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

APPEARANCES:

SHAW, LICITRA, ESERNIO & SCHWARTZ, P.C. Attorneys for The Bennett Funding Group, et al. 1010 Franklin Avenue Garden City, New York 11530	STUART GORDON, ESQ. Of Counsel
SIMPSON, THACHER & BARTLETT Attorneys for § 1104 Trustee 425 Lexington Avenue New York, New York 10017	M.O. SIGAL, JR., ESQ. Of Counsel
WASSERMAN, JURISTA & STOLZ Attorneys for Unsecured Creditors Committee 225 Millburn Avenue P.O. Box 1029 Millburn, New Jersey 07041	DANIEL STOLZ, ESQ. Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

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

The Court has before it the Final Fee Application of Shaw, Licitra, Esernio & Schwartz ("SL"). By Order dated May 24, 1996, SL was authorized on a *nunc pro tunc* basis pursuant to section 327(a) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) ("Code") to serve as counsel to The Bennett Funding Group, Inc., Bennett Receivables Corp., Bennett Receivables Corp. II, and

Bennett Management and Development Corp. (collectively, the "Debtors") from April 1, 1996 through April 18, 1996 ("Retention period"). The Order further provided that SL could seek compensation for services rendered after April 19, 1996 ("Postretention period"), in accordance with the procedures set forth in Code § 503(b). *See* Order dated May 24, 1996, at 2-3. The fee application, filed on November 1, 1996, seeks payment of $138,358.75 in fees and $2,715.79 in expenses for the Retention period, and $23,118.75 in fees and $4,424.03 in expenses for the Postretention period, which covers work through October 22, 1996. In addition, SL filed a supplemental affidavit wherein it requests payment of $5,033.75 in fees and $3,120.20 in expenses incurred during the period subsequent to the Postretention period from October 23, 1996, through January 9, 1997 ("Supplemental period"). *See* Supplemental Affidavit in Support of Final Allowance of Compensation dated January 8, 1997, at 2. Objections to the fee application of SL were filed by the United States Trustee ("UST"), the Official Committee of Unsecured Creditors ("Committee") and the Trustee in these cases. A hearing regarding the entire fee application was held on January 9, 1997, and the matter was submitted for decision on that date.[1]

JURISDICTIONAL STATEMENT

[1] In the interest of judicial economy, sections of this Decision which discuss conclusions of law and their application to fee applications generally are utilized in other Decisions issued during the initial interim fee period in these cases. Due to the large volume of fee applications before the Court and the similarity of issues presented by each, reliance upon research already completed will yield uniformity and economies of scale.

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

FACTS AND ARGUMENTS

Anticipating the magnitude of the fee applications to be filed in these cases, the Court *sua sponte* filed an Order to Show Cause, dated September 5, 1996 ("OSC"), to consider the appointment of a fee auditor. A hearing was held regarding the OSC on September 26, 1996, and the parties were offered the opportunity to object to the proposed appointment. At the conclusion of the hearing, the parties were invited to submit proposed orders regarding the appointment of a fee auditor by October 4, 1996. After due consideration and sufficient cause appearing for the appointment of a fee auditor, the Court appointed the firm of Stuart, Maue, Mitchell & James, Ltd. ("Fee Auditor"), to function in this capacity in these cases by Order dated October 15, 1996.[2]

The Order appointing the Fee Auditor and the Amended Order were made applicable to all professionals in these jointly administered cases employed or to be employed pursuant to 11 U.S.C. §§ 327 or 1103. 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

[2] This Order was subsequently superseded by an Amended Order Appointing Fee Auditor and Directing Related Procedures and Standards Concerning the Interim Payment of Compensation and Consideration of Fee Application, dated December 2, 1996 ("Amended Order").

review and analysis of SL's Final Fee Application pursuant to the Amended Order, and submitted a report ("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.

SL provided responses to the findings of the Fee Auditor. Specifically, SL argues that certain entries labeled as potential duplicate billing entries are not properly characterized, as such time entries represent time spent on specific tasks that were allocated among two or more of the Debtors. SL also asserts that entries labeled by the Fee Auditor as vague are sufficiently described for a person who is familiar with these cases to understand the nature and scope of the services rendered. Regarding allegedly vague time entries for reviewing documentation, SL argues that since it did not prepare the bankruptcy petitions, it did not have the normal lead time to review documents, and that as a result of the crisis situation presented by the bankruptcies, SL was forced to review many boxes of documents at different locations throughout the Debtors' headquarters, thus making it impossible to keep track of documents on an individual basis.

Like many of the other professionals in these cases, SL notes that multiple attendance at meetings or hearings was necessary due to the complexity of the issues presented. Specifically, SL states that generally one attorney was in attendance for the bankruptcy matters and another was in attendance to handle the litigation matters. Regarding travel time, SL has agreed to reduce its requested fees by 50% for this time. Tasks labeled as administrative or clerical by the Fee Auditor aggregated $3,985.63, and SL agreed that some of the services performed were clerical in nature and has offered to reduce its fees in this category by 20%. As to the use of "spread billing" to allocate time spent on general matters among all four Debtors, SL states that the

allocation was made at the time that the work was performed, rather than at the time the fee application was being prepared.

Regarding expenses, SL notes that its retention was authorized as of April 1, 1996, and that it will accept a reduction in the amount of $56.87 for expenses incurred prior to that date. SL also is willing to accept reduction of its requested expenses as listed in exhibits OO-1 and OO-2 of the Fee Auditor's Report, and for various other expenses which shall be detailed further herein.

The UST objects to payment for services rendered by SL after the appointment of the Trustee in these cases, and also requests an inquiry as to the necessity of these services and whether or not they were authorized by the Trustee. Furthermore, the UST objects to reimbursement for vaguely described services, multiple billing of intra-office conferences, excessive time spent in conferences with non-firm personnel and services related to efforts to retain Matthew Harrison as examiner in these cases.

The Committee objects to SL's fee application on the grounds that the services rendered were of no significant benefit to the estate.[3] The Committee characterizes a majority of the services of SL as related to efforts to retain Matthew Harrison as examiner and to resist attempts to appoint a chapter 11 trustee, and also states that many of the services were "learning curve" services. The Committee does believe, however, that SL did benefit the creditors in some way and therefore does not object to modest compensation for services rendered. The Trustee concurs

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[3] The Committee mistakenly believed that SL had not been appointed by the Court pursuant to Code § 327, and therefore argued that the sole basis for awarding fees to SL was Code § 503(b). Although SL has requested sanctions against the Committee and Trustee based on their failure to locate the existence of the Order retaining SL, the Court finds no grounds for sanctions, and thus the request is denied.

with the objections of the Committee.

SL filed a response to the objections of the Committee and the Trustee, which notes that SL was in fact appointed pursuant to Code § 327 for the period of April 1 to April 18, 1996, and that it should be compensated for services rendered after April 19, 1996, pursuant to Code § 503(b).

At oral argument on the matter on January 9, 1996, SL stated that in an effort to address areas of concern noted by the Fee Auditor, it would accept a fee reduction of $12,500 and an expense reduction of $4,334. Counsel for the Committee stated that although the quality of the work performed by SL is not questioned, the Committee could not find any tangible benefit to the estate resulting from the services performed by SL. Counsel for the Trustee argued that when the Trustee took over, chaos still reigned at the Bennett headquarters, and that Bennett family members continued to have access to the computers and other records. Counsel for the Trustee also argued that SL has not shown that its work resulted in any benefit to the estates.

DISCUSSION

The 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.

It is important to note that the Court appreciates and understands a concern shared by many of the fee applicants in these cases regarding the potential for "double disallowance" of certain fees or expenses because they may fall into more than one category of the Fee Auditor's Reports. For example, since a time entry proposed for disallowance as pre-retention billing may also appear on another exhibit which categorizes that entry in a different way, there is a chance that an entry already proposed for disallowance could be criticized again for a different reason in a different category. This would produce an unjust result, and the professionals have themselves indicated that adding the totals in each Fee Auditor category would result in a sum far greater than that requested by the applicants. The Court has reviewed the applications aware of these potential problems. As a result, the Court has made every effort to ensure that no time entry that was disallowed in one category was disallowed again in another. The Fee Auditor provided information indicating the other exhibits in which a particular time entry appears again, and thus the Court was able to cross-reference any disallowed entries to prevent double disallowance.

SL was an authorized employed professional during the Retention period, and in seeking fees pursuant to Code § 330, it must demonstrate that its services were actual, necessary and reasonable. The starting point for determining reasonable attorney's fees is a computation of the "lodestar" figure, which is obtained by multiplying the hours reasonably spent by the reasonable hourly rate. *See Cruz v. Local Union No. 3 of Intern. Bhd. of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir. 1994); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939 76 L.Ed.2d 40 (1983) (stating that starting point of determining reasonable fee is hours spent on

litigation multiplied by reasonable hourly rate). In adjusting the lodestar figure to determine a reasonable attorney's fee, the Court may consider the twelve factors set forth in the seminal case of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), which include: (1) the time and labor involved; (2) the novelty and difficulty of the matter; (3) the skill required to perform the legal services properly; (4) the inability to accept other employment due to involvement in the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed; (8) the amount involved and the results obtained; (9) the experience, reputation and skill of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship; and (12) awards in similar cases. *See Johnson*, 488 F.2d at 717-19; *see also Cruz,* 34 F.3d at 1160 (affirming use of *Johnson* factors to evaluate fee applications); *United States Football League v. National Football League*, 887 F.2d 408, 415 (2d Cir. 1989) (same); *In re Environmental Waste Control*, 122 B.R. 341, 345 (Bankr. N.D.Ind. 1990) (indicating that *Johnson* factors are utilized to adjust upward or downward the result obtained by multiplying law firm's hourly rates by the hours worked).

A debtor's attorney's fees are payable from the estate when the services confer a benefit to the estate, but not when those services benefit only the debtor personally. *See In re Spanjer Bros., Inc.*, 191 B.R. 738, 747-48 (Bankr. N.D.Ill. 1996). The concept of a benefit to the estate is not limited simply to economic benefit; another factor to be considered includes "whether the services rendered promoted the bankruptcy process or administration of the estate in accordance with the practice and procedures provided under the Bankruptcy Code and Rules for the orderly and prompt disposition of bankruptcy cases and related adversary proceedings." *Id.* at 748; *see also In re Lifschultz Fast Freight, Inc.*, 140 B.R. 482, 489 (Bankr. N.D.Ill. 1992) (stating that test

under Code § 330 is whether compensation is sought for "necessary services," whether or not those services result in economic benefit to estate).

As to the services rendered in the Postretention period, SL seeks compensation for such services under Code § 503(b) as an administrative expense claim.[4] Administrative expense priority is generally limited to those creditors who perform services which are actual and necessary to preserve the estate or that allow it to continue operating. *See In re R.H. Macy & Co., Inc*., 170 B.R. 69, 76 (Bankr. S.D.N.Y. 1994); *In re CIS Corp*., 142 B.R. 640, 642 (Bankr. S.D.N.Y. 1992). Under the two-prong test established in *In re Mammoth Mart, Inc*., 536 F.2d 950 (1st Cir. 1976), an administrative expense claimant must show that the obligation arises from a transaction with the debtor-in-possession, and that there was a direct benefit to the estate. *See id*. at 954; *see also In re Olga Coal Co*., 194 B.R. 741, 746 (Bankr. S.D.N.Y. 1996) (stating that Second Circuit has adopted *Mammoth Mart* test); *R.H. Macy & Co*., 170 B.R. at 76 (same); *In re Chateaugay Corp*., 102 B.R. 335, 354 (Bankr. S.D.N.Y. 1989) (same).

A. Retention Period

Duplicate Billing Entries

Although SL has disputed the characterization of certain time entries as duplicative, the basis for its objection is that the time entries represent charges for particular tasks allocated among two or more of the Debtors. Reference to exhibit A-1 of the Fee Auditor Report itemizing potentially duplicate billing entries, however, reveals that time entries on April 16, 1996, are

[4] Fees requested for services and expenses in the Supplemental period shall also be considered under Code § 503(b).

apparently double-billed. The Court understands SL's argument, which is essentially that the same description of services and the time spent thereon is allocated among the four Debtors, thus giving the appearance of duplicativeness. On April 16, however, the same description of services for the same amount of time allocated among the four Debtors appears twice. The Court therefore concludes that this second grouping of charges is a duplicate billing entry which shall be disallowed in the amount of $275. The time entry on April 18, 1996, is also duplicative, in that the same Debtor entity is billed for the same amount of time for the same description of services twice. Therefore, the amount of $17.50 shall be disallowed.

Lumping of Services

Services which are "lumped" together in a single time entry may be non-compensable. *See In re Poseidon Pools of America, Inc.*, 180 B.R. 718, 731 (Bankr. E.D.N.Y. 1995) (noting that when applicants "lump" entries, courts have denied payment based on impossibility of determining whether time spent on service was reasonable); *In re Office Prods. of America*, 136 B.R. 964, 976 (Bankr. W.D.Tex. 1992) ("[S]ervices which have been lumped together into a single time entry should not be compensated"); *In re Adventist Living Ctrs., Inc.*, 137 B.R. 701, 705-06 (Bankr. N.D.Ill. 1991) (stating that "[w]hen an applicant lumps together services, the court is unable to ascertain whether the time spent is reasonable. Accordingly, the applicant should not be compensated for those entries which contain 'lumping'"; however, court reduced compensation for lumped services by only 50%). *But see In re Blackwood Assocs. L.P.*, 165 B.R. 108, 113 (Bankr. E.D.N.Y. 1994) (lumping did not prevent meaningful review).

The fee application of SL contains lumped time entries which make it difficult to

determine the amount of time spent on specific activities. This problem will be addressed in the individual categories herein.

Vague Documentation of Services

It is well settled that the bankruptcy court has an affirmative obligation to examine fees and expenses requested even if no objection has been made. *See 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); *In re Copeland*, 154 B.R. 693, 697 (Bankr. W.D.Mich. 1993); *In re J.F. Wagners & Sons Co*., 135 B.R. 264, 266 (Bankr. W.D.Ky. 1991). It is also true that the court may award compensation only for actual and necessary services and expenses under Code § 330(a), and that the burden of proving that services rendered were actual and necessary, and that the compensation sought is reasonable, rests with the applicant. *See Brake v. Tavormina (In re Beverly Mfg. Corp.)*, 841F.2d 365, 370 (11th Cir. 1988); *In re Ward,* 190 B.R. 242, 245 (Bankr. D.Md. 1995); *In re Navis Realty*, 126 B.R. 137, 145 (Bankr. E.D.N.Y. 1991). To meet this burden, the applicant must support its request for fees and expenses with specific, detailed and itemized documentation. *See Poseidon*, 180 B.R. at 729; *In re Gold Seal Prods. Co., Inc*., 128 B.R. 822, 827 (Bankr. N.D.Ala. 1991); *see also J.F. Wagner's Sons Co.*, 135 B.R. at 267 (stating that professionals have burden of providing adequate description of services and expenses to allow court to make finding of reasonableness).

In cases where the time entry is too vague or insufficient to allow for a fair evaluation of the work done and the reasonableness and necessity for such work, the court should disallow compensation for such services. *See Poseidon*, 180 B.R. at 730; *J.F. Wagner's*, 135 B.R. at 267;

Gold Seal Prods., 128 B.R. at 828. The point is that the court should be able to determine from the fee entries themselves the legal issues involved, the difficulty of the issues and the resolution or results obtained for the estate. *See Navis Realty,* 126 B.R at 142; *In re Lafayette Radio Electronics Corp*., 16 B.R. 360, 361 (Bankr. E.D.N.Y. 1982). Without such detailed entries it is difficult, if not impossible, to "make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed." *Hensley v. Eckerhart*, 461 U.S. 424, 441, 103 S.Ct. 1933, 1943, 76 L.Ed.2d 40 (1983) (Burger, C.J., concurring).

For example, time entries for telephone calls must indicate the parties involved and the purpose and length of the conversation. *See In re NRG Resources, Inc*., 64 B.R. 643, 653 (W.D.La. 1986)*; Poseidon*, 180 B.R. at 730. Entries such as "telephone call with Mr. X" are insufficient descriptions of services, *see Navis Realty*, 126 B.R. at 143; *In re R&B Institutional Sales, Inc*., 65 B.R. 876, 881 (Bankr. W.D.Pa. 1986), as such entries fail to "indicate the function, substance, necessity or benefit of the call with sufficient particularity to permit the court to evaluate whether or not the service is compensable." *Office Prods. of America*, 136 B.R. at 977. As the burden of proof to show that services rendered were necessary, appropriate and reasonable is on the applicant, *see id*. at 976; *In re Pettibone Corp*., 74 B.R. 293, 299 (Bankr. N.D.Ill. 1987), it is not the Court's responsibility to recognize or assume that a vague time entry meets these requirements. Those entries that are made vague intentionally to protect privileged or confidential material should be noted appropriately, such as by the word "Redacted," and such information should be available to the Court for *in camera* review if the need should arise.

The Court does not approach the fee applications as though unfamiliar with the details and needs of these cases, however, sufficient description of services is expected. Analysis of

SL's fee application and the Fee Auditor's Report reveals a number of vague time entries, which are further complicated by the "lumping" of services within individual time entries. Of the $15,848.19 in fees labeled as vaguely described conferences in exhibit B-1 of the Report, the Court shall disallow $3,600. Other vague time entries in this category consist primarily of intra-office conferences, which shall be addressed separately herein. As to vaguely described document drafting in exhibit C-1 and other vaguely described entries in exhibit D-1of the Report, the Court finds that the services rendered can be ascertained from the entries provided, especially based on the limited extent and amount of time in which SL was involved in these cases, and since the "lumping" did not prevent meaningful review of these other entries, no deduction shall be made in these categories. *See Blackwood*, 165 B.R. at 113.

Time entries for either intra-office or other conferences must denote sufficient information for the court to determine whether the service provided and the fees charged were necessary and reasonable. *See Office Prods. of America*, 136 B.R. at 976. At a minimum, such entries should indicate the participants and the nature and purpose of the conference. *See Navis Realty*, 126 B.R. at 143; *Pettibone*, 74 B.R. at 301. While this Court recognizes the need for intra-office conferences, such time spent must be justified. *See Office Prods. of America*, 136 B.R. at 977. It is also an accepted principle that generally no more than one attorney may bill for time spent in intra-office conferences or meetings absent an adequate explanation. *See Poseidon*, 180 B.R. at 731; *In re Adventist Living Ctrs., Inc.*, 137 B.R. 701, 716 (Bankr. N.D.Ill. 1991); *Office Prods. of America*, 136 B.R. at 977; *In re Environmental Waste Control,* 122 B.R. 341, 347 (Bankr. N.D.Ind. 1990)*; In re Wiedau's, Inc.*, 78 B.R. 904, 908 (Bankr. S.D.Ill. 1987).

Review of SL's fee application and the Report regarding intra-office conferences reveals

a number of instances of more than one professional billing for the same conference. Various other intra-office conferences are unduly vague, offering little if any information as to the substance of the conference. The Court shall therefore disallow 25%, or $4,386.16, of the total time entries listed as intra-office conferences in exhibit L-1 of the Report.

Multiple Attendance at Events

The Fee Auditor identified a significant amount of entries reflecting multiple attendance at events, and it appears that two attorneys were generally in attendance at every event during the Retention period. The Court understands that the magnitude and diversity of work involved in assessing the financial condition of the Debtors in these cases would have been difficult, if not impossible, for just one one attorney to address properly, especially in a situation where a firm is brought in after the bankruptcy petitions have already been filed to untangle a financial web of this scope. Reference to exhibit E-1 of the Report indicates that the majority of events at which more than one attorney attended involved conferences with non-firm personnel, which is the subject of exhibit M-1 of the Report. While the Court believes that not every meeting required more than one attorney, this problem will be addressed in the discussion of exhibit M-1 of the Report.

Conferences with Non-firm Personnel

Reference to exhibit M-1 of the Report reveals a significant amount of time and attendant fees related to time spent in meetings or conferences. In fact, almost 41% of the fees requested for the Retention period were generated from these meetings and conferences. As stated above,

the majority of these meetings involved the participation of more than one attorney. Upon examination of the initial fee application of Coopers & Lybrand ("C&L"), which is the accountant for the Trustee and which performed a majority of the interviews, meetings and conferences on behalf of the Trustee, the Court finds that C&L sought fees for conferences with non-firm personnel amounting to only 19% of the total of requested fees. The Court finds that the fees requested by SL in this category are excessive due to both the amount of time spent on these services and the duplication of effort by multiple attorneys, and thus of the $56,377.63 categorized in exhibit M-1 of the Report, the Court shall disallow 30%, or $16,913.29, of this amount.

Clerical or Administrative Tasks

SL has agreed to reduce the fees categorized by the Fee Auditor as clerical or administrative tasks by 20%. Upon review of the time entries categorized as such, the Court finds that a reduction of 20% is warranted, and thus the amount of $532.63 shall be disallowed.

Travel Time

As stated by the Court in the Amended Order regarding the fee application process, travel time will be compensable at one-half normal rates unless the Court is satisfied that work was performed during travel. After reviewing the Report, SL has agreed to accept reduction of its requested fees in this category. Therefore, of the total fees of $1,487.40 listed in exhibit F-1 of the Report, $748.70 shall be disallowed.

Preparation of Fee Applications

Under 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). It is generally accepted that reasonable compensation is appropriate for time spent preparing a fee application. *See, e.g., 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*; Pettibone*, 74 B.R. at 304. Compensation for such work yields incentive "to engage in a comprehensive review of the time expended and the value thereof," perhaps resulting in a discount of the amount billed. *See Pettibone*, 74 B.R. at 304. In fact, since preparation of detailed fee applications for the bankruptcy court's review is a prerequisite to payment, which no doubt can consume valuable and substantial time depending on the magnitude of the fee application, it seems that it would be unduly burdensome and unfair to require that professionals go completely uncompensated for such a task. *See 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). It is proper, however, for the bankruptcy court to examine the amount and value of time spent preparing the application, *see Office Prods. of America*, 136 B.R. at 977, and reasonable limits may be placed on compensation for such work. *See Pettibone*, 74 B.R. at 304.

Fees related to the preparation of SL's fee application were incurred during the Postretention and Supplemental periods, and thus consideration of payment for these services is governed by Code § 503(b). Although the Court finds difficulty in ascertaining a direct benefit to the estate for these services, the Court has allowed compensation to other professionals for the

time spent preparing their respective fee applications. Thus, to the extent necessary to compensate SL for this service, the Court finds such service to benefit the Debtors. The amount related to this service, however, is found to be excessive and therefore shall be reduced. SL has requested the sum of $3,600 in the Postretention period and an additional $3,177.50 in the Supplemental period for this task, for a total of $6,777.50. In addition, SL seeks compensation in the Supplemental period for time spent responding to the Report of the Fee Auditor in the amount of $1,856. For comparison purposes, the Court notes that other professionals appointed in these cases who billed more than $100,000 but less than $200,000 in fees and expenses requested compensation for fee application preparation ranging from $564.50 to $1,125. The Court shall allow SL $1,800 for the preparation of the fee application, and shall allow $1,000 for time spent responding to the Report. Thus, the Court shall disallow the sum of $5,833.50 from the combined Postretention and Supplemental periods for these tasks.

B. Postretention Period

SL continued to provide services to the Debtors even after the appointment of the Trustee in these cases. The issue of the compensability of services rendered by a debtor's attorney after the appointment of a trustee has been the subject of a number of decisions from other courts, the majority of which focus on a "benefit to the estate" analysis. *See, e.g., In re Pro-Snax Distribs., Inc*., 204 B.R. 492, 496 (Bankr. N.D.Tex. 1996); *Spanjer Bros*., 191 B.R. at 759; *Pfeiffer v. Couch (In re Xebec)*, 147 B.R. 518, 523 (9th Cir. B.A.P. 1992); *In re Sugarman*, 137 B.R. 391, 392-93 (Bankr. S.D.Cal. 1992); *In re Ginji Corp*., 117 B.R. 983, 992 (Bankr. D.Nev. 1990); *In re Stoecker*, 114 B.R. 965, 970 (Bankr. N.D.Ill. 1990). Factors to be considered in determining

whether there was a benefit to the estate include whether the actions of the debtor's attorney duplicated the duties of the trustee or the trustee's counsel under Code § 1106, whether the services obstructed or impeded the proper administration of the estate, and whether the actions of the debtor's attorney are consistent with the debtor's duties under Code § 521. *See Xebec*, 147 B.R. at 523 (considering fees generated by debtor's attorney after appointment of a trustee under Code § 330(a)).

In the Order dated May 24, 1996 authorizing the retention of SL as counsel to the Debtors during the period from April 1, 1996 to April 18, 1996, the Court specifically stated that SL could seek payment for services rendered after April 19, 1996 in accordance with the procedures set forth in Code § 503(b), rather than Code § 330(a). As noted earlier, in order to be compensated under Code § 503(b), an administrative expense claimant must show that its services directly benefitted the estate. *See R.H. Macy & Co*., 170 B.R. at 76. Since the requirement of a benefit to the estate is likewise found in Code § 330(a), the Court finds that reference to the *Xebec* factors stated above will assist the Court in determining whether the services provided by SL after the appointment of the Trustee benefitted the Estates. *See Xebec*, 147 B.R. at 523. Upon review of the individual time entries during the Postretention period[5], the Court is not convinced that the majority of services provided were requested or necessary to the administration of the estates, and thus the Court has difficulty in finding a direct benefit to the estates. Many of the entries were for services which can be deemed a duplication of the duties of the Trustee or the

[5] Professional fees billed during the Supplemental period, which are also subject to the compensability standards of Code § 503(b), relate solely to time spent in the preparation and defense of SL's fee application, which has already been addressed in this Decision. Expenses incurred during this period shall be addressed separately.

Trustee's counsel. Furthermore, counsel for the Trustee contends that the work performed by SL did not assist the Trustee. There are, however, time entries that reflect efforts of SL to effect a smooth transition of information and documents to the Trustee. These efforts necessarily resulted in some benefit to the Trustee, as information gathered by SL during the Retention period and transferred to the Trustee during the Postretention period was no doubt of some use. Therefore the Court finds a direct benefit to the estates and is willing to grant SL the amount of $5,000 out of a total amount requested of $23,118.75 for time expended during the Postretention period. The remaining $15,691.72[6] shall be disallowed.

C. Expenses

Pre-retention Expenses

The Court has identified pre-retention expenses in the amount of $56.87, and this amount shall be disallowed.

Unreceipted Expenses

As to unreceipted expenses in exhibit OO-1 of the Report, SL has withdrawn its request to be compensated for these expenses, and thus the amount of $360.31 shall be disallowed. Of the total of $2,805.37 in exhibit OO-2, SL provided receipts for $411.26 of these expenses and

[6] Although it may appear that this figure should be $18,118.75, the Court has already disallowed $2,427.03 from the Postretention period for preparation of the fee application. This amount is based on a comparative percentage of fees allowed and disallowed in the Postretention and Supplemental periods for fees relating to the fee application and its defense.

has withdrawn its request to be compensated for the remainder. Thus, the amount of $2,394.11 shall be disallowed.

Other Expenses

SL has withdrawn its request for reimbursement for: staff services in the amount of $1,348.67; office supplies in the amount of $140.31; amenities in the amount of $27.76; meals in the amount of $20; computerized assisted legal research in the amount of $234.45; and expenses appearing on expense sheet number 4418 in the amount of $18.50. SL has also reduced the amount of its request for reimbursement of photocopy expenses by $79.05 in accordance with the compensation guidelines in the Amended Order. The total reduction for the foregoing expenses amounts to $1,868.74.

As to expenses incurred during the Supplemental period, the Court reviewed the supplemental affidavit filed by SL on January 9, 1997, requesting reimbursement of expenses in the amount of $3,120.20. The Court shall make no deduction for these expenses.

D. Determination of Reasonable Fee

After performing the specific adjustments to the fee application based upon a review of time entries in different categories, the Court finds a need to further adjust the fee award granted to SL. As discussed earlier, the Court may utilize the *Johnson* factors to determine a reasonable attorney's fee. *See United States Football League*, 887 F.2d at 415. Of these factors, the "results obtained" factor carries significant weight in the determination of a reasonable fee. *See id.* (affirming district court's focus on results obtained as "crucial factor" in determining reasonable

fee); *see also In re Allied Computer Repair, Inc*., 202 B.R. 877, 885 (Bankr. W.D.Ky. 1996) (noting that many courts have determined that "results obtained" factor carries greatest determinative weight). When the fees requested are disproportionately high in comparison to the results obtained, it is proper for the Court to make an adjustment to the amount of fees awarded. *See Allied Computer Repair*, 202 B.R. at 885 (denying fees based on limited benefit to estate and citing numerous cases where fees were substantially reduced because they were disproportionate to benefit produced); *see also Norman v. Housing Auth.*, 836 F.2d 1292, 1302 (11th Cir. 1988) (finding that attorney's fees must be reduced where results obtained were only of limited success). Upon review of the overall fee application and with knowledge of the services provided to the Debtors throughout the Retention period for which SL has requested payment, the Court finds that the services rendered, although professional, were of limited value to the estates at the time they were performed. More specifically, the Court has determined that the fees requested significantly outweigh the results obtained by SL. The Court finds that frequent conferences and meetings between SL partners and associates regarding the bankruptcy, efforts to appoint a responsible person for the estates for which there is arguably no statutory precedent, and efforts to oppose the appointment of a trustee resulted in fees which are much greater than any corresponding benefit produced to the estates.

Under the Code, the Court may award a reasonable fee for services which were necessary to the administration of a case or were beneficial at the time they were rendered, but shall not award fees for unnecessary duplication of services or for services which were not reasonably likely to benefit the estate or that were not necessary for the administration of the case. *See* 11 U.S.C. § 330(a)(3)(C), (4)(A). Thus, if the services provided did not "produce a demonstrable

benefit to the estate, § 330 does not authorize the court to award compensation." *Allied Computer Repair*, 202 B.R. at 886. After examination of the "results obtained" factor under the *Johnson test*, the Court finds that an additional reduction by 50% of the total fees allowed in the Retention period is warranted and is proper under the mandates of Code § 330(a).[7]

CONCLUSION

The preparation and submission of fee applications and the review by the Court thereof are understandably burdensome but necessary tasks, and one can readily understand the difficulty of such tasks merely by observing the sheer volume and size of the fee applications, Fee Auditor reports, replies, responses and objections submitted in these cases. Such applications are a necessary part of representation of bankrupt estates, however, and as amply stated by Bankruptcy Judge Jack B. Schmetterer,

> [t]he fee application and hearing thereon are the Applicant's opportunities to meet its burden of proof. Careful preparation of its application with supporting affidavits can meet that burden. Applicant has no basis to complain about any "adversarial" questioning by the Court seeking to carry out its responsibilities upon reading the application. Any judgment disallowing certain fees is a finding that applicant has failed to meet its burden of proof as to those fees.

In re Pettibone Corp., 74 B.R. 293, 300 (Bankr. N.D.Ill. 1987). Any concern as to an applicant's right to a hearing has been satisfied by the opportunity to respond formally to the findings of the Fee Auditor with whatever additional proof or explanation the professional wished to add to its fee application as specifically granted in the Order dated October 15, 1996 and the Amended Order, dated December 2, 1996. In addition, oral argument regarding SL's fee application was

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[7] Total fees requested in Retention period: $138,358.75; total fees allowed in Retention period: $111,885.47; fifty percent reduction of fees allowed in Retention period: - $55,942.74.

heard by the Court on January 9, 1997, at a regular motion term in these proceedings. Furthermore, professionals have supplemented their applications with rebuttals and replies to objections by other parties to these cases, and therefore it cannot be said that professionals have not been given their "day in court" in regard to their fee applications. *See Busy Beaver*, 19 F.3d at 845-46 (indicating necessity for an applicant's right to a hearing prior to disallowance). Any further allowance of time to supplement or argue the fee applications, other than that specifically allowed by the Court, would "overwhelm already swollen calendars." *See id*. at 846. As noted by the Court at the hearings on January 9, 1996, the fee application process should not take on a greater and separate life of its own in these already heavy and complex proceedings.

In summary:

Total of requested fees and expenses for all periods		$176,774.27[8]
Disallowances:		
Duplicate billing entries	-	292.50
Vague/lumped time entries	-	3,600.00
Intra-office/vague conferences	-	4,386.16
Conferences with non-firm personnel	-	16,913.29
Administrative or clerical tasks	-	532.63
Travel time	-	748.70
Preparation of fee application	-	5,833.50
Post-retention services	-	15,691.72
Pre-retention expenses	-	56.87
Unreceipted expenses	-	2,754.42
Other expenses	-	1,868.74
Total allowed fees and expenses	$	124,095.74

[8] The Fee Auditor noted a $3.00 difference between SL's expenses billed for the Postretention period and those actually computed by the Fee Auditor. The Court shall add the $3.00 on to SL's fee application. The total amount requested as listed above reflects this addition.

Fifty percent reduction of fees in Retention period	- 55,942.74
Remaining balance of allowed fees and expenses	$ 68,153.00

Based on the foregoing, it is

ORDERED that the remaining balance of fees and expenses requested by SL in its Final Fee Application shall be allowed as detailed above; and it is

ORDERED that the $100,000 retainer paid to SL by The Processing Center, Inc. on April 3, 1996, shall be returned to The Processing Center, Inc., and that the allowed fees and expenses as detailed herein shall be sought from the proper Debtors in these cases; and it is further

ORDERED that payment of the remaining balance of fees and expenses totaling $68,153.00 shall not be made from encumbered assets of these estates.

Dated at Utica, New York

this 8th day of April 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge