

In the United States Bankruptcy Court

for the Northern District of Iowa

BLESSING INDUSTRIES INC.
Debtor(s).

Bankruptcy No. 00-00140-W
Chapter 11

ORDER RE: APPLICATION FOR COMPENSATION

This matter came before the undersigned on May 9, 2000 for hearing on Application for Compensation and Reimbursement of Expenses of Attorney filed by attorney for Debtor, Day, Rettig, Peiffer, Johansen, P.C. ("Counsel"). Attorney Joe Peiffer appeared as counsel for Debtor. John Schmillen appeared for the U.S. Trustee. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (B).

FINDINGS OF FACT

Counsel for Debtor filed an Application for Compensation on March 30, 2000 requesting approval of fees of \$23,489.50 and expenses of \$2,849.02, or a total of \$26,338.52, for the period from January 25, 2000 to March 23, 2000. This time period begins with the filing of Debtor's Chapter 11 petition and ends with the appointment of a Chapter 11 Trustee. No objections were filed. Nevertheless, this Court is bound to perform an independent review of this fee application pursuant to 11 U.S.C. §330 (a).

When this Court examined the initial application, it found fees which were, in its opinion, objectionable. This Court set the matter for hearing. Between that date and the date of hearing, Counsel filed a Supplement to his application for compensation on May 8, 2000.

In the supplement, Counsel reduces fees by \$371.25 for entries for paralegal time which should not have been charged. However, he adds \$612.50 in fees for time he spent on 3/13/00 which was inadvertently left off the original application. Counsel reduces fax charges to \$134.20. He increases expenses sought by \$394.81 for long distance and cellular phone charges inadvertently omitted in the original application. The final revised request seeks total fees of \$23,739.75 and total expenses of \$3,023.13.

CONCLUSIONS OF LAW

The Court's Order Setting Hearing sets out areas of concern regarding Counsel's original Application for Compensation. These include reasonableness of Counsel's hourly rate, qualifications of paralegals, clerical services rendered by paralegals, travel to and from the law office for court hearings, and excessive and unitemized expenses.

Counsel's Supplement adds \$1,007.31 to the total compensation requested. This includes \$612.50 for omitted time entries and \$394.81 for omitted phone charges. Counsel has not complied with notice

requirements regarding these charges. As such, Court will not address the reasonableness of these amounts. Counsel may request compensation for these amounts at a later time, after following the requirements of the Code and Rules regarding notice.

HOURLY RATE

Counsel asserts his hourly rate of \$175.00 is reasonable considering rates charged by other bankruptcy specialists, his experience and credentials, and inflation. Calculation of Counsel's reasonable attorney's fees under §330 requires the Court to apply the lodestar analysis. In re Kula, 213 B.R. 729, 737 (B.A.P. 8th Cir. 1997); In re Apex Oil Co., 960 F.2d 728, 731 (8th Cir. 1992). This calculation produces a presumptively reasonable fee award. Id. The lodestar amount is the number of hours reasonably expended multiplied by a reasonable hourly rate. Id. A reasonable hourly rate is determined in part with reference to the rates charged by attorneys performing similar services in the district. In re McKeeman, 236 B.R. 667, 671-72 (B.A.P. 8th Cir. 1999).

Counsel had a fee survey conducted comparing lawyers fees in the Cedar Rapids and Des Moines metro areas. He also offered expert testimony by attorney Dan Childers. The survey reveals that Counsel is charging the highest rate for bankruptcy attorneys in Cedar Rapids; the average rate is \$153 per hour and the range is from \$125 to \$175. In Des Moines, the average hourly rate for bankruptcy specialists is \$183 and the range is \$155 to \$225. Nonbankruptcy specialists' rates in Cedar Rapids range from \$135 to \$200 per hour; in Des Moines, the range is between \$165 to \$250 per hour.

The Court has examined fee applications in Chapter 11 cases in this district. Experienced Chapter 11 attorneys regularly appearing in this Court generally charge between \$125 and \$170 per hour. The Court notes that Des Moines is not within the Northern District of Iowa.

Based on the evidence presented and the Court's own investigation of hourly rates, the Court concludes that \$175 per hour is not a reasonable rate in this case. Instead, the Court will approve an hourly rate of \$165.

EFFECTIVE RATE

Counsel explains that the "effective hourly rate" listed on the original application for compensation is a measurement used by his law firm for internal recordkeeping. He agrees this rate is not relevant to the Court's consideration of compensation under §330(a).

Nevertheless, the Court wishes to address Counsel's use of an "Effective Rate" in his fee application. Nowhere in the original Application for Compensation does Counsel disclose that his actual hourly rate is \$175. Instead, he lists his "Effective Rate" at \$167.80. He explained at the hearing that this description is used for intraoffice informational purposes. It reflects the fact that he charged one-half of his regular hourly rate for travel time. The Court requires that fee applications set forth the professional's actual hourly rate and the number of hours charged at that rate. Separately, counsel should list any other rate used and the number of hours charged at that rate. Without such information, the Court is unable to apply the lodestar analysis.

QUALIFICATIONS OF PARALEGALS

The Supplement sets out biographical information regarding Attorney Peiffer and Susan Lancaster. Counsel itemizes services rendered by two paralegals, charging \$45.00 per hour for those services. This Court has held that "[i]f paralegal work is to be compensated, a paralegal's qualifications must be established in the fee application." In re Cargo, Inc., No. X90-00200, slip op. at 14 (Bankr. N.D. Iowa Jan. 24, 1992); see also In re Grimes, 115 B.R. 639, 646 (Bankr. D.S.D. 1990). The individual paralegal's training and qualifications should be of such a degree as to qualify the paralegal for the rates charged. Cargo, slip op. at 14.

Counsel's Supplement sets out qualifications for Susan Lancaster as a paralegal which are sufficient to allow Counsel to charge \$45.00 per hour for her services. Counsel retracts his request for fees of \$180.00 for work done by Sandra Brock.

CLERICAL SERVICES

This Court disallows paralegal compensation for secretarial or ministerial work. In re Rubber Development, Inc., No. 98-03432-W, slip op. at 2 (Bankr. N.D. Iowa Apr. 24, 2000); Cargo, slip op. at 15. Paralegal billing entries for "[s]ecretarial tasks are overhead expenses of the attorney and are not additionally compensable." In re Bonds Lucky Foods, Inc., 76 B.R. 664, 671 (Bankr. E.D. Ark. 1986). The court considers factors such as the amount of discretion allowed the paralegal, the experience or education required to accomplish the assignment, the responsibility delegated to the paralegal, and the amount of supervision retained by the attorney. In re CF & I Fabricators, Inc., 131 B.R. 474, 489-90 (Bankr. D. Utah 1991); see, e.g., In re Reil, No. 92-00860, slip op. at 2-3 (Bankr. N.D. Iowa June 27, 1994) (disallowing compensation for paralegals doing clerical work, reviewing the work of attorneys for merely informational purposes or the similar review of court orders or other filings, discussing matters or events in the case without justification for the discussion, and noting deadlines on calendars).

After review of his original application for compensation, Counsel reduces fees charged by \$371 for services which actually constituted secretarial or clerical work. The Court has identified additional clerical work billed and calculates that entries by paralegals for only clerical work total \$432. In addition, paralegal Susan Lancaster logged approximately 40 hours for preparation of schedules. The Court estimates that approximately one-third of this time, or \$600, constitutes clerical work, i.e. inputting information into computerized forms, as opposed to paralegal work which requires experience, training and exercise of discretion on the paralegal's part. Therefore, the Court will reduce paralegal fees by a total of \$1,032.00.

TRAVEL TO COURT

As to charges for travel to Court from his office, Counsel asserts it is appropriate to bill at half rate for such travel. Counsel's office is located approximately three blocks from Court. The time charged for such travel is one-half of the attorney's standard hourly rate. See In re Paquin, No. 95-40909XM, slip op. at 3 (Bankr. N.D. Iowa May 13, 1996). The Court finds, however, that round trip travel from one's office to the court in the same locale is not compensable. In re S.T.N. Enters., Inc., 70 B.R. 823, 844 (Bankr. D. Vt. 1987); Rubber Development, slip op. at 3.

Counsel billed a total of 0.8 hours for travel between his office and Court at one-half his regular hourly rate. This amount is deducted from the total fees approved.

EXPENSES

Counsel requests expenses as follows:

Mileage and Parking Fees	\$ 223.97
Photocopies	1,791.60
Facsimiles	134.20
Postage	264.95
Filing Fees	20.00
Payment for Bank transfer charges	5.00

This Court has previously directed that applications for compensation should provide an itemization of individual expenses to enable the court to evaluate their necessity and reasonableness. Cargo, slip op. at 17. In Cargo, the Court allowed a portion of the expenses requested although the justification for them was slight, reasoning that "some allowance should be made as undoubtedly copies were run, calls made, items delivered and information was FAXed all in relation to compensable work." Id. at 16.

This Court has also stated:

Counsel may claim reimbursement for actual and necessary expenses under §330. All out-of-pocket expenses chargeable to a particular case must be itemized and documented. An expense is not "actual," and therefore not reimbursable under §330(a) to the extent it is based on any sort of guesswork, formula or pro rata allocation. Concrete documentation is necessary to support any application for reimbursement.

In re Simon, No. 94-21591KD, slip op. at 6 (Bankr. N.D. Iowa Apr. 12, 1997) (citations omitted). In Simon, the application for compensation listed total amounts in categories including, among other things, photocopies, telephone calls, mileage and postage. The Court noted that lack of detail in the description leaves the following questions unanswered: the number of photocopies made and the amount charged per copy, who participated in the telephone calls, whether the postage was for special mailings or part of overhead costs, who drove where, and whether faxes were sent or received and the per page charge. Id. at 7. The Court refused to approve reimbursement of any of the expenses requested. Id.

Counsel's supplement to his application for compensation states that photocopies are charged at \$0.20 per page. He revises his fax expenses to charge \$0.20 per page. Counsel charges mileage at \$0.315 per mile according to the Internal Revenue rate.

At \$0.20 per page, expenses of \$1,791.60 for photocopies indicate a total of 8,958 copies were produced. This is excessive considering Counsel was employed as Debtor's counsel for a mere two months. It is evident some photocopies were necessary. The complexity of the schedules and the number of creditors indicates a high volume of paperwork. However, Counsel has failed to describe the photocopying expenses in such a manner as to allow the Court to determine whether 8,958 copies were reasonably made. The same must be said of expenses for faxes and postage. As such, the Court will compensate Counsel for expenses after reducing the total charges for photocopies, faxes, and postage by approximately one-third. Counsel requests a total of \$2,190.75 for these categories of expenses. The Court will reduce this amount by \$730.00 and allow the remainder.

SUMMARY

The Court has spent considerable time reviewing Counsel's application in this case. The Court would obviously prefer to be in a position of being able to more summarily review fee applications, and, if in compliance with the Code and local case law, approve those fees. The Judges of the Northern District of Iowa have written numerous formal opinions concerning fee applications in an attempt to provide counsel with clear guidelines as to what will be approved in a fee application. Many of the matters which the Court found objectionable in the present application are matters about which the Judges of the Northern District of Iowa have already written opinions.

The Court recognizes that, if objections are found by the Court, counsel is entitled to a hearing under existing Circuit law. In re Kula, 213 B.R. 729, 743 (B.A.P. 8th Cir. 1997); In re Pflughaar, 215 B.R. 394, 397 (B.A.P. 8th Cir. 1997). The Court also recognizes that under existing law counsel should be provided an opportunity to explain or supplement the previous fee application. In this case, after the Court pointed out specific areas of concern, Counsel provided a supplement fee application.

While the Court understands Counsel has the right to supplement a previous application, such a procedure also places the Court in a difficult position. The Court must first examine the fee application to see if it is in compliance with the Code and local case law. If not, Counsel is allowed to come into compliance by supplementing the fee application after which the Court must again review the application to determine if compliance is now achieved. Under such a system, the Court is placed in the position of being an advisor as to whether or not the fee application is complete and correct. This is frustrating in view of this District's attempts to continually advise counsel of what is and is not permissible. While the cases require a hearing, there is little, if any, case law concerning whether Courts are allowed to penalize counsel for failing to comply with the Code or local case law in the first instance. It is this Court's opinion that if the Code and existing case law are ignored, the Court has discretion to determine whether an appropriate penalty should follow. Without such potential for a discounted fee application, Counsel has no incentive to produce a complete and accurate application. Counsel may file an application which is deficient, and if approved, Counsel has lost nothing. If the deficiencies are found, Counsel can simply supplement the application without penalty. The Court does not feel this is the result intended by existing law. Even so, after careful consideration, the Court in this case elects not to impose such a sanction.

Based on the foregoing, the Court makes the following calculations:

Fees:	Allowed
Joseph Peiffer	
114.2 hours @ \$165/hr.	\$18,843.00
9 hours (travel) @ \$82.50/hr.	742.50
0.8 hours travel not compensated	
Paralegals	
originally requested \$2,691.00	
less \$432.00 clerical work	
less \$600.00 for clerical schedule preparation	1,659.00
TOTAL FEES ALLOWED:	\$21,244.50
Expenses:	

Requested	\$2,849.02	
Faxes (revised)	- 543.50	
	+ 134.20	
less 1/3 of amount requested for copies, faxes and postage	- 730.00	
TOTAL EXPENSES ALLOWED:		\$ 1,709.72

WHEREFORE, Application for Compensation and Reimbursement of Expenses of Attorney is GRANTED IN PART and DENIED IN PART.

FURTHER, the Court approves compensation of fees of \$21,244.50 and expenses of \$1,709.72, or a total of \$22,954.22 for Day, Rettig, Peiffer, Johansen, P.C., counsel for Debtor.

FURTHER, the Court disallows the remainder of fees and expenses requested.

FURTHER, Counsel may request fees and expenses for omitted entries and phone charges arising prior to March 23, 2000 at a later date after proper notice.

SO ORDERED this 31st day of May, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge