

In the United States Bankruptcy Court
for the

Southern District of Georgia at 3 O'clock & 05 min PM
Savannah Division

FILED

Date 8-11-93

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

In the matter of:

KEY AIRLINES, INC.

Debtor

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Chapter 11 Case

Number 93-40226

ORDER ON INTERIM FEE APPLICATION
OF DEBTOR'S COUNSEL

On June 3, 1993, counsel for the Debtor filed a Motion for Interim Compensation which was assigned for a hearing on July 21, 1993. After considering the presentation made on behalf of counsel for the Debtor, the objections of the United States Trustee, and counsel for creditor Fling Vacations, and following extensive review of the application, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to a previous order of this court I have approved the lodestar rate for Debtor's counsel at the rate of \$125.00 per hour for partner's time, \$100.00

per hour for associate's time and \$45.00 per hour for paralegal time. There was no dispute that that continues to constitute an appropriate lodestar rate. Debtor's lead counsel, Mr. Wasden, summarized the fee application which was divided, pursuant to a previous direction of the court, into numerous subcategories to more clearly delineate the nature of services rendered on various aspects of the Debtor's representation which generally contained sufficient detail on which a determination of the reasonableness of the time devoted can be made. The application requests attorney's fees in the amount of \$62,880.00 and reimbursement of expenses in the amount of \$6,928.14.

Counsel for the Debtor and counsel for the United States Trustee conferred prior to the hearing and reached an agreement that certain sums for which compensation was being sought would be reduced. As a result of those discussions, Debtor's counsel agreed that 19.5 hours of associate time would be disallowed and compensated at a rate applicable to paralegals. This would result in a reduction in the fee of \$1,950.00 and an allowance of \$877.50 as paralegal compensation. Thus, the net disallowed is \$1,072.50.

The parties were unable to resolve the objection of the United States

Trustee that certain services rendered in connection with bad check charges filed in Magistrate Court of Chatham County against principals of the corporation should not be compensated from the Debtor's estate. See Account Number 157-6-B. While Debtor's counsel does not seek compensation for any appearances in the State Court proceeding in the direct representation of Debtor's principals and seeks instead only compensation for an action filed in this court seeking to enjoin the state court prosecution, I nevertheless find that these services are not compensable out of the estate.

As the court in In re Duque, 48 B.R. 965, 975 (Bankr. S.D. Fla. 1984), stated:

[E]mployment of special counsel must be in the "best" interest of the estate. In determining whether the best interests are at stake, there must be an actual need for the services, based upon a threat to the estate or its property. The threat must be actual and real, not some hypothetical or speculative benefit which may or may not be realized. Criminal counsel must not be potentially in the estate's interest but reasonably and actually calculated to be in its best interest

The need for counsel must be for purposes of protecting the assets of the estate or furthering its interests. The propriety of employment must be gauged by the needs of the estate and directly related to the trustee's or debtor-in-possession's performance

of the duties and responsibilities imposed by the Bankruptcy Code [T] debtor's general counsel appointed under 11 U.S.C. §327(a) must be presumed generally able to advise against criminal transgressions for post-bankruptcy activity, which is the only concern of the estate, while criminal investigations and prosecutions for pre-filing activity are matters which concern only the debtor personally and are excluded from the section 362 automatic stay designed to protect the estate.

See also In re Gherman, 101 B.R. 367 (Bankr. S.D.Fla. 1989) (Holding that attorney's fee paid for legal services which were rendered in connection with pre-petition criminal activities of the debtor were recoverable by the estate).

Although the action was brought in the name of the corporation the primary, if not sole, beneficiary of the action were the corporate officers. Under the rationale of cases cited by both parties I am persuaded that it is inappropriate to compensate counsel for the Debtor out of estate funds for such representation even though there may have been an incidental benefit to the debtor corporation. The fact that the fees were incurred by Debtor's bankruptcy counsel rather than special counsel constitutes no basis for distinguishing Duque and its holding as to the compensability of such services is compelling. Accordingly, the entire amount of \$2,820.00, plus

expenses of \$286.85, is disallowed.

The United States Trustee and Debtor's counsel were unable to reach an agreement regarding the rate at which compensation should be allowed Debtor's counsel for its previous prosecution of the initial fee application which was the subject of an order entered in this case dated June 7, 1993. *See* Account Number 157-6-E. I have previously ruled that

[I]t is both inconsistent with the express policy of the Bankruptcy Reform Act and fundamentally inequitable to impose substantial requirements on bankruptcy counsel as pre-requisites to their obtaining compensation while simultaneously denying compensation for the efforts necessary to comply with those requirements. The preparation and presentation of the detailed fee applications required by the Bankruptcy Court necessarily involves substantial investments of time and effort from both counsel and their staffs. To require counsel to devote considerable time to the preparation of fee applications but demand they absorb the substantial costs therewith, would be to ignore the direct mandate of section 330(a) that reasonable compensation be provided for all "actual, necessary" services rendered by bankruptcy counsel.

Matter of Concrete Products, Inc., Chapter 11 Case No. 88-20540, slip op. at 20-21

(Bankr. S.D.Ga. Feb. 7, 1992) (*quoting In re Nucorp Energy, Inc.*, 764 F.2d 655, 659 (9th Cir. 1986)). However, time allowed in the prosecution of such a matter still must meet the test of reasonableness and necessity. Therefore, excessive hours which are devoted to the task, or work performed by an attorney which could more appropriately be handled by clerical or paralegal employees should not be compensated at the full rate available to attorneys. See *Matter of Concrete Products, Inc.*, Chapter 11 Case No. 88-20540 (Bankr. S.D.Ga. July 26, 1993). I find that the following services should be disallowed as attorney compensation because they are clerical or administrative in nature, or are unnecessarily duplicative.

Date	Attorney	Hours Claimed	Disallowed	Allowed	Amount Disallowed
04/05	WAW	2.9	2.9	0.0	\$362.50
04/14	JBW	5.5	5.5	0.0	\$550.00
04/15	WBW	1.2	1.2	0.0	\$120.00
04/16	JBW	1.0	1.0	0.0	\$100.00
04/20	WAW	2.9	2.9	0.0	\$362.50
04/27	JBW	6.1	4.0	2.1	\$400.00
04/28	JBW	3.7	2.7	1.0	\$270.00
TOTAL AMOUNT DISALLOWED					\$1,802.50

In addition to the objections raised by counsel for the Trustee, the court retains an independent duty to review all applications and assess the

reasonableness of the amount and time devoted to individual tasks. Having done that I order the following reductions because the entries are either insufficiently documented to be allowable, or represent unreasonable time devoted to particular tasks or are unnecessarily duplicative.

General Administration, Account Number 157-6-A:

Date	Attorney	Hours Claimed	Disallowed	Allowed	Amount Disallowed
03/15	JBW	5.6	2.0	3.6	\$200.00
05/17	WBW	2.4	1.4	1.0	\$175.00
05/20	WBW	1.2			
TOTAL AMOUNT DISALLOWED					\$375.00

Bad Check Matters, Account Number 157-6-B, supra, page 3.

Insurance Matters and Insurance Adversary, Account Number 157-6-C:

Date	Attorney	Hours Claimed	Disallowed	Allowed	Amount Disallowed
03/16	WBW	4.3	4.3	0.0	\$430.00
04/07	WAW	3.9	3.0	0.9	\$375.00
04/08	WAW	3.1	2.1	1.0	\$262.50
04/08	WBW	4.6	1.6	3.0	\$160.00

04/15	WBW	1.1	1.1	0.0	\$110.00
05/02	WBW	4.1	2.0	2.1	\$200.00
TOTAL AMOUNT DISALLOWED					\$1,537.50

Cash Adversary, Account Number 157-6-D. No reduction.

Fee Matters, Account Number 157-6-E, supra, page 5.

Leases, Account Number 157-6-F. No reduction.

Plane Seizures, Account Number 157-6-G. No reduction.

Plane Adversary, Account Number 157-6-H:

Date	Attorney	Hours Claimed	Disallowed	Allowed	Amount Disallowed
04/22	JBW	4.1	4.1	0.0	\$410.00
04/23	JBW	4.8	4.8	0.0	\$480.00
04/23	WAW	2.1	2.1	0.0	\$262.50
TOTAL AMOUNT DISALLOWED					\$1,152.50

Major Adversary, Account Number 157-6-I:

The vast majority of time in this category relates to adversaries against

parties which are of unknown value at this time. As a result, the time (except the services devoted to claims against World Corp which have been settled as a result of a previous order in this case) is disallowed on an interim basis with Debtor's counsel being granted leave to seek compensation for the disallowed services as part of any future interim fee application. As a result, fees are reduced by \$1,890.75. For World Corp related services fees are allowed for April 20th and April 27th in the amount of \$712.50 for a net reduction of \$1,178.25.

EEOC Claim, Account Number 157-6-J. No reduction.

In summary, from the fee application seeking total compensation the following amounts are disallowed:

Subject Matter	Account Number	Total Amount Disallowed
Settlement with United States Trustee	Various	\$1,072.50
General Administration	157-6-A	\$375.00
Bad Check Matters	157-6-B	\$3,106.85
Insurance Matters and Insurance Adversary	157-6-C	\$1,537.50
Cash Adversary	157-6-D	No reduction
Fee Matters	157-6-E	\$1,802.50

Leases	157-6-F	No reduction
Plane Seizures	157-6-G	No reduction
Plane Adversary	157-6-H	\$1,152.50
Major Adversary	157-6-I	\$1,178.25
EEOC Claim	157-6-J	No reduction
TOTAL		\$10,225.10

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the application for attorney's fees and expenses in the total amount of \$69,808.14 is therefore reduced by \$10,225.10 and allowed in the total amount of \$59,583.04.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 11th day of August, 1993.