

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

MERCER'S KWIK STOP FOOD
STORES, INC.

CASE NO. 90-02046

Chapter 11

Debtor

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

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

The Court has before it the first Interim Fee Application ("Interim Application")
of Ernst & Young ("E&Y"), the accountants appointed herein on behalf of the Official Creditors'

Committee ("Committee") in this Chapter 11 case pursuant to an Order of the Court dated November 23, 1990.

The Interim Application, which covers a period of four and one-half months, was duly noticed to creditors and appeared on the Court's motion calendar at Syracuse, New York on September 24, 1991.

Prior to the hearing date the Debtor filed an Objection to Application ("Objection") and appeared in opposition on the hearing date. Following oral argument, the Court gave E&Y until October 8, 1991 to file a written response to the Objection.

The Objection references several technical objections, only one of which the Court believes warrants discussion.

Debtor asserts that E&Y's hourly rates are excessive absent special circumstances. In its affidavit submitted in response to Debtor's Objection, E&Y simply states that it discussed its hourly rates with the Committee and the Committee approved.

Approval by the Committee of hourly rates is clearly not binding on this Court in reviewing the Interim Application pursuant to 11 U.S.C. §331.

The Court frequently reviews the fee applications of numerous accounting firms in the "upstate" New York area, and notes that hourly rates for accountants, unlike those of attorneys, range over a broad spectrum. Clearly, the rates charged by E&Y herein are at the outer limits of the high end of that spectrum.¹

Additionally, more than half of the hours for which E&Y seek compensation were expended by individuals billing their time in excess of \$200.00 per hour, thus producing an

¹ It is noted that the accounting firm appointed on behalf of the Debtor charged hourly rates ranging from \$60.00 to \$120.00.

average hourly rate of \$211.00.

The Court does not believe that such hourly rates are justified when certified public accountants, with comparable experience and credentials, are billing their professional services at substantially less than \$150.00 per hour.

Accordingly, the Court will reduce the referenced hourly rates in excess of \$200.00 per hour by \$75.00 and apply same to the hours actually allowed.

Turning to the so-called "Substantive Objections" of the Debtor, the Court will not reduce the 27.5 hours devoted to preparation of a "work plan" which E&Y asserts was not promotional in nature, but was formulated in response to the Committee's request.

Likewise, with regard to the Debtor's Objection to E&Y's preparation of "Store Summaries", review of financial statements, and analysis of Debtor's pre-petition merger with CFM Enterprises, Inc. as it impacted on the Chapter 11 case from a tax perspective, the Court will make no adjustment as it believes E&Y's explanation justifies most of the time expended in both exercises.

The Court does, however, agree with Debtor that the seven hours devoted exclusively to an analysis of Debtor's cash flow position resulting from net operating loss (NOL), carry backs and carry forwards, have not been justified nor have the two hours incurred researching the tax implications of the Debtor forgiving an account receivable due and owing from James Mercer personally.

Finally, the Court will disallow the 3.5 hours expended by Michael Dings in connection with reviewing the report on Debtor's tax position when Howard Buchan, a partner, apparently reviewed the same report a day earlier.

Having made the necessary adjustments in accordance with the foregoing, the Court

will approve a fee of \$15,380.00. Further, the Court will approve reimbursement of \$72.00 in expenses.

The fee and expenses awarded herein shall be paid in accordance with the Order Confirming Debtor's Plan.

IT IS SO ORDERED.

Dated at Utica, New York

this day of January, 1992

STEPHEN D. GERLING
U.S. Bankruptcy Judge