

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

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

Debtors

CASE NO. 96-61376  
96-61377  
96-61378  
96-61379

Chapter 11  
Jointly Administered

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APPEARANCES:

SIMPSON, THACHER & BARTLETT  
Attorneys for § 1104 Trustee  
425 Lexington Avenue  
New York, New York 10022

M.O. SIGAL, JR., ESQ.  
Of Counsel

WASSERMAN, JURISTA & STOLZ  
Attorneys for the Unsecured Creditors Committee  
225 Millburn Avenue  
Millburn, New Jersey

HARRY GUTFLEISH, ESQ.  
Of Counsel

GUY VAN BAALEN, ESQ.  
Assistant U.S. Trustee  
10 Broad Street  
Utica, New York 13501

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 Interim Fee Application (“Second Application”) of Simpson, Thacher & Bartlett (“STB”) attorneys for Richard C. Breeden as trustee in these cases (“Trustee”). The application seeks payment of professional fees in the amount of \$2,478,488 and reimbursement of expenses in the amount of \$343,145 incurred during the period from July 7, 1996 to November 3, 1996. This fee application was submitted to Stuart, Maue,

Mitchell & James, Ltd. (“Fee Auditor”) in accordance with the Court’s Amended Order dated December 2, 1996 regarding fee applications subject to review by the Fee Auditor. The report of the Fee Auditor (“Report”) was filed with the Court on March 17, 1997, and a hearing on the application was held on March 27, 1997, at which time the Court awarded STB a provisional award of \$750,000 and reserved on the balance of the Second Application. The only opposition to the Second Application was interposed by the United States Trustee (“UST”) and the Official Committee of Unsecured Creditors (“Committee”).

### **JURISDICTIONAL STATEMENT**

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

### **FACTS AND ARGUMENTS**

This Court previously entered a Memorandum-Decision, Findings of Fact, Conclusions of Law and Order in February 1997, *see In re The Bennett Funding Group, Inc.*, No. 96-61376, slip op. (Bankr. N.D.N.Y. Feb. 5, 1997)) (“STB Fee Decision I”), in which it awarded fees and disbursements to STB in connection with its First Interim Fee Application. Familiarity with that Decision is presumed and it will be referenced herein to the extent necessary.

The Order appointing the Fee Auditor and the subsequently issued Amended Order were made applicable to all professionals in these jointly administered cases employed or to be

employed pursuant to sections 327 or 1103 of the Bankruptcy Code (11 U.S.C. §§ 101-1330) (“Code”). The aforementioned Orders provided the authority and the guidelines for professionals regarding the process to be employed in submitting fee applications to the Fee Auditor and to the Court. In accordance with its responsibilities, the Fee Auditor performed a review of STB’s Second Interim Fee Application and submitted a Report in order to assist the Court in its analysis of the Fee Application. The Fee Auditor identified various time and expense entries that appeared to violate Court guidelines or that were brought to the Court’s attention for further review. Generally, the entries which the Auditor’s Report identifies as appearing to violate Court guidelines fall into five general categories, while the areas to be examined are found in approximately seventy-five much more specific and limited categories or tasks. STB provided specific responses to the Report of the Fee Auditor in a response filed on March 25, 1997. In the reply, STB indicates that it has voluntarily reduced its Second Application by the sum of \$6,168.75, which the Fee Auditor’s Report indicates was computational error. In addition, STB agrees to reduce the Second Application by the sum of \$1,202 which references time entries inadvertently included as travel.

STB challenges the Report insofar as it questions “Vaguely Described Tasks”. The Report itemizes some 492 hours representing \$112,307 in fees falling in this category. STB argues that the Fee Auditor’s standard of “Vagueness” is much more stringent than that found in the Local Rules of this Court or case law in this Circuit. STB suggests that to comply with the Auditor’s standard, record keeping would become its foremost activity.

Another area of Fee Auditor criticism is “Multiple Attendance at Events” to which is

allocated approximately 401 hours representing \$135,809. STB responds that the Fee Auditor ignores the need in this extremely complex case for more than one attorney to attend a particular event, such as a Court hearing or a meeting. To support this contention, STB suggests that it is required to call upon specialists from many different areas of the law to confer on specific issues; that while it utilizes its highly talented associates extensively, they are in need of a more experienced partner's judgment; and that the efficient use of paralegals necessitates meetings between them and firm attorneys.

STB opposes the portion of the Report relating to services the Fee Auditor describes as "Administrative and Clerical Tasks" for which STB allegedly seeks fees of approximately \$356,073, asserting once again that much of what the Fee Auditor labels administrative/clerical is of necessity performed by paralegals rather than clerical personnel. STB suggests that the mischaracterization of many of these tasks as being capable of being performed strictly by clerical personnel is rooted in the Fee Auditor's general lack of knowledge and understanding as to how a large law firm meets its responsibilities to its clients, here the Trustee.

Turning to the "Areas the Court May Wish to Examine," STB suggests that the Court foreclosed criticism of its hourly rates in the STB Fee Decision I, and that with regard to intra-office conferences, the Fee Auditor seems to again suggest that there is a "per se" rule which denies compensation to time involved in such conferences. STB also opposes the Fee Auditor's criticism of entries from which information has been redacted, as well as time entries devoted to "getting up to speed" and preparation of fee applications.

The UST, while generally adopting the criticisms of the Fee Auditor, specifically criticizes STB's time entries for double billing at intra-office conferences, attendance of multiple

professionals at court hearings, preparation of fee applications and administrative and clerical tasks. In addition, the UST objects to the time entries supporting some 541.25 hours or \$148,273.75 devoted to a subsequently withdrawn substantive consolidation motion which the UST characterizes as “ill conceived.”

The Committee reiterates the same concerns it expressed with regard to STB’s First Interim Fee Application, but focuses specifically on the administrative and clerical tasks as well as time entries pertaining to the “Lady Kathleen” and “Cordoba litigation” from which the Committee suggests the “Bennett estates will receive little or no benefit.”

STB also responded to the Fee Auditor’s criticism of its unreceipted expenses and expenses labeled as office overhead, meals and amenities, facsimile charges, and messenger/courier and airfare charges, which shall not be detailed here.

### **DISCUSSION**

The Court will not reiterate the commentary set forth in the STB Fee Decision I regarding the potential for double disallowance of certain fees and expenses.

Code § 330 requires that authorized professionals demonstrate that their services were actual, necessary and reasonable, and it is the Court’s duty to independently examine the reasonableness of the fees requested.<sup>1</sup> *See In re Keene Corp.*, 205 B.R. 690, 695 (Bankr.

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<sup>1</sup> Interim fee applications submitted pursuant to Code § 331 are judged under the same standards as final applications under Code § 330. *See In re CF & I Fabricators of Utah, Inc.*, 131 B.R. 474, 482 (Bankr D.Utah 1991); *In re RBS Indus., Inc.*, 104 B.R. 579, 581 (Bankr. D.Conn. 1989).

S.D.N.Y. 1997); *In re Spanjer Bros., Inc.*, 191 B.R. 738, 747 (Bankr. N.D.Ill. 1996); *In re Ferkauf, Inc.*, 42 B.R. 852, 853 (Bankr. S.D.N.Y. 1984), *aff'd*, 56 B.R. 774 (S.D.N.Y. 1985).

The applicant bears the burden of proving that the services rendered were actual and necessary and that the compensation sought is reasonable. *See Brake v. Tavormina (In re Beverly Mfg. Corp.)*, 841 F.2d 365, 370 (11th Cir. 1988); *In re Navis Realty*, 126 B.R. 137, 145 (Bankr. E.D.N.Y. 1991).

Reasonable fees are in part determined by calculating the “lodestar” figure, which is derived by multiplying the number of hours reasonably expended by a reasonable hourly rate. *See Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 944-45, 103 L.Ed.2d 67 (1989); *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997); *Cruz v. Local Union No. 3 of the Int’l Bhd. of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir. 1994); *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 17 (Bankr. S.D.N.Y. 1991). The lodestar amount should be comparable with rates prevailing in the district in which the court sits for similar services by professionals of reasonably comparable skill, experience and reputation. *See Blum v. Stenson*, 465 U.S. 886, 896 n.11, 104 S.Ct. 1541, 1547 n.11, 79 L.Ed.2d 891 (1984); *Olsten Corp.*, 109 F.3d at 115; *Polk v. New York State Dep’t of Correctional Servs.*, 722 F.2d 23, 25 (2d Cir. 1983). An exception to the standard of compensating out-of-town professionals at rates prevailing in the district may be found when such professionals are necessarily employed. *See In re Victory Markets, Inc.*, No. 95-63366, slip op. at 6 (Bankr. N.D.N.Y. Nov. 7, 1996); *In re ICS Cybernetics, Inc.*, 97 B.R. 736, 740 (Bankr. N.D.N.Y. 1989) (recognizing exception but finding no substantial disparity between rates charged in Buffalo, New York as compared to Syracuse, New York); *In re S.T.N. Enters., Inc.*, 70 B.R. 823, 843 (Bankr. D.Vt. 1987) (indicating that in complex cases of national scope,

rates of nationally prominent, out-of-state firms may apply). The Court has already indicated that STB's billing rates may be applied in this case. *See* STB Fee Decision I, slip op. at 28. However, STB has agreed to cap its blended hourly rate at \$250 per hour, and must still demonstrate that the compensation requested is reasonable and that its services were actual, necessary and reasonable. No adjustment to the hourly rate shall be made at this point.

Determination of the lodestar figure does not end the inquiry of whether fees are reasonable. *See Hensley v. Eckerhart*, 461 U.S. 424, 433-34, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983). A fee application is to be examined by the court with a consideration of the value of the work performed to the client's case. *See DiFilippo v. Morizio*, 759 F.2d 231, 235 (2d Cir. 1985). If the expenditure of time is deemed to be unreasonable, such hours should be eliminated from the lodestar calculation. *See Hensley*, 461 U.S. at 434, 103 S.Ct. at 1939-40. In calculating a fee computation, the court may make an across-the-board reduction in the amount of hours billed based upon a finding of excessive or unreasonable hours. *See In re "Agent Orange" Prod. Liab. Litigation*, 818 F.2d 226, 237-38 (2d Cir. 1987); *New York Ass'n for Retarded Children v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983); *see also U.S. Equal Employment Opportunity Commission v. AIC Security Investigations, Ltd.*, 55 F.3d 1276, 1288 (7th Cir. 1995); *Ohio-Sealy Mattress Manuf. Co. v. Sealy, Inc.*, 776 F.2d 646, 658 (7th Cir. 1985). Furthermore, the lodestar figure may be reduced for over staffing and duplicative or inefficient work. *See Agent Orange*, 818 F.2d at 237; *Siegal v. Merrick*, 619 F.2d 160, 164 n.9 (2d Cir. 1980). Across-the-board percentage reductions are appropriate to use in cases where fee applications are voluminous and numerous. *See Agent Orange*, 818 F.2d at 238. In such cases, "no item-by-item accounting of the hours disallowed is necessary or desirable." *See id.* (citing

*Ohio-Sealy*, 776 F.2d at 658).

With the foregoing principles in mind, the Court shall address the services provided and the fees requested in STB's Second Interim Fee Application.

#### Duplicate Billing Entries

The Fee Auditor located a number of entries which appeared to be duplicate time entries for the same services. Upon review of the Fee Auditor's Report, STB has agreed to reduce the Second Interim Fee Application by the amount of \$12,295 resulting from inadvertent double billing entries. Therefore, this amount shall be disallowed.

#### Vaguely Described Tasks<sup>2</sup>

Fee requests should be supported with specific, detailed and itemized documentation. *See* STB Fee Decision I, slip op. at 16; *In re Poseidon Pools of America, Inc.*, 180 B.R. 718, 729 (Bankr. E.D.N.Y. 1995). Without detailed itemization, it is difficult to determine whether the time expended was reasonable, whether the services were needed and whether the fees charged were reasonable. *See Hensley*, 461 U.S. at 441, 103 S.Ct. at 1943 (Burger, C.J., concurring). The Court will consider STB's contention that in assessing "vagueness" the Auditor fails to consider the surrounding descriptions within the time records, however. In reviewing the Fee Auditor's Report, the Court has made every effort to keep STB's concerns in mind and has reviewed the Report accordingly. Likewise the Court has reviewed the Report and STB's time records from

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<sup>2</sup> The Court, in reviewing Vague Documentation of Services, has considered Exhibit B attached to STB's Response to Fee Auditors Review and Analysis of Second Interim Fee Application dated March 25, 1997.

the perspective of “vagueness,” keeping in mind that the voluminous amount of correspondence reviewed by STB partners and associates relating to these cases cannot always be referenced to a specific task.

