UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

THE BENNETT FUNDING GROUP, INC.	CASE NO. 96-61376 Chapter 11
Debtors	Substantively Consolidated

APPEARANCES:

SIMPSON, THACHER & BARTLETT Attorneys for § 1104 Trustee 425 Lexington Avenue New York, New York 10017	GEORGE M. NEWCOMBE, ESQ. Of Counsel
WASSERMAN, JURISTA & STOLZ Attorneys for Official Unsecured Creditors Committee 225 Millburn Avenue Millburn, New Jersey 07041	HARRY GUTFLEISH, ESQ. Of Counsel
GUY VAN BAALEN, ESQ. Assistant U.S. Trustee 10 Broad Street Utica, New York 13501	

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

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

Before the Court is a motion by Simpson, Thacher & Bartlett ("STB") requesting reconsideration and clarification of certain portions of the Court's August 13, 1997 Decision addressing STB's Second Interim Fee application ("Second Fee Decision"). The motion is made pursuant to Rules 9023 and 9024 of the Federal Rules of Bankruptcy Procedure and Rules 59(e) and 60(b)(1) of the Federal Rules of Civil Procedure.

Opposition to the motion was interposed by the Official Committee of Unsecured

Creditors ("Committee") and the United States Trustee ("UST"). The Court heard argument on the matter in Syracuse on September 23, 1997, at a regular motion term in these proceedings, and the matter was submitted for decision on that date.

JURISDICTION

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

ARGUMENTS

STB requests that the Court reconsider or clarify four specific areas where disallowances were made, including: (a) billings by multiple attorneys for conferences; (b) fee application preparation and defense; (c) fees relating to the motion for substantive consolidation; and (d) fees associated with efforts to recover property relating to the Lady Kathleen. STB also inquires whether the August fee decision established a "per se" rule against meetings between multiple attorneys.

STB's initial contention is that conferences among lawyers within the firm are a necessary part of the proper representation of the client, and that such conferences are essential to the efficient and coordinated administration of this case. As an example, STB asserts that many diverse matters must be addressed which require the expertise of attorneys familiar with different fields and disciplines. STB also submits that conferences among two or more partners or two or

more associates and meetings among larger groups are essential to the proper representation of the Trustee and the efficient management of the case. STB asserts that in each such conference all of the participants play a role in the subject of the discussion, thus providing a direct benefit to the estate. STB notes that the Court has previously indicated that if more than one professional bills for the time spent in intra-office conferences, there should be sufficient explanation to justify the additional billings. Referring to Exhibit O of the Fee Auditor's Report[1], which addresses intra-office conferences, STB asserts that the exhibit is misleading and results in a distorted impression of the actual time billed for intra-office conferences. More specifically, STB argues that the exhibit does not consider the length of the discussion or conference, the substance of the narrative time entry, nor does it identify the participants in terms of seniority or field of practice. STB also asserts that it does not bill for all intra-office conferences, and in fact claims that a significant number of the conferences are not billed by all attorneys participating. Furthermore, STB states that conferences allow for the cost efficiency of having senior attorneys monitor work delegated to junior associates, and also that they allow attorneys to prepare for court appearances.

STB has read the Second Fee Decision as accepting only one partner/one associate conferences. It is STB's position that all participants in a conference play a role in the subject discussion or negotiation, thereby providing a direct and tangible benefit to the estate. Overall, STB states that meetings are an essential part of the representation of the Trustee, and if not compensated for such time, STB will be deprived of the right to represent the Trustee in the

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[1] The Court appointed Stuart, Maue, Mitchell & James, Ltd., as fee auditor in this case ("Fee Auditor"). Upon review of a fee application, the Fee Auditor issues a Report which itemizes the work performed by a professional into categories.

professional manner in which the firm represents its non-bankruptcy clients. As indicated, STB also inquires as to whether the Court has imposed a *per se* rule that all such conferences will be mandatorily reduced or stricken.

As to reductions in the category labeled multiple attendance at events, STB argues that the appearance by two or more attorneys at motion terms of the Court is necessitated by the volume and complexity of the motions on the calendar. It is submitted that each attorney plays an active role in reviewing and preparing the motion or opposition.

Addressing the issue of compensation for fee application preparation, STB questions whether the Court has imposed a "cap" of $35,000 for such activity. STB notes that the process involves substantial record-keeping requirements, and further that the law requires fee applications in order to seek compensation from the Court.

STB also asserts that the Court "disallowed" $100,000 in fees subject to reexamination in future fee applications regarding work performed for the substantive consolidation motion. STB submits that all the information necessary to make a determination was before the Court, and asserts that the original motion was not "ill-timed" as alleged by the UST.

Regarding disallowances relating to work involving the vessel Lady Kathleen, STB asserts that the vessel is an asset of the Cordoba Corporation, and that the Trustee brought suit on behalf of Cordoba, BMDC and BFG, and has alleged that all funds relating to the purchase and operation of it came from BFG and BMDC. Since the Trustee is the sole creditor of the Cordoba Corporation, STB posits that any effort with respect to the Lady Kathleen would inure to the benefit of the Debtor's estate.

During argument in support of the motion for reconsideration, STB stated that their

representation is structured in a way that minimizes the billing time of more senior attorneys by providing instruction and direction to less senior attorneys who perform the work. STB asserted that 90% of their conferences are one lawyer meeting with one lawyer, however they did concede that this figure represented only litigation conferences, rather than all conferences. In addition, STB objects to what it perceives are across-the-board percentage reductions without consideration of the reasonableness of the requested time or the conference itself.

The UST argued that the interim fee decision was not an appropriate subject for reconsideration. According to the UST, as long as the Court provides some reasonable basis, across-the-board reductions are appropriate. The Committee argued similarly at the hearing that reconsideration was not appropriate, indicating instead that appeal was the proper route to pursue if available. In addition, the Committee asserted that a chart produced by STB regarding intra-office conferences was merely a rehashing of information previously submitted to the Court, and that this chart could have been presented initially or in response to the Fee Auditor's Report.

DISCUSSION

Whether to grant a motion for reconsideration is a decision committed to the sound discretion of the Court. *See New York Racing Ass'n, Inc. v. Perlmutter Publ'g, Inc.*, 959 F. Supp. 578, 580 (N.D.N.Y. 1997); *Atlantic States Legal Foundation, Inc. v. Karg Bros., Inc*., 841 F.Supp. 51, 55 (N.D.N.Y. 1993); *In re Victory Markets*, 1996 WL 365675 at *2 (N.D.N.Y. 1996). The Court may reconsider a previous order to determine whether: 1) there is an intervening change in controlling law; 2) new evidence not previously available is discovered; or 3) it is

necessary to remedy a clear error of law or to prevent obvious injustice. *See Hester Indus., Inc. v. Tyson Foods, Inc*., 160 F.R.D. 15, 16 (N.D.N.Y. 1995); *In re Pothoven*, 84 B.R. 579, 582 (Bankr. S.D. Iowa 1988).

Rule 59 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P."), made applicable to bankruptcy proceedings pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P."), allows a court to alter or amend a prior judgment for purposes of correcting "manifest errors of law or misapprehension of fact." *See In re DEF Invs., Inc.*, 186 B.R. 671, 680 (Bankr. D. Minn. 1995) (citations omitted). Reconsideration may be granted where a litigant presents matters or controlling decisions that were overlooked by the court in the initial decision. *See Morser v. AT&T Information Sys.*, 715 F. Supp. 516, 517 (S.D.N.Y. 1989). At the same time, a party seeking relief is cautioned against using the motion to "re-litigate issues previously decided by the Court, or to attempt to 'sway the judge' one last time." *Victory Markets*, 1996 WL 365675 at *2 (citation omitted); *see also DEF Invs.*, 186 B.R. at 681 ("Attempts to take a 'second bite at the apple' or pad the record for purposes of appeal . . . are thus beyond the scope of Rules 59 and 60"). The fact that a party may disagree with the Court's interpretation of the law is not a ground for reconsideration.

Under Fed.R.Civ.P. 60(b), incorporated by Fed.R.Bankr.P. 9024, courts have the authority to vacate a judgment in order to accomplish justice, although this authority should be applied only in extraordinary circumstances. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864, 108 S. Ct. 2194, 2204, 100 L.Ed. 2d 855 (1988); *Ackerman v. United States,* 340 U.S. 193, 199, 71 S. Ct.209, 212, 95 L.Ed. 207(1950); *Jones v. Trump*, 971 F. Supp. 783, 786 (S.D.N.Y. 1997). The standard for granting a motion for reconsideration is strict, and

"reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255 (2d Cir. 1995). Those motions which simply revisit issues previously ruled upon by the court or which present supporting material which was otherwise available at the time the issues were first briefed will generally be denied. *See Alexander v. Bleau (In re Negrette),* 183 B.R. 195, 197 (B.A.P. 9th Cir. 1995), *aff'd*, 103 F.3d 139 (9th Cir. 1996). Importantly, reconsideration is not meant as a substitute for appeal. *See Ackerman*, 340 U.S. at 198-99, 71 S. Ct. at 211-12; *Matarese v. LeFevre*, 801 F.2d 98, 107 (2d Cir. 1986). Indeed, "[t]he standards for reconsideration are strict 'in order to avoid repetitive arguments on issues that have already been fully considered by the Court.'" *Sherrell v. Fleet Bank of New York (In re Sherrell)*, 205 B.R. 20, 21 (N.D.N.Y. 1997) (citation omitted). This policy is intended "to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988) (quoting *Lewis v. New York Telephone*, No. 83 Civ. 7129, slip op. at 2 (S.D.N.Y. Jan. 29, 1986)). The decision STB has asked this Court to reconsider and clarify addresses an interim fee request. Congress provided for the interim payment of fees to professionals during the pendency of cases in order to prevent the hardship that might occur if professionals had to "finance" lengthy reorganizations. *See, e.g., In re Commercial Consortium*, 135 B.R. 120, 123 (Bankr. C.D. Cal. 1991). The right to interim payment lies within the discretion of the court, however, and

> courts often "holdback" a portion of an interim allowance pending final review of the reasonableness of the aggregate fees and disbursements paid to a particular

> applicant. Such holdbacks, while not mandated by statute (and subject to some criticism), are commonly used by courts to moderate potentially excessive interim allowances and to offer an incentive for timely resolution of the case. . . . In the end, the holdbacks are either directed by the court to be paid in full, in part, or denied altogether (with the potential for additional disgorgement) depending upon an array of factors including: the total interim fees paid the applicant, the total and priority of the final fees awarded and the level of solvency of the estate.

In re Child World , Inc., 185 B.R. 14, 18 (Bankr. S.D.N.Y. 1995) (internal citations omitted). Interim fee applications are not final orders, *see In re Stable Mews Assoc.*, 778 F.2d 121, 123 (2d Cir. 1985), and interim fee awards "are subject to reexamination and adjustment during the course of the case, and the Court may review the case at its conclusion and take into account the results obtained in making a final allowance." *In re Spanjer Bros., Inc.*, 191 B.R. 738, 747 (Bankr. N.D. Ill. 1996).

Due to the volume and magnitude of fee applications and Fee Auditor reports in this substantively consolidated case, the Court has painstakingly examined each of the interim fee applications prior to ruling on them in an effort to be prepared to make a final ruling on fees when that eventuality comes to pass. It would be extraordinarily difficult to perform a responsible and effective examination of requested fees at that time if the Court simply awarded total interim fees as they are requested and then reserved analysis and judgment until the final fee application.[2] The Court has at each stage of the interim fee process made every effort to consider all factors in determining reasonable fees, including calculation of the lodestar figure, *see Cruz v. Local Union No. 3 of Int'l. Bhd. Of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir. 1994), consideration of the Johnson factors, *see Johnson v. Georgia Highway Express, Inc.*, 488 F.2d

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[2] This is especially so in this case where the Court is confronted with individual fee applications totaling in the *millions* of dollars for every three to four month period.

714 (5th Cir. 1974), and an analysis of what services are actual and necessary and the reasonable compensation for such services. *See* 11 U.S.C. § 330(a).[3] To that extent, the disallowances made to fee applications generally represent the findings and opinions of this Court as to what fees and expenses ultimately will be allowable. [4] However, the Court has not passed finally on fees for any specific category or project of work. Adjustments are not an impossibility. *See In re Taxman Clothing Co.*, 49 F.3d 310, 314 (7th Cir. 1995) ("all awards of interim compensation are tentative, hence reviewable -- and revisable -- at the end of the case").

I. Intra-office conferences

Turning to the issue of the Court's disallowance of certain intra-office conference fees, the Court agrees with the UST and the Committee that no grounds have been posited by STB which justify reconsideration under the above stated standards. STB has not asserted any manifest errors of law or misapprehension of facts in the Court's ruling, *see DEF Invs.*, 186 B.R. at 680, nor is there any claim of an intervening change in controlling law or the discovery of previously unavailable evidence. *See Hester Indus*., 160 F.R.D. at 16; *Victory Markets*, 1996 WL 365675 at *2. During argument on the motion for reconsideration, STB presented an exhibit which categorized litigation conferences by number of attorneys attending and by level of

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[3] Such a detailed analysis is not absolutely required when addressing interim fee applications submitted pursuant to Code § 331, however. *See In re Public Serv. Co.*, 93 B.R. 823, 834 (Bankr. D.N.H. 1988) (finding that an interim fee allowance may be made upon a determination of "general reasonableness" or a "surface determination of a reasonable fee" as opposed to a strict consideration of all reasonable fee factors considered for final awards).

[4] In that respect, the Court has not employed a fixed percentage "holdback" pending the final outcome of this case. *See, e.g., In re Robertson Cos., Inc.*, 123 B.R. 616, 622 (Bankr. D.N.D. 1990).

seniority. Although the Court may find this breakdown of conferences valuable when reviewing intra-office conferences in future fee applications, the information necessary to create this exhibit was available to STB prior to the initial hearing on the Second Fee Application, and therefore it cannot be considered newly discovered evidence justifying reconsideration.

Although sufficient grounds justifying reconsideration of fees relating to intra-office conferences have not been asserted, the Court shall take this opportunity to clarify the Second Fee Decision and address certain arguments presented by STB. STB argued that as a matter of billing practice, not all attorneys bill for all intra-office conferences. The information supporting this statement is not readily available to the Court, however, and it is difficult for the Court to know which conferences were attended by professionals who did not bill for their time. Furthermore, the fact that STB has not billed the time of some professionals who attended conferences does not automatically validate the necessity of all who did. As already noted, the reductions made in this category are not final such that STB will not again have the opportunity to make an argument in support of those fees. The allowances granted are the result of an interim application, and the Court has the opportunity to make adjustments to such allowances at a later point in this case if warranted. As to STB's inquiry of whether the Court has adopted a *per se* rule that fees for all intra-office conferences will be mandatorily stricken or reduced, no such rule has been or will be adopted or applied by the Court. The Court does not make reductions in fees merely because the total amount of billings in a particular category constitutes a significant sum of money.

Although the Court has cited authority for the proposition that no more than one professional may bill for an intra-office conference, *see In re Poseidon Pools of America, Inc.*,

180 B.R. 718, 729 (Bankr. E.D.N.Y. 1995); *In re Adventist Living Ctrs., Inc.*, 137 B.R. 701, 716 (Bankr. N.D. Ill. 1991); *In re Office Prods. of America*, 136 B.R. 964, 977 (Bankr. W.D. Tex. 1992); *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), disallowances have not been made by strict adherence to this rule. The Court recognizes that allowing only one professional to bill for such conferences in all instances may unduly penalize the other professionals who also contributed actually, meaningfully and substantially to the conference. However, other courts reviewing fee applications have allowed only one-half of the time that attorneys spend in conferences. *See, e.g., Bowne of New York City, Inc., v. AmBase Corp.*, 161 F.R.D. 258, 268 (S.D.N.Y. 1995)*; see also In re Agent Orange Prod. Liab. Litig.*, 611 F. Supp. 1296, 1350 (appendix) (suggesting that attorneys be compensated for 50% of the time spent in intra-office conferences regarding substantive matters), *aff'd in part, rev'd in part*, 818 F.2d 226 (2d Cir. 1987). Review of STB's two interim fee applications that have been ruled on to date indicate that a total of $884,475.25 was categorized as billings for intra-office conferences. *See* Fee Auditor's Reports addressing STB's First and Second Interim Fee Applications, at exhibits N and O, respectively. These billings were incurred during the seven month period from April 18, 1996, through November 3, 1996. Of this amount, the Court has allowed $591,079.44, or approximately 67%, of the requested fees for intra-office conferences. Furthermore, it appears that more than 25% of these conferences involved three or more professionals. Clearly, the Court has not disallowed 50% of time billed by attorneys for these conferences, nor has the Court allowed the time of only one attorney in conferences involving more than two attorneys.

Although the Court agrees that professionals attending intra-office conferences who

actively provide a benefit to the estate should be compensated for their time, the Court does not believe that all professionals attending must necessarily be compensated. There is no doubt that all professionals bring something in the way of experience, knowledge, or expertise to a conference. STB has alleged as much when it argues that each attorney in attendance adds something to the discussion. At the same time, however, some professionals are educating others unfamiliar with certain areas of the law, or may be providing direction or instructions which will enable the other professionals to perform certain services for the estate. By compensating all professionals for all of their time at full hourly billing rates, the estate is paying to educate attorneys, as well as paying for attorneys to receive instructions or guidance in order for them to perform services for the benefit of the estate. The Court is certainly willing to accept that professionals who have attained superior knowledge of their specialty should be compensated for passing that knowledge to other professionals within the firm, as the estate clearly benefits from services performed by others imparted with that knowledge. The Court is less convinced that the estate should bear the entire burden of paying attorneys to learn new concepts or law that they will put to use when performing specific tasks or assignments, for which the estate also will be billed. *See, e.g., In re CF & I Fabricators, Inc.*, 131 B.R. 474, 488 (Bankr. D. Utah 1991) (disallowing education time); *In re Pacific Sea Farms, Inc.*, 134 B.R. 11, 16 (Bankr. D. Haw. 1991) (same); *In re Esar Ventures*, 62 B.R. 204, 205-06 (Bankr. D. Haw. 1986) (same). Furthermore, it is difficult to determine to what extent each professional in a conference contributes. To preclude the Court from making judgments regarding compensability of what may appear to be justified time entries completely enervates any discretion afforded to the Court

based on its knowledge of the issues, the work involved and the needs of the case.[5] It would appear to be the equivalent of demanding that a private client of a law firm pay for all billings regardless of whether that client challenges the necessity or benefit of certain services.

Although STB states that the Court still retains the discretion to disallow fees, it is difficult to coalesce that belief with STB's argument that all of the professionals contribute to the conferences and therefore full compensation must be granted. STB has essentially requested the Court to detail the exact information required in terms of description such that the Court could not find fault with or disallow any requested fees. To do so would allow the professionals to determine their compensation rather than the Court. *See Van Gemert v. Boeing Co.*, 516 F. Supp. 412, 414 (S.D.N.Y. 1981) ("The calculations made by petitioners are, of course, subject to our own determination of reasonableness"); *see also In re Agent Orange Prod. Liab. Litig.*, 611 F.Supp. at 1306 ("A lodestar calculation does not contemplate that a court blindly accept counsel's records"). The Court does not disallow fees on an arbitrary basis. Where reason exists to reduce fees, the Court makes adjustments. The fact that the Court may utilize percentage reductions, or that a reduction may come out to an even, rounded number, does not mean that a figure was haphazardly obtained.

STB has submitted an affidavit of Christopher A. Conroy, the Director of Finance at STB,

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[5] STB provided a chart at the reconsideration hearing detailing a breakdown of the number and level of professionals attending *litigation* conferences. The Court did not have the benefit of this chart at the time it ruled on STB's Second Interim Fee Application. Because the Court has not found grounds to reconsider this portion of the decision, no consideration of the chart shall be made at this time. The Court shall however consider such additional information in ruling on future fee applications. However, a chart should be submitted detailing the number and level of attorneys attending all types of intra-office conferences, not just litigation conferences.

which indicates that in five bankruptcy cases in which STB was involved, compensation was awarded at 100% of the fee requests. The purpose of this affidavit is unclear, although it might be for the purpose of suggesting that STB's fees are inherently reasonable, as indicated by the actions of other courts which did not disallow any of their fees. The Court is not persuaded by this affidavit. There are many reasons a court may not disallow any fees requested by a professional, and this Court is not about to speculate as to the rationale of other courts. Although STB may view this Court's disallowances as an affront to their presumed good-faith billing practices, no such challenge is intended. Indeed, the Court is well aware of the high quality of representation and advocacy demonstrated by STB over the course of this case, and the Court does not seek to diminish justifiable and warranted compensation. Nevertheless, the Court has an independent duty to examine fees for reasonableness, and pursuant to that mandate must consider the nature of the work, the number of professionals performing services, the amount of time spent doing so, and the rates of compensation demanded for such work. Although the lodestar figure is presumed to be reasonable, *see Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,* 478 U.S. 546, 565, 106 S. Ct. 3088, 3098, 92 L. Ed. 2d 439 (1986), other factors may be taken into account when determining a reasonable fee.

At oral argument on the motion for reconsideration/clarification of this Court's decision, STB made a point of questioning the applicability of cases such as *In re "Agent Orange" Prod. Liab. Litig.,* 818 F.2d 226 (2d Cir. 1987) and *Ohio-Sealy Mattress Manuf. Co. v. Sealy, Inc.,* 776 F.2d 646 7th Cir. 1985), arguing that they were non-bankruptcy cases which did not address Code §§ 330 and 331. Those cases support the proposition that "across-the-board" percentage reductions are appropriate in fee applications of large magnitude. *See In re "Agent Orange,"* 818

F.2d at 237-38; *Ohio Sealy*, 776 F.2d at 658. This is a commonly accepted principle. *See Luciano v. Olsten Corp.*, 109 F.3d 111, 117 (2d Cir. 1997); *Hudson v. Reno*, 130 F.3d 1193, 1209 (6th Cir. 1997); *Jacobs v. Mancuso*, 825 F.2d 559, 562 (1st Cir. 1987); *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1202-03 (10th Cir. 1986). Interestingly, STB has consistently argued throughout this case that their compensation should be in line with what they receive in non-bankruptcy cases. The logic of not considering how reductions are made in non-bankruptcy cases then simply does not follow. Furthermore, the Court finds no reasonable basis for concluding that the use of percentage reductions has no applicability to bankruptcy cases. In fact, such across-the-board reductions have been utilized in bankruptcy cases. *See, e.g., In re General Oil Distribs., Inc.*, 51 B.R. 794, 802 (Bankr. E.D.N.Y. 1985). Fee applications both inside and outside of the bankruptcy courts are generally reviewed pursuant to similar standards, including calculation of the lodestar figure and consideration of the Johnson factors. It would be disingenuous to argue that because there may be no statutory guideline in a non-bankruptcy case requiring that services performed be actual and necessary that such factors are not considered in the award of compensation. Thus, the Court concludes that STB has not persuasively argued the existence of any manifest errors of law in the Court's decision.

II. Multiple attendance at events

As to STB's objection regarding the disallowance of $17,776 of a total of $135,809.50 in fees categorized as multiple attendance at events, the Court similarly finds that sufficient grounds have not been alleged to warrant reconsideration of these reductions. As a general rule, the Court recognizes the necessity of additional counsel attending court proceedings or other

events in this case. *See New York State Ass'n for Retarded Children v. Carey, Inc.*, 711 F.2d 1136, 1146 (2d Cir. 1983). Limited disallowances in this category were nonetheless made on the grounds that the task billed for did not require the attendance of all professionals who billed for the event, and thus the amount billed represented unnecessary duplication of services. *See Williams v. New York City Housing Auth.*, 1997 WL 528055, *8 (S.D.N.Y. 1997). The Court believes that the reductions are the result of an appropriate exercise of the Court's discretion.

III. Fee Application

A fixed cap on compensation for fee application preparation has not been established in this case to date. Because the Court is of the opinion that compensation is warranted for this work, payment has been made by the Court at amounts deemed reasonable for the tasks described. Other than arguing that the Court has allowed a lower amount of fees for this task than other courts who have utilized percentage allowances, STB has not presented any compelling justification for reconsideration of the fees granted for preparation of their own fee application, and therefore no reconsideration shall be made. STB has made a significant observation regarding payment for preparation of the Trustee's fee application, however. The Court believes that it was error to include fees billed for the preparation of the Trustee's fee applications together with those billed for preparation of STB's fee applications, because the preparation of the Trustee's fee application is a service performed on behalf of the estate, rather than for the benefit of STB. Therefore, the Court deems it appropriate to grant STB an additional

$28,000 for services in connection with the Trustee's fee application.[6]

Because payment for fee application preparation has been the subject of debate on all sides of the issue, the Court shall, going forward, allow an amount equal to 3% of the total fees billed for the interim period for billings related to the preparation and defense of fee applications. The Court shall retain discretion to reduce this amount if it is comprised of tasks for which the Court has previously indicated are not compensable, such as billings for time spent by professionals noting their time. *See In re The Bennett Funding Group, Inc.*, No. 96-61376, slip op. at 28-29 (Bankr. N.D.N.Y. Feb. 5, 1997).

IV. Substantive consolidation motion

It is STB's position that based upon the objection of the UST, the Court disallowed $100,000 in fees subject to re-examination in future fee applications. The Court did not "disallow" these fees, but rather subjected them to a "hold back" pending review of STB's subsequent fee application, which presumably will contain billings for work on the substantive consolidation motion when it was brought for a second time. It was the UST's position that the initial motion was ill-conceived and ill-timed, and therefore full compensation was not warranted. The Court's intention was, and is, to examine the subsequent fee applications at the time they are scheduled for review, and at that time a determination will be made whether any excess or

[6] The Court will not allow the total of nearly $40,000 attributed to preparation of the Trustee's fee application. Such an amount is excessive in light of the limited size of the Trustee's fee applications generally.

duplicative billings resulted from the decision to bring the motion a second time.[7] If there are no such billings, STB will be granted the compensation that was held back.

V. Lady Kathleen and Cordoba litigation

STB has objected to the Court's reduction of fees relating to time devoted to the "Lady Kathleen" and to "Cordoba Litigation." The Court noted that the Lady Kathleen is an asset of the Cordoba Corporation, a related but separate debtor in this case, and that such services, along with hours billed for "Cordoba Litigation," were not properly chargeable to the unconsolidated Bennett Debtors that were listed in the caption of STB's Second Interim Fee Application.

STB's response to this is that the Trustee brought suit on behalf of Cordoba, Bennett Management and Development Corp. ("BMDC"), and the Bennett Funding Group, Inc. ("BFG"), and that the Trustee has alleged that all funds relating to the purchase and operation of the Lady Kathleen by Cordoba came from BFG and BMDC. Furthermore, STB asserts that the Trustee is the sole creditor of the Cordoba Corporation, and thus any efforts with respect to the Lady Kathleen will benefit the Bennett Debtors' estates.

This rationale does not provide obvious justification for simply combining work for various unconsolidated debtors into one fee application.[8] The Court believes that fees billed to

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[7] The Court has observed that STB has requested an additional $66,988.50 in fees relating to the substantive consolidation motion which have yet to be ruled upon. *See* Fee Auditor Reports addressing STB's Third and Fourth Interim Fee Applications, filed July 7, 1997, and November 5, 1997, respectively.

[8] The Second Interim Fee Application was submitted prior to the substantive consolidation of the various Bennett-related debtors. Cordoba Corporation, however, is not one

work attributable to the Cordoba estate should be contained in a fee application seeking payment from that estate, and therefore no change in this category is warranted.

VI. Expenses

STB noted that expenses requested in the First Interim Fee Application for which additional supporting documentation was later submitted to the Court were inadvertently categorized as unreceipted expenses. Therefore, the Court shall award STB the $27,660.46 in expenses for which documentation was submitted.[9]

VII. Future Fee Applications

The Court will make every effort to provide STB with a detailed discussion of the basis of reductions to fees in future fee applications. However, the Court is not of the opinion that each and every disallowance or reduction must be individually justified, especially when addressing fee applications containing hundreds upon hundreds of time entries by scores of professionals billing at different, and varying, rates. *See Cruz v. Local Union No. 3 of Intern. Bhd. Of Elec. Workers,* 34 F.3d at 1159 ("Where a district court augments or reduces the lodestar figure it should, *at least briefly*, state its reasons for doing so") (citing *Hensley v. Eckerhart,* 461 U.S. 424, 433-34, 103 S. Ct. 1933, 1939-40, 76 L. Ed. 2d 40 (1983)) (emphasis added); *Copeland v.*

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of the substantively consolidated Bennett related debtors.

[9] STB also noted that the Court's reference to a $250 per hour blended hourly rate cap was assumed by Coopers & Lybrand, L.L.P., another professional employed in this case, and not STB. Instead, STB notes that it agreed not to bill for travel time between New York and Utica or Syracuse.

Marshall, 641 F.2d 880, 903 (D.C. Cir. 1980) (indicating that where fee applications are massive, an hour-by-hour review is both impractical and a waste of judicial resources).

> The calculation of attorney's fees is, admittedly, an inexact science. Especially where the fee requests are voluminous, courts "need not become enmeshed in a meticulous analysis of every detailed facet of the professional representation." . . . It is thus less important that judges attain exactitude (which may be impossible) than that they use their experience with the case, as well as their experience with the practice of law, to assess the reasonableness of the hours spent and the rates charged in a given case.

Bowne of New York City, Inc. v. AmBase Corp., 161 F.R.D. 258, 267 (S.D.N.Y. 1995) (citations omitted).

Based on the foregoing, it is

ORDERED that STB's request that the Court reconsider/clarify its decision addressing the Second Fee Application is hereby granted in part and denied in part in accordance with the above discussion; it is further

ORDERED that STB shall be awarded additional fees in the total amount of $28,000 for work related to the Trustee's fee applications, and $27,660.46 in expenses relating to the First Interim Fee Application, in accordance with the above findings.

Dated at Utica, New York

this 9th day of February 1998

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge