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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
1999-03-08
COURT CLERK

In re:) Case No. 96-15177
)
FRETTER, INC., et al.,) Chapter 11
)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **RE FEE APPLICATIONS**

This case is before the Court on fee applications filed by professionals who have rendered post-confirmation services. They are:

1. First application of Benesch, Friedlander, Coplan & Aronoff for allowance of post-effective date compensation in the sum of \$17,809.50 for services rendered as Co-Counsel for the Official Committee of Unsecured Creditors and for reimbursement of expenses in the sum of \$1,450.63 for the period March 11, 1999 through August 31, 1999. (Docket 2179).

2. First application of Jay Alix & Associates for allowance of post-effective date compensation in the sum of \$68,454.75 for services rendered as Accountants, Financial Advisors and Consultants to the Official Committee of Unsecured Creditors and for reimbursement of expenses in the sum of \$1,566.60 for the period March 11, 1999 through September 30, 1999. (Docket 2186).

3. Fourth Application of Carson Fischer for allowance of fees in the sum of \$258,838 for services rendered prior to the effective date of the Plan as Lead Co-Counsel for the Official Committee of Unsecured Creditors and for reimbursement of expenses in the sum of \$33,678.04 for the period March 10, 1999 through October 10, 1999. (Docket 2189).

THIS OPINION IS NOT INTENDED
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4. The balance of the First Application of Jones, Day, Reavis & Pogue for Allowance of Compensation and for Reimbursement of Expenses for Professional Services Provided After the Effective Date of the Third Amended Joint Liquidating Plan of Fretter, Inc. and Its Subsidiary Debtors. (Docket 2175). The Application covers the time period from March 11, 1999 through July 31, 1999 and requests \$121,407.10 in fees and \$19,294.59 in expenses. The Court ruled on all but one part of this application in an order dated December 17, 1999. (Docket 2205). The balance of the fees in the amount of \$8, 663.50 and expenses in the amount of \$421.69 are at issue here.

The Court held an initial hearing on the Jones, Day application on December 16, 1999 and on the other applications, together with the balance of the Jones, Day application, on January 20, 2000.

JURISDICTION

The Court has jurisdiction over this matter under 28 U.S.C. § 1334, General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio, and Article X of the Plan. This is a core proceeding under 28 U.S.C. § 157(b)(2)(O).

Bankruptcy Code § 330 provides for an award to professionals of “reasonable compensation for actual, necessary services” and for “reimbursement of actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) and (B). Applications for compensation are reviewed under 11 U.S.C. § 330, the bankruptcy rules related to professional compensation, the legal principles set forth in *In re Boddy*, 950 F. 2d 334 (6th Cir. 1991), and the Guidelines for Compensation and Expense Reimbursement for Professionals set forth in General Order No. 93-1 of the Bankruptcy Judges of the Northern District of Ohio. (See <http://ohnb-web/local.htm>). The Court has the

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power and the duty to review fee applications notwithstanding the absence of objection by any party in interest. *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 840-41 (3d Cir. 1994); *see also* 11 U.S.C. § 330(a)(2). Additionally, expense requests are reviewed with a “strict eye” as to reasonableness. *Bowling v. Pfizer*, 132 F.3d 1147, 1152 (6th Cir. 1998).

1. Jay Alix

After review of this Application, and having considered the statements of counsel at the hearing, the Court finds that the firm’s request is reasonable and appropriate under § 330(a) of the Bankruptcy Code. The application will be granted in full.

2. Jones, Day

The fees still in issue relate to research done by Jones, Day on a matter assigned to Carson Fischer. While the hearing statements of counsel and Mr. McLean indicated that this work may have resulted from a miscommunication, it is nonetheless clear that to a large extent the work duplicated the Carson Fischer effort and did not benefit the estate. As a result, the Court finds that the time will be reduced by 50%, with additional fees allowed in the amount of \$4,300. The expenses will be allowed in full.

3. Benesch, Friedlander

The Court advised the Firm in connection with earlier fee applications that many of the paralegal entries were too vague to permit meaningful review and that many entries included clerical activity which is generally not compensable under General Order No. 93-1. (See, for example, the oral opinion rendered on December 17, 1997). This problem persists. (See, by way of example, the following entries under “Case administration”: the 5/10/99 entry “File review, organization;” the 6/17/99 entry “Retrieve all BFC&A Fee Applications filed and deliver to J.

THIS OPINION IS NOT INTENDED
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Zimon at Bankruptcy Court for fee hearing;” and multiple entries for “analyzing case docket”). The paralegal time also includes blocks of hours devoted to analyzing pleadings for file coding, without an explanation of why that was a necessary and appropriate activity at this point in the case administration. There is an additional issue with respect to billing rates, as the paralegal time is billed at hourly rates up to \$110. The Court advised the firm in connection with earlier applications that the paralegal time would be allowed at a rate no higher than \$85 an hour absent a showing by the firm that a higher rate should be allowed based on a reasonable correlation between the individual’s compensation and the hourly rate requested. (See December 19, 1997 and July 9, 1999 oral opinions). As the firm did not address that in this application, the rate will be limited to \$85 an hour. The Court finds, then, that (1) the “paraprofessional time” is disallowed as clerical work in the nature of overhead expense (Guidelines ¶17); and (2) the reasonable number of hours billed by paralegals is 4 hours for services other than those related to the fee application, which are discussed below, at \$85 an hour, with the balance disallowed, resulting in a reduction of \$3,563.

The application also requests \$8,354.50 in compensation for 66 hours described as bill and fee preparation. The fee applications at issue were not unusually complicated, follow the same structure as earlier applications, and in many respects duplicate information filed in earlier applications (see, for example, much of the introductory material). With these considerations in mind, the Court finds that the reasonable number of hours for this activity is no more than 30. Using the blended hourly rate for all professionals identified by the firm as \$131.63, fees in the amount of \$3,948.90 will be awarded for this work, with the balance of \$4,405.60 disallowed.

THIS OPINION IS NOT INTENDED
FOR PUBLICATION

The firm also requests reimbursement for expenses incurred during the compensation period in the amount of \$1,450.63. The Court finds that these were actual and necessary expenses under § 330(a)(1)(B) of the Bankruptcy Code and they will be allowed.

4. Carson Fischer

The Court explored with counsel at the hearing its concerns about the amount of time devoted to the Household adversary proceeding. For example, in the time period from August 20, 1999 through August 26, 1999, the firm billed approximately 70 hours to drafting the trial brief, witness list, and exhibit list, with most of the time billed at the rates of \$145 and \$195. This is exclusive of numerous entries from this and other time periods attributable to related research. While the Court recognizes that there were some complicated issues in this dispute, the amount of time spent on this particular task was clearly excessive. The Court finds the reasonable amount of time attributable to this activity is at most 30 hours considering the requested hourly rates. Using a blended hourly rate of \$175,¹ the time will be reduced by 40 hours or a total of \$7,000.

The Guidelines also require that time entries adequately identify the work performed and that time not be lumped. Guidelines ¶¶ 9, 10. The Court brought to the firm's attention in connection with an earlier application that the Guidelines had not been followed. This problem is still evident throughout the present application. (See, for example, "3/11/99 Legal research re objection to claim for workers compensation 2.5 [hours]" [one of many with the same or similar description]; "5/18/99 Attention to Workers Com Objection 1.8" [one of many with that same

¹ This rate is arrived at using the rates in effect before September 1, 1999 for the partners and associates listed on Exhibit C of the application.

THIS OPINION IS NOT INTENDED
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description]; “6/3/99 Preparation of Objection to St. Christopher’s and SISF” 2.5 [these are two unrelated claims]; “6/4/99 Preparation of claims objections to State of Michigan, St. Christopher Hospital, Chicago Tribune 2.8;” “7/13/99 Research in preparation for hearing on 1. Chicago Tribune, and 2. Maytag Corporation claims objections 2.6” [again, two unrelated claims with no allocation of time or description of the issue researched] and multiple other entries with more than one topic and a description too vague to permit meaningful review. While no deduction was made the last time, it is appropriate to reduce the fees in light of the continued noncompliance. The fees could be disallowed in their entirety, as it is counsel’s obligation to present an application that warrants its fee award. Such an approach would result in a drastic disallowance of fees, given the pervasive nature of the problem. The Court believes that the more equitable approach is to reduce the fees by \$5,000, which is a fraction of what would otherwise be disallowed.

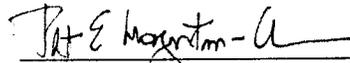
The application also requests compensation for 121.30 hours devoted to preparing its own fee application, reviewing those of other professionals, and communicating with the United States Trustee in response to questions raised by that office, for a total of \$19,356.50. More than 25 hours, at rates ranging from \$130 an hour to \$230 an hour, were spent revising earlier fee applications to bring them into compliance with the Guidelines. (See, for example, entry of 5/24/99 and following). As the firm had notice from the beginning of the case that fee applications must follow the Guidelines, the amount of time spent revising them is not compensable. The fees will be reduced by \$4,375 to reflect this (25 hours x blended hourly rate of professionals billing time to this issue of \$175).

THIS OPINION IS NOT INTENDED
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The firm also requests reimbursement for expenses incurred during the compensation period in the amount of \$33,678.04. The Court finds that these were actual and necessary expenses under § 330(a)(1)(B) of the Bankruptcy Code, with the exception of \$326.67 in non-travel related meals which, based on the explanation offered at the hearing, fall outside of the Guidelines. Guidelines ¶¶ 17, 30. The expenses will be allowed in the amount of \$33,351.37.

The Court will enter a separate order reflecting these findings of fact and conclusions of law.

Date: 3 Feb 2000



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Rebecca Bishop, Esq.
Robert Weisberg, Esq.
Lisa Diem, Esq.
Harvey Schatz, CPA
Dean Wyman, Esq.

By: Joyce L. Gordon, Secretary

Date: 2/3/2000