

*Attorney Fees
Lodestar Analysis*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Waycross Division

In the matter of:

ISAIAH JAMES DAVIS
d/b/a Davco Realty
Debtor

Chapter 11 Case
Number 87-50208

ISAIAH JAMES DAVIS
d/b/a Davco Realty

Plaintiff

Adversary Proceeding
Number 88-5006

v.

THE FEDERAL LAND BANK OF
COLUMBIA, SOUTHEAST GEORGIA
PRODUCTION CREDIT ASSOCIATION
as successor to Satilla
Production Credit Association,
LAMAR GIBSON, STEPHEN L.
JACKSON, J. KENNETH ROYAL,
SEABORN BELL, LAMAR BELL,
and J. W. WAINWRIGHT

Defendant

FILED
at 4 O'clock & 18 min. P.M
Date 9/8/89
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

MEMORANDUM AND ORDER ON APPLICATION FOR ATTORNEY'S FEES

William E. Callaway, Jr., (hereinafter "Callaway")
attorney for the Debtor, filed an application for approval of

attorney's fees on January 23, 1989, and amended same on February 15, 1989. To said application, objections were received from the United States Trustee and from the Debtor. After a lengthy hearing on July 10, 1989, and July 14, 1989, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) On November 4, 1987, the Debtor filed this Chapter 11 case utilizing the services of Duston Tapley as his attorney at law. Prior to this filing, Debtor had filed another Chapter 11 case, Case Number 580-00069, which case was confirmed on November 16, 1981. The Debtor revealed that at the time of the filing of the present Chapter 11 case, he was involved in pending litigation in Toombs County, Georgia, wherein he sought an accounting and in Pierce County, Georgia, where he had brought an action alleging mismanagement by a real estate agent acting on his behalf. Debtor scheduled no priority creditors, four secured creditors, and one unsecured creditor as of the date of filing. The total unsecured debt amounted to \$6,434.32. Debtor revealed monthly income of approximately \$1,900.00 and monthly expenditures of approximately one-half that amount. Debtor scheduled as assets of his estate claims against the Farm Credit Service, Lamar Gibson, Sea-Mar

Realty, Dinkins Timber Company, and Gilman Paper Company in the aggregate amount of approximately \$830,000.00.

2) Almost immediately, on November 13, 1987, a Motion to Dismiss the Chapter 11 was filed by the Federal Land Bank of Columbia (hereinafter "FLB"). The Motion alleged that the Debtor was in default under the terms of his confirmed Chapter 11 Plan which dated back to 1980, had been in default for a period of over two years, and owed a balance of \$742,819.12. The Motion further alleged that as a result of the Debtor's default under the terms of the confirmed plan the Land Bank had commenced foreclosure proceedings under State Law. This attempted foreclosure had resulted in the filing of the action in Toombs County, Georgia, seeking an injunction to stop the foreclosure and an accounting. That action resulted in FLB voluntarily withholding the foreclosure pending the accounting. When this Chapter 11 case was filed, which resulted in the imposition of an automatic stay the accounting action was dismissed. FLB asserted that dismissal of the 1987 petition was appropriate since Debtor did not demonstrate that a Chapter 11 reorganization was feasible and because the filing of the case was in bad faith. Alternatively, the Land Bank sought relief from the stay since it alleged that it was not being afforded adequate protection by the Debtor who was not making payments sufficient to protect the interest of the Land Bank. A lengthy

evidentiary hearing was held on December 9, 1987, in which the allegations of that Motion were considered.

3) On January 14, 1988, this Court entered an order denying the Motion to Dismiss but granting the Motion for Relief from Stay. In that order, I reserved the right to reimpose the stay in the event Debtor was able to procure a bona fide sales contract for any of the tracts of land in issue at a net price that would equal or exceed the values which the Debtor had asserted should be found to be the correct values by the Court and which values had for the most part been rejected. This provision was open only through February 15, 1988, and Debtor failed to produce any such contract on or before that date.

4) As a result, FLB was free to foreclose as early as the first Tuesday in March, 1988. Prior to that time, however, Debtor became entitled to seek restructuring of his debt obligation to the Farm Credit Service under the provisions of the Agricultural Credit Act of 1987. As a result of the Debtor seeking restructuring of his loan as permitted under that Act, the FLB did not institute or attempt to institute foreclosure proceedings for some period of time.

5) At the December 19, 1987, hearing, Debtor's counsel

had asserted forcefully that one of the bases on which the Court should not grant relief from the stay was that the Debtor was indebted to FLB in an amount substantially less than the amount claimed. The discrepancy between the Debtor's position and FLB arose out of the claim that FLB had not properly accounted to the Debtor for monies which it had received, that certain agents acting on the Debtor's behalf had not properly accounted for monies which they received and were to have paid over to FLB and that entities which had cut timber off the Debtor's land had not properly accounted for the amount of timber cut. During his testimony, Mr. Davis vehemently asserted that he had been defrauded by some or all of those parties. However, under questioning by counsel for FLB the Debtor admitted that he could not at that point in time produce any document which would support such allegations. Indeed these allegations were quite similar if not identical to the allegations which had given rise to the filing of the accounting action in the Superior Court of Toombs County, Georgia, and which action had, subsequent to the filing of the Chapter 11 case, been voluntarily dismissed by the Debtor.

6) Debtor's counsel, likewise, was unable to state to the Court that he could produce any evidence to support the Debtor's allegations. However, he also argued strenuously that the Debtor was insistent that he had been defrauded and that he was entitled

to credits which, if they were provided to him, would have substantially reduced his debt to FLB and which would have resulted in there being significant equity in the properties pledged to FLB as collateral. At that hearing, reference was made by the Debtor to his granddaughter-in-law, Sharon Davis, who he represented to be an accountant who was attempting to analyze the Debtor's records and reconcile them with the records of FLB. However, Ms. Davis apparently had not completed this investigation and was not called to testify by either side at that time.

7) In late January, 1988, apparently as a result of their dissatisfaction with the outcome of the hearing in December and this Court's order of January 14th, Debtor I. J. Davis, his grandson Patrick Davis and his granddaughter-in-law Sharon Davis the then wife of Patrick Davis, sought out the law firm of Callaway, Neville and Brinson. They initially met with William J. Neville, Jr., for a brief period of time and later returned and had a meeting with the applicant herein, William E. Callaway, Jr. At the time of their initial meeting with Callaway the Debtor presented Mr. Callaway with the following factual situation. He indicated that he owed money to the Federal Land Bank which held a deed to secure debt on five tracts of land totalling over 3,300 acres and that just prior to that meeting the Bankruptcy Court had lifted the automatic stay which would otherwise have prevented the Land Bank from

foreclosure on those tracts of land. He firmly believed he had substantial equity in the property, thought that one tract had very valuable minerals (sand) which had not been properly valued in previous hearings and was adamant that he was not in default in his obligations to FLB. Indeed, he represented to Callaway that the FLB owed him substantial sums of money, that Sharon Davis, who was a CPA and a relative, had spent considerable time going over the FLB records and had come to that conclusion and furthermore that he had substantial claims of fraud against various attorneys, realtors, and other agents who had handled his business affairs over the years.

8) The Debtor advised Callaway that Sharon Davis had been working for nearly two years trying to reconstruct the many financial transactions which he had engaged in over the years and informed Callaway that her expertise as a CPA would be available to him if he took the case. Callaway recognized that much of the case would involve detailed accounting skills and ability and agreed to take the case on the suggestion of the Debtor that Ms. Davis would be available to assist and would be an integral part of the team working to vindicate the Debtor's rights. Over the period of the next several months Callaway met on many occasions with the Debtor and with Ms. Davis. Contrary to the Debtor's assertion that he only saw Callaway on four or five occasions I find that Callaway's testimony on this point is entitled to greater weight. It is clear

that on virtually every occasion when Callaway worked on the case, particularly in the initial stages, Mr. Davis and his granddaughter-in-law, Sharon Davis, would travel from their home in Brantley County to Callaway's office in Evans County, would arrive there first thing in the morning and remain at his office all day long. It is further clear that Callaway and Sharon Davis would spend many hours reviewing the hundreds of pages of documents which the Debtor had in his possession and those which later came into Callaway's possession through the discovery process in order to sort out the truth of Debtor's contentions. It is also clear that Debtor, a very well educated and able businessman who has now been retired for a number of years, is of failing eyesight and cannot readily look at a document and read it unless he uses a magnifying glass and pores over it laboriously for a very long period of time. Mr. Davis also suffers from lapses of memory at least with respect to the many details of his transactions over the years with adverse parties and apparently with respect to his dealings with Callaway as well.

9) As a result of the initial meetings with the Debtor and Sharon Davis and Callaway's subsequent review of all the relevant documents between early February of 1988, and early April, 1988, the parties entered into a contract (Exhibit Callaway-1) dated April 6, 1988, executed by the Debtor, by Sharon Davis, and by Callaway, under which Callaway's firm was retained to take certain

specific actions. The contract provided for a flat fee of \$350,000.00. The attorneys were authorized but not required to collect their sum from the proceeds of any settlement or any recovery. It is clear in paragraph "4" that the fee is "based upon the anticipated time and expertise required to handle the case and actual time expended shall not be required to be kept nor shall any portion of said fee be refundable." Debtor has now contended that the fee was intended as a contingent fee arrangement but there is no language in the agreement to support his position.

10) As has been perfectly clear to the Court throughout these proceedings, Mr. Davis believed with every fiber of his being that he had been defrauded, that he was in fact owed substantial sums of money by FLB and others. At the outset of Callaway's employment. Debtor provided documentation which appeared to support his assertions and also presented a CPA with the expertise necessary to unravel the many transactions. While the recovery may have been payable out of a fund of money which Debtor believed beyond any doubt he would ultimately recover and had convinced Callaway of the same, the fee was definitely not contingent upon the success of that litigation. Indeed the specific tasks outlined in the contract required that the attorneys only pursue an action but not that there be a recovery.

11) The contract further specifically provided that:

All aspects to the above representation are based upon the full assistance and cooperation of Sharon Davis to provide accounting, background and leg work in compiling necessary documents, accounting pro forma, and of I. J. Davis in assisting and cooperating in all matters of said legal representation and the acceptance and diligent pursuit of the legal advice given.

(Exhibit Callaway-1, paragraph 5). It was clear that among the factors considered by the firm in accepting the case and setting the fee was the urgency of the case, the magnitude of it, the priority it would have to be given, the adverse reaction of FLB and the fact that actions were going to be taken against attorneys and other professionals of high esteem in their communities. In the contract Mr. Davis further authorized his attorneys full discretion in determining the manner in which the case would be pursued, dismissed, compromised, or settled.

Very shortly thereafter, on April 19th, Debtor executed a Special Power of Attorney. (Exhibit Callaway-2). In that document the Debtor appointed Sharon Davis

. . . as my true and lawful attorney in fact, for me, and in my name, place and stead to handle all matters, legal and equitable, concerning my claim against The

Federal Land Bank of Columbia, Southeast Georgia Production Credit Association, Lamar Gibson, Stephen L. Jackson, J. Kenneth Royal and such other persons, firms and/or corporations as might be discovered, to have been involved in matters pertaining to Bankruptcy Case No. 580-00069 and as to all other matters pertaining to the Contract for Legal Services entered into on April 6, 1988 with the law firm of Callaway, Neville & Brinson.

From the foregoing, it is obvious that Callaway was given to understand that Mr. Davis placed an extremely high degree of confidence in Ms. Davis based upon her expertise and her family relationship both in the accounting aspects of the case and in the general conduct of his affairs.

12) Sharon Davis and Patrick Davis have subsequently obtained a divorce and the Debtor now disavows any confidence in Ms. Davis or her activities. Indeed it has been asserted by the Debtor and his new counsel in these proceedings that Ms. Davis was pursuing her own personal private objectives in the pursuit of this litigation, that that pursuit was not in the Debtor's best interest and that Callaway is responsible for the utilization of Ms. Davis' services and for the expenditure of vast sums of time in the pursuit of these claims. Debtor's new counsel characterizes the vast majority of claims asserted in the adversary to have been clearly without merit.

I find, however, from the manner in which the employment of Callaway occurred, from the conduct of the Debtor in presenting Ms. Davis as his trusted confidant and expert who could assist Callaway in proving the case, from his execution of the Special Power of Attorney and from his involvement of and reliance upon her in virtually all proceedings before this Court prior to the time the divorce occurred, that the selection and retention of Sharon Davis was solely that of the Debtor and that Sharon Davis was acting as the Debtor's agent and not as the agent of Callaway.

13) After the execution of the contract the adversary proceeding in this case was filed. Shortly thereafter, as previously indicated, Mr. Tapley terminated his services to the Debtor leaving Debtor with no counsel to represent him other than Callaway in either the adversary for which Callaway had initially been hired or in the underlying case. Callaway thereupon undertook to pursue the adversary proceeding, to pursue the restructuring of Mr. Davis' debts with the Federal Land Bank under the Agricultural Credit Act of 1987 and also to handle the underlying Chapter 11 case. To that end he filed numerous applications for leave to sell, filed the Debtor's plan and disclosure statement and other documents. The overall strategy was to reduce the Debtor's obligations in an effort to get a confirmable plan while at the same

time pursuing his monetary claims in order to establish that he did not owe the debt to the Land Bank as he had alleged and asserted on every possible occasion.

14) On March 28, 1988, William E. Callaway, Jr., and William J. Neville, Jr., filed a Notice of Appearance as counsel of record for the Debtor and the Court entered an Order on April 27, 1988, ordering their appointment.

15) On April 21, 1988, the Office of the United States Trustee directed correspondence to Debtor's attorney Duston Tapley indicating that due to the failure of the Debtor to file a disclosure statement and plan, the Office of the United States Trustee was considering whether to bring before the Court a motion to dismiss or to convert the case.

16) On April 25, 1988, the Debtor filed an application for leave to sell real estate. The tract of land involved was one of the tracts held as security by the Federal Land Bank which had been valued by the Court in January at \$80,500.00. The Debtor sought to enter into a contract to sell the sand off of that 403 acre tract at a unit price per ton for the sand actually removed over a twenty year period. The company which had entered into a contract had tentatively agreed to a \$100,000 payment up front and

the Debtor sought to have the stay reimposed to prevent foreclosure of this tract since the up front payment for just the sand on the tract exceeded the amount previously established as the value of that tract. That motion was prepared and filed by Callaway on Debtor's behalf. Also, on April 25, 1988, Debtor filed an application for leave to sell timber. That contract provided for a \$150,000 advance payment and permitted Baxley Veneer & Cleat, Inc., and Miles Brothers Timber Company to cut timber off certain enumerated tracts of land for a period of 30 months.

17) On April 27, 1988, Debtor filed his adversary proceeding against the Federal Land Bank and numerous other defendants seeking the recovery of money or property and an accounting. In this action the Debtor filed and presented to the Court his long-asserted claims of fraud and misappropriation by various parties which allegedly would substantially offset the debt owed FLB. On May 6, 1988, Callaway filed Debtor's Disclosure Statement and Plan of Reorganization. On that same date, Debtor filed a Motion to Substitute Callaway in place of Duston Tapley as his counsel which the Court authorized in an Order dated May 6, 1988.

18) On June 13, 1988, the Court considered the application for leave to sell the sand and the timber off the

respective tracts of land owned by the Debtor. At the hearing to consider that application Callaway, speaking for the Debtor, asserted that based on the investigation he had undertaken with the assistance of the Debtor and Sharon Davis the correct amount of the debt owed to the Land Bank was approximately \$200,000. He asserted that the sale of the timber and the sale of the sand would pay off the amount which the Debtor believed he owed and the proceeds would in any event exceed the values established by the Court for that collateral at the previous hearing. The Court took the matter under advisement as to the timber sale and agreed to permit the sale of the sand subject to additional Court-imposed provisions.

19) At a continued hearing on July 5, 1988, the Court signed an Interim Order regarding the sale of the sand to the San Carlos Sand Company. After consideration of the continued objections of FLB the Court refused to approve the timber contract, in part because the 30 month term was too lengthy in view of the uncertain value of the timber that would be cut and the accruing debt obligation. Also, on July 5, 1988, the Court considered and declined to approve the Debtor's Disclosure Statement and ordered the filing of an Amended Disclosure Statement. On August 17th Debtor filed an Amended Disclosure Statement captioned as a "Plan Amendment".

20) On August 15, 1988, Debtor filed a Motion to Reimpose the Automatic Stay which had been lifted by the previous January 15, 1988, Order of the Court. That Motion alleged that the Federal Land Bank of Columbia had initiated foreclosure proceedings which were scheduled for September 6, 1988, that as a result of his various applications for leave to sell land, timber and sand the Debtor would realize approximately \$230,000 to be applied to the FLB indebtedness, that the FLB debt was only approximately \$215,000 and that the collateral security held by FLB of some \$789,000 was more than adequate. It was therefore alleged that the stay should be reimposed to permit the Debtor to litigate the adversary proceeding in which he could once and for all establish the correct amount of the indebtedness and to preserve Debtor's title to his real estate pending the outcome of that adversary. A hearing was scheduled August 25, 1988, to consider the Motion to Reimpose the Stay.

21) At that hearing, Sharon Davis was qualified as an expert witness and testified at length as to the accounting she had undertaken to determine the correct amount of the FLB indebtedness. Her testimony at that time was that the true balance owed by Mr. Davis was \$442,000. The alleged discrepancies related to instances when FLB had allegedly held monies paid by the Debtor to reduce his principal indebtedness for extended periods of time without applying them to the debt. This resulted in a failure to toll the accruing

interest in a timely fashion. She also testified to FLB's failure to charge the correct rate of interest on the loan which was a floating interest rate loan tied to the prime rate. She testified that she had analyzed over 700 individual transactions which covered a span of 14 years.

22) Testimony of the FLB witnesses tended to show that its accounting was in order and that the opinion of Ms. Davis as to the balance of the indebtedness was incorrect and was based upon a misinterpretation of the records of the Land Bank. At the conclusion of the hearing the Court entered a verbal order denying the relief sought. The Court, however, declined to make a final adjudication on the merits as to the claim against the Land Bank and held only that there was no "manifest defect" in FLB's claim which would be sufficient for reimposition of the stay. The Court specifically reserved to the Debtor the right to pursue any claim he might be able to later establish in the adversary proceeding against FLB and the other defendants.

23) Debtor continued to insist that the FLB records were wrong, that he had been defrauded and that the foreclosure which took place subsequent to the denial of the Motion to Reimpose Stay was wrongful.

24) In the adversary case, the defendants filed answers, many of them filed motions and extensive discovery was undertaken. On September 15, 1988, the Court conducted a status conference. Subsequently, on December 15, 1988, a continued status conference was held. At this point it was determined that Callaway had obtained virtually all of the discovery to which he was entitled and he revealed that as a result of the discovery materials received and further analysis it appeared that many of the claims asserted in the adversary proceeding were not sufficiently well-founded for him to go to trial on them. Pending the receipt of additional discovery Callaway stated that he believed that he would be recasting his complaint to eliminate a number of the claims and several of the defendants including the FLB. Debtor's counsel suggested and the Court ordered that such a recast complaint be filed on or before January 25, 1989.

25) Subsequent to the date of the hearing but prior to the deadline for filing the recast complaint, Debtor advised Callaway that he desired to terminate his employment as counsel. Callaway therefore did not file the recast complaint but instead filed on January 23, 1989, his petition for approval of attorney's fees and for permission to withdraw as attorney of record.

26) On February 16, 1989, a continued status conference

was held as was a hearing on a new Motion to Dismiss filed by FLB asserting that the failure to recast the complaint prior to the January 25th deadline warranted such a dismissal. On March 7, 1989, the Court entered a scheduling order which required the Plaintiff to file and serve a recast complaint on or before March 24, 1989. Failure to do so would result in dismissal of the adversary proceeding. The Debtor/Plaintiff's recast complaint was filed on March 24, 1989. Federal Land Bank of Columbia, Southeast Georgia Production Credit Association, Stephen L. Jackson and J. W. Wainwright were dismissed as defendants.

27) A review of the case and adversary files in this matter reveal that during the time he served as Debtor's counsel in either or both cases, Mr. Callaway's firm prepared and filed 28 separate pleadings.

28) During the same period of time Debtor's counsel were served with 41 pleadings by parties in both the case file and the adversary proceeding.

29) During the time he served as counsel, Mr. Callaway prepared for and attended 14 hearings in one of the two cases.

30) The magnitude of Callaway's undertaking is

difficult to adequately describe. However, when the Debtor's initial Chapter 11 case was filed in 1980 he apparently owned over 9,000 acres of land and over a period of twelve to fifteen years sold thousands if not millions of dollars worth of timber in multiple transactions. He maintained a debtor-creditor relationship with FLB and his account statement shows over 290 individual transactions entered on his ledger during the period from 1974 when the loan was made, through 1987 (See Annual Loan History Statement, Exhibit FLB-3, August 25, 1988 hearing).

31) The accounting process which Callaway and Ms. Davis engaged in necessarily involved tracing every one of the several hundred transactions disclosed on the FLB records back to records of the Debtor to determine whether the amount of the money which he showed had been tendered to the Land Bank was in fact properly credited. It also required tracing documents in the hands of attorneys and realtors who had handled closings of timber and land sales over the years from which the proceeds were paid over to the FLB to insure that FLB properly credited the Debtor's account and that those professionals had accurately accounted for all proceeds which were properly due and payable to the Debtor.

32) In some instances the Debtor denied that he had executed certain promissory notes. He further asserted that he had

left blank warranty deeds in the hands of certain attorneys and asserted that they had, without his authorization, sold some of his land and not properly remitted the proceeds to him. It was true that he had left blank warranty deeds in the hands of counsel in order to avoid the necessity of his attending each and every individual closing which might be scheduled, but after much discovery it was determined that virtually all of the transactions had properly been accounted for. It was also established that one or more notes which he denied signing were in fact obligations of his. There were instances where monies payable to him which were remitted to FLB were not applied on his main note but upon examination it was determined that, with his permission, these sums of money had been applied to obligations of certain family members who were likewise obligated to FLB.

33) In summary, during the course of the investigation it was necessary to recreate every financial transaction Mr. Davis had undertaken over a period of approximately thirteen years, to examine and reconcile all of his deposits and checks written out of his various accounts, the transactions handled for him by professionals and the crediting of sums received by FLB. In order to reconcile the nearly 300 transactions on the FLB records it was necessary to find supporting documentation from the records of the Debtor or his professionals and in many cases it was necessary to

trace numerous documents to obtain verification. The reconciliation of monies paid was made more difficult by virtue of the fact that when Debtor made certain payments to FLB as evidenced by check in a specific amount, the amount credited to his account by FLB would often be split into several separate entries. On the face of it this made it appear that Debtor had never received credit for the amount of his check while at the same time the Land Bank records made it appear that the Debtor might have made other payments which the Debtor was unable to locate copies of his own documentation to support. At other times the Land Bank would accept two checks from the Debtor and combine them into one total for the purposes of crediting on his account statement. Callaway ultimately reconciled most of the transactions which had appeared to be irregular and improperly accounted for.

34) Callaway, apparently in reliance on the contract language which provided that he was not required to keep time records did not in fact keep contemporaneous time records when he worked on the Debtor's case. In response to the objections, Callaway reconstructed from his file the time which he has devoted to this case and set forth that information in his amended application filed on February 15, 1989. Callaway's application is for an award of a fee of \$150,000.00 based on an hourly rate of \$150.00 per hour and a request that the Court recognize the

expenditure of 1,000 hours in prosecution of Mr. Davis' case. Callaway testifies that from his reconstruction of the record it appears that he in fact spent over 1,100 hours but he has voluntarily reduced his application by 100 hours and has waived any claim for the full \$350,000.00 since he was terminated prior to the conclusion of the case.

35) An examination of the amended application reveals that on many occasions Mr. Callaway seeks to recover fees for expenditures of large blocks of time with a general description of what activity might have taken place on any particular day. For example, on February 10, 1988, he shows 10.5 hours devoted to "first working conference with Davis". On February 14, 1988, he shows 9.0 hours devoted "Review, log, copy, compare and analyze documents to sort various claims". That entry is repeated on numerous occasions in the February, March, and early April, 1988, time frame.

While Mr. Davis testified that he went to Callaway's office on many occasions when he was not involved in the lengthy conferences or analysis of the records, I conclude that he was never excluded at a time when he expressed a desire to be present and that the suggestion that he remain outside of the conference room was merely an effort to expedite the analysis of the records since he was not able, due to his eyesight and his memory, to contribute on

a regular basis to the analysis of the validity of his claims. The Debtor relied very heavily on Sharon Davis to report to him what was going on and relied on her to read to him the terms of the attorney fee contract and the special power of attorney which he executed. He also admits that he trusted her fully at that time although he now claims that he should not have.

36) From February 11th to April 15th Callaway claims 397 hours devoted to the preparation of his case, most of which were devoted to reviewing, logging, comparing and analyzing documents. The entries after April, 1988, are generally more descriptive in the sense that the reconstructed records show time devoted to the preparation, filing, and prosecution of various applications to sell property in the Chapter 11 case and to the review and response to answers and discovery activities in the adversary proceeding. Again, however, the entries are in large blocks of time. For example, on July 4, 1988, there is a 10.5 hour entry for "preparation for hearing on July 5, 1988". Likewise, on July 20, 1988, there is a 7.5 hour entry for "Review file with clients re tax overpayment and other matters in file". On August 5, 1988, 10.5 hours devoted to "Received and reviewed Bell discovery information", and on September 22, 1988, 10.5 hours devoted to "Conference with clients re Gibson discovery".

37) All of these entries are challenged by the United States Trustee and by Debtor's present counsel as being insufficiently detailed for the Court to make a determination as to the reasonableness of the time devoted to the case. Callaway's testimony is that since he did not keep contemporaneous records it is difficult to be any more detailed. Instead, his testimony is that in preparation of his amended application he went back to review the dates from his notes and from documents in his file to ascertain when he received and worked on the preparation of various pleadings, correspondence or when he was engaged in an office conference. By checking his office calendar and by recollection of how many hours in a working day he typically spent during the time period in question he is able to determine how many net hours were devoted to this case on a given date. While his entry may make reference only to the receipt of a piece of correspondence or a review of discovery materials and other services that are very limited in scope he has charged for several hours of work on many occasions because he knew, in addition to that single specific item, that his clients were present in the office and that he devoted all or substantially all of a day's work to the file on that occasion.

38) Callaway clearly placed the priority of this case ahead of everything else he was handling at the time. When the Debtor came to his office he would block out an entire day to meet

and work with him and delay work on other files, the returning of telephone calls and other matters until evening hours when he would continue to work after his client had returned home. As a result of his thorough and exhaustive analysis of the documentation, Callaway drafted an adversary complaint involving 33 separate counts wherein it appeared there were causes of actions existing on behalf of the Debtor against one or more defendants. Through additional investigation this was refined to a 17 count complaint each of which was based not only on the Debtor's contentions but also on documents which appeared to evidence the existence of a discrepancy in the accounting that had been provided the Debtor over the years.

39) Fletcher Farrington qualified as an expert witness and testified that based on his examination of the file and information provided by the applicant he believed the fee being sought by Mr. Callaway was reasonable. He was of the opinion that the expenditure of time of 1,100 hours was modest to reasonable given the magnitude of the case. His opinion that the fee was reasonable was based in part on the fact that the case was undesirable, as evidenced by the Debtor having been turned down by other attorneys, on the nature of the defendants being sued, the substantial effort it took to pursue the case, the aggressiveness of the defense and the existence of the fee contract. He further testified that the hourly rate sought was reasonable for Plaintiff's

representation in this area.

40) Although Callaway's partner, Mr. Neville, met initially with the client on at least one occasion and attended most of the hearings after their firm was retained, none of Neville's time was included in the application. His presence was desirable from the attorneys' standpoint due to concerns about their personal security during the litigation and from the Debtor's standpoint in order that the highest quality representation could be delivered in the course of various hearings and trials. However, none of his time was charged for.

41) On some occasions, for example April 5th and 6th, 1988, Callaway charged as much as 14 hours of time to the file with the explanation that he worked not only a full day at the office but took the file home with him and worked several hours at night. He particularly utilized this method in the drafting of the initial pleadings in the adversary case. Included in the \$150 hourly rate are all of the long distance calls, copy charges and travel expenses incurred by the Debtor's attorneys, none of which were separately billed.

42) With respect to the written fee contract, while Mr. Davis, because of his eyesight, did not take the time to read the

document prior to its execution, it was read to him verbatim by Sharon Davis in Callaway's presence prior to his execution which he did freely and voluntarily.

43) Callaway, in the course of his law practice, has closed loan transactions where FLB was a lender and was an attorney on their approved list of closing attorneys, however, he has not previously represented FLB. He disclosed the fact that he had that relationship with FLB in his initial meeting with the Debtor. He also disclosed to the Debtor that he was distantly related (a fifth or sixth cousin) to Paul Eason who served at that time as Executive Vice President of FLB.

44) The Debtor now questions the propriety of Callaway's representation based on these relationships. However, I find that the relationship was fully disclosed to the Debtor and that the Debtor believed it was in his best interest to hire an attorney who had some credibility with and a reasonably good working relationship with FLB. Moreover, since the essence of Debtor's complaint now is that Mr. Callaway pursued his action against FLB too vigorously when the claim was not meritorious, it is curious indeed why the Debtor would believe that that would have occurred if there was an improper relationship between Mr. Callaway and FLB.

45) Callaway has no specialized experience in handling Chapter 11 bankruptcy cases but initially was retained only to pursue the adversary case seeking an accounting and damages. Callaway is extremely well qualified and experienced to handle a case of that nature and only later became involved in the handling of Debtor's Chapter 11 case when Debtor terminated the services of Mr. Tapley. In all of the appearances before this Court, Callaway has exhibited that he has done a thorough, exhaustive and skilled job in the representation of his client. He has always been highly prepared when he has come to Court, has engaged in extensive factual and legal research and has carried out his responsibilities throughout the adversary action and in the main case in exemplary fashion.

46) Unbeknownst to Callaway at anytime prior to the hearing it was asserted by Debtor's present counsel and testified to by Patrick Davis that Sharon Davis has a criminal record dating back to 1985, in the State of Tennessee. Patrick Davis admitted, however, that he never told his grandfather, the Debtor, nor did he tell Callaway or Mr. Neville about Sharon Davis' prior criminal activity because he was too embarrassed. He does state that he did not trust her then and would not trust her now. Callaway denied that he was ever aware that Sharon Davis had a criminal record or was for any reason not a credible or believable person. Therefore

I conclude that whether or not Sharon Davis was pursuing some interest adverse to her grandfather-in-law, at no time was there any reason for Callaway to suspect her motivation, her sincerity, or her expertise. The knowledge of her alleged lack of trustworthiness was apparently known only to Patrick Davis.

47) The Debtor's memory is not entirely reliable. For example he testified that he believed he had filed his Chapter 11 case pro se without the involvement of an attorney and that Mr. Tapley came to represent him later. An examination of the Court's file, however, makes it clear that Mr. Tapley was his attorney of record at the time of filing. Likewise, he testified that he had personally cruised the entire 3,000 acres which he still owned after an earlier hearing which occurred in Savannah to determine the value of the timber, however, he cannot state when the cruise was performed or which hearing it occurred after. Moreover, he has never testified in this Court that he personally cruised his 3,000 acres and made a detailed analysis of the timber located on it. It is difficult to conclude whether Debtor's memory is failing in general as a result of his age or whether he has a selective memory.

Viewed in this context, in light of Mr. Davis' continued insistence that he has been defrauded by or has not received appropriate accounting for all of his transactions even after many

years of unsuccessful litigation with FLB and because in other instances his recall has appeared to be faulty, to the extent there are discrepancies between his testimony and Callaway's about the nature and extent of the services rendered or the manner in which the attorney client relationship and the fee agreement were reached I conclude that Callaway's testimony is entitled to more weight than Mr. Davis'. Therefore, I specifically find:

a) The express written terms of the contract as supported by the testimony of Callaway control and the fee agreement was not in any respect a contingent fee arrangement. The fee agreement and Special Power of Attorney were read verbatim to the Debtor by Sharon Davis in the presence of Callaway and Debtor fully understood their terms and voluntarily entered into them when he executed same.

b) That Messrs. Neville and Callaway fully disclosed the relationship which their firm had and which Callaway individually had with FLB and Paul Eason.

c) That Debtor was physically present at the offices of Callaway, Neville and Brinson and was fully consulted with by Callaway at all times when consultation with him would have been useful or productive in the prosecution of his claim but that

on occasions when Debtor was distracted by incidental unrelated issues or when his ability to contribute to the analysis of the case was marginal he removed himself from the conference room in order that Sharon Davis and Callaway could work more efficiently and productively.

d) That Callaway devoted a minimum of 1,100 hours to the prosecution of the adversary proceeding and to the handling of Debtor's underlying Chapter 11 case between January 27, 1988, and February 8, 1989.

e) That Callaway at all times in his representation was thorough, knowledgeable, skilled, articulate, highly prepared and engaged in exhaustive factual and legal research in order to formulate a sufficient legal basis on which to prosecute the claim which had driven Mr. Davis for many years in the belief that he had been defrauded.

f) That Debtor's intense and unyielding belief that he had been defrauded along with certain documents which he initially produced to Callaway, together with the expertise of Ms. Davis, constituted a substantial basis upon which Callaway based his professional opinion that Debtor had a valid claim. Based on his client's demands and consistent with his analysis of the

validity and magnitude of the claim, Callaway devoted herculean efforts to prove his case.

g) That Sharon Davis was at all times the agent of the Debtor in the preparation and the prosecution of the action and that there was no agreement on the part of Callaway to compensate her in any form or fashion.

h) That although the adversary proceeding has been described by Mr. Davis' present counsel as being without merit, there are in fact certain allegations which are still pending before the Court following the filing of the recast complaint, which recast complaint was filed by present counsel upon the recommendation of Callaway following his extensive involvement in the case.

i) That although the largest measure of monetary recovery which Mr. Davis initially asserted he was entitled to in the adversary has now been deleted as a claim, Mr. Davis has obtained a substantial benefit from that litigation. It is clear that the action he filed in the Superior Court of Toombs County, Georgia, sought an accounting of monies that had been paid and received by the FLB and others as well as possible monetary damages. Likewise, it is clear that an important element in the relief he sought in the adversary proceeding in this Court was an

accounting for the proceeds of those transactions.

Mr. Davis has now received that accounting and knows or should know that a proper accounting has been made. He may not be happy and apparently is not happy with the results of that accounting but the point is that he has received it and Mr. Davis, or at least a reasonable person standing in the shoes of Mr. Davis, should recognize the benefit in terms of peace of mind that a resolution of the question of whether he has been badly wronged has finally occurred. Even if Mr. Davis has not personally benefited from the peace of mind that comes from the resolution of as serious a matter as this, there can be no doubt that the bankruptcy estate has reaped a benefit by counsel's prosecution of the action for accounting which clearly demonstrates that Mr. Davis' bankruptcy estate was not overcharged, defrauded, or otherwise diminished to the detriment of his creditors or himself.

CONCLUSIONS OF LAW

The general standards for setting attorney's fees in the Eleventh Circuit are now found in Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292 (11th Cir. 1988). Although Norman

involved application of the civil rights fee-shifting statute, 42 U.S.C. Section 1988, guidelines established in civil rights cases have been applied in bankruptcy cases for the determination of appropriate fees. E.g., In re First Colonial Corp. of America, 544 F.2d 1291, 1299 (5th Cir. 1977). In re Colombian Coffee Co., Inc., 88 B. R. 409 (Bankr. S. D. Fla. 1988); In re Wells, 87 B. R. 732 (Bankr. N. D. Ga. 1988).¹ Prior to the Norman decision, the Eleventh Circuit standards for reasonable attorney's fees were found in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).² The Norman decision reflects an effort by the Eleventh

¹ The primary distinction between the fee-shifting cases and fee-award cases centers around the success of claims. In the fee-shifting cases, the court should exclude the time spent on unsuccessful claims that are not related to successful claims in determining the amount of a reasonable fee. See Hensley v. Eckerhart, 461 U. S. 424, 440, 103 S.Ct. 1933, 1943, 76 L. Ed. 2d 40 (1983). Similarly, the emphasis on the "amount involved" or received in Hensley seems to be most important with relation to fee-shifting statutes. See Walford v. Heckler, 765 F.2d 1562, 1568-69 (11th Cir. 1985). Whether or not the fee arrangement was "contingent" is also more relevant to the civil rights context in which courts have deemed adjustment necessary to ensure the availability of counsel. See Norman, 836 F.2d 1302. The proper focus is not on what the parties have contractually agreed upon but on what is reasonable. Clark v. American Marine Corp., 320 F.Supp. 709, 711 (E. D. La. 1970), aff'd, 437 F.2d 959 (5th Cir. 1971).

² Fifth Circuit cases decided prior to October 1, 1981, are binding precedent in the Eleventh Circuit. See Bonner v. Pritchard, 661 F.2d 1206 (11th Cir. 1981) (en banc). Johnson has been cited with approval in numerous Eleventh Circuit cases. See e.g., NAACP v. City of Evergreen, 812 F.2d 1332 (11th Cir. 1987). In Johnson, the predecessor to the Eleventh Circuit set out twelve factors to guide a trial court's determination of a reasonable attorney's fee: (1) The time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due

Circuit to conform with recent United States Supreme Court decisions. Norman, 836 F.2d at 1299.

The Supreme Court initially addressed the issue of determination of "reasonable" attorneys fees in Hensley adopting "a hybrid approach that shared elements of both Johnson and the lodestar method of calculation". Pennsylvania v. Delaware Valley Citizens Council, 478 U. S. 546, 564, 106 S.Ct. 3088, 3097, 92 L.Ed. 2d 439 (1986). Beginning with the lodestar analysis, the Court stated that "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services". Hensley, 461 U. S. at 433, 103 S.Ct. at 1939.

The Court went on to state: "The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the District Court to

to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

adjust the fee upward or downward ", Id. at 434, 103 S.Ct. at 1940. For instance, where the documentation of hours is inadequate, the reviewing court may reduce the award accordingly. Id. at 433, 103 S.Ct. at 1939. The Hensley court then took an expansive view of what those "other considerations" might be, noting that "[t]he district court also may consider [the] factors identified in Johnson [citation omitted], though it should note that many of the factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate". Delaware Valley, 546 U. S. at 564, 106 S.Ct. at 3098 [quoting Hensley, 461 U. S. at 434, n.9, 103 S.Ct. at 1940, n.9 (citations omitted).]

Elaborating on this analysis, the Court explained that "the figure resulting from this calculation is more than a mere 'rough guess' or initial approximation of the award to be made". Delaware Valley, 546 U. S. at 564, 106 S.Ct. at 3098. Rather the Court found that "when the applicant for a fee has carried his burden of showing that the claimed rate and number of hours is reasonable, the resulting product is presumed to be the reasonable fee." Blum v. Stenson, 465 U. S. 886, 104 S.Ct. 1541, 79 L.Ed. 2d 891 (1984) (emphasis added).

Expanding upon its earlier finding that many of the

Johnson factors "are subsumed within the initial calculation" of the lodestar, the Blum Court specifically held that the "novelty and complexity of the issues", "the special skill and experience of counsel", and the "results obtained" from the litigation are presumptively included in the lodestar amount and thus cannot serve as independent bases for increasing the basic fee award. Delaware Valley, 478 U. S. at 565, 106 S.Ct. at 3098 (quoting Blum, 465 U. S. at 898-900, 104 S.Ct. at 1548-50). Hence, a strong presumption exists that the lodestar figure represents a "reasonable fee". Id.

The Norman case served as a vehicle for clarifying and conforming Eleventh Circuit fee review standards with these Supreme Court decisions. Specifically, the Court adopted the "lodestar" approach adopted in Hensley and its progeny. Norman, 836 F.2d at 1299. The Norman Court, concerned that the 12-factor Johnson approach left too much to judicial discretion, stated that it "creates a theoretical attorney's fee based on subjective evaluations." Id. The Eleventh Circuit noted that "[t]he Supreme Court elected the lodestar approach because it produces a more objective estimate and ought to be a better assurance of more even results." Id.

Citing NAACP, the Norman Court suggested that Johnson factors might be considered in terms of their influence on the

lodestar amount. 836 F.2d at 1299.

The first step towards assessing an objective estimate of the valuation of a lawyer's services is to multiply the hours reasonably expended by a reasonable hourly rate, thus arriving at the lodestar figure. Id. (citing Hensley, 461 U. S. at 433, 103 S.Ct. at 1939). In measuring hours reasonably expended, the focus is not on the least amount of time in which the case theoretically may have been handled, but rather, "is determined by the profession's judgment of the time that may be conscionably billed". Id. at 1306. Thus, "hours reasonably expended" as the phrase is used in Norman, means billable hours - that is, work that would be paid for by a reasonable client of means seriously intent on vindicating the rights at issue. Id. at 1301.

The fee applicant bears the burden of establishing its entitlement to an award and of documenting the hours expended. Hensley, 461 U. S. at 437, 103 S.Ct. at 1941. This requires more than mere generalized statements that the time spent was reasonable or unreasonable. See Id. at 439 n.15, 103 S.Ct. at 1942 n.15. The attorney's fee application should indicate whether nonproductive time was excluded and, if so, the nature of the work and the number of hours should be specified therein. NAACP, 812 F.2d at 1337.

Although counsel is not required to record in great detail how every minute of time was spent, counsel should at least "identify the general subject matter of his time expenditures". Id. (quoting Hensley, 461 U. S. at 437 n.12, 103 S.Ct. at 1941 n.12).

Prudent counsel will, of course, maintain contemporaneous time records as the preferred method of proof. Yet the Eleventh Circuit has held that contemporaneous time records are not indispensable where there is other reliable evidence to support a claim for attorney's fees. Jean v. Nelson, 863 F.2d 759, 772 (11th Cir. 1988); Johnson v. University College, 706 F.2d 1205, 1207 (11th Cir.), cert. denied, 464 U. S. 994, 104 S.Ct. 489, 76 L.Ed. 2d 684 (1983).

Sworn testimony that it actually took the time claimed is evidence of considerable weight on the issue of hours reasonably expended in the usual case and therefore, it must appear that the time claimed is obviously and convincingly excessive under the circumstances in order to reduce an award. In borderline cases where the court believes that the matter has not been handled efficiently, the court may reflect that fact by decreasing the hourly rate to the market rate charged by lawyers of less skill and experience. Perkins v. Mobile Housing Bd., 847 F.2d 735, 737 n.1 (11th Cir. 1988).

A court may reduce excessive, redundant or otherwise unnecessary hours in the exercise of billing judgment. Norman, 836 F.2d at 1301. However, "[i]f the court disallows hours, it must explain which hours are disallowed and show why an award of these hours would be improper". Id. at 1304; See also Hill v. Seaboard Coastline Railroad Co., 767 F.2d 771, 775 (11th Cir. 1985) (suggesting, but not mandating the same). For instance, an attorney may not be compensated for tasks which are properly the responsibility of the trustee or receiver nor may an attorney be compensated at a rate applicable to legal work for tasks which properly could have been performed by less costly non-legal employees. Matter of U. S. Golf Corp., 639 F.2d 1197 (5th Cir. 1981). Where multiple counsel are employed, a reduction is warranted if the attorneys are unreasonably doing the same work. University College, 706 F.2d at 1208. In the final analysis, any exclusions for excessive or unnecessary work must be left to the discretion of the trial court. Norman, 836 F.2d at 1301. Once the number of hours reasonably expended has been established, the next determination is the reasonable hourly rate to be applied.

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation". Id. at

1299 (citing Blum, 465 U. S. at 895-96 n.11, 104 S.Ct. at 1547 n.11). The burden of producing satisfactory evidence that the hourly rate sought is in line with prevailing market rates falls upon the applicant. NAACP, 812 F.2d at 1338. Satisfactory evidence must refer to rates actually billed and paid in similar lawsuits. Mere testimony, without more, that a requested fee is reasonable is therefore unsatisfactory evidence of market rate. Norman, 836 F.2d at 1299; see also Hensley, 461 U. S. at 439 n.15, 103 S.Ct. at 1167 n.15. Reasonable hourly rates may be established through direct evidence of charges by lawyers of comparable skill in similar circumstances. Norman, 836 F.2d at 1299. Alternatively, opinion evidence may be proffered. Such evidence will be affected by the detail contained in the testimony regarding factors such as similarity of skill, reputation, experience, similarity of case and client, and breadth of the sample of which the expert has knowledge. Id.

In view of the fact that no two lawyers possess the same skills and no lawyer always performs at the same level of skill, the parties should provide the court with a range of market rates for lawyers of different skill levels, measured by quality and quantity of experience, involved in similar cases with similar clients, so that the court may make a determination of a reasonable market rate "based on an assessment of the skill demonstrated in the case at

bar". Id. at 1300.

Focusing on the skill of the litigants, the Eleventh Circuit has noted:

Skill of the case attorney is not a matter which requires the production of external proof. Instead, it is a matter committed to the sound discretion and judgment of the trial judge after an assessment of the attorney's performance in the case. Skill of an attorney, for purposes of comparison, may be conceived of in terms of length and type of experience, education, professional accomplishment, and professional reputation, and proof may be made in these terms when offering evidence of fees charged by attorneys of comparable skill.

Perkins, 847 F.2d at 737 n.1. The fee award order must address the skill and experience of the fee applicant recognizing that "the highest market rates are not theoretical rates for the perfect lawyer and that the lowest market rates are being earned not by imbeciles but by men and women who are proud to say they are attorneys, who are good enough to earn a livelihood from the profession, and who are at least well enough qualified to be admitted to the bar". Norman, 836 F.2d at 1301. This Court is mindful of the maxim that a trial court enjoys wide discretion in the determination of a fee and the concurrent heavy responsibility that flows from such discretionary power to conscientiously

ascertain a reasonable amount. See Fitzpatrick v. Internal Revenue Service, 665 F.2d 327 (11th Cir. 1982); Perkins, 847 F.2d at 738; Norman, 836 F.2d at 1303. Popham v. City of Kennesaw, 820 F.2d 1570, 1581 (11th Cir. 1987); Gaines v. Dougherty County Bd. of Education, 775 F.2d 1565, 1571 (11th Cir. 1985); In re Beverly Mfg. Corp., 841 F.2d 365, 369 (11th Cir. 1988).

Where an evidentiary hearing has been requested, where there are disputes of fact, and where the written record is not sufficiently clear to allow the trial court to resolve the disputes of fact, it is abuse of discretion to make an award without holding an evidentiary hearing. King v. McCord, 621 F.2d 205 (5th Cir. 1980) (King I); Marable v. Walker, 704 F.2d 1219 (11th Cir. 1983). Disputes over material historical facts such as whether a case might have been settled without litigation or whether attorneys were duplicating each other's work merit an evidentiary hearing. Norman, 836 F.2d at 1304. On the other hand, an evidentiary hearing is not necessary every time the written pleadings conflict regarding matters as to which the courts possess expertise, such as the reasonableness of the hourly rate, the reasonableness of the billed time and the significance of the outcome. Id.

The court may consider the issue of delay in receipt of payment by counsel. If there has been a significant delay, the

court should take into consideration the time value of money and the effects of inflation. Compensation awards should generally reflect current rates rather than historic rates. See Gaines, 775 F.2d at 1572 n.14.

Finally, the court shall grant reasonable compensation for the time spent in preparation of the fee application. Ross Pass Mines, Inc., v. Howard, 615 F.2d 1088, 1093 (5th Cir. 1980).

The ultimate goal of the trial court in considering a fee application is reasonable compensation. King v. McCord, 707 F.2d 466, 468 (11th Cir. 1983) (King II). Adequate compensation is necessary to enable an attorney to effectively serve its client and to preserve the integrity and independence of the legal profession. Johnson, 488 F.2d at 720. The guidelines contained herein are part of an ongoing attempt to balance between the competing interests of adequate compensation of professionals and the preservation of the bankruptcy estate.

As applied to the facts in this case I conclude the allowed fee to be as follows:

1. Hourly Rate

Based on all the evidence before me arising out of the

lengthy evidentiary hearing and drawing on my own experience, I conclude that the reasonable hourly rate to be applied in this case is \$125.00. In virtually all cases previously before this Court a \$100.00 rate has been found to be a reasonable hourly rate allowable for attorneys of "comparable skill, experience and reputation" as Mr. Callaway. I continue to believe, in the absence of affirmative evidence to the contrary that in this District, a \$100.00 rate is generally sufficient to secure competent counsel while preserving the estate to the maximum extent possible.

This is not an ordinary case, however. Debtor's ability to secure counsel at a "standard" rate was impaired. In light of the past history of this case, Debtor's retention and dismissal of prior counsel, and his contentions of claims against FLB and numerous prominent professionals, I conclude that \$125.00 is a reasonable hourly rate necessary to secure the quality of representation Debtor received.

2. Reasonable Hours

This aspect of the fee analysis is obviously made more difficult by the lack of contemporaneous time records. However, while the keeping of such records is the preferred method of evidencing the reasonableness of hours devoted to a case, the absence of such records is not fatal to the application. In this

case there is sworn testimony of Callaway that he spent over 1,100 hours on this case. Based on that, the expert testimony of Mr. Farrington, the magnitude of the case, this Court's personal observation of Callaway's pleadings and practice in this case and the exhaustive reconstruction of his file to provide documentation of the work performed, I conclude that Callaway has carried his burden of proving that he has in fact spent over 1,100 hours in prosecution of all aspects of this case. Assessing whether it was reasonable to devote such a large amount of time to the case is more difficult. However, in view of the voluminous records which had to be digested and analyzed, the number of pleadings and court appearances, the magnitude of the issues litigated on each occasion and the high degree of preparation which was evident throughout, I conclude that the expenditure of 1,100 hours would be reasonable. While this might not be the minimum that would have sufficed for the case, it is certainly a "conscionable" amount of time to bill a "reasonable client of means seriously intent on vindicating the rights at issue". Debtor demanded no less of Callaway than that which Callaway delivered in terms of his aggressive handling of the case, the priority he gave it and the thoroughness with which he pursued it.

Debtor's present counsel now protests the expenditure of vast sums of time pursuing claims he now says were "without

merit". He argues that even a cursory examination of Debtor's claims should have been sufficient for Callaway to have dismissed them. I disagree. Debtor even now refuses to accept reality when it comes to his "claims" and remains very earnest and convincing in his belief in their validity. He also provided Sharon Davis, an accounting expert and close family member, and together they convinced Callaway that a huge claim lurked there waiting to be unearthed. Given that conduct, it is doubtful whether Debtor should be permitted to complain that Callaway spent too much time on his case. More fundamentally I find that from all the evidence, it was not so clear that Debtor's claim was without merit, until Callaway put the hours of effort into the case which he did.

While I have concluded that the expenditures of 1,100 hours is within the realm of reasonableness, the absence of more detailed, contemporaneous records does make it impossible to make a precise determination of the number of hours that should be compensated. There is authority to support a reduction or elimination of a fee in the absence of contemporaneous records and in some cases this court has reduced an award by as much as 25% for that reason. Hensley, 461 U. S. at 433, 103 S.Ct. at 1939. However, in this case such an assessment would be excessive, particularly where counsel has already exercised "billing judgment" in reducing his application from 1,100 hours to 1,000 hours and in

not seeking to charge for his partners' time at all. Such a large assessment would also be unreasonable when counsel failed to keep such records because his client expressly authorized him not to. Even though the failure to keep records was expressly authorized by Debtor, the contract between attorney and client is not binding on the Court in awarding a fee. While I cannot in good conscience assess a substantial penalty for failure to keep contemporaneous records for the reasons stated, the desirability of having such records as a tool to aid this Court in determining a reasonable fee is obvious. Failure to have such records must, in order for this Court to perform its proper role in fee matters, carry a price tag. Thus, I will reduce the reasonable hours otherwise allowable by 10% from 1,000 hours to 900. In addition, Callaway has submitted a claim for fourteen hours devoted to reconstruction of hours expended on "reviewing files re petition for attorney's fees". I find that had contemporaneous records been maintained such time expenditure would have been unnecessary and therefore I will disallow ten of these hours.

3. Adjustments to Lodestar Fee

Based on the above, Callaway's fee will be based on a lodestar amount of \$111,250.00 (890 hours X \$125.00). The lodestar fee is presumptively the allowable fee. Many of the more subjective factors which, under a Johnson analysis, were employed to set a fee

are subsumed into the initial calculation of reasonable hours and reasonable rate. Norman indicates that the lodestar may be adjusted up for exceptional results and down in the event of only partial or limited success. An adjustment is also permissible to compensate for the delay in receipt of payment. In this case I conclude that there should be no adjustment of the lodestar.

Debtor sought monetary relief in his adversary case. That element of his case has not been successful. However, Debtor also sought an accounting from FLB and professionals who had worked on his behalf for many years. He believed he had been defrauded, that his trust had been violated. He sought to learn the truth. Through Callaway's efforts he now should know the truth. He was largely if not totally mistaken in his belief that fraud had occurred. He should accept that truth, complete his reorganization efforts, and enjoy his retirement years peaceful in the knowledge that his rights were protected. Callaway's efforts have produced the evidence that should give Debtor peace of mind in his twilight years. I find that such a benefit, though intangible, is of such value that the lodestar rate should remain intact.

Callaway's efforts, likewise, have benefitted the Debtor's bankruptcy estate. The prosecution of the adversary case to obtain an accounting was necessary in order to determine whether

creditors of the Chapter 11 case could share in a monetary recovery based on fraud or based on wrongful foreclosure of Debtor's real estate by FLB. Now that that prospect has been eliminated, the Chapter 11 case can be administered expeditiously. Likewise, Callaway's handling of the Chapter 11 case after the termination of prior counsel is fully compensable, without adjustment. While the case has not progressed to the stage of confirmation of a plan it is proceeding at a normal pace toward a conclusion, given the complexity of the matters which needed resolution. Callaway has successfully begun to sell off assets and reduce Debtor's financial burden. Debtor is well on the way, through Callaway's efforts, to paying off all debt and retaining some assets, debt-free. While there is no guarantee of ultimate success, the progress to date suggests that the full lodestar should be awarded. Certainly Debtor should not avoid the obligation of this fee simply because the case is not over. Interim fee awards are clearly authorized by Rule 2016(a) and in a case where counsel has been replaced, the timing of what is, in effect, an interim request cannot be seriously questioned.

Finally, Callaway has prayed for the granting of an attorney's lien in order to preserve his rights to compensation for time expended. I will reserve ruling on the attorney's lien issue at this time.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the application of William E. Callaway, Jr., for compensation is allowed in the amount of \$111,250.00. The Debtor has previously paid \$5,000.00 to Mr. Callaway. Accordingly, the balance of the allowable fee due is \$106,250.00.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 8th day of September, 1989.