UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.	CASE NO. 96-61376
BENNETT RECEIVABLES CORPORATION	96-61377
BENNETT RECEIVABLES CORPORATION II	96-61378
BENNETT MANAGEMENT AND DEVELOPMENT CORPORATION	96-61379
	Chapter 11
Debtors	Jointly Administered

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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 of Coopers & Lybrand, L.L.P. ("C&L"), accountant and financial advisor to Richard C. Breeden as trustee in these cases ("Trustee"). The application seeks payment of professional fees in the amount of $3,100,199 and

reimbursement of expenses in the amount of $210,182 incurred during the period from July 16, 1996 to November 30, 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 April 17, 1997, and a preliminary hearing was held on April 24, 1997, at which time the Court awarded C&L a provisional award of $750,000. Argument on the application was heard on May 8, 1997, and the matter was submitted for decision on that date.

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 which it awarded fees and disbursements to C&L in connection with its First Interim Fee Application. *See In re The Bennett Funding Group, Inc*., No. 96-61376, slip op. (Bankr. N.D.N.Y. Feb. 5, 1997) ("C&L Fee Decision I"). 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 C&L'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.

C&L provided specific responses to the Report of the Fee Auditor in a reply filed on April 30, 1997 ("Reply") and a document filed on May 8, 1997 containing additional receipts[1] for expenses identified as unreceipted by the Fee Auditor. Addressing the Fee Auditor's findings, C&L notes that since many individual time entries are included in more than one category, the Report wrongly suggests that C&L is not complying with the Court's billing guidelines, and C&L further argues that this "double counting" makes analysis of the data difficult and yields potentially misleading results. C&L also objects that the Fee Auditor appears to have failed to consider explanations of fee categorizations located in the narrative and exhibits submitted with the fee application. Furthermore, C&L notes that it has already voluntarily reduced its fees by $183,550 and expenses by $87,092, a point which C&L feels the Fee Auditor has not taken into consideration. Further specific objections to the Fee Auditor's Report shall be addressed in the

[1] The Reply filed April 30, 1997 also contained receipts for expenses listed by the Fee Auditor as unreceipted.

Discussion section of this Decision.

The Court received objections to the Second Interim Fee Application of C&L from the Official Committee of Unsecured Creditors ("Committee") and the United States Trustee ("UST"). The Committee raised a number of specific concerns in its objection, filed May 5, 1997. The Committee objects to the apparent use of C&L staff for services beyond what the Committee believes are traditional accounting services, including the day-to-day management of the Debtors' operations, and objects to work performed on behalf of Resort Funding Inc. ("RFI"), a non-debtor entity. The Committee also objects to what it deems to be excessive billings for a staff of 91 people used by C&L during this fee period. The Committee is concerned that, based upon the number of staff professionals used and the fact that they are being brought in from all over the country, C&L is not maximizing efficiency and minimizing cost in its representation of the Trustee. Acknowledging the issues raised by the Fee Auditor, the Committee objects to payment for: administrative and clerical services; time spent performing employee functions for the Debtors; time spent on financing activities and the Trustee's motion for substantive consolidation; time spent preparing fee applications and responses to objections thereto; and fees relating to a web site created and maintained on the Internet. The Committee adopted the Fee Auditor's findings with respect to C&L's expenses.

The UST filed an objection to the Fee Application on April 29, 1997. In addition to adopting in large part the findings of the Fee Auditor, the UST specifically objects to: payment for administrative and clerical services; excessive staffing which results in a duplication of effort and services; "double-billing" of intra-office conferences; excessive fees related to fee application preparation; and fees attributable to the substantive consolidation motion, which the

UST believes should be subject to a 100% holdback until such time as that motion is heard by the Court. It is the UST's position that the original motion by the Trustee was ill-conceived and ill-timed.[2] Lastly, the UST believes that fees relating to the business operations of the Debtors are excessive, since a majority of these day-to-day operation services could be performed by other less costly accounting or financial firms.

C&L filed responses to the objections of the Committee and the UST.[3] As to the Committee's characterization of the fees and expenses requested as "staggering," C&L asserts that the Committee ignores the magnitude of the tasks performed and the long term benefits to the Debtors that these services have provided. C&L states that a substantial amount of its time (45%) was spent "complying with the reporting requirements of the Bankruptcy Court," including the preparation of Monthly Operating Reports, Schedules of Assets and Liabilities, and Statements of Financial Affairs. C&L also asserts that the Committee has ignored the voluntary reductions already made to the fees charged. Further detail of C&L's reply to the Committee shall be addressed in the following discussion.

DISCUSSION

The Court shall not reiterate the commentary set forth in the C&L Fee Decision I regarding the potential for double disallowance of certain fees and expenses.

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[2] 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.

[3] C&L's Reply to the Objections of the United States Trustee, filed May 16, 1997, was untimely and therefore the responses shall not be detailed herein.

As in its First Interim Fee Application, C&L continued the practice of allocating a certain percentage of fees classified by C&L as "Bennett Bankruptcy" matters to the four Bennett debtors which are the subject of this decision.[4] The remaining percentage is allocated among debtors who are not subject to the fee auditor process. C&L indicates that it is not always possible to allocate services to specific debtors, and therefore it employs the allocation method to distribute certain fees among the various debtors. For purposes of this Decision, the Court shall consider only that portion of "Bennett Bankruptcy" matters which are properly allocated to the four Bennett Debtors which are the subject of this Decision.

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.[5] *See In re Keene Corp.,* 205 B.R. 690, 695 (Bankr. 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). Accounting firms rendering services in a bankruptcy case must also meet this standard. *See In re Kenneth Leventhal & Co.*, 19 F.3d 1174, 1177 (7th Cir. 1994). 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).

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[4] These debtors are: The Bennett Funding Group, Inc., Bennett Receivables Corp., Bennett Receivables Corp. II, and Bennett Management and Development Corp.

[5] 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).

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 C&L's billing rates may be applied in this case. *See* C&L Fee Decision I, slip op. at 31. However, C&L has agreed to cap its blended hourly rate at $250 per hour, and C&L must still demonstrate that the compensation requested is reasonable and that its services were actual, necessary and reasonable.

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 C&L'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, C&L agrees that 12.6 hours were mistakenly double billed, and therefore the amount of $2,829 shall be disallowed. As to the remainder of alleged duplicate entries, C&L asserts that such entries are proper allocations of the same task among different debtors. The Court shall make no further deductions in this category.

Vaguely Described Tasks

Fee requests should be supported with specific, detailed and itemized documentation. *See* C&L 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).

Of the thousands of individual time entries in C&L's fee application, the Fee Auditor identified only 11 entries, with corresponding fees of less than six thousand dollars, which were deemed to be vague. The Court shall make no deduction in this category.

Administrative/Clerical Tasks

In the Decision relating to C&L's first interim application for payment, the Court provided a lengthy discussion regarding the compensability of administrative or clerical tasks. Familiarity with that discussion is assumed, and therefore it shall not be repeated here. 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* C&L Fee Decision I, slip op. at 21-26; *Poseidon Pools*, 180 B.R. at 746.

In response to the Fee Auditor's categorization of numerous time entries as clerical or administrative, C&L claims that such tasks can be broken down into four categories, including "substantive and valuable non-administrative tasks," "staffing, engagement planning and project status review," "fee application preparation," and "essential administrative work." *See* Reply of C&L to Fee Auditor's Report, filed April 30, 1997, at 9-10. As to the first category, C&L asserts that the work performed required specialized expertise as well as professional judgment. Regarding the second category, C&L claims that such services were crucial to the efficient coordination and execution of its services on behalf of the Debtors. Regarding fee application preparation, C&L notes that it specifically segregated time spent on preparation of its first interim fee application into a distinct project category. C&L objects to the categorization of time spent on this task as administrative. As to the final subcategory, C&L claims that "essential administrative work" consists of documenting and organizing the investigation of investor products, requiring forensic investigation and professional skills.

Upon review of exhibit D of the Report, the Court notes that a significant number of time entries relate to fee application preparation and compiling time and expense information. These time entries are also included in exhibit DD, which relates specifically to such tasks. To that extent, the Court shall not consider these time entries in this section addressing administrative and clerical tasks. Similarly, the Court shall not consider time entries in exhibit D also categorized as intra-office conferences and as administrative work for the Trustee, since these are also the subject of other exhibits. Such time entries shall be addressed separately. Of the remaining time entries, the Court has located 46 which are deemed to be administrative in nature. For example, assisting during the interview of a potential new employee in the accounting

department, scheduling staff for assignments, making arrangements for a trip to Syracuse, and picking up copies from a copy center are services which do not merit compensation at professional rates of up to $450 per hour. The 46 entries located amount to fees of over $10,871. The Court shall disallow $7,600 from this category.

Exhibit E of the Report addresses clerical tasks as classified by the Fee Auditor. C&L responds that many of these tasks related to the preparation of the bankruptcy schedules and statements and the Monthly Operating Reports, which, due to the poor books and records of the Debtors, were not delegable to administrative personnel. Furthermore, C&L asserts that the Fee Auditor overlooks the substantive work performed by personnel within task descriptions that appear to be only clerical in nature.

Upon review of Exhibit E, the Court once again disregarded entries relating to fee application preparation, time and expense reporting and entries for administrative work for the Trustee performed by an employee of C&L, since these are the subject of separate exhibits. The Court agrees with C&L regarding its concern that substantive work may be overlooked due to its inclusion in the clerical task category. There are also time entries which appear to require professional skills or judgment, and thus such tasks would not be appropriately delegated to clerical staff. However, the Court located 80 time entries for services that are clerical in nature, including faxing or picking up documents, and arranging for copying or duplication of papers. Such time entries encompass fees of greater than $17,900, and the Court shall disallow the amount of $12,530.

Administrative Work for the Trustee

The Fee Auditor created a separate exhibit denoting administrative work performed for the Trustee. *See* Report, at exhibit F. An overwhelming majority of the time entries in this exhibit are attributed to one particular C&L employee billing $125 per hour. In addition to many services which appear to be clerical, it appears that this one employee acted as an administrative assistant to the Trustee, performing tasks such as reviewing and organizing the Trustee's documents and correspondence, updating the Trustee on various issues, and meeting with the Trustee to discuss the status of the case. These are services which the Court believes are more economically performed by a person on the Trustee's staff who would not command such a significant hourly fee. In fact, C&L indicates that the Trustee has now hired a full-time Bennett employee to handle matters formerly handled by the C&L employee. Based on the foregoing, the Court deems it appropriate to reduce by 50% the fees requested in this category. Therefore, the amount of $11,477.44 shall be disallowed.

Travel Time

The Court has stated that it will compensate professionals at one-half of their normal hourly rate for non-working travel time. The Fee Auditor analyzed C&L's fee application and did not observe a reduction in billing rates or in time billed for non-working travel, and thus brought this issue to the Court's attention. C&L responded that it did in fact reduce its requested compensation for non-working travel time by $118,129 as indicated in paragraph 108 of its fee application. The Court finds that C&L did reduce its requested fees for this time, although the reduction is not apparent simply by reference to the individual fee entries. Therefore no deduction in this category shall be made.

Intra-office Conferences

C&L states that intra-office conferences were necessary and critical due to the magnitude of the work involved and poor condition of the Debtors' books and records. As stated in the fee application, C&L believes that these conferences were necessary to resolve common problems and issues and to develop work plans and strategy to accomplish the tasks required.

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 In re The Bennett Funding Group, Inc.*, No. 96-61376, slip op. at 16 (Bankr. N.D.N.Y. Feb. 5, 1997) ("STB Fee Decision"); *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). The majority of the intra-office conferences for which C&L has billed relate to discussions regarding the status, strategy and staff requirements for the engagement. Often there are three or more professionals billing for the same conference, and at times there are as many as sixteen. Without an adequate explanation as to the need or propriety of so many professionals billing for the same conference, the Court shall reduce fees associated with intra-office conferences.

The total allocated fees attributable to intra-office conferences amounts to $123,303.34 according to Exhibit L of the Report. After deducting entries which are addressed in the exhibits relating to fee applications, there remain fees of $107,419.23. The Court shall reduce these fees by $64,000. The reduction in this category is well justified, since as pointed out above there were

often three or more professionals billing for the same conference. This reduction also takes into account the occasional recurrence of time entries also categorized as administrative tasks.

Day-to-day Operations

Both the Committee and the UST object to payment of fees amounting to over $500,000[6] generated by C&L through involvement in the day-to-day operations and activities of the Debtor. As the Committee correctly points out, C&L stated that its personnel were actively involved in the daily operations of The Processing Center. The Committee has expressed its concern that C&L is involved with the management of the Debtors' businesses, rather than performing accounting services such as assisting in the preparation of the Schedules, investigating the Debtors' financial affairs, reviewing and/or compiling current financial statements, and limiting its advice to the Trustee to purely financial aspects of the Debtors' operations. The Committee argues that payment for activities characterized by C&L as "Assist Trustee in the Day to Day Activities" should be completely denied. The Committee also objects to work performed for Resort Funding, Inc., a non-debtor entity. While the Committee recognizes that the estates may ultimately realize a benefit from these services, it does not approve of payment for such services from estate assets.[7] The UST asserts that the fees requested for services involving the day-to-day

[6] The Committee relies upon exhibit B to C&L's fee application, which indicates that the amount of $530,376 was billed for assisting the Trustee in the day-to-day activities of the Debtor. The UST indicates that $517,849.50 was billed for C&L's involvement in the business operations of the Debtor, which in large part consisted of assisting in day-to-day operations. The source of the UST's figure is the sum of the unallocated fees listed in exhibits V-1 through V-8 of the Report.

[7] The Committee has also objected to payment of fees incurred in connection with certain chapter 11 proceedings pending in Mississippi in which both debtor and non-debtor entities are

operations should be reduced since the services provided in this category were not so unique as to require the personnel and the attendant billing rates of a nationally known accounting/financial firm.

In reply to the Committee and the UST, C&L asserts that its services were of a unique character because of the difficulty in determining and unraveling the fraud involved in this case. Among other services, C&L states that it played an integral role in re-establishing the day-to-day operations of the Bennett companies since necessary business operations were not being performed, a service which was essential to stabilizing operations, restoring credibility of the Debtors and gaining the confidence of financial institutions and other parties in interest. Part of C&L's work involved assessing and reorganizing TPC's operations in order to improve efficiency, increase stability and reduce operating costs. According to C&L, in December 1996 it began an organized transition of these services to new employees hired by the Debtors, a transition which was completed as of March 1, 1997. As to work performed on behalf of RFI, C&L states that it served as the Trustee's representative in assisting RFI to reopen accounts at banks and allayed the concerns of institutional and individual lenders. C&L argues that if it had not performed these services, RFI would also have sought bankruptcy protection, thereby eliminating any equity of BFG and BMDC in RFI, and it would have greatly reduced the chances of the Debtors collecting on an approximate $24 million receivable due from RFI. C&L also notes that its actions have allowed the Trustee to make RFI a key component in the Debtors' reorganization.

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involved. The Committee asserts that it is unclear whether the C&L is seeking payment for services performed for non-debtors.

The Court is also concerned that C&L not be utilized to operate and manage the Debtors' businesses, and therefore review of other time entries is necessary. Specifically, the Court reviewed Exhibits V-1 through V-8, which are identified as "General Business Operations," "Review of Disbursements," "Review of Control Systems," "Review of Asset Recovery System," RMR Review and Analysis," "Customer Dispute Resolution," "Inventory of Assets," and "Selection of Long-Distance Carrier."

C&L clearly acknowledges that it was involved in the day-to-day operations of the Debtors, and review of the fee application reveals evidence of such activity. Furthermore, there are time entries relating to services performed for RFI, a non-debtor. The Court must consider and balance the concerns of all parties and professionals in these cases. There does not seem to be any dispute that staffing at the Debtors had been reduced significantly by the time C&L was charged with the responsibility of helping to reconstruct the books and records of the Debtors, and therefore not only did C&L need to perform traditional accounting services, but it also had to take the steps necessary to assist in maintaining the Debtors as viable entities, and this meant ensuring that invoices were sent to the lessees, among other tasks. While it is understandable that the Committee and the UST object to payment for services which were characterized as assisting the Trustee in the day-to-day activities, review of various exhibits of the Report and the fee application itself does not evidence an excessive amount of involvement in mundane tasks or the ordinary business of the Debtors. For example, Exhibit V-1 of the Report is entitled "General Business Operations," but review of this exhibit does not indicate a general misuse of professionals for tasks more economically performed by regular employees of the Debtors. Indeed, issues addressed include tax liability concerns, the analysis of bank aging reports,

discussions and negotiations regarding possible financing deals,[8] and the review of cash management techniques.

Without discounting the quality of the work performed by C&L, the Court nevertheless acknowledges that everyday services were performed by C&L at its normal billing rates, and that while C&L argues that its services for RFI will result in a benefit to the estates, RFI is still a non-debtor and the Court cannot allow professionals to perform work for non-debtors and then allow payment from the Debtors' estates because of an indirect, though possibly significant, benefit. The Court shall therefore disallow 20% of the total allocated fees in Exhibits V-1 and V-2 only, which amounts to a reduction of $59,152.01. This reduction addresses excessive fees for work reflecting involvement in day-to-day activity and RFI issues located throughout the fee application.[9]

Overstaffing and Duplication of Effort

It is clear that overstaffing and duplication of work are not to be compensated from the debtor's estate. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40 , 76 L.Ed.2d 40 (1983) (stating that excessive, redundant or otherwise unnecessary hours should not

[8]The Court has noted the Committee's objection regarding fees related to financing activities. Review of the fee application reveals that negotiations and work concerning such activity did take place on a number of occasions. Although there is no in-depth explanation for, or obvious results of, such financing work, the Court will not at this point make any deductions in this category.

[9] While the Committee objects to any payment for services relating to assisting the Trustee in the day-to-day activities, which aggregates fees of over $500,000 according to the fee application, the Court believes that the adjustments reflected in this Decision adequately and fairly address all concerns of the parties.

be considered); *General Electric Co. v. Compagnie Euralair, S.A.*, 1997 WL 397627, *4, (S.D.N.Y. 1997) (noting that when more lawyers than are necessary are assigned to a case, level of duplication of effort increases; also finding staffing level excessive); *Agent Orange*, 818 B.R. at 238 ("Overstaffing and other extravagances are not recoverable"); *Seigal 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"); *see also In re Rancourt*, 207 B.R. 338, 363 (Bankr. D.N.H. 1997) (finding that time record indicated excessive staffing and inordinate amount of conferences). "Just as Michelangelo should not charge Sistine Chapel rates to paint a barn, *In re S.T.N. Enters., Inc.*, 70 B.R. 823, 842 (Bankr. D.Vt. 1987), he should not employ the entire Florentine school on the project." *Keene Corp*., 205 B.R. at 708-09.

The Court is not deaf to the claim that the magnitude and the complexity of issues presented by the alleged fraud in these cases required the use of significant resources. However, C&L's use of 91 staff professionals during this fee period is significant, and represents the employment of a large army of very costly professionals. Understanding C&L's claims regarding the disarray of the Debtors' books and records and the difficulty of unraveling tortuous financial puzzles, the Court nevertheless believes that the use of 91 professionals, some being flown in from all over the country, resulted in the duplication of effort and services which should not be compensated by these estates. Furthermore, the Court believes that the use of so many different staff professionals also resulted in unnecessary "learning curve" time, which is not necessarily represented in the "Orientation/Getting Up-to-Speed" category of the Fee Auditor.[10]

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[10] The Court has noted C&L's reply that only 55 billing entries are associated with the "Orientation/Getting Up-to-Speed" category in the Report. *See* C&L's Reply to Report of Fee Auditor, filed April 30, 1997, at ¶46.

According to the responses to the Committee and the UST addressing the issues of staffing and involvement in the day-to-day operations, C&L points out that the staffing at TPC had been reduced from 350 to 100, and that invoices were not being mailed to lessees. In addition, most of the Debtors' senior management had left, leaving the remainder to assume new management roles for which C&L provided direction. C&L asserts that because of its efforts, payments to various vendors, servicers and taxing authorities were disbursed timely, the asset recovery department managed surplus equipment aggressively, and invoices were timely mailed to the lessees.

The Court has reviewed many exhibits to the Fee Auditor's Report which would indicate evidence of overstaffing, duplicative work, excessive conferences or involvement in the day-to-day operations of the Debtors. Turning to the issue of conferences, Exhibit M of the Report is entitled "Conferences with Non-Firm Personnel," and review of this exhibit reveals almost 1,800 time entries during this interim fee period. These conferences amount to total allocated fees of $621,722.64, which represents over 20% of the total fees requested. Significantly, these conferences are *in addition to* the numerous intra-office conferences addressed earlier in this Decision. These conferences involve, *inter alia*, discussions regarding bank settlements, schedules of assets and liabilities, RFI and its relationship with the Debtors, various financing transactions and arrangements, the business operations of the Debtors, collection issues, consolidation issues, monthly operating reports, security issues, discussions regarding various assets, and meetings with employees of the Debtors, the Trustee and counsel for the Trustee. More than 50 professionals billed for conferences in this category. The Court noted a significant number of conferences earlier on in the period covered by this fee application, but observed that

the number of conferences began to decrease towards the end.[11] The number of different people billing for such conferences also began to decrease as the fee period progressed. Based upon review of the nearly 1,800 entries, the Court concludes that there were an excessive amount of conferences billed to the estates during this fee period, especially in the beginning of the period. The Court deems that a 30% reduction in the total fees in this category is warranted. Therefore, the amount of $186,516.79 shall be deducted from the fee request.[12]

Fee Application

Fees relating to preparation and defense of the fee applications[13] are compiled in exhibits DD-1 through DD-9 of the Report, which represent separate categories labeled by the Fee Auditor as follows: fee/employment applications; drafting/revising application; handling of fee/expense data; review/editing of task descriptions; collection/input of fee data; coordination of application; reconciliation of invoices; response to objections; and meeting fee auditor

[11] After fully reviewing Exhibit M, the Court randomly chose three-day intervals at various points in the months covered by this fee application, which served in part as the basis for the Court's observation. These three-day intervals are: 7/16/96 - 7/18/96; 8/7/96 - 8/9/96; 9/17/96 - 9/19/96; 10/8/96 - 10/10/96; and 11/6/96 - 11/8/96.

[12] Exhibit M also contains many time entries also categorized by the Fee Auditor as "Multiple Attendance at Events" in Exhibit C of the Report. The Court believes that the reductions reflected above adequately address the issue of more than one professional attending meetings or other events, and therefore no additional scrutiny of Exhibit C shall be made.

[13] The Court is aware that this Second Interim Fee Application includes time entries relating to preparation of the first and second interim fee applications. Due to the ongoing nature of the interim fee application process, and the fact that work performed for prior fee applications will appear as time entries in the subsequent fee application, the Court deems it appropriate to address all time entries relating to fee application preparation as they appear in the application before the Court at that time, rather than parsing out time entries according to the respective fee application to which they relate.

requirements. The combined allocated fees for these tasks total $290,215.03.

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* C&L Fee Decision, slip op. at 26, 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 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 C&L Fee Decision*, slip op. at 27; *see also Office Prods. of America*, 136 B.R. at 977; *In re Pettibone Corp*., 74 B.R. 293, 304 (Bankr. N.D.Ill. 1987)

In the replies to the Fee Auditor's Report and the objections of the Committee and the UST, C&L states that it took a voluntary reduction of $71,993 in fees relating to fee application preparation, which represents that amount in excess of a voluntary 5% cap on total fees incurred. The basis of C&L's 5% cap is unclear, although some courts have held that such a limit is appropriate. *See Spanjer Bros*., 203 B.R. at 93; *In re Pettibone,* 74 B.R. at 304; *In re Wildman*, 72 B.R. 700, 711 (Bankr. N.D.Ill. 1987). Furthermore, it is unclear exactly what services C&L

considered as relating to its fee application, such that it took a voluntary reduction of almost $72,000 in order to fall within the self-imposed 5% cap.

The Court reviewed exhibits DD-1 through DD-9 to determine whether these services relate to preparation of the fee application. Exhibit DD-1 contains time descriptions which are not clearly related to the preparation of a fee application, although some of the services are collaterally related to professional compensation. The fees in this exhibit will not be considered as amounts requested for preparation of the fee application, and no deductions shall be made in this category. Exhibit DD-2 contains time entries for preparing the fee application narrative, reviewing time and expense entries, analyzing billing summaries, performing discreet billing judgment on time and expense entries, reviewing and revising the fee application, preparing responses to fee objections, and review of affidavits in support of the fee application. A majority of the entries, which are dated August 30, 1996 or earlier, relate to preparation of the First Interim Fee Application and the Amendment thereto filed on August 30, 1996. Other time entries specifically relate to preparation of the Second Interim Fee Application. The total allocated fees relating to these time entries, including those relating to the Second Interim Fee Application, amount to $59,089.69.

Upon review of Exhibits DD-3 through DD-5, the Court found that an overwhelming majority of the hundreds of time entries relate to the compilation of time and expense data, installing the C&L billing system on various computers, inputting time and expense descriptions into the billing system, and the review and editing of task descriptions. Without detailing an exhaustive and often repetitive listing of time entries, some examples of descriptions include: “Assisted C&L engagement staff in printing time and expense reports”; “Uploaded time and

expense descriptions into the approach billing system"; "Edited time and expense descriptions for the fee application"; "Input time descriptions for C&L employees"; "Reviewed detailed time and expense reports in preparation for the fee application"; and "Updated dtrslog for time and expense files." The total allocated fees in these exhibits amount to $174,021.13.

Exhibit DD-6, entitled "Coordination of Application," contains time entries for discussions regarding the strategy and status of the fee application, coordination of the fee application, and calls and meetings regarding the fee application, for a total of $26,922.83 in allocated fees. Exhibit DD-7 contains time entries which relate to reconciling time descriptions, hours billed, which amounts to an additional $9,662.40 in allocated fees. Exhibit DD-8 addresses time entries which the Fee Auditor categorized as "Response to Objections." The fees associated with these entries total $5,707.92.

The combined allocated fees for Exhibits DD-2 through DD-8 totals $275,403.98. As the Court stated in the Decision relating to C&L's First Interim Fee Application in these cases, reasonable compensation is appropriate for time spent preparing a fee application, which can consume time otherwise spent on different tasks. *See* C&L Fee Decision, slip op. at 26-27; *see also In re NuCorp Energy, Inc*., 764 F.2d 655, 659 (9th Cir. 1985); *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088, 1093 (5th Cir. 1980). However, the estate should not be burdened with fees amounting to more than one quarter of a million dollars to essentially compile, prepare and edit fee and expense entries and information in order to submit a fee application. *See, e.g., In re Cuisine Magazine, Inc.,* 61 B.R. 210, 217 (Bankr. S.D.N.Y. 1986) (indicating that time spent reviewing billings should not be paid from estate funds). 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. Furthermore, the Court finds no basis to allow 5% of the total fees awarded for fee application preparation in cases of this magnitude. While recognizing that preparation of the voluminous fee applications is burdensome, it must be remembered that these tasks enable a professional to seek 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 C&L, which no doubt resulted in a reduction of fees charged to the estates. This is further demonstrated by C&L's assertion that it has taken voluntary fee reductions prior to submitting the fee application. Such billing judgment is expected. As stated in the Decision relating to C&L'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 C&L Fee Decision I, slip op. at 7. The tasks found in these exhibits are not legal services or accounting services rendered for the benefit of the estates. Instead, they are a benefit to the

professional.[14] For the most part, the Court finds that the services in Exhibits DD-3 through DD-8 are minimally-compensable tasks. They represent the procedure for compiling the bill to the estates for services rendered. The estates should not have to pay an extraordinary fee just to receive a detailed and accurate account of the services they receive for the millions of dollars that are paid to the professionals in these cases. What shall be compensable in this case at reasonable hours and fees is the drafting of the fee narrative, completing the fee application itself, reasonable review and editing of the application, and responding to objections. The Court finds that $35,000 is a reasonable fee for the tasks located in Exhibits DD-2 through DD-8, and the remaining $240,403.98 is deemed unreasonable, duplicative, excessive and/or of no benefit to the estate and therefore shall be disallowed.[15]

Exhibit DD-9 addresses time entries which the Fee Auditor categorized as "Meeting Fee Auditor Requirement." Since the Court has imposed the fee auditor process on the parties,

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[14] 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.

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.

[15] 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.

reasonable fees relating to compliance with the Fee Auditor's requirements shall be compensable. The time entries and related fees in this category are reasonable, and therefore no deduction shall be made.

Motion for Substantive Consolidation

While the UST posits that the original motion for substantive consolidation made by the Trustee was ill-conceived and ill-timed, the Court does not deem it appropriate to penalize C&L by withholding or otherwise disallowing fees associated with work performed by C&L for this matter. The timing and appropriateness of such a motion is within the realm of the Trustee's responsibilities, and the Court shall not make any adjustments to C&L's fees associated with the original motion.

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*, 61 B.R. at 218; *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.

Exhibit KK[16] of the Report addresses unreceipted expenses. Reference to the fee application reveals a number of unreadable receipts, as noted by the Fee Auditor. In the Reply to the Report of the Fee Auditor, C&L resubmitted copies of receipts, and thereafter submitted additional supporting documentation in the form of receipts in a document filed with the Court on May 8, 1997. At this time, expenses that remain unreceipted total $1,477.66 ($1120.66 allocated).[17] This amount (allocated) shall be deducted from the expense request. C&L has also agreed to an additional deduction of $94.17 ($71.41) representing non-compensable expenses. Additional deductions agreed to by C&L include $941.20 ($713.81) for items classified as overhead, $460.75 ($349.43) in overtime transportation, $57.21 ($43.39) in amenities, $206.50 in tips ($156.61), and $47.80 ($36.25) for vaguely described expenses. The cost of lunches is not reimbursable, regardless of whether it was consumed while working, and thus $2,369.09 ($1,796.72) in expenses shall be deducted.

No further deductions shall be made to the expenses submitted by C&L. As noted by C&L, it had already taken voluntary reductions for certain expenses prior to submitting the fee application. The Court must address one other issue of concern, however. Travel expenses represent a substantial amount of the total expenses incurred in this case. Upon review of the expense entries in the fee application, the Court has noted relatively substantial fees for taxis and car service to and from the airports. For example, one entry is for car service from a

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[16] The Court refers to the revised Exhibit KK submitted by the Fee Auditor in response to C&L's assertion that certain expenses were improperly included in the original exhibit.

[17] C&L did not specifically attribute expenses to individual debtor estates, and instead utilized the allocation method described earlier in this Decision. The allocation factor attributable to these Debtors is 75.84% of the total billed. Deductions shall similarly be based on this factor.

professional's home to LaGuardia Airport at a cost of $91, and another is for $105.90. The Court questions the need of burdening these estates with such excesses. Furthermore, there are many instances of multiple taxi cab rides to and from Syracuse Airport and the Atrium. The Court asks that C&L review this issue and determine whether it is possible to reduce travel expenses in any way.

In summary, the Court makes the following reductions to the fees and expenses sought in C&L's Second Interim Fee Application:

Total of requested fees:	$3,100,199.00
Disallowances	
Duplicate Billing Entries	-2,829.00
Administrative/Clerical Tasks	-20,100.00
Administrative Work for the Trustee	-11,477.44
Intra-office Conferences	-64,000.00
Day-to-day Operations	-59,152.01
Overstaffing/Duplication of Work	-186,516.79
Fee Application	-240,403.98
Provisional fee award granted on 4/24/97	-750,000.00
Net Total Fees Allowed	$ 1,765,719.78

Total Requested Expenses	$210,182.00
Disallowances	
Unreceipted	-1,120.66
Miscellaneous deductions	-1,370.90
Lunches	-1,796.72
Net Total Expenses Allowed	$205,893.72

Based on the foregoing, it is

ORDERED that the fees and expenses requested by C&L 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 amount 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