



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Bankruptcy Battleground West

A Penny for Your Thoughts: Insights into the Professional Retention and Compensation Process

Richard H. Golubow, Moderator

Winthrop Couchot PC; Newport Beach

Michael J. Bujold

Office of the U.S. Trustee; Washington, D.C.

Hon. Sandra Ruth Klein

U.S. Bankruptcy Court (C.D. Cal.); Los Angeles

Prof. Nancy B. Rapoport

William S. Boyd School of Law, University of Nevada, Las Vegas; Las Vegas

Genevieve G. Weiner

Gibson, Dunn & Crutcher LLP; Los Angeles

A Penny for Your Thoughts: Insights into the Retention and Compensation Process

ABI Bankruptcy Battleground West
March 21, 2017



Panelists:

Hon. Sandra Klein, U.S. Bankruptcy Judge, Central District of California

Michael Bujold, Trial Attorney at U.S. Department of Justice

Prof. Nancy Rapoport, Special Counsel to the President of UNLV, Fee Examiner

Genevieve Weiner, Attorney, Gibson, Dunn & Crutcher LLP

Moderator: **Richard Golubow**, Attorney, Winthrop Couchot

Overview—Step 1: Getting Retained

- ▶ Key Statutes and Rules
- ▶ The Basics
 - ▶ Employment Application
 - ▶ Must be “disinterested” and have no “interest adverse to the estate”
- ▶ Hot Button Issues
- ▶ Case Studies

Retention: Key Statutes and Rules

- ▶ § 327 - Debtor Professionals
- ▶ § 1103 - Committee Professionals
- ▶ Rule 2014 - Applies to Employment of Professional Persons Under Both § 327 and § 1103

Background: Appendix B Guidelines

- ▶ Effective November 1, 2013
- ▶ Applicable to attorneys in chapter 11 cases with \$50 million or more in assets *and* \$50 million or more in liabilities (aggregated for jointly administered cases)
- ▶ Single-asset real estate cases are excluded
- ▶ Generally not applicable to ordinary course professionals

Retention: Appendix B Guidelines

- ▶ Statement from the applicant
 - ▶ Should include responses to specific questions in Section D.1., (a) - (d)
- ▶ Statement from the client
 - ▶ Should not be routine form
 - ▶ Provide specifics re: practices in place to review bills
 - ▶ Detail re: number of firms interviewed
 - ▶ Efforts to negotiate rates
 - ▶ Process to ensure rates are comparable to non-BK rates/other counsel
- ▶ Where there are multiple § 327(a) counsel, retention applications should clarify roles (i.e., lead counsel, local counsel, efficiency counsel)

Retention: The Employment Application

- ▶ Debtor (or committee) must seek court approval to employ professionals
- ▶ Key components of an employment (also called retention) application
 - ▶ Description of qualifications and services to be provided
 - ▶ Rates to be charged
 - ▶ Disclosures of “connections” with parties in interest

Retention: No Adverse Interest and Disinterested

- ▶ § 327(a): only persons “that do not hold or represent an interest adverse to the estate, and that are disinterested persons” may be employed by the estate
- ▶ § 101(14): The term “disinterested person” means a person that—
 - ▶ (A) is not a creditor, an equity security holder, or an insider;
 - ▶ (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
 - ▶ (C) does not have 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 for any other reason.

Retention: Disclosure of “Connections”

- ▶ Rule 2014: Applications under § 1103 or § 327 must set forth professional’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”
- ▶ Requires comprehensive and robust process to identify all connections
- ▶ Include discussion of *material* connections
 - ▶ Judgement call as to what is “material”
- ▶ Exhibit chart of other connections

Retention: Hot Button Issues

- ▶ Inadequate disclosures re: connections with debtor or interested parties
 - ▶ Prior relationship with debtor (or debtor's equity holder, i.e., PE firm)
 - ▶ Existing or prior relationship with creditor
 - ▶ Provide revenue information to demonstrate immateriality of connection
- ▶ Professional is creditor of the debtor based on outstanding balances/inadequate retainer
 - ▶ *Pillowtex* analysis

Retention: Case Studies

- ▶ *In re Woodcraft Studios, Inc.*, BAP NC-15-1143-WJUKU, 2016 WL 4045379 (Bankr. App. 9th Cir. July 22, 2016)
 - ▶ The retention application and fee application of a lawyer who represented a debtor in possession in a chapter 11 case were denied
 - ▶ Retention was initially approved, but lawyer's fee applications showed that he was owed money for prepetition services, and, therefore, was a prepetition creditor who was not disinterested
 - ▶ His failure to fully and properly disclose this connection to the debtor resulted in a denial of all fees and disgorgement of the \$5,000 retainer the debtor had paid him

Retention: Case Studies

- ▶ *In re Champagne Services LLC*, 560 B.R. 196 (Bankr. E.D. Vir., 2016)
 - ▶ Law firm's retention application was denied where firm failed to disclose the retainer agreement, a personal guarantee of the proposed counsel's fees by the debtor's sole owner, and details about the law firm's previous representations of the owner, who was a co-debtor on the debtor's largest corporate debts.
 - ▶ Additionally, the terms of the retainer agreement were "wholly unacceptable," including quarter-hour billing arrangements, minimum charges for certain services, a provision for automatic withdrawal of counsel without court approval, and a provision giving the law firm superpriority and liens on the debtor's assets without acquiring specific approval.

Retention: Case Studies

- ▶ *In re Caesars Entertainment Operating Company, Inc.*, Bankr. N.D. Ill., Case No. 15-01145, Examiner Report at Dkt. No. 3401
 - ▶ Law firm represented both operating company and parent company in a number of transactions
 - ▶ PE sponsor was also "very significant" client of law firm
 - ▶ Operating company filed and was insolvent at points during the prepetition transactions
 - ▶ Examiner concluded that there is a "reasonable case" that a court would find a conflict existed:
 - "By representing both CEC and CEOC, Paul Weiss was representing both the buyer and seller"

Retention: Case Studies

- ▶ *In re Project Orange Associates, LLC*, 431 B.R. 363 (Bankr. S.D.N.Y. 2010)
 - ▶ Law firm's retention application was denied when the UST objected to it on the basis that firm also represented the chapter 11 debtor's largest unsecured creditor and essential supplier, albeit in unrelated matters
 - ▶ It did not matter that the debtor had executed a stipulation with the creditor, waived the conflict, and used conflicts counsel
 - ▶ The firm would have been involved in developing and negotiating a plan of reorganization for the debtor, which would likely position it directly adverse to the creditor/supplier. Further, the firm had a duty to investigate all possible claims on behalf of the debtor, including those against the creditor

Retention: Case Studies

- ▶ *United States v. Gellene*, 182 F.3d 578 (7th Cir. 1999)
 - ▶ Milbank sought to be retained by chapter 11 debtor. Lead attorney's declaration in support of retention application failed to list senior secured creditor and related parties, who were current clients of the firm. Failed to correct in second declaration and on stand at hearing on fee application. Attorney was sentenced to 15 months in jail and \$15,000 fine. Law firm also had to disgorge all fees from bankruptcy
- ▶ 18 U.S.C. § 152
 - ▶ A person who knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury . . . in relation to any case under title 11. . . . Shall be fined under this title, imprisoned not more than 5 years, or both.
- ▶ "[A] statement is fraudulent if known to be untrue and made with intent to deceive."
- ▶ Element of materiality

Retention: Key Takeaways

- ▶ Ensure firm has a robust process in place to identify connections
- ▶ When in doubt, disclose!
- ▶ Stay on top of billing and retainer issues
- ▶ Don't just delegate the retention application to a junior associate

Overview—Step 2: Getting Paid

- ▶ Key Statutes and Rules
- ▶ The Basics
 - ▶ Fee Statements and Applications
 - ▶ The Guidelines
- ▶ Hot Button Issues & Red Flags
- ▶ Case Studies

Compensation: Key Statutes and Rules

- ▶ § 328 - Limitation on compensation
- ▶ § 329 - Debtor's transactions with attorneys
- ▶ § 330 - Compensation of officers
- ▶ § 331 - Compensation of officers
- ▶ § 504 - Compensation of officers
- ▶ Rule 2013 Public Record of Compensation
- ▶ Rule 2016 Compensation for Services Rendered
- ▶ Rule 2017 Examination of Debtor's Transactions with Debtor's Attorney
- ▶ Local rules and forms and local, local rules, procedures, etc.

