

In the United States Bankruptcy Court

for the Northern District of Iowa

CARGO INC.
Debtor(s).

Bankruptcy No. X90-00200S
Chapter 7

MEMORANDUM AND ORDER RE: ATTORNEY'S FEES

The matter before the court is an application for allowance of compensation filed by members of the Margolin Law Firm (FIRM) as attorneys for the debtor. Objections to the fee application were filed by case trustee Wil Forker and by creditor Don Main Enterprises. A hearing was held on August 27, 1991 in Sioux City. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. §157(b)(2)(A).

FINDINGS OF FACT

Cargo, Inc. (CARGO), a trucking company, filed a voluntary chapter 7 petition on February 6, 1990. The Margolin Law Firm was retained by Cargo to handle the bankruptcy. Firm had not previously represented Cargo. Four attorneys from Firm--Ted Karpuk, John Mugan, Dan Gildemeister and Daniel Flaherty-performed legal services for Cargo. [\(1\)](#)

During the course of its representation of Cargo, Firm also gave advice to the officers and directors of Cargo in an effort to aid them in avoiding personal liability for any of Cargo's debts. Sums billed by the firm for these services have been deleted from the final amount requested by debtor's counsel.

Cargo paid the Firm a retainer of \$12,500.00 prior to the commencement of the case. Legal services at the rate of \$90.00 per hour were to be charged against the retainer as were the Firm's expenses. There was no indication that Firm and Cargo discussed what would happen in the event the retainer fee was exhausted. At the present time, there remains slightly more than \$800.00 in Firm's trust account. However, the requested fees and expenses far exceed the amount of the retainer. It was always contemplated by Firm and by Cargo that the case would be filed under chapter 7.

In its highly-detailed application for fees and expenses, debtor's counsel has requested \$19,836.00 in fees and \$1,174.74 in expenses. After application of the \$12,500.00 retainer to the court's allowance, Firm asks that the balance be paid as an administrative expense pursuant to 11 U.S.C. §503(b)(2). The fee application describes the qualifications of three of the attorneys. The qualifications of the fourth, Mr. Gildemeister, are known to the court. Each entry meticulously described the work performed, the amount of time each action took, and the initials of the attorney who performed the work. Paralegal work is described, but the identification and qualifications of Firm's paralegals is not provided.

Certain amounts claimed by Firm were deleted by it at the time of the hearing because they were for duplicative work or were amounts attributable to work performed by Firm to ensure that the directors and officers of Cargo would not be held personally liable for any of Cargo's debts. These amounts,

totaling \$623.00, were listed in exhibit No. 1. In a supplemental argument filed on the day of the hearing, the final amounts requested by Firm were \$19,005.30 in fees and \$1,174.74 in expenses. Thus in addition to the \$12,500.00 retainer, the Firm requests payment from the estate in the amount of \$7,669.44.

Karpuk says that Cargo's case was a particularly complicated one. It involved approximately \$20,000,000 in debt, and more than \$3,000,000 in assets. More than 1,000 creditors were eventually included in the schedules. The complexity of the case required Firm's time and effort in reviewing and organizing "mountains" of information. Karpuk pointed out that the case eventually involved a substantial number of employee (priority wage) claims, more than 200 truck leases, some 15-25 equipment leases, approximately 10-15 lawsuits, and numerous other claims both by and against Cargo. Although the initial schedules filed by debtor contained 475 creditors, an amended and substituted schedule and matrix were filed in April 1990, listing more than 1,000 creditors. A final amendment in June, 1990 added eight additional creditors.

Firm rests its claim to compensation on several bases. First, part of the compensation requested is for pre-bankruptcy work done on behalf of the debtor in preparation for the filing. Second, Firm claims fees for the preparation of the amended bankruptcy schedules. Related to the amendment process were substantial conversations and correspondence with creditors. According to Karpuk, creditors would contact him by phone and he would take their names and addresses, discuss the claims and then refer them to the trustee for future communications. Karpuk says that he took this information in his efforts to amend the schedules. The firm has also made application for sums necessary for "organizing and reorganizing" their files to make them more easily accessible. Third, Karpuk contends that he had a duty to remain "informed" about the bankruptcy case as it progressed in order to advise the debtor through its chief officer, Frank DeJute. Karpuk says that this enabled him to help fulfill the debtor's duty to assist the trustee in the administration of the estate by ensuring the flow of information between DeJute and trustee.

Fourth, Karpuk, acting on behalf of Cargo, filed an objection to a settlement entered into between the trustee and Don Main Enterprises, a creditor. Cargo's objection was based in part on the assertion that such a settlement would have resulted in a preferential transfer. This court heard the matter and overruled the objection. Fifth, Karpuk seeks compensation for his participation in efforts by creditors to obtain relief from the automatic stay. Karpuk stated that he would inform the creditors that the debtor had no objection to lifting the stay. Also, he would sign written consents to relief. He believes this action benefited the estate by making the entire case flow more smoothly.

Although Trustee Forker has objected to the amount of fees requested by debtor's attorney, he nevertheless agrees that much of Firm's work did in fact benefit the estate early in the case by keeping information flowing between the trustee and DeJute. Copies of correspondences among Firm, trustee and trustee's attorney, do show that information on the debtor's debts, assets and activities were exchanged.

DISCUSSION

A claimant seeking payment of an administrative expense has the burden to prove the amount and legitimacy of its claim. 11 U.S.C. § 503(a). See In re Burmester, Bankr. No. 86-00710M, slip op. at 3-7 (Bankr. N.D. Iowa, Dec. 11, 1987); In re Packard Properties, Ltd., 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990). Compensation for an attorney's services is determined on a case-by-case basis. In re Nu-Process Industries, Inc., 13 B.R. 136, 138 (Bankr. E.D. Mich. 1981).

Firm seeks allowance as an administrative expense for the fees and expenses related to the case. After application of the retainer, it asks the balance of fees and expenses be paid to it by the estate. Section 503 of the Code governs the allowance of administrative expenses. Subsection 503(b)(2) permits an administrative expense for "compensation and reimbursement awarded under section 330(a) of this title." Section 330(a) of the Code permits the court to award reasonable compensation to debtor's attorney for services rendered in the case, and to award reimbursement for actual, necessary expenses.

The retainer, as disclosed by attorneys in their Disclosure of Compensation, was placed in the Firm's trust account. Firm's agreement with debtor was to debit the retainer for fees subsequently earned. The retainer, to the extent attorneys had not drawn upon it prior to filing, became property of the estate when the case was filed. This is because under state rules governing the conduct of attorneys, the client retained an interest in the retainer until fees were earned and the retainer or portions of it were removed from the trust account. Disciplinary Rules 9-102(A) and 9-210(A)(3), Iowa Code of Professional Responsibility for Lawyers. There was no indication at hearing that the entire \$12,500.00 retainer was not fully intact at the time of filing. Inasmuch as the debtor had an interest in the retainer at filing, it became property of the estate. 11 U.S.C. § 541(a)(1); In re Leff, 88 B.R. 105, 107 (Bankr. N.D. Tex. 1988); see also, Matter of Independent Sales Corp., 73 B.R. 772 (Bankr. S.D. Iowa 1987). Once the petition is filed, debtor's counsel may not charge against or draw down from the retainer without the permission of the court. Matter of Independent Sales Corp. 73 B.R. at 775. Debtor's counsel may, of course, seek such permission pursuant to 11 U.S.C. § 330(a).

Debtor's counsel seek compensation from the estate--from the retainer which is estate property and from the cash assets held by the trustee. The court concludes that Firm has a security interest which attached to the retainer, pursuant to Iowa Code § 554.9203 and which was perfected by possession. Thus, to the extent of the retainer, fees and expenses which are allowed will be paid to Firm in full. (In cases where the retainer is insufficient to cover an administrative award, it would be necessary for attorneys to share with other administrative claimants those assets available to pay first priority claims.)

In the context of a fee review under § 329 of the Code, this court has discussed the appropriate standards for analyzing fee applications for debtor's counsel in a chapter 7 case. In re Burmester, Bankr. No. 86-00710M, slip op. at 3-7. The standards are also applicable in chapter 7 cases where fees are requested under § 330.

In Burmester, the court held that:

An attorney for a debtor is entitled to compensation for analyzing the debtor's financial condition, advising the debtor on whether to file for bankruptcy, preparing and filing the necessary petition, schedules, and statements, and representing the debtor at the §341 meeting of creditors. In re Riverview Financial Services, Inc., 67 B.R. 714, 715 (Bankr. E.D.Mich. 1986); In re Kirlan, 55 B.R. 105, 105 (Bankr. S.D. Fla. 1985); In re Olen, 15 B.R. 750, 752 (Bankr. E.D. Mich. 1981); In re Nu-Process Industries, Inc., 13 B.R. 136, 138 ([Bankr.] E.D. Mich. 1981). See also In re Taylor, 66 B.R. 390, 395 (Bankr. W.D. Pa. 1986). These services qualify as an administrative expense entitled to priority consideration under 11 U.S.C. § 507 with immunity from avoidance as a preference under 11 U.S.C. § 547

* * *

The appropriate starting point is the calculation of the actual and necessary hours reasonably expended at a reasonable hourly rate -- the lodestar or initial point of reference. In re Pettibone Corp., 74 A.R. at 305. To calculate the lodestar amount, the court considers the hours expended by each of the attorneys, examines the services performed, eliminates the time which cannot be compensated, and estimates the reasonable time required to perform the compensable services. In re Wabash Valley Power Association, 69 B.R. 471, 477-79 (Bankr. S.D. Ind. 1987).

(Footnotes excluded) (Emphasis in original).

Not all work done by a debtor's attorney is compensable from either the estate or from a retainer fee taken from the debtor. Services provided by a debtor's attorney must benefit the estate. Burmeister, Bankr. No. 86-00710M, slip op. at 3; in re Leff, 88 B.R. 105, 108 (Bankr. N.D. Tex. 1988); In re Kirlan, 55 B.R. at 105.

I. Legal Fees

The court finds the requested hourly rate is appropriate in this case. The rate is comparable to amounts recognized by this court as acceptable. In re McIntire Feed & Grain, Inc., Bankr. No. X88-01395M, slip op. at 6 (Bankr. N.D. Iowa, June 6, 1990); In re Lemley, Bankr. No. Y82-03341, slip op. at 6 (Bankr. N.D. Iowa, June 22, 1989)

In calculating the amount earned by Firm, the court finds that all of the attorney fees up to and including the filing of the initial petition on February 6, 1990 are compensable. This court has permitted, within reason, fees for filing amendments to bankruptcy schedules and other initial documents. In re Krausg, Bankr. No. X87-01428M, slip op. at 5 (Bankr. N.D. Iowa, June 17, 1988). Because of the substantial number of creditors added in the first amendment and the size of the task, the court will allow fees which directly relate to the preparation of the amendment documents.

However, Firm will not be compensated for handling the numerous telephone calls and correspondence with creditors. It has not been satisfactorily shown how such communications benefited the estate. Those initially unlisted creditors that contacted Firm obviously had learned of the bankruptcy. Listing them by subsequent amendment would not result in allowance of their claims. Only the filing of a proof of claim would begin the process leading to allowance. Those creditors needed to confirm the filing and obtain information on the location of the court and the assigned docket number of the case. With that information, they could have filed their claims, and that information could have been provided by a clerical worker or telephone operator. The time spent by Firm attorneys in talking to these creditors and in recording their calls and claims has not been shown to be beneficial to the estate. Attorney Karpuk contends that it is the debtor's obligation to file accurate schedules and Firm's time was expended in fulfillment of that duty. That a debtor must file complete and accurate schedules is correct, but debtor's counsel is in no way the guarantor of the accuracy of the schedules. "[E]xpending large sums of money to test and re-test the accuracy and completeness of the information furnished by the client is [a] waste." In re Saturley, 131 B.R. 509, 519 (Bankr. D. Me. 1991).

Nor will the court compensate Firm for the time spent receiving and reviewing pleadings, motions and applications. Once the case is filed, these documents are necessarily examined by debtor's counsel from the standpoint of the debtor, for it is the debtor that counsel represents. The estate is represented by the trustee and his counsel. So too it is with stays. The stay of 11 U.S.C. § 362 protects both the debtor and the estate. Debtor's counsel must decide if modification or termination of the stay

protecting the debtor is in the debtor's best interest. The trustee considers similar but separate issues. Counsel's consents in the stay litigation in this case did not affect the stay against the estate and will not be compensated by the estate.

Firm will not be compensated for its representation of the debtor in its objection to the trustee's settlement with Don Main Enterprises. The trustee believed it was in the estate's best interest to compromise. Debtor disagreed and litigated against the estate's representative. The court will not fund from the estate the debtor's litigation against the trustee.

Finally, Firm will not be compensated for its communication with its own client. It is Firm's obligation to keep its client informed. But the estate need not pay for that.

Firm will be allowed compensation for legal services performed post-petition relating to the preparation and filing of amendment documents as to the first amendment to the schedules, for services involved in the conducting of examinations under 11 U.S.C. § 343 and Rule 2004, for services for providing the trustee with information during the two-month period following filing, and for services relating to the preservation of firm assets. The latter includes time entries which appear to document attorney efforts to confirm insurance coverage on estate property.

After examining the application, the court determines that the following post-petition work should be compensated.

| DATE | SERVICES PERFORMED | HOURS | CHARGE |
|--------|--|-------|--------|
| 2-7-90 | Telephone conference with Clerk of Court regarding filing of Bankruptcy (.10); telephone conference with Frank DeJute re: status (.15); * * *; telephone conference with clerk regarding Subsection 341 Notice and wording regarding no asset and regarding 3/19/90 1st Meeting of Creditors (.25); letter to client re: status (.15); schedule of file ahead for Subsection 341 Meeting (.10); telephone conference with Barb Everly regarding no asset notice and meaning thereof (.15); clerical instructions regarding copies (.10) | 1.0 | 90.00 |
| 2-8-90 | Receipt and review of file-stamped Petition from Shea (.10); telephone conference with secretary Jennifer regarding notices on doors and regarding continuing to work at Cargo at Trustee's request (.25); telephone conference with Bank One of Youngstown regarding extent and amount of any debt by Cargo, Inc. to it that is secured by accounts receivable (.25); review of UCC filing report and confirmation with schedules (.50); telephone conference with attorney Raybuck re: draw on letter of credit (.25); telephone conference with Wil Forker (3) re: several matters (.15); telephone conference with Frank re: several matters (.15); memo to file re: several matters (.25) | 1.90 | 171.00 |
| | | .15 | 13.50 |

| | | | |
|---------|---|------|--------|
| 2-10-90 | Receipt and review of notice appointing Wil Forker as trustee, of file-stamped Petition page (.10); * * *; clerical instructions regarding mailing Petitions (.05) | | |
| 2-12-90 | Notice of Meeting of Creditors (.10). dictation of letter to Wil Forker, copy to Pope and Rasmusson re: several matters (.25); * * * telephone conference with secretary Jennifer regarding services to be provided regarding accounts receivable (.50); telephone conference with Wil Forker regarding hiring of help, keys and misc aspects of bankruptcy (.25) | 1.10 | 99.00 |
| 2-13-90 | * * * trip with Wil Forker to review building with Jennifer (1.65) * * * | 1.65 | 148.50 |
| 2-16-90 | * * * telephone conference with Ron Tauro regarding accountant and taxes, both pre-petition and post-petition (.20); telephone conference with Forker regarding same (.20) | .40 | 36.00 |
| 2-20-90 | Telephone conference with Wil Forker regarding insurance (building and worker's comp) and regarding 2004 examination (.25); telephone conference with Frank DeJute regarding same (.25); telephone conference with Roemer Insurance regarding building and work. comp. insurance (.25); * * * telephone conference with Roemer Agency regarding building, inventory (.15); telephone conference with Forker (.05) | .95 | 85.50 |
| 2-26-90 | telephone conference with Roemer Ins. regarding building insurance and worker's comp. insurance (.10); telephone conference with Aetna insurance regarding coverage (.25) * * * telephone conference with U. S. Trustee (.10); receipt and review of letter from Roemer Ins. regarding building insurance (.10) | .55 | 49.50 |
| 3-5-90 | Telephone conference with DeJute regarding 1st Meeting of Creditors, regarding 2004 exam, regarding status (.25) * * * telephone conference with Forker regarding 2004 exam (.05) | .30 | 27.00 |
| 3-19-90 | * * * office conference with Mr. DeJute and attendance at First Meeting of Creditors (1.00) | 1.00 | 90.00 |
| 3-20-90 | Attendance at 2004 Exam of Frank DeJute (5.50); * * * dictation of extensive letter to Forker and Molstad regarding lawsuits (1.15) | 6.65 | 598.50 |
| 3-21-90 | Further dictation of letter regarding lawsuits (.25); dictation of letter to Forker and Molstad regarding copies of lease agreements (.25) | .50 | 45.00 |
| 3-28-90 | Telephone conference with Wil Forker regarding status and regarding payroll tax claim | .10 | 9.00 |
| 3-30-90 | * * * begin review and determination of amended list of unsecured creditors (1.80) * * * | 1.80 | 162.00 |

| | | | |
|----------------|--|--------------|-----------------|
| 3-31-90 | Extensive dictation of amended schedules A-2, A-3, A-1 containing numerous additional creditors (3.75) * * * | 3.75 | 337.50 |
| 4-2-90 | * * * dictation and clerical instructions on amendment to schedules (1.00) * * * | 1.00 | 90.00 |
| 4-4-90 | * * * letter to Forker regarding substantial credits in favor of Cargo (.10); extensive review and adjustments to schedules primarily schedule A-3 (.90); dictation of table of contents for same (.25); telephone conference with Wil Forker (.15) * * * dictation of several additional letters to Forker regarding claim, creditors and various other matters (.50); dictation of A-1, A-2 and attorney and representative lists (.50) * * * | 2.40 | 216.00 |
| 4-7-90 | Review of address printout and comparison of same with typed schedules (2.00); letter to Forker regarding addresses of various creditors (.25) | 2.25 | 202.50 |
| 1-9-90 | Review and adjustments to schedules (.25); check of addressed (.25); cross-check of both computer printouts (.50); determination of creditors with credit (.25); letter to Forker regarding same (.10); dictation of letter to Forker regarding proceeding in letter of credit action (.15) | 1.50 | 135.00 |
| 4-10-90 | Telephone conference with Deb regarding missing addresses (.25); telephone conference with Clerk regarding noticing creditors and need to do new matrix (.10); dictation of Notice of Filing Bankruptcy Petition, Amended and Substituted List of Creditors and Due Date for Filing Proof of Claim (.25); dictation of Certificate of mailing (.15); receipt and review of Section 341 list of creditors and cross-check of same with the amended and substituted list (.25); second telephone conference with Clerk regarding matrix and notice (.10); second telephone conference with Deb regarding revising addresses and unpaid wage claims (.15) * * * | 1.25 | 112.50 |
| 4-12-90 | Determination of list of newly listed creditors for Matrix and sending out new notice of bankruptcy (1.45) * * * | 1.45 | 130.50 |
| 4-13-90 | Review of new Matrix (.25); dictation of cover sheet for amended schedules (.25); * * * telephone conference with Clerk regarding mailing and labels (.15); clerical instructions regarding mailing labels (.15) | .80 | 72.00 |
| TOTALS: | | 32.50 | 2,920.50 |

Total attorney compensation is \$10,044.00. This includes \$7,123.50 in pre-petition legal work and \$2,920.50 in postpetition work.

II. Paralegal Expenses.

The court denies all paralegal fees claimed in the present case. A paralegal is a professional. The individual paralegal's training and qualifications should be of such a degree as to qualify him or her for the rates charged. No showing has been made as to the identity of paralegals and as to their background and training. If paralegal work is to be compensated, a paralegal's qualifications must be established in the fee application. In re Grimes, 115 B.R. 639, 646 (Bankr. D.

S.D. 1990); In re Carter, 101 B.R. 170, 175 (Bankr. D.S.D. 1989); In re Yankton College, 101 B.R. 151, 159 (Bankr. D.S.D. 1989).

Even if qualified paralegals performed the services claimed, the court would still not grant professional compensation for the work described. The paralegal entries involved delivering and picking up photocopies, delivering and picking up documents at the clerk's office, and delivering documents to others. This sort of work is secretarial or ministerial and such work is not compensable at professional rates. In re Wuebker, Bankr. No. 84-03178, slip op. at 11-15 (Bankr. N.D. Iowa, July 22, 1986) (secretarial services and routine services, are overhead and not to be compensated separately (following In re Nashville Union Stockyard Restaurant Co., Inc., 54 B.R. 391, 395 (Bankr. M.D. Tenn. 1985))). Paralegals are not entitled to reimbursement for performing non-professional assignments. In re Bicoastal Corp., 121 B.R. 653, 655 (Bankr. M.D. Fla. 1990); In re Lanier Spa. Inc., 99 B.R. 490, 492 (Bankr. N.D. Ga. 1989). The Southern District of Iowa also has held that law firms should not be reimbursed amounts for paralegals performing such ministerial tasks as making phone calls. Matter of Pothoven, 84 B.R. 579, 588 (Bankr. S.D. 1988). This court agrees.

III. Expenses.

Finally, in addition to legal fees, Firm has requested expense reimbursement in the amount of \$1,174.74. These expenses were listed as the following:

Expenses (Through 2-28-91 Statements)

| | |
|--------------------------------------|------------|
| Filing Fees | \$160.00 |
| Fax | 93.00 |
| Copies From Outside Office | 249.68 |
| Long-Distance Phone | 184.01 |
| Extraordinary Postage | 198.90 |
| Copies By Office | 123.00 |
| Attorney Shea Office Filing Service | 82.40 |
| Express Delivery Service | 31.75 |
| Address Search Fees | 49.00 |
| Secretary of State -- UCC Search Fee | 3.00 |
| | \$1,174.74 |

The filing fee is a valid expense and will be allowed. The use of an entity in Cedar Rapids to file the case is also acceptable and will be allowed. The UCC search fee presumably was incurred to reflect security interests in the schedules. It will also be allowed. The address search fees will be allowed. These allowed expenses total \$294.40.

As to the remainder of expenses for which reimbursement is sought, it is difficult to determine how much of each was expended in conjunction with compensable legal work and how much was not. For example, photocopies made or long distance phone calls made in relation to projects not entitled to compensation should also not be entitled to compensation. Despite this, some allowance should be made as undoubtedly copies were run, calls made, items delivered and information was FAXed all in relation to compensable work. An allowance will be made on a proportional basis. These miscellaneous expenses total \$880.34. Fees requested total \$19,005.30. Fees allowed total \$10,044.00 or 53 per cent of the request. Fifty-three percent of the remaining expenses will be allowed--\$466.58.

This proportion of the expenses is allowed although justification for them is slight. Future fee applications by Firm in other cases should provide an itemization of the individual expenses to enable the court to evaluate their necessity and reasonableness.

Total allowable reimbursed expenses are \$760.98.

IV.

Fees and expenses as an administrative expense claim will be allowed in the sum of \$10,804.98. This amount is compensated from the retainer. The balance of the retainer is property of the estate. Although additional significant and legitimate legal work was performed for debtor after the filing, it was not performed for the estate, and it may not be compensated for with estate property. And although Firm may have had a security interest in the retainer at the time of filing, payment for post-filing services may not be paid from the collateral unless it benefits the estate. To permit postfiling legal services to the debtor to use up the equity existing in estate assets at the time of filing would be similar to permitting a bank to make post-petition future advances to a debtor, thus consuming the estate's equity in non-exempt property. It will not be permitted.

Attorney Karpuk asserts that this case was complicated. To some extent it was, but the complications for debtor's counsel often related to the continued communications between the attorney and Cargo's creditors and their representatives. It must be remembered that this was a case for the liquidation of a corporation. There were thus no questions of discharge, dischargeability, exemption or lien avoidance to be tried. Indeed, there was little litigation, if any, for debtor's counsel to be concerned with. The fees allowable to a debtor's attorney as an administrative expense in a chapter 7 case will, of course, vary with the complexity of the case--the appropriate allowance would be different depending on whether the attorney represented an unemployed consumer or Pan Am. But in either type of case, the court must still be concerned with the type of work for which compensation is sought and its benefit to the estate. Once the petition and schedules are filed in a corporate liquidation, there are normally few matters to concern either the debtor or its attorney.

To the extent a debtor's counsel must act so that the debtor can perform its duties as required under 11 U.S.C. 521, then compensation may be allowable. One such duty is the duty "to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties. . . ." Thus, this court would permit appropriate compensation when a debtor's counsel is required to perform work to aid the trustee. That does not mean that a debtor's counsel may be compensated by performing helpful tasks not requested by the trustee or required by the Code. In this case, trustee contends that not all work done by counsel was for the estate. The court has tried to ferret out that which was and to compensate for it. Compensation for the balance of the work has been denied.

These rules, unfortunately in some cases, make it difficult for chapter 7 debtors to pay for the post-petition bankruptcy legal services which they may need. It is necessary for firms and debtors to

arrange payment out of exempt property, debtor's future earnings, or through other means. The difficulties are exacerbated in this case because future earnings and exempt property do not exist. The court recognizes the diligent attention paid by Firm to debtor's case. Unfortunately, its diligence and hard work cannot be fully rewarded out of assets of the estate. The balance of the retainer-\$1,695.02-- must be turned over to the trustee.

ORDER

IT IS ORDERED that Firm is allowed as an administrative claim of fees and expenses the amount of \$10,804.98. The balance of the retainer shall be turned over to the trustee within 30 days.

SO ORDERED ON THIS 24th DAY OF JANUARY, 1992.

William L. Edmonds
Chief Bankruptcy Judge

1. Karpuk performed roughly 90 percent of the approximate 233 hours for which attorney compensation is requested.