

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

LINCOLN SUPPLY CO., INC.

CASE NO. 88-01221

Debtor

APPEARANCES:

RANDY SCHAAL, ESQ.
Trustee
100 W. Seneca Street
Sherrill, New York 13461

BAUM & WOODARD, ESQS.
Attorneys for Trustee and
Attorneys for Creditors' Committee
c/o Martin, Martin, Piemonte
& Woodard, Esqs.
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LEE WOODARD, ESQ.
Of Counsel

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Of Counsel

HANCOCK & ESTABROOK, ESQS.
Attorneys for Richard Tuttle
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STEPHEN A. DONATO, ESQ.
Of Counsel

STEPHEN D. GERLING, U.S. Bankruptcy Judge

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

A hearing on the Trustee's Final Account and on Final Applications for Compensation ("Final meeting"), was held in this case at Syracuse, New York on July 13, 1993. At said hearing the Court also considered objections to certain proofs of claim.

The final hearing was thereafter adjourned to August 10, 1993 to enable the Trustee to resolve certain objections to claims and other miscellaneous matters.

At the August 10, 1993 hearing, the Trustee renewed his objection to

the Supplement to the Interim Application For Allowance ("Supplemental Application") filed by Menter, Rudin & Trivelpiece, P.C. ("Menter"), on June 3, 1993. Menter was previously appointed as attorney for the Debtor in the pre-conversion Chapter 11 case. Subsequent to conversion of the case to Chapter 7 on June 15, 1989, Menter was not appointed as counsel to the Chapter 7 Debtor.

A portion of Menter's Supplemental Application covers inter alia the post-conversion period June 15, 1989 through May 6, 1992 and thus, if allowed, would be entitled to Chapter 7 priority pursuant to §726(b) of the Bankruptcy Code (11 U.S.C. 101-1330) ("Code").

The Trustee opposes payment of that portion of the Supplemental Application which seeks fees for the post-conversion period because he contends that Menter was not appointed as his attorney and that the services rendered by Menter did not benefit the Chapter 7 Debtor's estate.

Menter responds to the Trustee's objection arguing that prior appointment as counsel to the converted Chapter 7 Debtor is not a condition precedent to compensation, citing In re Met-L-Wood Corp., 115 B.R. 133 (N.D.Ill. 1990) and that the services Menter rendered were in fact beneficial to the Trustee in administering the Chapter 7 estate.

The Court has also considered the commissions and expenses requested by the Chapter 7 Trustee, as well as the fee requests of Baum & Woodard, as Trustee's attorneys, and formerly as attorneys for the Creditors' Committee, Menter, as attorneys for the Chapter 11 Debtor and Firley, Moran, Freer & Eassa, Accountants for the Chapter 11 Debtor, to which no objections have been filed.

DISCUSSION

Generally speaking, an attorney for a Chapter 7 debtor is not entitled to compensation for services rendered post-petition or post-conversion in the absence of a showing that his or her legal services benefitted the estate of the Chapter 7 debtor as opposed to the Chapter 7 debtor personally. See In re Trinsey, 115 B.R. 828, 836 (Bankr. E.D.Pa. 1990).

Menter's reliance on In re Met-L-Wood Corp., supra 115 B.R. 133, is somewhat misplaced given the significant factual differences between that case

and the matter sub judice.

In Met-L-Wood Corp., the District Court and the Bankruptcy Court concluded that fundamental fairness required an allowance of compensation to a converted Chapter 7 debtor's counsel where that counsel was forced to defend itself against meritless claims of the Chapter 7 trustee based upon counsel's alleged pre-conversion fraud.

Factually, the instant case bears no resemblance to the facts in Met-L-Wood Corp., supra, 115 B.R. at 136 and thus, its concept of "fundamental fairness" is lacking here.

The Court, however, does acknowledge that in every conversion from Chapter 11 to Chapter 7, certain services must be rendered by Chapter 11 counsel to insure that the requirements of Federal Rule of Bankruptcy Procedure ("Fed.R.Bankr.P.") 1019 are complied with, thus allowing for an orderly transition of the case from a debtor-in-possession status to that of liquidation by a Chapter 7 trustee. It is difficult to conclude that those services rendered by the former Chapter 11 counsel in compliance with Fed.R.Bankr.P. 1019 do not in any way benefit the creditors of the Chapter 7 estate. Obviously, the larger and more complex the Chapter 11 case, the more difficult and time consuming will be the transition to Chapter 7.

In the instant case, the Court notes, from a review of the contemporaneous time records submitted by Menter for the period post June 15, 1989 and those submitted by Lee E. Woodard, Esq. ("Woodard"), on behalf of Baum & Woodard, Esqs., the attorneys appointed by this Court to represent the Chapter 7 Trustee, there is very little overlap. In fact, Woodard's time records reflect no actual services rendered to the Chapter 7 Trustee prior to June 22, 1990, more than one year after the conversion of the case and the effective date of Baum & Woodard's appointment, while the post-conversion services of Menter were rendered primarily during the period June 15, 1989 through November 21, 1989.

The time records would appear to substantiate Menter's contention that its post-conversion services were clearly benefitting the Trustee and the Chapter 7 estate because from June 15, 1989, the date of conversion, through June 22, 1990, they were apparently the only legal services being rendered by anyone in connection with the Chapter 7 case.

While a close review of Menter's post-conversion services does reveal certain services that can be labelled as benefitting only the Debtor as opposed to the estate, they are minimal in relation to those rendered on behalf of the Chapter 7 estate, particularly in light of the corporate nature of the Debtor.

Thus, the Court will approve that portion of the Supplemental Application which relates to Menter's fee request of \$3,015.50 for services rendered post-conversion, however, with regard to reimbursement of expenses, the Court will approve only non-photocopying expenses amounting to \$271.13. Additionally, the fee request will be treated as an administrative expense in the Chapter 7 case and shall be paid in accordance with Code §726(b).

Turning to the remainder of the commissions and final applications for compensation, the Court will approve the following Chapter 7 applications:

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|--|-------------|
| Baum & Woodard as attorneys for Chapter 7 Trustee - Fee | \$15,007.50 |
| Butternut Manlius Associates, post-conversion rent | \$18,727.23 |
| Randy J. Schaal, Chapter 7 Trustee Commissions | \$ 6,531.38 |
| Expenses | \$ 4,612.36 |

With regard to the final applications for compensation in the Chapter 11 case, the Court approves:

| | | |
|---|-------------|-------------|
| Menter, Rudin & Trivelpiece, P.C., Attorneys for Chapter 11 Debtor - Fee *\$28,720.50 (*includes Supplemental Application) | Retainer | -18,417.73 |
| | Balance due | \$10,302.77 |
| | Expenses | \$ 2,582.09 |
| Baum & Woodard, as attorneys for Creditors' Committee in Chapter 11 | Fee | \$ 4,752.00 |
| | Expenses | 138.43 |
| Firley, Moran, Freer & Eassa, Accountants for Chapter 11 Debtor | Fee | \$ 5,660.00 |

Finally, the Court notes that the Chapter 7 Trustee, through his attorney, has reached an agreement with Tuttle Leasing Corp. and/or Richard Tuttle regarding another objection to the Trustee's Final Account, which objection is not dealt with herein and which agreement shall be subject to a

disposition by the Court following further notice to creditors.

IT IS SO ORDERED.

Dated at Utica, New York

this day of September, 1993

STEPHEN D. GERLING
U.S. Bankruptcy Judge