With the foregoing in mind, and given the Court’s admonition in the STB Fee Decision I, the Court has reviewed the Auditor’s Report and STB’s time records and concludes that an adjustment under the general heading of vague documentation of services, as contained in Exhibits D, E and F of the Auditor’s Report, should result in a disallowance of a total of \$16,507.50.

#### Intra-office Conferences

While the Court recognizes the need for intra-office conferences in a case of this magnitude, time spent in such conferences must be justified. *See Office Prods. of America*, 136 B.R. at 977. Furthermore, the Court has previously indicated its belief that generally no more than one professional may bill for intra-office conferences or meetings unless there is sufficient explanation to justify additional billings. *See* STB Fee Decision I, slip op. at 16; *see also Poseidon*, 180 B.R. at 731; *In re Adventist Living Ctrs.*, 137 B.R. 701, 716 (Bankr. N.D.Ill. 1991); *In re Environmental Waste Control*, 122 B. R. 341, 347 (Bankr. N.D.Ind. 1990). In the STB Fee Decision I, the Court observed that with regard to intra-office conferences “[r]outine billing by two or more attorneys for every consultation regarding issues or projects in these cases generally will not be compensable.” STB Fee Decision I, slip op. at 17. In the Second Interim Fee Application, the Fee Auditor has identified some 1,554.55 hours, with attendant fees of \$510,892, devoted to intra-office conferences that it proposes be reviewed for reasonableness.

The hours to be reviewed are set forth on the Auditor's Exhibit O.

The Court has analyzed STB's time records identifying intra-office conferences in light of the Fee Auditor's Report and finds that conferences attended by two or more STB partners and a number of STB associates as well as conferences solely between two or more STB partners or two or more STB associates requires adjustment. The Court's analysis of the Auditor's Exhibit O in light of the foregoing, results in a reduction in fees attributable to intra-office conferences by \$200,000.

#### Multiple Attendance at Events

The Auditor's Report identifies some 401 hours devoted to Multiple Attendance at Events as reflected on Auditor's Exhibit G. The Court notes that in the STB Fee Decision I it observed that a certain amount of billing judgment should be utilized. For example, during the period covered by the Second Interim Fee Application, STB appeared at various motion terms and a status conference by one or two partners and at least two associates. On another occasion two associates appeared at a pre-trial conference. After reviewing the time entries identified on the Auditor's Exhibit G, the Court will disallow a total of \$17,776 representing what the Court deems to be unnecessary multiple attendance by STB partners and associates. *See, e.g., Siegal v. Merrick*, 619 F.2d at 164 n.9 ("Ample authority supports reduction in the lodestar figure for overstaffing as well as for other forms of duplicative work").

#### Administrative/Clerical Tasks

Under the general category of "Administrative or Clerical Tasks", the Auditor's Report

has identified some eleven sub-categories which it contends appear to violate Court guidelines. These entries total some 3,639 hours representing fees of \$356,073. *See* Auditor's Exhibit H-1 through H-11.

In the STB Fee Decision I the Court considered the arguments of STB in support of the compensability of these kinds of services at considerable length. It need not restate its position again herein except to the extent that the Court notes STB's Response to the Fee Auditor's Review and Analysis. While such tasks may be compensable, it is the applicant's burden to demonstrate to the Court the reasonableness and necessity of a professional or paraprofessional performing such tasks. *See* STB Fee Decision, slip op. at 22; *Poseidon Pools*, 180 B.R. at 746.

From a review of the Report, approximately one-third of the hours identified as "Administrative Clerical" generally fall into a sub-category of "Filing/Organizing/Retrieving" of various documents. STB contends in spite of the Court's admonitions in the STB Fee Decision I that such services must be performed by paralegal rather than clerical personnel. The Court simply cannot accept STB's contention that in each instance these types of services can only be performed by paralegals. Given the voluminous nature of entries in this sub-category, the Court cannot and will not pour over each and every entry. Rather it will disallow one-third of those entries, or the sum of \$45,344. *See In re Agent Orange*, 818 F.2d at 237.

With regard to the other subcategories identified as "Assist in Preparing", "Assist in Document Production", "Calendaring", "Maintenance of Case/Document Charts", "Retrieve Cases/Statutes" and "Administrative"<sup>3</sup>, the Court will accept STB's contention that these are

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<sup>3</sup> The Court notes, however, that individual time entries in these allowed categories may have been disallowed on other grounds.

services for which the expertise of a paralegal is necessary.

As to the remaining sub-categories, the Court makes the following reductions:

Distribution of Documents/Materials	\$7,267.50
Quality Control of Copies	3,250.90
Assist in Servicing	5,780.00
Miscellaneous Clerical Tasks	8,649.50

These reductions again result from the Court's review of individual time entries and its conclusion that such services should have been performed by clerical personnel and should, therefore, have been absorbed in overhead.

#### Services Related to the Lady Kathleen

The Report has identified some 54.6 hours of STB's time during this application period devoted to the "Lady Kathleen". To the best of the Court's knowledge, the Lady Kathleen is apparently an asset of Cordoba Corporation, also a Debtor in this Court, but a separate Debtor and, therefore, the Second Interim Fee Application should be reduced by \$14,473. Likewise, the Report identifies some 101 hours devoted to the "Cordoba Litigation" which are not properly chargeable to these cases, thus requiring a reduction in fees of \$23,062.50.

#### Substantive Consolidation

The UST objects to services rendered by STB in connection with a motion for substantive consolidation which was ultimately withdrawn and refiled at a later point in time. Those services consumed some 541 hours resulting in fees of \$148,273.75. The UST suggests that the motion

was ill conceived in its inception and clearly premature. The Court believes, however, that STB should not forfeit all of the hours consumed in connection with the motion since it has not been shown that such services render no benefit to the estate and, in fact, the Court presumes that some portion of the work undertaken during the period reflected in this Application was actually utilized in the subsequent refiling of the motion.<sup>4</sup> Thus, the Court will reduce STB's fee request by \$100,000 for this project, subject to re-examination in future fee applications.

### Fee Application

As provided by Code § 330(a), “[a]ny compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application.” 11 U.S.C. § 330(a)(6). This Court has previously indicated its belief that reasonable compensation is appropriate for time expended in preparing a fee application, *see* STB Fee Decision I, slip op. at 24-25, as opposed to those courts which have indicated that fee application preparation is of no benefit to the estate and therefore is not compensable. *See, e.g., In re Wilson Foods Corp.*, 36 B.R. 317, 323 (Bankr. W.D.Okla. 1984); *In re Liberal Market, Inc.*, 24 B.R. 653, 661 (Bankr. S.D.Ohio 1982). Other courts have also indicated that reasonable compensation for this task is appropriate. *See In re NuCorp Energy, Inc.*, 764 F.2d 655, 659 (9th Cir. 1985); *Braswell Motor Freight Lines, Inc. v. Crutcher, Burke & Newsom (In re Braswell Motor Freight Lines, Inc.)*, 630 F.2d 348, 351 (5th Cir. 1980); *Office Prods. of America*, 136 B.R. at 977; *CF&I*

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<sup>4</sup> The initial motion for substantive consolidation, filed on October 31, 1997, was subsequently withdrawn by the Trustee on January 23, 1997. The Trustee refiled the motion for substantive consolidation on April 24, 1997, and an Order substantively consolidating the Debtors' estates was entered on July 25, 1997.

*Fabricators*, 131 B.R. at 483. The Court must examine the amount and value of time spent preparing the application, however, and limits may be placed on compensation for this task. See *In re The Bennett Funding Group, Inc.*, No. 96-61376, slip op. at 27 (Bankr. N.D.N.Y. Feb. 5, 1997) (“C&L Fee Decision”); see also *Office Prods. of America*, 136 B.R. at 977; *In re Pettibone*, 74 B.R. at 304.

The Fee Auditor has identified fees amounting to \$125,864.75 which are related to fee applications.<sup>5</sup> The Fee Auditor has particularized this general category into sub-categories which include “Simpson Thacher Fee Application,” \$46,972.50; “STB Response to Objections to Fee Application,” \$14,616.50; “Fee Application Research,” \$5,752.00; and “Breedon Fee Application” \$38,890.00. With regard to the Breedon Fee Application subcategory, the UST asserts that the amount is grossly excessive in view of its allegations that Breedon’s initial application submitted during this time period contained minimal information and attempted to adopt an unacceptable shortened notice procedure.

While this Court has consistently allowed compensation for services rendered in connection with the preparation of fee applications, the amount of that compensation must be necessarily limited. Clearly, total fees in excess of \$125,000 identified by the Auditor in the Second Application are well beyond permissible bounds. Fees of this magnitude, generated by tasks which for the most part provide little, if any, benefit to the estate, are unreasonable and shall be reduced substantially. While recognizing that preparation of the voluminous fee applications is burdensome, it must be remembered that these tasks enable a professional to seek

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<sup>5</sup> This amount includes fees from Exhibits CC-1 through CC-5, CC-8 and DD of the Report.

compensation from the Debtors' estates. In addition, every dollar spent on professional services is a dollar less that is available for distribution to the unsecured creditors, *see Pettibone*, 74 B.R. at 299, and it must be remembered that bankruptcy proceedings are intended to benefit the creditors and the estate, not the attorneys and other professionals employed to manage the case. *See In re Arnold*, 176 B.R. 13, 15-16 (Bankr. E.D.Tex. 1995); *In re NRG Resources*, 64 B.R. at 655.

The Court appreciates that some of the work performed in these exhibits relates to the exercise of billing judgment on the part of STB, which no doubt resulted in a reduction of fees charged to the estates. Such billing judgment is expected. As stated in the Decision relating to STB's First Interim Fee Application,

[t]he standard practice of professionals submitting fee applications should be to "make a good faith effort to exclude from a fee request hours that are excessive, redundant or otherwise unnecessary; just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983) (discussing billing practice in context of statutory attorney fees). This exercise of "billing judgment" is an essential, and as noted above, ethically mandated, component of every fee application submitted to the court.

*See* STB Fee Decision I, slip op. at 7. The tasks found in these exhibits are not legal services rendered for the benefit of the estates. Instead, they are a benefit to the professional.<sup>6</sup> Thus,

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<sup>6</sup> In *City of Detroit v. Grinnell Corp.*, 560 F.2d 1093, 1102 (2d Cir. 1977) the Second Circuit noted with approval the Third Circuit's analysis in *Lindy Bros. Builders, Inc. v. American Radiator and Standard Sanitary Corp.*, 540 F.2d 102, 111 (3d Cir. 1976)(*en banc*) regarding the compensability of services related to a fee application. The Third Circuit stated that, [s]ervices performed in connection with the fee application are necessary to the attorney's recovery. They benefit *him*, for without them, the attorney cannot . . . recover. But such services do not benefit *the fund* - they do not create, increase, protect or preserve it . . . . There being no benefit to the fund from services performed by appellees in connection with their fee application, there should be no attorneys' fee award from the fund for those services.

the Court will not allow total fees for the preparation and defense of the fee applications of STB and the Trustee to exceed \$35,000, resulting in a reduction of \$90,864.75.<sup>7</sup>

### Expenses

When applying for reimbursement of expenses, the applicant must demonstrate that such expenditures were reasonable and necessary. *See Poseidon Pools*, 180 B.R. at 781; *In re Convent Guardian Corp.*, 103 B.R. 937, 939 (Bankr. N.D.Ill. 1989); *In re Cuisine Magazine, Inc.*, 61 B.R. 210, 218 (Bankr. S.D.N.Y. 1986); *In re Island Helicopter Corp.*, 53 B.R. 71, 73 (Bankr. E.D.N.Y. 1985). The Court will not assume that any expense is necessary. *See Spanjer*, 191 B.R. at 749. An expense is deemed to be necessary if it was reasonably needed to accomplish the representation of a client. *See id.*; *In re Wildman*, 72 B.R. at 731.

Turning to STB's request for reimbursement of expenses as set forth in the Second Application, the Court notes that the Auditor's Report identifies what it contends are "Unreceipted Expenses" totaling \$48,769.37. STB, in responding to the Auditor's Report, has provided additional backup for these expenses which the Court will accept as substantiating those expenses.

Additionally, the Auditor identifies numerous expenses which it contends constitute

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*See Lindy*, 540 F.2d at 111 (emphasis in original). Although this Court has agreed to allow reasonable compensation for fee application preparation, the foregoing observation lends support to the need to disallow excessive fees related to work which does not benefit the estate.

<sup>7</sup> The Court is not passing on the value of the time of the individuals who performed these tasks or on the level of skill required to complete them. Instead, the Court is focusing on the value to the estate that these tasks provide, and the recognition that reasonable time and fees spent on the fee application itself will be compensated.

“Office Overhead”. STB responds that these are charges for which it typically bills its clients and, therefore, it should be no different here. In the STB Fee Decision I, the Court disallowed expenses identified as “word processing”, “overtime transportation”, “overtime meals”, “lunch meals” and “amenities”. In the Second Application, STB again seeks a total of \$53,916.03 for these same categories of expense and again the Court will disallow same.

Finally, the Court notes, as it did in the STB Fee Decision I, that while STB has somewhat reduced its use of overnight delivery services, it still seeks reimbursement of \$4,863.11 in Federal Express charges. As an aside, the Court has on more than one occasion received a single piece of correspondence from STB delivered via Federal Express for which there did not appear to be any need for overnight delivery. While the Court will not disallow any portion of the overnight delivery charges sought in the Second Application, indiscriminate use of such services will not be reimbursable in future fee applications.

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

Total of requested fees	\$2,478,488.75
<u>Disallowances</u>	
Discrepancy between request and actual computed amount identified in Auditor’s Report	- 6,158.75
Inadvertent Double Billing identified in Auditor’s Report	-12,295.00
Charge for travel time identified in Auditor’s Report	-1,202.00
Vague Documentation of Services	-16,507.50
Intra-office Conferences and Multiple Attendance at Events	-217,776.00
Filing, Organizing and Retrieving	- 45,344.00
Distribution of Documents/Materials	- 7,267.50

Quality Control of Copies	-3,250.00
Assist in Serving	-5,780.00
Miscellaneous Clerical Tasks	- 8,649.50
Lady Kathleen	-14,473.00
Cordoba Litigation	-23,062.50
Motion for Substantive Consolidation	-100,000.00
Fee/Employment Applications	-90,864.75
Provisional Fee award granted on March 27, 1997	<u>-750,000.00</u>
<u>Net Total Fee Allowed</u>	\$1,175,858.25
Total Requested Expenses	\$ 343,145.22
Pre-retention expenses	-265.50
Office Overhead	- 53,916.03
<u>Total Expenses Allowed</u>	<u>\$288,963.69</u>
Award of expenses previously held back from STB's First Interim Fee Application <sup>8</sup>	+ \$146,984.18
<u>Net Total Expenses Allowed</u>	\$435,920.97

Based on the foregoing, it is

ORDERED that the fees and expenses requested by STB in its Second Interim Fee Application shall be disallowed as detailed above; and it is further

ORDERED that payment of the remaining balance of allowed fees and expenses, and any

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<sup>8</sup> The Court delayed payment of \$187,011.98 in expenses requested in STB's First Interim Fee Application because such expenses were not supported by adequate documentation. STB thereafter submitted underlying documentation for many of the requested expenses. This documentation was reviewed by the Fee Auditor, who submitted a review of those expenses in a document filed on April 25, 1997. Of the total expenses requested, \$36,277.90 remained unreceipted. An additional \$3,590.35 of STB's request consists of expenses which this Court has indicated will not be reimbursed, including overtime meals, transportation to and from the office, and office supplies. Lastly, the amount of \$159.55 represents expenses for items such as alcoholic drinks, snacks, and valet parking, which shall not be reimbursed. Based on the foregoing, the allowed expenses from the First Interim Fee Application total \$146,984.18.

amounts still due and owing on any prior award, shall not be made from encumbered assets of these estates.

Dated at Utica, New York

this 13th day of August 1997

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge