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DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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DEC 15 1997
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (4)

IN RE:

Dunes Hotel Associates, a South Carolina
general partnership,

Debtor.

C/A No. 94-75715-W

JUDGMENT

Chapter 11

Based upon the findings of the Court as recited in the attached Order, the settlement of the United States Trustee's motion for examination of Debtor's transactions with attorneys, review of connections, review of compensation paid and review of the payment of compensation is approved.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
December 15, 1997.

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DEPUTY CLERK

FILED

at _____ O'clock & _____

DEC 15 1997

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

TERENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina

In re:	)	In Proceedings Under Chapter 11
)	
DUNES HOTEL ASSOCIATES, a South	)	Case No. 94-75715 (JW)
Carolina general partnership,)	
	)	ORDER APPROVING SETTLEMENT
	)	OF CONTROVERSY BY AND
	)	BETWEEN THE UNITED STATES
	)	TRUSTEE AND THE DEBTOR'S
	)	COUNSEL; FURTHER ORDER OF
	)	THE COURT STATING AND
Debtor.	)	REVIEWING THE LEGAL
	)	REQUIREMENTS AND UNDERLYING
	)	PRINCIPLES APPLICABLE TO
	)	RETENTION OF PROFESSIONALS IN
	)	THIS DISTRICT

This matter is before the Court on the United States Trustee's motion for examination of debtor's transactions with attorneys, review of connections, review of compensation paid, and review of the payment of compensation. The United States Trustee, Streich Lang, P.A., and Nexsen Pruet Jacobs & Pollard, LLP have settled their controversy, and the Court approves their settlement. The Court also reserves the right to review all matters relating to professional employment and compensation in accordance with applicable law at any time and particularly when and if this case or any adversary proceeding is remanded to the Court or reinstated as a result of a decision in one or more appeals now pending.

FACTUAL BACKGROUND

1. Dunes Hotel Associates, a South Carolina general partnership ("Debtor"), filed a petition for relief under chapter 11 of the Bankruptcy Code on November 18, 1994.

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2. Debtor applied for approval of its request to employ Streich Lang, P.A. (the "Streich Firm") and Nexsen Pruet Jacobs & Pollard, LLP ("NPJP") (collectively "debtor's counsel") by application filed with the Court on December 6, 1994.

3. Debtor's application was accompanied by an affidavit of NPJP which provides in part:

Prior to the commencement of this case, the debtor retained NEXSEN PRUET JACOBS & POLLARD, LLP to counsel it with STREICH LANG, P.A., the debtor's general bankruptcy counsel, on a restructuring/workout of the debtor's financial affairs, including possible bankruptcy representation of the debtor with STREICH LANG, P.A.

As a part of such representation, NEXSEN PRUET JACOBS & POLLARD, LLP has represented the debtor in a state court mortgage foreclosure action, and in a state court interpleader action related to the foreclosure action.

NEXSEN PRUET JACOBS & POLLARD, LLP has no other connections with the debtor, creditors, the United States Trustee, or other parties in this case, or with their attorneys or accountants, except that, as a law firm, from time to time it may have cases with some of these parties.

4. Attached to the NPJP affidavit, although not referenced therein, is a letter from Edward G. Menzie, Esquire of NPJP to Dunes Hotel Associates dated November 16, 1994. The letter provides, in part:

We are pleased that you have chosen Nexsen Pruet Jacobs & Pollard, LLP to represent Dunes Hotel Associates, a South Carolina general partnership ("Dunes Hotel"), in connection with its efforts to reorganize and restructure its business and financial affairs. This representation may include a chapter 11 bankruptcy case.

In Chapter 11 cases in which we represent the debtor-in-possession, we normally require a retainer to assure payment of our fees and expenses in the case. In this case, however, we have agreed to waive a retainer and to receive payment from equity interest holders on a regular billing cycle basis. Meyer Enterprises, Inc., a general

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partner of Dunes Hotel, shall be responsible for payment of our professional fees and expenses. If a chapter 11 bankruptcy is filed, we will periodically apply to the Bankruptcy Court for approval and payment of our fees and expenses from the Dunes Hotel bankruptcy estate. If such fees and expenses are recovered from the bankruptcy estate, we will reimburse Meyer Enterprises, Inc. for amounts paid to us by the bankruptcy estate.

5. Debtor's application was also accompanied by a verified statement of the

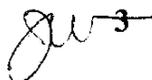
Streich Firm which provides, in part:

The Streich Firm has been asked by DUNES HOTEL ASSOCIATES ("Dunes") to represent Dunes as its general bankruptcy and restructuring counsel; and with the approval of Dunes, and subsequent approval by the court, the Streich Firm has arranged to do so in association with the law firm of NEXSEN PRUET JACOBS & POLLARD (the "Nexsen Firm") as local counsel for Dunes.

There will be no duplication of efforts between the Streich Firm and the Nexsen Firm in the representation of Dunes. Speaking on behalf of the Streich Firm, I hereby represent and confirm to Dunes and to the Court that members and associates of our firm are accustomed to working with local bankruptcy counsel on bankruptcy cases throughout the United States. Furthermore, the Streich Firm will file its requests for professional fees and reimbursements of expenses simultaneously with such requests by the Nexsen Firm, so that the Court will be satisfied that the Streich Firm and the Nexsen Firm have performed their assignments without duplication of efforts as heretofore described.

Subject to approval by the Court, Dunes and the Streich Firm have made the following agreements concerning employment of the Streich Firm, compensation of the Streich Firm for professional services rendered, and reimbursements of the Streich Firm for costs, disbursements, and other expenses which it incurs in this matter:

(a) Dunes has agreed that the Streich Firm is employed as its general bankruptcy and restructuring counsel (effective November 1, 1994, unless the Court otherwise directs); and that the Streich Firm will represent Dunes in association with local counsel regularly licensed to practice before the Court. The Nexsen Firm has been selected by Dunes as local counsel.

A handwritten signature in cursive script, appearing to be "JWS", located at the bottom center of the page.

(b) Dunes and the Streich Firm have agreed that the Streich Firm will charge for its professional services at hourly rates customarily charged by the Streich Firm for the services of the lawyers and paralegals involved, and that the Streich Firm will be paid for its costs incurred representing Dunes in this matter. A copy of the Streich Firm's engagement letter with Dunes (the "Engagement Letter") is attached hereto as Exhibit "A" and is by this reference incorporated herein. The Engagement Letter is the only agreement of Dunes and the Streich Firm regarding professional compensation and reimbursement of costs. The Streich Firm's regular hourly rates are adjusted from time to time, but presently range from about \$80.00 to \$200.00 per hour for associate lawyers, and from about \$225.00 to \$300.00 per hour for directors.

(c) Neither I nor the Streich Firm has agreed to share compensation with anyone.

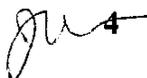
(d) The Streich Firm is not a creditor of Dunes.

With respect to the Streich Firm's connection with Dunes, its creditors, any other parties in interest, or their respective attorneys or accountants, I hereby represent and confirm the following to Dunes and the Court, personally and on behalf of the Streich Firm, and to the best of my knowledge, information, and belief:

(a) The Streich Firm represents and has represented the Trustees of the General Electric Pension Trust ("GEPT") in matters unrelated to Dunes and the Dunes Chapter 11 case. GEPT is an affiliate of Meyers Enterprises, Inc. and Andrick Hotel Corp. (which are the general partners of Dunes). The Streich Firm has not represented GEPT, and does not currently represent GEPT, in any matters which relate to Dunes or any of its property, or creditors, or any other parties-in-interest in this case; and, therefore, the Streich Firm does not believe that its representation of GEPT presents any actual or potential conflict of interest affecting the Streich Firm's representation of Dunes.

(b) The Streich Firm has not represented, and does not represent, any other party in Dunes' case.

(c) Other than as stated above, the Streich Firm has no other connections with Dunes, its creditors, or any other parties-in-interest in this case.



(d) Accordingly, the Streich Firm does not hold or represent any interest adverse to Dunes' estate; and within the meaning of 11 U.S.C. §§101(14), 327, and 328, the Streich Firm is "disinterested" and is eligible to be employed as Dunes' general bankruptcy counsel.

6. Attached to the Streich Firm verified statement, and referenced therein, is a letter from John J. Dawson, Esquire of the Streich Firm to Dunes Hotel Associates dated November 11, 1994. The letter provides, in part:

To secure and ensure the payment of Streich Lang's professional compensation and expense reimbursements, Dunes agrees with Streich Lang as follows:

(a) All outstanding fees and costs due from Dunes to Streich Lang will be paid prior to the filing of a bankruptcy case for Dunes.

(b) If a Chapter 11 bankruptcy petition is filed by Dunes, Streich Lang will apply to the Bankruptcy Court from time to time for allowance of its professional compensation and expense reimbursements. Subject to orders of the Bankruptcy Court, Streich Lang will have the right and option (i) to obtain payment from available assets of Dunes' estate; or (ii) to obtain payment of professional fees and expenses from Meyers Enterprises, Inc. ("Meyers"), a general partner of Dunes, subject to any right of subrogation on behalf of Meyers to obtain from Dunes reimbursement of any professional fees and costs paid to Streich Lang.

7. The Court signed an order authorizing employment of counsel on December 9, 1994 which provides, in part:

Dunes shall be, and hereby is, authorized to employ the law firm of Streich Lang, P.A. to act as general bankruptcy and restructuring counsel for Dunes in all its capacities, including its capacity as Debtor and Debtor-In-Possession; and said employment shall be, and hereby is, approved by the Court;

Dunes is authorized to employ the law firm of Nexsen Pruet Jacobs & Pollard, LLP as local counsel; and

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The compensation and reimbursement of costs from the bankruptcy estate shall be set by the Court according to 11 U.S.C. Section 330(a) and, therefore, may be different from the terms of compensation discussed by Dunes and its counsel.

8. NPJP received \$498,868.03 from Meyers Enterprises, Inc. in fees and cost reimbursements in this case between December 15, 1994 and September 18, 1997.

9. The Streich Firm received \$2,406,665.95 from Meyers Enterprises, Inc. in fees and cost reimbursements in this case between December 30, 1994 and October 1, 1997.

10. Meyers Enterprises, Inc. is a general partner of the Debtor. None of the fees and cost reimbursements paid to NPJP and the Streich Firm were property of the Debtor or its estate.

11. Neither NPJP nor the Streich Firm applied to the Bankruptcy Court for approval of professional compensation and cost reimbursements. Both firms which are the debtor's counsel have stated that they have relied, and will continue to rely, on the Debtor's general partner for payment, and that they do not seek compensation from the Debtor or its estate. The debtor's counsel have agreed that, until it is finally decided on appeal whether this case will be remanded and reinstated, they will continue to disclose all payments of fees and expenses that they receive. When and if the case is remanded and reinstated, the debtor's counsel have agreed, without waiving their agreement to be paid by the Debtor's general partner rather than the Debtor or its estate, that their post-remand fees and expenses will be paid only upon application to and following approval of the Court.

12. On or about June 27, 1997, Hyatt Corporation and S.C. Hyatt Corporation (collectively, "Hyatt") filed a motion to dismiss the Debtor's chapter 11 case.

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13. One of the allegations made by Hyatt during proceedings on the dismissal motion was that the debtor's counsel had failed to comply with 11 U.S.C. §329.¹ The debtor's counsel denied Hyatt's allegation that they had not complied with Bankruptcy Code §329 (and further alleged that any issue regarding their compliance could be addressed in proceedings other than case dismissal).

14. When the Court entered its order dismissing the case on September 26, 1997,² the Court requested the United States Trustee to review the allegations of non-compliance with Bankruptcy Code §329 and to file a written report or other appropriate pleading. On October 6, 1997, the United States Trustee filed the motion initiating the controversy which the parties are settling with the Court's approval.

15. Both before and after the United States Trustee was asked to review the non-compliance allegations and filed the motion, the debtor's counsel cooperated with requests for information by the United States Trustee. In particular, the debtor's counsel provided the following written materials at the United States Trustee's request: (a) a joint statement pursuant to Bankruptcy Rule 2016(b) and Bankruptcy Code §329; (b) separate amended Bankruptcy Rule 2014 statements elaborating on certain matters as requested by the United States Trustee; (c) a separate supplemental Bankruptcy Code §329 and Bankruptcy Rule 2016(h) statement for each payment received by the debtor's counsel; and (d) statements of details regarding their services and costs.

¹ Further references to the Bankruptcy Code, 11 U.S.C. §101, *et seq.*, will be by section numbers, *e.g.*, Bankruptcy Code §329 or Section/§329.

² The Debtor has appealed this order.

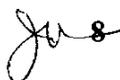


THE SETTLEMENT

The United States Trustee contends: (a) that the debtor's counsel failed to disclose the connection that a general partner would pay their fees and failed to disclose clearly the terms and conditions of their employment in this case; (b) that both engagement letters refer to the possibility of a bankruptcy case and contemplate a pre-petition employment relationship and should be read as requiring applications for compensation once a bankruptcy is filed; and (c) that, regardless of the construction that might be given an engagement letter, it is always improper for counsel to receive post-petition compensation from any source without bankruptcy court approval and that it is improper to fail to disclose the receipt of fees.

The debtor's counsel contend: (a) that their disclosures were complete and clearly identified the general partner payment source and their right to receive payment from that source; (b) that the procedures which they followed were appropriate where they were not, and are not, seeking compensation or cost reimbursements from the Debtor or its estate; and (c) that no participant in this case, including Hyatt and the United States Trustee, has been misled regarding compensation and reimbursement of the debtor's counsel.

Despite the parties' firm convictions as to their respective positions, they agree that there is no clearly controlling case law on all the issues in this district. NPJP and the Streich Firm agree that there should be prompt disclosure of the periodic payments received in this case, and the United States Trustee recognizes that there was some notice of an alternative compensation arrangement early in the case. Accordingly, the parties have reached the following settlement: The United States Trustee, NPJP, and the Streich Firm have agreed that NPJP should pay



\$5,000.00 and that the Streich Firm should pay \$35,000.00 of the fees received in this case to the South Carolina Bar's Pro Bono Program.³

This Court hereby approves the foregoing settlement as stated herein. Notwithstanding the settlement disposing of the United States Trustee's motion and this Court's order dismissing the case, the Court reserves the right to review matters relating to professional employment and compensation at any time and particularly when and if this case or any adversary proceeding is remanded to the Court or reinstated as a result of a decision in one or more appeals now pending.⁴

AND IT IS SO ORDERED.

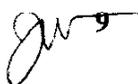
FURTHER ORDER OF THE COURT

In light of issues encountered in this case and other cases, the Court believes that it would be beneficial to the bankruptcy bar for the Court to review the legal requirements for professional retention, the payment of compensation to professionals, and the principles underlying those requirements.

Nothing in the following discussion is intended to conclude that the professionals in this case did or did not comply with all of the requirements discussed.

³ Disgorgement of fees would result, unless otherwise ordered by the Court, in the fees being repaid to the payor which is a result inconsistent with the spirit of this settlement. The United States Trustee, NPJP and the Streich Firm have selected the South Carolina Bar's Pro Bono Program as the recipient of the settlement funds. Proof of payment and service of a copy of this Order upon the South Carolina Bar's Pro Bono Program shall be filed with this Court within 10 days of the entry of this Order.

⁴ In as much as this case is dismissed upon other grounds, the Court finds it unnecessary at this time to determine whether any failure to comply with requirements for employment or compensation of professionals constitutes separate grounds for dismissal. However, the Court reserves such determination if necessary if the case or any adversary proceeding is remanded or reopened.



Employment of Professionals

Employment of professionals by trustees and debtors in possession is governed by

11 U.S.C. §327, which provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The Trustee may not employ a person that has served as an examiner in the case.

11 U.S.C. §327.

Section 327(a) requires that the proposed professional be a "disinterested person" and that the person not hold or represent an interest adverse to the estate. While these

requirements do overlap to some extent, they are separate and distinct. A “disinterested person” is defined in 11 U.S.C. §101(14) as a person not having any one of certain enumerated relationships with the debtor. Subsections (A) through (D) of §101(4) define certain relationships with the debtor that make a person per se not disinterested. For instance, if a person is a creditor, an equity security holder, or an insider of the debtor, the person is not disinterested. 11 U.S.C. §101(14)(A). Subsection (E) of §101(14) is a broad “catch-all” provision. It states that a person is not disinterested if the person “has an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) of (C) of [section 101(14)], or for any other reason.” 11 U.S.C. §101(14)(E) (emphasis added).

The requirements of §327(a) that the person whom the trustee or debtor in possession seeks to employ “not hold or represent an interest adverse to the estate” duplicates to a certain extent the language of §101(14)(E). The provisions are not, however, completely co-extensive. Section 101(14)(E) states that a person is not disinterested if that person has an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders. The adverse interest proscription of §327(a) does not contain an explicit materiality requirement. Section 327(a) prohibits the employment of a person who either holds or represents an interest adverse to the estate. The inclusion of representation of an interest adverse to the estate in this requirement is important. Attorneys and accountants can be disqualified based upon the interests of other parties whom they represent.

However, Section 327(c) contains a limited exception to the general rule of §327(a). It provides that a person is not disqualified for employment solely because of that person’s

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employment by or representation of a creditor, unless another creditor or the United States Trustee objects. If such an objection is made, the Court is to disapprove the employment if there is an actual conflict of interest.

Professional employment is most often handled *ex parte*, based upon application by the debtor or the trustee. In the District of South Carolina, the original application, the professional's verified statement of connections, and the proposed order are submitted to the United States Trustee for review, consent and transmittal to the Bankruptcy Court.⁵ The Court and the United States Trustee must be fully apprised of the connections of the proposed professional with various constituencies in order to determine if the proposed professional is disinterested and is otherwise qualified to serve under §327. Federal Rule of Bankruptcy Procedure 2014(a) details the procedures to be followed and the disclosure to be made:

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to §327, §1103, or §1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connection with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

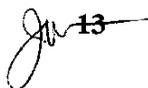
⁴ The United States Trustee returns a significant number of these applications to obtain corrections or additional information. This process serves to reduce the number of objections that would otherwise be filed by the United States Trustee and heard by the Court.

Fed. R. Bankr. Proc. 2014(a).

This rule calls for full disclosure of all connections of the proposed professional with the debtor and the other parties in interest in the case, including their attorneys and accountants. This Court is concerned with the sometimes incomplete and haphazard disclosures which are made by debtors and those practicing before the Court. Some practitioners appear to think that so long as a professional believes that he is disinterested, the professional need not disclose any connections with the debtor or others. Attorneys and debtors often state merely that the attorney is a disinterested person and that the attorney represents no interest adverse to the estate on the matters upon which the attorney is to be employed. Such disclosures do not comply with the requirements of Rule 2014(a). They are conclusory, and contain no factual representations upon which the Court or the United States Trustee can rely in determining whether the proposed professional is qualified to serve. The duty of professionals is to disclose all connections with the debtor, the debtor in possession, insiders, creditors, and parties in interest as well as fee arrangements. They cannot pick and choose which connections are irrelevant or trivial. In re Hot Tin Roof, Inc., 205 B.R. 1000, 1003 (1st Cir. B.A.P. 1997).

Applications for employment of professionals must be timely submitted to the Court for consideration. While this Court has not required that an application be filed before or contemporaneously with the commencement of services by a professional, any significant delay will result in the application being treated as seeking the nunc pro tunc employment of the professional. This Court has established a nine part test for the approval of such employment. In re TJN, Inc., 194 B.R. 396 (Bankr. D.S.C. 1996).

While the law requires that counsel fully disclose all connections with parties in interest, the Court believes that the circumstances of this case emphasize the importance that all

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relationships between counsel and insiders of the debtor regarding the payment of attorneys' fees be brought to the actual attention of the Court and the United States Trustee early in the case. While the Court does not necessarily believe that a per se rule forbidding the payment of retainers or attorneys' fees by insiders would be appropriate, each such arrangement must be carefully examined to determine if the interests of the insider and of the debtor are totally congruent. See In re Missouri Mining, Inc., 186 B.R. 946 (Bankr. W.D. Mo. 1995); In re Rabex Amuru of North Carolina, Inc., 198 B.R. 892 (Bankr. M.D.N.C. 1996); In re Lotus Properties, Inc., 200 B.R. 388 (Bankr. C.D. Cal. 1996). See also In re Harold & Williams Development Co., 977 F.2d 906 (4th Cir. 1992), in which the Court of Appeals discussed the danger of the development of per se disqualifications beyond those specifically set out in the Code. The potential for a conflict of interest is readily apparent when counsel for a chapter 11 debtor must look for payment of its fees to an insider who might himself be a creditor of the estate, or who might be a guarantor of some but not all claims against the debtor, or who might suffer adverse tax consequences if the debtor proceeded in a fashion that might be generally beneficial to creditors. The Court will, therefore, consider in the future setting applications that disclose fee agreements between insiders and counsel for hearing on notice to all parties in interest. The United States Trustee is requested to bring such applications to the Court's attention. At such hearings, the Court will inquire into the nature of the agreement and the interests of the insiders to determine if counsel is disinterested or represents an interest adverse to the estate.

Payment of Compensation

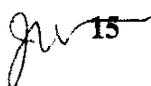
In addition to the general professional retention requirements discussed above, the Bankruptcy Code and Bankruptcy Rules contain provisions dealing explicitly with the compensation of debtors' attorneys. Section 329(a) of the Code states:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. §329(a). Rule 2016(b) provides:

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by §329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Fed. R. Bankr. Proc. 2016(a). These provisions are mandatory, and require that all payments and agreements regarding payment be fully disclosed by the attorney for the debtor. This Court has previously made it abundantly clear that non-compliance with these requirements is not to be taken lightly. See In re TJN, Inc., 194 B.R. 400 (Bankr. D.S.C. 1996). In particular, all payments received by debtor's attorneys, whether before or after the filing of the petition, must be timely disclosed to the Court and the United States Trustee. In TJN, the Court emphasized that debtor's counsel cannot be excused for failing to comply with Rule 2016(b) because other evidence of counsel's payment arrangement was available to the Court and other parties in interest. Id. at 402-3. The potential sanction for the failure by counsel to comply forthrightly and timely with these requirements is the complete denial and disgorgement of fees, and the bar should understand that the Court may impose this sanction.

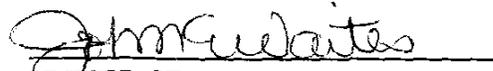
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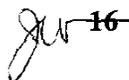
"[F]ees paid to the debtor's counsel may be reviewed regardless of their source."

In re BOH! Ristorante, Inc., 99 B.R. 971, 972 (9th Cir B.A.P. 1989). See also In re Furniture Corporation of America, 34 B.R. 46 (Bankr. S.D. Fla. 1983); In re Crimson Investments, N.V., 109 B.R. 397 (Bankr. D. Ariz. 1989); In re Key Largo Land, Inc., 158 B.R. 883 (Bankr. S.D. Fla. 1993); David & Hagner P.C. v. DHP, Inc., 171 B.R. 429, 437 (D.D.C. 1994) (noting that the Bankruptcy Court's review of fees paid by a non-estate source is discretionary), affirmed, 70 F.3d 637. Absent an order of the Court approving the payment or providing for alternative payments in the specific case, debtor's counsel in the District of South Carolina should not accept post-petition payments from any source. Additionally, counsel may not draw against a retainer until the Court has approved compensation and authorized payment. In re Printing Dimensions, Inc., 153 B.R. 715 (Bankr. D. Md. 1993).

Bankruptcy Judges may examine the propriety and reasonableness of fees, even if no party in interest objects to the fees. In re Busy Beaver Bldg. Centers, Inc., 19 F.3d 833 (3rd Cir. 1994); In re Taxman Clothing Co., Inc., 134 B.R. 286 (N.D. Ill. 1991), affirmed, 70 F.3d 637; In re Hunt, 196 B.R. 356 (N.D. Tex. 1996); In re Great Sweats, Inc., 113 B.R. 240 (Bankr. E.D. Va. 1990); In re Oxford Homes, Inc., 204 B.R. 264 (Bankr. D. Me. 1997); In re Keene Corp., 205 B.R. 690 (Bankr. S.D.N.Y. 1997); In re Spanzer Bros., Inc., 203 B.R. 85 (Bankr. N.D. Ill. 1996).

AND IT IS FURTHER SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE



We consent to the settlement stated hereinabove:

W. CLARKSON MCDOW, JR.
UNITED STATES TRUSTEE

By: David R. Duncan
David R. Duncan
District Court ID #641
1201 Main Street, Suite 2440
Columbia, SC 29201-3226

NEXSEN PRUET JACOBS & POLLARD, LLP

By: Julio E. Mendoza, Jr.
Julio E. Mendoza, Jr.
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STREICH LANG, P.A.

By: John J. Dawson, by Julio E. Mendoza, Jr.
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Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391
(pursuant to authorization given by Mr. Dawson)

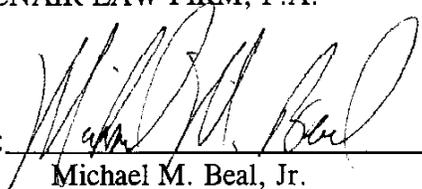
S.C. Hyatt Corporation and Hyatt Corporation (together, "Hyatt") have previously expressed their position on the matters raised in the United States Trustee's motion and the entry of this Order shall not estop Hyatt and shall be without prejudice to Hyatt to reassert its position on these matters at any subsequent time in any Court. Subject to the foregoing, Hyatt takes no position on the settlement agreement between Streich Lang, P.A., Nexsen Pruet Jacobs and Pollard, LLP and the United States Trustee resolving the motion filed by the United States Trustee

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for examination of the debtor's transactions with attorneys, review of connections, review of compensation paid, and review of payment of compensation, which settlement agreement is incorporated in the Order Approving Settlement Of Controversy By And Between The United States Trustee And The Debtor's Counsel; Further Order Of The Court Stating And Reviewing The Legal Requirements And Underlying Principles Applicable To Retention Of Professionals In This District. Hyatt does not object to the settlement of the United States Trustees' Motion, but reserves all rights that Hyatt may have on matters addressed therein.

MCNAIR LAW FIRM, P.A.

By: _____



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