature of the "flat fee" of \$25,000 per appraisal being requested.

On September 8, 1999, a Supplemental Affidavit from Robert A. DelGenio was filed with the Court. The Court, however, was unable to review the Supplemental Affidavit prior to the September 9th adjourned motion date and at that time advised Trustee's counsel that it would rule on the motion following the Court's review of the Supplemental Affidavit.

Upon further review of both the initial motion and the Supplemental Affidavit, the Court concludes that it will deny the motion.

While the Court is aware that in certain limited circumstances it has, in this case, approved fees for services rendered by professionals without regard to time actually expended by the professionals, such a practice is generally contrary to 11 U.S.C. § 330(a)(3) and the Local Rules of this Court.

Though the Supplemental Affidavit of DelGenio suggests that the work product of CDG will

be in the nature of an appraisal, similar in some ways to a real estate appraisal; neither the motion nor the Supplemental Affidavit give any estimate of the amount of time to be consumed in producing the work product nor the particular identity, qualifications or hourly rates of the person or persons performing the services.

The Court is being asked to award \$50,000 in professional fees on a “carte blanche” basis simply because flat fees “for services of this nature. . . .are customary throughout the market,” while the time records of other professionals appointed in this case are scrutinized by any number of parties in interest, and in some cases by the Court appointed fee auditor, as a condition precedent to ultimate approval by the Court.

CDG gives this Court no compelling reason to exempt it from the rigors adhered to by the vast majority of other professionals appointed in this case, which essentially is the submission of a fee application supported by contemporaneous time records which the Court may evaluate pursuant to 11 U.S.C. § 330(a)(3) before finally awarding the appropriate compensation.

IT IS SO ORDERED.

Dated at Utica, New York

this 14th day of September 1999

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge