

# BANKRUPTCY LAW NEWSLETTER

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WESTERN DISTRICT OF MICHIGAN CHAPTER

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## **A SUMMARY OF THE NEW FEE APPLICATION GUIDELINES**

By: Lori L. Purkey, Esq.<sup>1</sup>

As expected, in late March of 1995, the Executive Office of the United States Trustees (EOUST) released its Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 USC § 330 ("Guidelines"). The Guidelines were proposed by the EOUST in accordance with the statutory directive included in the Bankruptcy Reform Act of 1994 (the "Act").

Technically, the Guidelines apply to all cases filed after October 22, 1994, the effective date of the Act. However, the EOUST determined that the Guidelines will only be applied to fee applications filed on or after May 1, 1995.

For better or for worse, the Guidelines will likely require substantial changes to your fee applications. Enclosed in this Newsletter,

compliments of our local U.S. Trustee's Office, is a complete copy of the Guidelines. What follows is a summary of the provisions.

### **I. Introduction**

We start with what the Guidelines do not do. The Guidelines do not (a) replace any local rules; (b) limit the U.S. Trustee's "discretion" to request additional information; (c) limit the U.S. Trustee's discretion to file "comments" or objections to fee applications; nor (d) "create a private right of action" for any party in litigation with the U.S. Trustee. The Guidelines do state that all fee applications should be prepared in accordance with them and further require any nonconforming applicant to state why any

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provision is not followed, although this writer is uncertain as to the wisdom of such a strategy.

## II. Narrative Summary

Each fee application must contain a narrative summary that includes the information described below:

A. Background - Much of the information required in the narrative summary is not new, although substantially more detail is required. For example, the narrative must (a) contain the date the petition was filed; (b) the date the order was entered approving the employment; (c) the terms and conditions of employment, including any retainers, caps or limitations on fees or other charges; (d) the date services commenced; (e) the time period the fee application covers, a statement as to whose behalf the services were rendered; (f) whether the application is interim or final; (g) the dates of previous orders allowing compensation; (h) the dates of payment pursuant to fee orders and any unpaid amounts thereon; (i) approved fees; and (k) names and hourly rates of all persons requesting fees.

Fee applications must also state if the person's hourly rate has changed from a rate previously disclosed, the date the change became effective, the reason for the change and the rate the applicant charges to its nonbankruptcy clients for similar services.

B. Case Status - Fee applications are required to provide, to the best of the applicant's knowledge, the financial condition and status of the case, including cash on hand, amount and nature of accrued unpaid administrative expenses and amount of unencumbered funds and operating profit or loss. In addition, in Chapter 7 cases applications must contain a summary of all money received and disbursed in the case,

when the case is expected to close and whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor. In Chapter 11 cases applications must state the status of a plan and disclosure statement, whether all quarterly fees have been paid and whether all monthly operating reports have been filed. Finally, if the status of the case changes after the filing of the fee application, but before an order is entered approving the fees, the applicant is required to supplement the application as appropriate.

C. Project Summary - Clearly the most dramatic change is the requirement that the applicant describe each professional "project" or task for which compensation or reimbursement is sought from a list of project categories. The project categories are set forth in an exhibit to the Guidelines and include such categories as Asset Disposition, Case Administration, Employee Benefits/Pensions, Financing and Litigation. The list is non-exclusive. Each project or task must contain the following information: (i) a description of the project, its necessity and benefit to the estate and its current status; (ii) identification of each person providing services; (iii) the number of hours spent and the amount of compensation requested for each person, and (iv) itemized time entries. The U.S. Trustee may waive this requirement in certain cases, although readers are not encouraged to hold their breath waiting for such an event.

D. Evaluation Standards - Fee applications must provide sufficient information to permit a determination as to the reasonableness of the charges and the necessity of the services rendered.

E. Certification - The applicant must certify that his or her client has received and reviewed the application and indicate whether or not the client has approved same.

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### III. Itemization of Services Rendered

A. Summary Sheet - Fee applications should contain a summary or cover sheet that includes the following information: (i) total compensation and expenses requested and amounts previously requested; (ii) total compensation and expenses previously awarded; (iii) the applicable billing rate for each person who billed time during the period and the date of bar admission for each attorney; (iv) total hours billed and total amount of billing for each person who billed time during the billing period; and (v) computation of the "blended" hourly rate for persons who billed time during period, excluding paralegals or other paraprofessionals.

B. Itemization of Time - Time entries must be in chronological order within each project and cannot be "lumped" together. If the applicant seeks fees for preparation of the fee application, it must be included as a separate project. The requirement of entries in tenths of an hour continues.

C. Miscellaneous Items - Entries for telephone calls and letters should identify the other party, his or her relationship to the case and subject matter discussed. Requests to preserve the confidentiality of any information are the applicant's responsibility. Entries for court hearings or conferences should identify the parties in attendance and their relationship to the case and the subject matter discussed. Finally, if more than one professional from the applicant's firm attends the hearing or conference, the applicant must justify the need for multiple attendees.

### IV. Reimbursement For Actual, Necessary Expenses

A. Applicants are expected to use the most economical method available when incurring expenses and avoiding luxurious

expenses such as first-class airfare, expensive meals, drinks and routine use of courier services and express mail.

B. Expenses for which reimbursement is sought must be the kind typically sought from other, non-bankruptcy clients.

C. If expenses are prorated between clients or cases, the proration must be disclosed and the basis for the proration explained.

D. All expenses must be itemized by their nature and detail provided, including date, description of expense, method of computation, the person incurring the expense (where appropriate) and purpose of expense. Extraordinary items may require additional detail.

E. Supporting documents (i.e. receipts) should be maintained.

F. Reimbursement for third-party expenses is limited to actual amounts billed to, or paid by, the Applicant.

G. "In-house expenses" are to be billed at actual cost.

H. If local rules set allowable rates for expenses, the applicant must abide by those rules.

I. The applicant should be prepared to submit the method used to determine the per page charge for photocopies and facsimile transmission (e.g. based upon the purchase or lease cost of the copy machine, facsimile machine and supplies). Mileage should not exceed the current IRS established rate. Computerized research charges must be supported by the dates, time used, description of research performed, vendor costs and person incurring the expense. Postage, telephone, courier, court costs and other expenses are to be reimbursed if reasonably incurred. Office overhead is not reimbursable.

### V. Conclusion

The task of complying with the Guidelines will certainly present a challenge for many of us. You are encouraged to review and comment on the Guidelines. The EOUST will accept comments from practitioners on the Guidelines through August 1, 1995. Comments should be directed to: Martha L. Davis, General Counsel, 901 East Street, N.W., Room 780, Washington D.C. 20530.

### RECENT BANKRUPTCY COURT DECISIONS

Sixth Circuit and Supreme Court decisions are summarized by John Potter and Western District cases by Vicki Young. There are no Eastern District cases to report.

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In Re: First Truck Lines, United States of America v Thomas Noland, Trustee, 1995 FED App. 0073P (6th Cir.), File Name 95a0073p.06, Case No. 93-4311 (March 2, 1995). On April 10, 1986, Debtor, First Truck Lines, filed a Chapter 11 petition. During post-petition operations Debtor failed to pay FICA and FUTA taxes. On August 7, 1988, the case was converted to a Chapter 7 bankruptcy. Debtor then ceased operations and the liquidation of estate assets did not create enough funds to pay creditors in full. The claims bar date was December 1, 1988. On November 22, 1988, the IRS filed a "Request for Payment of Administrative Expenses" claim for post-petition

preconversion taxes, interest and penalties. On April 20, 1989, the IRS amended its claim, adding a penalty for post-petition unpaid FUTA taxes.

The bankruptcy court held that although, post-petition tax, interest and penalties were "administrative expenses" under 11 U.S.C. §503(b), the tax penalties were subject to equitable subordination under 11 U.S.C. §510(c). The bankruptcy court then stated that its power to equitably subordinate a claim applied not only to cases of creditor misconduct, but also in the case of post-petition, nonpecuniary loss tax penalties. The bankruptcy code has a preference for compensating actual losses. The United States has not suffered an actual pecuniary loss in regard to the penalties. The equities of this case required equitable subordination of the tax penalty claim, to the claims of the general unsecured creditors. The district court agreed.

In affirming the lower court decision, the Court of Appeals found that the legislative history indicates that penalty claims are subject to equitable subordination and that Congress intended the "principles of equitable subordination" to follow existing case law. Moreover, the bankruptcy court may equitably subordinate IRS claims for pre-petition, nonpecuniary loss tax penalties in a liquidating Chapter 11 case and inequitable conduct is not required. *In Re Virtual Network Services*, 902 F.2d 1246, 1248 (7th Cir. 1990). The reasoning of the court in this case is equally applicable to post-petition penalties.

Further, the legislative history indicates that Congress intended nonpecuniary loss tax penalties to be subject to the bankruptcy court's power to ensure that the distribution of the estate is a Chapter 7 case is equitable. In drafting §726(a)(1) and making it subject to §510(c), Congress made post-petition, nonpecuniary loss tax penalties, traditionally disallowed in bankruptcy, subject to the bankruptcy courts' equitable subordination

power. Compelling reasons of justice and equity, as well as the Court's interpretation of the plain language of the statutes, and the legislative history regarding the undefined phrase "principles of equitable subordination," led the Court to agree with other Circuits that nonpecuniary loss tax penalty claims are one type of claim subject to equitable subordination.

The essence of bankruptcy is equity. The bankruptcy court determined that a post-petition tax penalty claim could be equitably subordinate if the equities so required. The court went on to find that the equities balanced in favor of general unsecured creditors who suffered actual losses, as opposed to the IRS. Because the bankruptcy court did not clearly err and the district court properly affirmed the decision of the bankruptcy court, the judgment was affirmed.

\* \* \* \*

In Re: John and Betty Chavis: United States v Chavis, 1995 FED App. 0065P (6th Cir.), File Name 95a0065p.06, Case No. 94-3083 (February 23, 1995). On May 23, 1991, Debtor/Defendants, John and Betty Chavis filed a Chapter 13 petition. Plaintiff, the IRS, received notice of the filing. The §341 was held on June 26, 1991. On August 16, 1991, the IRS filed its initial proof of claim, listing \$7,662.63 as unsecured priority income taxes for the years 1989 and 1990. On August 19, 1991, the Bankruptcy court confirmed Debtors' plan and set September 24, 1991, as the claims bar date. The IRS received notice of the September 24 deadline. On August 7, 1992, the IRS filed an amendment to its original proof of claim. The amendment sought priority unsecured status for additional income taxes of \$4,438.00 for the 1988 and 1991 tax years. Debtors objected to the amended claim, asserting that it was untimely since it was filed after the September 24, 1991,

bar date.

The bankruptcy court, in agreeing with Debtors, adopted the reasoning and conclusions reached by the court in *In Re Zimmerman*, 156 B.R. 192 (Bankr. W.D. Mich, 1993) (en banc). FRBP 3002 (c) establishes a bar date for filing certain proofs of claim in Chapters 7 and 13. The deadline would be meaningless if untimeliness was not grounds for disallowance of claims. FRBP 3002(a) makes it clear that filing a proof of claim in the manner required by the rule is a necessary precondition to allowance. This conclusion is further supported by the Supreme Court's ruling in *Pioneer Investment* wherein the Court detailed circumstances when an untimely claim may be allowed due to "excusable neglect". The *Pioneer Investment* analysis presupposed that a finding of "excusable neglect" is necessary to allow an otherwise untimely claim. The district court affirmed the bankruptcy court.

In affirming the lower court, the Court of Appeals found that: 11 U.S.C. §501 creates the right to file a claim; §502 says a claim filed in accordance with §501 is allowed unless a party in interest's objection is sustained; §501 contemplates a timeliness requirement; Rule 3002 designates when a claim is timely filed and incorporates §501; and, because §502 presupposes compliance with §501, compliance with Rule 3002 is a prerequisite to §502 allowance. This result is further supported by the Bankruptcy Code's legislative history.

\* \* \* \*

In Re: Holly's Inc. (Holly's Inc. v City of Kentwood, Case No.: 1-94-CV-780 (Bankr. WD Mich) 3/3/95. Judge Quist affirmed the Bankruptcy Court's ruling that the doctrine of *res judicata* precluded the debtor, Holly's Inc., from challenging its real property tax liability to the City of Kentwood for the tax years

1989-1992 in any forum.

Prior to the commencement of the Chapter 11 Bankruptcy, Hollys filed a timely protest to the 1991, 1992 and 1993 real property tax assessments before the local boards of review and continued the administrative appeals process by petitioning further relief from the Michigan Tax Tribunal. Hollys paid its post-petition 1992 real property taxes as administrative expenses under its confirmed plan. Proofs of claims were filed by and on behalf of the Kentwood for the tax years 1989, 1990 and 1991 taxes. Following the confirmation of its Chapter 11 plan, Hollys filed a motion seeking a determination of the amount of the real property taxes it owed to Kentwood for the tax years 1989-93 pursuant to 11 U.S.C. §505. The Bankruptcy Court held that because Holly's Chapter 11 plan did not specifically reserve Hollys' right to contest the taxes owed to Kentwood, the doctrine of res judicata barred its request to determine its tax liability. The Court also held that Hollys is barred from further litigating its tax liability to Kentwood for the years 1989-1992 in any form.

On appeal, the District Court noted the well settled rule of law that parties to a confirmed plan are bound by the plan's resolution of issues presented in it. The Court also identified the following elements that must be found in order to dismiss a cause of action based on the doctrine of res judicata: (1) a final decision on the merits in the first action by a court of competent jurisdiction; (2) the second action involves the same parties, or their privies, and the first; (3) the second action raises an issue actually litigated or which should have been litigated in the first action; and (4) an identity of the causes of action. Sanders Confectionery Products, Inc. v Heller Financial, Inc., 1973 F.2d 474 (6th Cir.), cert-denied \_\_\_\_\_ U.S. \_\_\_\_\_, 113 S. Ct. 1046 (1993). Applying these factors, the Court held that the test for the

doctrine of res judicata was satisfied in this case. The Bankruptcy Court confirmation order constituted a final judgment on the merits of the Chapter 11 proceeding by a court of competent jurisdiction. The parties to the adversary proceeding were the same parties that are bound by the confirmed plan in Hollys' Chapter 11 proceeding. Hollys should have litigated the issue pertaining to the amount of the taxes prior to the confirmation of the plan, or at least specifically reserved the right to contest the taxes in its plan. The Court noted that Hollys' plan did not indicate that the parties intended for the state court proceedings to constitute an objection to Kentwood's claim under the confirmed plan would have required proof of the same facts and evidence as required by §505 proceeding for determination of tax liability.

\* \* \* \*

In Re: Davis, Case No. SM93-90190 (Bankr. WD Mich) 3/24/95. In this case Bankruptcy Judge Jo Ann C. Stevenson, although granting the Debtor's Motion to Reconsider her Order Approving a Settlement proposed by the Chapter 7 Trustee, reaffirmed her original Order for reasons set forth in her Opinion.

The Chapter 7 Trustee in this case filed a Motion to Dismiss the Debtor's Chapter 7 case, or in the alternative, approve the settlement reached between the Trustee and certain other Chapter 11 Debtors whose cases are currently pending before the United States Bankruptcy Court for the District of New Hampshire. The Court approved the Trustee's settlement over the objections of the Chapter 7 Debtor. The Debtor objected to the settlement, claiming that he had been defrauded by the Chapter 11 Debtors with whom the settlement agreement was reached. The Debtor requested that he be permitted to present evidence of fraud to the court. The

Court denied his request, noting that the issue was not whether the fraud had been committed, but rather, assuming that there had been fraud, was it in the best interests of the estate for the Trustee to pursue the potential cause of action.

The Debtor filed a Motion to Reconsider the Order Approving the Settlement and also a Notice of Appeal. Thereafter, the Court entered its Order Approving the Settlement. The Debtor's motion was styled as a "motion to reconsider" without citing the applicable federal bankruptcy rule of procedure. The Court held that the style of the Motion is not controlling, and that the Debtor's motion would be controlled by Fed.R.Bankr.P. 9023 (Fed.R.Civ.P. 59(e)). The Court also held that it had jurisdiction to consider the motion to reconsider although the debtor had also filed a Notice of Appeal. Ordinarily, a proper notice of appeal divests the bankruptcy court of jurisdiction and transfers the case to the appellate court. In this case, however, the Debtor filed its motion for reconsideration prior to its notice of appeal, and therefore, the Bankruptcy Court had jurisdiction to consider the motion.

The Court held that it was the Trustee's burden of show that the terms of the settlement are in the best interest of the estate, and that upon such showing, the burden shifted to the Debtor to show that the settlement is inequitable or not in the best interest of the estate. The Court cited the following applicable factors: the probability of success of the litigation; the difficulties of collection; the complexity, expense, inconvenience and delay in such litigation; and the interest of creditors. Drexel v Loomis, 35 F.2d 800, 806 (8th Cir. 1929). The Court concurred with the Trustee's assessment that the settlement benefitted the creditors of the Debtor's estate and the Chapter 11 Bankruptcy estates. The Court gave deference

to the Trustee's statements that the Debtor's objections to the settlement were baseless. The Court held that it was persuaded that the Chapter 7 Trustee had undergone a proper analysis and reached the correct conclusion in this matter with regard to the appropriateness of the settlement action.

\* \* \* \*

In Re: Dryland Marina, Inc. (Lindquist v FMB-First Michigan Bank), Case No. SJ91-83761 (Bankr. WD Mich) 4/4/95. Judge Stevenson held that the two year statute of limitations period under 11 U.S.C. §546(a)(1) continues to run after the appointment of a first Trustee, regardless of subsequent conversions and appointments of new Trustees. This holding is consistent with the Bankruptcy Reform Act of 1994 amendments to 11 U.S.C. §546(a)(1).

In this case, a Trustee was appointed in the Debtor's Chapter 11 proceeding. The case was converted and a Chapter 7 Trustee was appointed. The Chapter 7 Trustee filed the instant proceeding against FMB seeking to recover certain payments under 11 U.S.C. §547 and 548. FMB filed a motion to dismiss arguing that the complaint was filed over two years following the appointment of the Chapter 11 Trustee, and therefore, the complaint was barred by the §546(a)(1) statute of limitations. The Trustee argued that the complaint was timely because it was filed within two years of his appointment as the Chapter 7 Trustee.

This case is controlled by the language of §546(a), prior to the Bankruptcy Reform Act of 1994. The Court noted that the meaning of the former §546(a) is conflicting, supporting the positions of both the Chapter 7 Trustee and FMB. The Court reviewed the case law, legislative history, the amendment and the policies promoted by the amendment in an attempt to determine the correct

interpretation of the statute. The Court held that the Bankruptcy Reform Act was intended to clarify, not change, the interpretation of the two year statute limitations. Therefore, the Court held that under the former §546(a), the statute of limitations continues to run from the appointment of the first trustee, regardless of subsequent conversions or appointments of new trustees.

**SEVENTH ANNUAL FEDERAL  
BAR ASSOCIATION  
BANKRUPTCY SEMINAR  
JULY 27-29, 1995**

By now all should have received notice of the Seminar. If anyone has not received a notice, you should contact Rayman & Hamlin at (616) 345-5156 (telephone) or (616) 345-5161 (fax) for a copy. A summary of the program and our panelists appears below:

Friday - July 28, 1995

*Current Developments in Chapter 7 panel:* Paul F. Davidoff of Kalamazoo. John A. Potter of Grand Rapids.

*Current Developments in Chapter 11 panel:* Harold E. Nelson with Clary, Nantz, Wood, Hoffius, Rankin & Cooper. Robert F. Wardrop with Wardrop & Wardrop.

*Current Developments in Chapter 13 panel:* Judge James D. Gregg. Joseph Chrystler, Chapter 13 Trustee and Richardo I. Kilpatrick with Shermeta, Chimko & Kilpatrick.

*Tax Treatment of Individual Debtors in Chapter 7, 11 and 13 panel:* Donald B. Lawrence with Hubbard, Fox, Thomas, White & Bengtson. Vicki S. Young with Varnum, Riddering, Schmidt & Howlett. Vernon Bennett with Miller, Canfield, Paddock & Stone.

*Ethical Issues in Chapter 11 panel:* Bankruptcy Judge Robert D. Martin of Madison, Wisconsin. Karen Gross, Professor at New York Law School. Daniel Casamatta, Office of the U.S. Trustee.

*Family Law & Bankruptcy panel:* Judge Jo Ann C. Stevenson and Judge Thomas F. Waldron, Bankruptcy Judge from Dayton, Ohio.

Saturday - July 29, 1995

*Keynote Speaker* - Professor Karen Gross of New York Law School, a nationally known author and lecturer on Bankruptcy matters will speak on Taking the Community Interests into Account in Bankruptcy: An Idea whose Time has Come?

*Meet the Press* - For this session, Bankruptcy Judge Robert Martin will take questions from our "Meet the Press" panelists, Steven L. Rayman, Patrick E. Mears and Carol J. Chase.

*Sixth Circuit Revisited* - Western District Bankruptcy Judges Laurence E. Howard, Jo Ann C. Stevenson and James D. Gregg will be joined by Judge Thomas F. Waldron to analyze the past years' Michigan Bankruptcy cases, Sixth Circuit cases and Supreme Court cases. This panel will be moderated by Robert Wright.



## **STEERING COMMITTEE MINUTES**

The April Steering Committee meeting was "held" at the Peninsular Club in Grand Rapids. Peter Teholiz, Steve Rayman and Mary Hamlin drove in from out of town. Bob Wright and Dan Casamatta from Grand Rapids were also present. Rayman gave Wright, Casamatta and Teholiz an update as to what he and Mary were doing on the Seminar. Bob Wright wanted to discuss the contract with the Grand Traverse Resort for the 1996 seminar but, unfortunately, there was not a quorum present for the meeting, no other members of the Committee being present. The next Steering Committee meeting will be May 19, 1995 at the Peninsular Club in Grand Rapids.

## **LOCAL BANKRUPTCY NOTICE**

As of June 5, 1995 the Office of the U.S. Trustee will be relocated to: The Law Building, 330 Ionia, N.W., Suite 202, Grand Rapids, MI 49503. The phone number and fax number will remain the same. Phones will be disconnected and the office will be closed on June 2, 1995. Grand Rapids' Creditors'

meetings scheduled on or after June 5, 1995 will be held in Suite 203 in the Law Building.

In case you didn't read the lead Article, enclosed you will find the national fee guidelines adopted by the Executive Office for the United States Trustee (EOUST) pursuant to the Bankruptcy Reform Act of 1994. EOUST Director Jerry Patchan has made May 1, 1995 the effective date for these guidelines. However, he has fixed a comment period on the guidelines until August 1, 1995 during which time written comments may be made to Martha L. Davis, General Counsel, EOUST, 901 E. Street, NW, Suite 700, Washington, DC 20530, or to Jerry Patchan, Director at the same address. The guidelines are intended to be effective as to all cases commenced on or after October 22, 1994.

Enclosed are two Orders concerning Jury Trials in the Bankruptcy Court.

## **EDITOR'S NOTEBOOK**

Although most practitioners' reaction to the new United States Trustee's Guidelines will not be considered enthusiastic, these Guidelines will govern, depending on how closely compliance will be required, how we get paid in every case in the future (until a new set of Guidelines comes out). Even though it may take some time to read them, understand them and modify your forms accordingly, it is well worth everyone's effort to do so. There

will be money on the line and it will be your money if you take a hap hazard approach to the new requirements.

### LOCAL BANKRUPTCY STATICS

The following is a summary of the number of bankruptcy cases commenced in the United states Bankruptcy Court for the Western District of Michigan (Lower Peninsula) during the months of April of 1995. These figures are compared to those made during the same period one year ago and two years ago.

Bankruptcy Chapter	April of 1995	April of 1994	April of 1993
<b>Chapter 7</b>	412	357	496
<b>Chapter 11</b>	6	8	8
<b>Chapter 12</b>	3	3	4
<b>Chapter 13</b>	127	140	133
<b>Totals</b>	548	508	641

Bankruptcy Chapter	January - April of 1995	January - April of 1994	January - April of 1993
<b>Chapter 7</b>	1545	1441	1699
<b>Chapter 11</b>	25	30	40
<b>Chapter 12</b>	9	5	12
<b>Chapter 13</b>	524	530	499
<b>§304</b>	1	0	0
<b>Totals</b>	2104	2006	2250

## STEERING COMMITTEE MEMBERS

Dan Casamatta (1996)	(616) 456-2002
John Grant (1997)	(616) 774-0641
Tim Hillegonds (1995)	(616) 459-6121
Jeff Hughes (1996)	(616) 336-6000
Pat Mears (1995)	(616) 776-7550
Hal Nelson (1997)	(616) 459-9487
Steven Rayman, Chair-elect (1995)	(616) 345-5156
Brett Rodgers (1997)	(616) 732-9000
Tom Sarb (1995)	(616) 732-9000
Bob Sawdey (1996)	(616) 459-8311
Tom Schouten (1997)	(616) 774-8121
Peter Teholiz (1995)	(517) 886-7176
Janet Thomas (1996)	(616) 726-4823
Rob Wardrop (1997)	(616) 459-1225
Bob Wright, Chair (1995)	(616) 454-8656
Mary Hamlin, Editor (1996)	(616) 345-5156



U.S. Department of Justice

Executive Office for United States Trustees

Washington, D.C. 20530

March 22, 1995

**GUIDELINES FOR REVIEWING APPLICATIONS  
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES  
FILED UNDER 11 U.S.C. § 330**

**INTRODUCTION**

The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. § 586(a)(3)(A) to provide that, whenever the United States Trustees consider it appropriate, they will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. § 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by all United States Trustee personnel unless the United States Trustee determines that circumstances warrant different treatment. The Guidelines generally reflect and formalize many of the procedural standards used by the United States Trustees in the past to fulfill their statutory responsibility to monitor applications under section 330 of the Code.

Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the courts, the Guidelines focus on the disclosure of factors relevant to a proper award under the law, including: the time spent on the services; the rates charged for the services; whether the services were necessary to the administration of a case at the time the services were rendered; whether the services were directed toward the completion of a case under title 11; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11. The Guidelines, thus, reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rule of Bankruptcy Procedure. Adherence to the Guidelines better enables United States Trustees to evaluate the nature, extent, and value of services for which compensation or reimbursement of expenses is sought. These Guidelines will also assist the United States Trustees, the courts, and all interested parties to ensure that awards of compensation and expenses are both reasonable and necessary to the administration of bankruptcy estates.

## **GUIDELINES**

### **I. GENERAL INFORMATION.**

- A.** The Guidelines shall apply to all applications for compensation and reimbursement of expenses under section 330 of the Code in all cases commenced on or after October 22, 1994. All applications should be prepared in accordance with these Guidelines.
- B.** If any provision of the Guidelines is not to be complied with or included in an application, the applicant shall state the reason for the omission.
- C.** The Guidelines are not intended to supercede any existing local rules.
- D.** Nothing in the Guidelines should be construed:
  - 1.** to limit the United States Trustee's discretion to require additional information necessary for the review of a particular application or type of application; or
  - 2.** to limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or
  - 3.** to create any private right of action on the part of any person enforceable in litigation with the United States Trustee.

### **II. NARRATIVE SUMMARY.** An application for compensation and reimbursement of expenses under section 330 of the Code shall contain a Narrative Summary that includes the information described below. The purpose of the Narrative Summary is to provide the reviewing party the information necessary to review the application in the context of the present status of the case and without the necessity of locating other documents.

- A.** **Background.** The applicant shall state the following background information, to the best of the applicant's knowledge:
  - 1.** Date the bankruptcy petition was filed.

2. Date of the order approving employment and the date services commenced. The applicant shall also state on whose behalf the services were rendered including whether the applicant is seeking compensation pursuant to 11 U.S.C. § 503(b).
3. Terms and conditions of employment and compensation including all payments made or promised to be made; the source of the compensation; the terms and conditions of any retainers and the status of retainers; and any caps or limitations on fees or other charges.
4. The names of all the applicant's professionals and paraprofessionals requesting fees and the hourly rate charged by each. If any hourly rate has changed from a rate previously disclosed, state the change in the rate, the date the change became effective, and the reason for the change. The applicant shall state the rates at which applicant charges its nonbankruptcy clients for similar services.
5. Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed. State dates and amounts of all previous payments and amount of any approved fees and expenses remaining unpaid.
6. When an application is filed less than 120 days after the order for relief or after a prior application to the court, the applicant should specify the date and terms of the order allowing leave to file at shortened intervals.
7. Time period of the services or expenses covered by the application.

**B. Case Status.** The applicant shall state, to the best of the applicant's knowledge, the financial condition and status of the case.

1. Depending upon the applicant's relationship to the estate, the financial condition of the chapter 7 or chapter 11 estate should include:
  - a. the amount of cash on hand or on deposit in the estate;

- b. the amount and nature of accrued unpaid administrative expenses;
  - c. the amount of unencumbered funds in the estate; and
  - d. operating profit or loss, if applicable.
- 2. In a chapter 7 case, any application filed by the trustee or the trustee's counsel shall contain a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if the applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.
- 3. In a chapter 11 case, any application filed by the debtor's counsel, the creditors' committee's counsel, the trustee or the trustee's counsel, shall state whether a plan and disclosure statement have been filed, and if not yet filed, when the plan and disclosure are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.
- 4. If changes in the status of the case occur after the filing of the fee application, the applicant shall orally or in writing supplement the application at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

**C. Project Summary.**

- 1. The applicant shall describe each professional project or task for which compensation and reimbursement is sought. The project categories set forth in Exhibit A should be used to the extent practicable. Each project or task shall contain the following information:
  - a. a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement is requested;

- b. Identification of each person providing services on the project;
- c. a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional for each project; and
- d. Itemized time and service entries, as appropriate. See ¶ III.B.1.

2. In cases that are not complex or extensive, either because of size or the issues involved, the United States Trustee may concur that the project summary format is not to be required.

D. **Evaluation Standards.** All fee applications shall include sufficient detail from which an analysis of the factors specified in 11 U.S.C. § 330(a) can be made. This detail should be sufficient to enable the reviewer to evaluate the reasonable number of hours for the tasks documented and a reasonable blended rate per hour for these services. Applicants must demonstrate compliance with all the provisions of 11 U.S.C. § 330(a).

The provisions of 11 U.S.C. § 330(a) place a premium on the timeliness of administration, 11 U.S.C. § 330(a)(3)(D). They also require the reviewer to employ a retrospective analysis in determining whether the services were necessary at the time that they were rendered. 11 U.S.C. § 330(a)(3)(C). Thus, fee applications should provide sufficient information to permit a meaningful review of all time entries within the context of the case at the time that the services were provided. In addition, where time entries for a particular task extend over a period of time, the reasonableness of the time period should be apparent from the content of the application itself, including any explanatory narrative.

E. **Certification.** Each applicant shall certify that the person on whose behalf the applicant is employed, i.e., the debtor, the creditors' committee, or the trustee, has received and reviewed the application for compensation and reimbursement for expenses. The applicant shall also certify whether or not the debtor, the chair of the committee or the trustee, as appropriate, has approved the application.



### **III. ITEMIZATION OF SERVICES RENDERED**

- A. Summary Sheet. All applications should contain a summary or cover sheet that synthesizes the following information (a sample format appears at Exhibit B):
1. Total compensation and expenses requested and any amount(s) previously requested;
  2. Total compensation and expenses previously awarded by the court;
  3. Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;
  4. Total hours billed and total amount of billing for each person who billed time during billing period; and
  5. Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.
- B. Itemization of Time. The application shall set forth an itemization of time spent for which compensation is requested and, if project billing is applicable, arranged by projects.
1. All time and services must be presented chronologically. If project billing is used, the applicant shall report a chronological itemization of time and services under the appropriate project heading identified in the Project Summary. See § 11.C.1.d. Alternatively, the applicant may report the chronological itemization, by project, in a separate section or attachment to the application. There is to be a separate project for administrative matters and, if payment is requested, for fee application preparation. See Exhibit A for project categories.
  2. Time entries should be made contemporaneously with the services rendered. Entries should be kept in time periods of tenths of an hour. Services should be noted in detail and not combined, or "lumped" together, with each service showing a separate time entry. Ministerial tasks performed in a project which total less than .5 hours, in the aggregate, can be combined or lumped together.

### **C. Miscellaneous Items**

1. Time entries for telephone calls, letters, and other communications should identify the person spoken to or addressed, the relationship of the person called to the case, and the general nature or subject matter of the conference. The applicant bears the burden of filing a request to preserve the confidentiality of any information if there is a need to omit certain information.
2. Time entries for court hearings and conferences, whether within or outside of the applicant's offices, should identify the parties in attendance, their relationship to the case and the nature or subject matter of the conference or hearing.
3. If multiple professionals of the applicant's firm attend the same hearing or conference, in addition to providing the information in subparagraph 2 above, the need for multiple attendees should be stated and the service entry of each professional should explain that professional's role at the hearing or conference.

### **IV. REIMBURSEMENT FOR ACTUAL, NECESSARY EXPENSES**

- A. Applicants are expected to exercise reasonable billing judgment when seeking reimbursement for actual, necessary expenses. They are to use the most economical method when incurring expenses. For example, coach-class travel accommodations and economical commercial firm duplication for large numbers of copies should regularly be used. Luxurious expenses including first-class airfare, expensive meals, drinks, luxury hotel accommodations, entertainment charges, limousines, and routine use of courier services and express mail services, are not reimbursable, unless extraordinary circumstances pertain and are clearly demonstrated. Expenses that might be regarded as excessive for the task or case must be justified in terms of the type, size, and locale.
- B. All expenses for which reimbursement is sought must be of the kind customarily charged to non-bankruptcy clients of the applicant. For example, a professional who does not ordinarily charge a non-bankruptcy client for postage or computer research is not to charge such expenses to a bankruptcy estate.

- C. When the applicant has incurred expenses in other cases during the period covered by the application and has prorated charges between or among those cases, a detailed statement shall be provided to disclose and explain the basis for the proration. Similarly, if an expense is incurred on behalf of more than one client (e.g. travel expense), the applicant shall state the basis for prorating the cost between the estate and the other client(s).
- D. Applicants seeking reimbursement of expenses must provide a detailed itemization of all expenses including the date incurred, description of expense (e.g. type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses are to be listed by their nature e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc., and by the month incurred. Extraordinary or unusual items require more detailed explanations and should be allocated, where practicable, to specific tasks.
- E. Applicants should keep contemporaneous expense records, retaining receipts, vouchers and invoices, where applicable. Supporting documentation is to be made available upon request.
- F. Reimbursement of expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.
- G. The applicant shall seek reimbursement for only the actual cost of any expenses incurred in-house, such as for photocopies.
- H. The applicant is to adhere to allowable rates for expenses if fixed by local rule or order of the court.
- I. Additional comments regarding certain expense categories:
1. Photocopies. Actual costs should be used. Charges must be disclosed on a per page and aggregate basis. The applicant should be prepared to submit the method used to determine the per page charge upon request (e.g., based upon the purchase or lease cost of the copy machine and supplies therefor). A local photocopy service should be used for large copying projects if savings would result to the estate. Copies are reimbursable at actual cost if an outside service is used.

2. Facsimile Transmission. Actual and necessary charges must be disclosed on a per page and aggregate basis. The applicant should be prepared to submit the method used to determine the per page charge, upon request (e.g., based upon the purchase or lease cost of the facsimile machine and supplies therefor).
3. Mileage. Absent extraordinary circumstances automobile mileage should not exceed the current IRS established rate.
4. Computerized Legal Research. Applicant must provide dates, amount of time used, description of the legal research, vendor cost and name of person incurring the expense.
5. Postage, Telephone, Courier and Freight. The actual cost of postage, freight, overnight delivery, courier services and telephone toll charges may be reimbursable, if reasonably incurred.
6. Court Costs. Court costs, including filing fees, court reporter fees, process service, UCC searches, access charges for use of bankruptcy clerk's computer docket service, copies of transcripts, etc., are reimbursable at cost when necessarily incurred.
7. Overhead: Word Processing, Proofreading, Secretarial and Other Staff Services. Unless extraordinary circumstances apply, office overhead is not reimbursable. Office overhead consists of all continuous administrative or general costs or expenses incident to the operation of the professional's office not particularly attributable to an individual client or case. Items of overhead include, in addition to general staff services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephone and monthly car phone charges, lighting, heating or cooling, library or publication charges and charges for comparable or similar items.

## EXHIBIT A

### PROJECT CATEGORIES

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

**ASSET ANALYSIS AND RECOVERY:** Identification and review of potential assets including causes of action and non-litigation recoveries.

**ASSET DISPOSITION:** Sales, leases (§ 365 matters), abandonment and related transaction work.

**BUSINESS OPERATIONS:** Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

**CASE ADMINISTRATION:** Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

**CLAIMS ADMINISTRATION AND OBJECTIONS:** Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

**EMPLOYEE BENEFITS/PENSIONS:** Review issues such as severance, retention, 401K coverage and continuance of pension plan.

**FEE/EMPLOYMENT APPLICATIONS:** Preparations of employment and fee applications for self or others; motions to establish interim procedures.

**FEE/EMPLOYMENT OBJECTIONS:** Review of and objections to the employment and fee applications of others.

**FINANCING:** Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

**LITIGATION**: There should be a separate category established for each matter (e.g. XYZ Stay Litigation).

**MEETINGS OF CREDITORS**: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

**PLAN AND DISCLOSURE STATEMENT**: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

**RELIEF FROM STAY PROCEEDINGS**: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

**ACCOUNTING/AUDITING**: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis

**BUSINESS ANALYSIS**: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

**CORPORATE FINANCE**: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

**DATA ANALYSIS**: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

**LITIGATION CONSULTING**: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions; forensic accounting, etc.

**RECONSTRUCTION ACCOUNTING**: Reconstructing books and records from past transactions and bringing accounting current.

**TAX ISSUES**: Analysis of tax issues and preparation of state and federal returns.

**VALUATION**: Appraise or review appraisals of assets.

**EXHIBIT B: SAMPLE SUMMARY SHEET**

_____x					
In re	:				
	:	CHAPTER			
	:	Case No.			
	:				
Debtor.	:				
_____x					

**FEE APPLICATION**

NAMES OF PROFESSIONALS/ PARAPROFESSIONALS	YEAR ADMITTED TO PRACTICE	HOURS BILLED CURRENT APPLICATION	RATE	TOTAL FOR APPLICATION
--	------------------------------	--	------	-----------------------

**PARTNERS**

**ASSOCIATES**

**PARAPROFESSIONALS**

**TOTAL BLENDED HOURLY RATE \$  
(Excluding Paraprofessionals)**

**TOTAL**

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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IN RE: JURY TRIALS IN THE  
BANKRUPTCY COURTS

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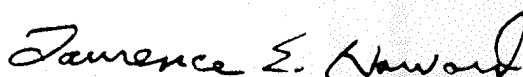
)  
)  
)  
GENERAL ORDER  
No. 8

Pursuant to 28 U.S.C. § 157(e), IT IS HEREBY ORDERED as follows:

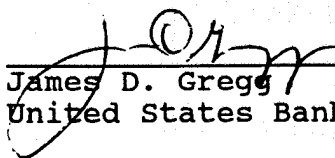
A. APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Bankruptcy Rule 5005.

B. CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed under Rule 38(b) F.R.Civ.P., and in accordance with an order of the United States District Court for the Western District of Michigan dated April 24, 1995, specially designating that all bankruptcy judges of this district may conduct jury trials as designated therein, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than submission by the parties of the Joint Final Pretrial Order.

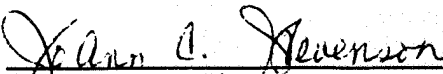
Dated: May 1, 1995.



Laurence E. Howard  
Chief United States Bankruptcy Judge

  
James D. Gregg

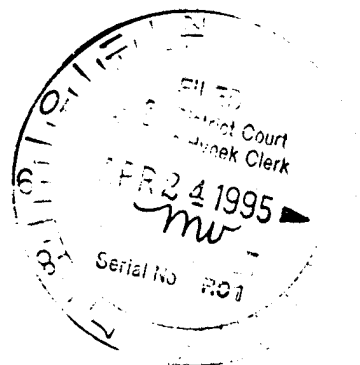
United States Bankruptcy Judge



Jo Ann C. Stevenson  
United States Bankruptcy Judge



UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN



IN RE: JURY TRIALS IN THE  
BANKRUPTCY COURTS

Administrative Order  
No. 95-024

Pursuant to 28 U.S.C. § 157(e), IT IS ORDERED as follows:

A. The United States District Court for the Western District of Michigan hereby specially designates all bankruptcy judges of this district to conduct jury trials, with the express consent of all parties, if the right to jury trial applies in any proceeding that may be heard by a bankruptcy judge.

B. All bankruptcy judges shall adhere to the Jury Selection and Service Act, 18 U.S.C. §§ 1861-1878, and this court's jury selection plan.

C. Upon request, the Clerk of the District Court shall supply a sufficient number of jurors to the Bankruptcy Court for its scheduled jury trials.

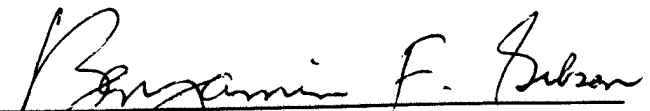
D. The Bankruptcy Clerk shall cooperate with the Clerk of the Court to coordinate juror use with the District Court and to ensure efficient juror utilization techniques.


E. The Bankruptcy Court shall promulgate a local rule or general order governing procedure in jury cases, including time and form of jury demand, waiver, advisory juries, and trial by consent.

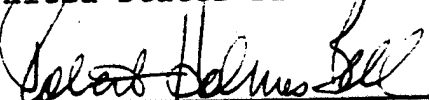
F. The procedure set forth herein shall apply to all bankruptcy cases filed on or after October 22, 1994, and shall

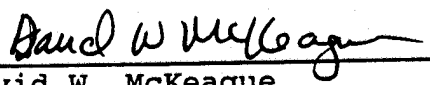
remain in effect until modified by subsequent administrative order  
or local rule.

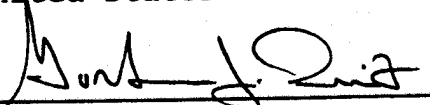
DATED: April 24, 1995

  
Benjamin F. Gibson  
Chief Judge

  
Richard A. Enslen  
United States District Judge

  
Robert Holmes Bell  
United States District Judge

  
David W. McKeague  
United States District Judge

  
Gordon J. Quist  
United States District Judge

Western Michigan Chapter of the  
Federal Bar Association  
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