Compensation: Reasonable and Necessary

- ▶ Code § 330 allows:
 - ▶ ***“reasonable compensation for actual, necessary services”***; and
 - ▶ ***“reimbursement for actual, necessary expenses.”***
- ▶ Court must determine what is reasonable compensation, taking into account all relevant factors
- ▶ Fee examiners aid courts in making this determination

Compensation: Appendix B Guidelines

- ▶ Detailed requirements outlined and sample forms provided
 - ▶ Summary cover sheet required
 - ▶ Timekeeper charts (title, bar admission, billing rate, totals billed)
 - ▶ Fee charts broken out by matter/project categories
 - ▶ Comparisons when rate increases have been implemented
 - ▶ Budgets and staffing plans
 - ▶ “[C]ustomary and comparable” blended rate disclosures
 - ▶ Statement from the applicant with specific questions answered
 - ▶ Task billing required: no time lumping/block billing
 - ▶ LEDES files
 - ▶ Expense detail

Compensation: Fee Applications

- ▶ Standard procedures allow for simplified monthly statement, i.e., mainly invoice with summary charts
- ▶ Absent objections, 80% of fees and 100% of expenses paid on monthly basis
- ▶ More formal interim (quarterly) and final applications
- ▶ Often more detailed description of case status and work performed
- ▶ Remaining 20% holdback paid if approved
- ▶ Court and/or fee examiner may have specific requirements in a given case

Compensation: Hot Button Issues and Red Flags

“Red flags” that may trigger follow-up questions from fee examiner or UST:

- ▶ Vague time entries
- ▶ Block-billed entries
- ▶ Staffing inefficiencies, i.e., multiple billers on same project w/o explanation; top-heavy billers
- ▶ Overhead expenses charged to the estate
- ▶ Billing 0.1 hours for “reading each entry” on a day’s docket, or several people reviewing the docket for the same reason
- ▶ Not following local rules for expenses like car services, meals, travel time
- ▶ Abnormally high airfare or hotel rates
- ▶ Unusual hourly rate increases or increases that did not receive prior client approval

Compensation: Hot Button Issues and Red Flags

Red flags from real life:

- ▶ \$425,000 conflicts check
- ▶ Tens of thousands of dollars to make charts (presumably from Excel data)
- ▶ Cell phone purchases charged to the estate
- ▶ \$140 shirt billed to the estate
- ▶ In-room movies

Compensation: Case Studies

- ▶ ***Baker Botts, L.L.P. v. ASARCO, L.L.C.***, 135 S. Ct. 2158 (2015)
 - ▶ The Supreme Court resolved an appellate court split and made clear that defense of a fee application is not necessary to the administration of the bankruptcy case and, therefore, not compensable under § 330.
 - ▶ Bankruptcy judges **do not** have discretion on this issue and cannot award compensation for the defense of a fee application.
 - ▶ The Court relied on the “American Rule” that each litigant pays for his or her own attorney’s fees, win or lose, unless a statute or contract provides otherwise (Bankruptcy Code did not specifically and explicitly provide otherwise).
- ▶ Attempted “work-arounds” post-ASARCO have been rejected by courts:
 - ▶ ***In re Boomerang Tube, Inc.***, Case No. 1511247, 2016 WL 385933 (Bankr. D. Del. Jan. 29, 2016)

Compensation: Case Studies

- ▶ ***In re Relativity Fashion LLC***, 2016 Bankr. LEXIS 4339, *10 (Bankr. S.D.N.Y. Dec. 16, 2016)
 - ▶ Investment bankers’ fee structure called for monthly fees plus a transaction-based fee when and if a transaction was consummated
 - ▶ Fee examiner, secured lender and debtor objected on grounds that § 330 should apply and transaction-based fee did not meet § 330 standards
 - ▶ Court overruled objections and rejected idea that transaction fees were bonuses or success fees
 - ▶ Instead part of base compensation for investment bankers, in and out of bankruptcy
 - ▶ If retention approved pursuant to § 328, then standard on compensation should be § 328 and not § 330

Compensation: Case Studies

- ▶ *In re MOLYCORP, Inc.*, 15-11357 (CSS), 2017 WL 56703 (Bankr. D. Del. Jan. 5, 2017)
 - ▶ DIP financing order included a cap for UCC counsel's fees
 - ▶ UCC conducted investigation and commenced litigation against lender and D&Os
 - ▶ Parties reached a settlement and plan was confirmed
 - ▶ Committee counsel filed fee application for fees in excess of DIP cap
 - ▶ Lender objected on grounds that fees exceeded DIP cap
 - ▶ Court overruled and approved fees and expenses (which fee examiner determined were reasonable)
 - ▶ DIP cap was not applicable once a plan was confirmed and Code's requirement, that all administrative expenses be paid in full, governed

Compensation: Key Takeaways

- ▶ Vague descriptions, i.e., "attention to," and block billing are not acceptable under the Guidelines
- ▶ Advise non-bankruptcy practitioners who are working on the case of need for compliance
- ▶ Ensure appropriate staffing and division of labor, especially when multiple firms retained
- ▶ Check local rules and guidelines to ensure expenses are compliant

Appendix: Relevant Statutes & Rules

- ▶ 11 U.S.C. § 327 Employment of professional persons
- ▶ 11 U.S.C. § 328 Limitation on compensation of professional persons
- ▶ 11 U.S.C. § 329 Debtor's transactions with attorneys
- ▶ 11 U.S.C. § 330 Compensation of officers
- ▶ 11 U.S.C. § 331 Interim compensation
- ▶ 11 U.S.C. § 503 Allowance of administrative expenses
- ▶ 11 U.S.C. § 504 Sharing of compensation
- ▶ 11 U.S.C. § 1103 Powers and duties of committees
- ▶ Rule 2013 Public Record of Compensation
- ▶ Rule 2014 Employment of Professional Persons
- ▶ Rule 2016 Compensation for Services Rendered
- ▶ Rule 2017 Examination of Debtor's Transactions with Debtor's Attorney
- ▶ Rule 5002 Restrictions on Approvals of Appointments
- ▶ Rule 6003 Interim and Final Relief Immediately following Commencement of Case

Appendix: UST Fee Guidelines

- ▶ <https://www.justice.gov/ust/fee-guidelines>
- ▶ Appendix B (large chapter 11):
 - ▶ https://www.justice.gov/sites/default/files/ust/legacy/2013/06/28/Fee_Guidelines.pdf; and
 - ▶ Fillable forms also available
- ▶ Appendix A:
 - (1) larger chapter 11 cases by those seeking compensation who are not attorneys;
 - (2) all chapter 11 cases below the larger case thresholds;
 - (3) SARE cases; and
 - (4) cases under other chapters of the Bankruptcy Code
- ▶ https://www.justice.gov/sites/default/files/ust/legacy/2013/06/28/1996_Fee_Guidelines.pdf
- ▶ FAQs: https://www.justice.gov/ust/Prof_Comp/FAQ_Prof_Comp
- ▶ Relevant Briefs: *In re Samson Resources Corp.*, D. Del., Case No. 15-11934, U.S. Trustee's Objection to Retention Application and Reply Brief, Dkt. Nos. 389 and 499

Appendix: Cases

- ▶ *Baker Botts, L.L.P. v. ASARCO, L.L.C.*, 135 S. Ct. 2158 (2015)
- ▶ *In re Boomerang Tube, Inc.*, Case No. 1511247, 2016 WL 385933 (Bankr. D. Del. Jan. 29, 2016)
- ▶ *In re Caesars Entertainment Operating Company, Inc.*, Bankr. N.D. Ill., Case No. 15-01145, Examiner Report at Dkt. No. 3401
- ▶ *In re Champagne Services LLC*, 560 B.R. 196 (Bankr. E.D. Va. 2016)
- ▶ *In re MOLYCORP, Inc.*, 15-11357 (CSS), 2017 WL 56703 (Bankr. D. Del. Jan. 5, 2017)
- ▶ *In re Pillowtex, Inc.*, 304 F.3d 246 (3d Cir. 2002)
- ▶ *In re Project Orange Associates, LLC*, 431 B.R. 363 (Bankr. S.D.N.Y. 2010)
- ▶ *In re Relativity Fashion LLC*, 2016 Bankr. LEXIS 4339, *10 (Bankr. S.D.N.Y. Dec. 16, 2016)
- ▶ *In re Samson Resources Corp.*, D. Del., Case No. 15-11934, Dkt. Nos. 389 and 499
- ▶ *United States v. Gellene*, 182 F.3d 578 (7th Cir. 1999)
- ▶ *In re Woodcraft Studios, Inc.*, BAP NC-15-1143-WJUKU, 2016 WL 4045379 (Bankr. App. 9th Cir. July 22, 2016)

Appendix

U.S. Trustee Website FAQs

1. **After *ASARCO*, will the USTP object to defense fees incurred after an objection has been filed in court?**

A: Yes. The Supreme Court ruled that attorneys' fees for defending objections to applications for compensation ("defense fees" or "fees-on-fees") are *per se* prohibited because section 330 does not expressly alter the American Rule against fee shifting. *See generally Baker Botts LLP v. ASARCO LLC*, 135 S. Ct. 2158, 2167 (2015). Although the U.S. Trustee Fee Guidelines for Attorneys in Larger Chapter 11 cases ("LCFG") state that billing the estate for defending fee applications is "generally inappropriate" unless the defense fees fall "within a judicial exception applicable within the [judicial] district," LCFG, B.2.g., there are no applicable judicial exceptions after *ASARCO*.

2. **Will the USTP rely on *ASARCO* to object to fees incurred in preparing a fee application?**

A: No. The Court in *ASARCO* did not disallow reasonable compensation for preparing a fee application and noted that "preparation of a fee application is best understood as a 'servic[e] rendered' to the estate administrator under § 330(a)(1)." 135 S. Ct. at 2167. Thus, reasonable charges for preparing interim and final fee applications are compensable because section 330(a)(1) allows them, and section 330(a)(6) requires that the compensation for the fee application be reasonable in relation to the level and skill required to prepare it. *See also* LCFG, B.2.f. (preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid).

3. **After *ASARCO*, will the USTP object to defense fees incurred negotiating or explaining fee applications before an objection is filed in court?**

A: Generally no, but it depends on the facts and circumstances of each case. Work that is an extension of fee application preparation will not generally be objectionable. Thus, good faith communications and negotiations regarding a well-prepared fee application may be considered an extension of fee application preparation. But patently poor and deficient fee applications that elicit extensive inquiries or negotiations and require extensive amendment may not be considered part of the fee application preparation. For example, fees related to repeated billing errors, such as vague descriptions or block-billing, will draw an objection. In the absence of further court guidance post-*ASARCO*, the USTP will consider many factors in determining whether such defense fees appear to be for the professional's benefit or for the client's and, therefore, objectionable or not. The USTP's goal is to apply *ASARCO* faithfully, while encouraging sound billing practices and professional cooperation and compliance short of litigation, where possible.

4. **Will the USTP object to professionals seeking a pre-approved term of employment that permits the payment of fees-on-fees otherwise disallowed by *ASARCO*?**

A: Yes. Professionals' employment and compensation rights in bankruptcy arise by statute. *ASARCO*'s analysis is relevant to all Bankruptcy Code sections dealing with employment and compensation. First, section 328 permits a professional to seek court approval for any reasonable terms and conditions of employment. But section 328, like section 330, does not contain explicit statutory authority for deviating from the American Rule against fee-shifting. Second, section 328 terms must both relate to the scope of the professional's employment and be reasonable. Paying fees-on-fees is neither a term of employment nor is it reasonable for the estate to pay for work that is not a client service. Third, section 330(a)(1) governs the award of compensation, subject to

sections 326, 328, and 329, and *ASARCO* expressly precludes an award of fees-on-fees under section 330(a)(1). (A section 330 award is what gives the professional an administrative claim against estate assets under section 503(b)(2)).

In addition, estate-paid professionals cannot by consent or contract create an exception to pay what the Code does not allow. See *In re Lehman Bros. Holdings, Inc.*, 508 B.R. 283, 294 (S.D.N.Y. 2014). The Code, through sections 326-331 and 503, regulates both professional compensation and administrative expenses paid from the estate in a comprehensive way that parties are not free to rewrite. See *id.* Thus, fees cannot be shifted by a contract that violates a statute, and the USTP will generally object to efforts to pay fees-on-fees in circumvention of *ASARCO*.

5. Will the USTP object if a professional seeks a higher rate or enhanced compensation, i.e., a bankruptcy premium, than that charged for comparable non-bankruptcy engagements based on the purported risk of non-payment for future fee litigation and resulting dilution of its bankruptcy compensation?

A: Yes. The Court in *ASARCO* considered—and rejected—the idea of bankruptcy premiums or enhancements based on the risk of “dilution.” “In our legal system, no attorneys, regardless of whether they practice in bankruptcy, are entitled to receive fees for fee-defense litigation absent express statutory authorization. Requiring bankruptcy attorneys to pay for the defense of their fees thus will not result in any disparity between bankruptcy and nonbankruptcy lawyers.” *ASARCO*, 135 S. Ct. at 2168. This analysis is consistent with section 330(a)(3)’s standard that a bankruptcy practitioner’s reasonable compensation is what is customary and comparable to a non-bankruptcy practitioner’s, i.e., market rates and billing practices. See 11 U.S.C. § 330 (a)(3)(F). To the extent the Fifth Circuit suggested otherwise in its earlier *ASARCO* decision, 751 F.2d 291 (5th Cir. 2014), the Supreme Court disagreed.

Moreover, dilution risk is minimal. *ASARCO* is an exceedingly rare case for many reasons. First, *ASARCO* involved the very unusual circumstance where management of the reorganized debtor was again controlled by the parent upon confirmation. Post-confirmation management was uniquely motivated to be hostile to debtor’s bankruptcy counsel because bankruptcy counsel had represented the debtor in obtaining an extraordinarily large judgment against the parent during the bankruptcy—and any reduction in fees would have been a dollar-for-dollar economic benefit to the parent. Second, the fee defense costs were \$5 million, reflecting again the very unusual nature of the case. Third, in many cases, the USTP is the only party that objects to a fee application. See *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833 (3rd Cir. 1994). Finally, because an objecting party must pay its own attorneys’ fees to pursue fee objections, this should discourage frivolous objections. And to the extent there are bad faith or frivolous fee objections, the Court noted that a bankruptcy professional can avail itself of Rule 9011 sanctions. 135 S. Ct. at 2168, n.4.

6. How will the USTP handle pending cases with requests for fees incurred in defending fee applications?

A: Any newly filed interim application and any final application containing a request for defense fees *for the first time* should be reviewed under the standards discussed above. That is, if the fees-on-fees resulted from fee litigation, an objection is generally appropriate. If no fee objection was ever filed, then whether the fees-on-fees are objectionable depends on the facts and circumstances of the case.

If fees-on-fees have been previously awarded on an interim application that would have been disallowed under *ASARCO*’s ruling, the USTP should determine whether an objection at the final application stage is advisable based on controlling law within the jurisdiction.

7. Will the USTP continue to object to billing for the preparation of invoices submitted in support of a fee application?

A: Yes. There is no statutory authorization to shift fees for preparing invoices (as opposed to fee applications) to the estate, and the Court in *ASARCO* did not rule otherwise.

As explained in the LCFG, “routine billing activities . . . typically are not compensable outside of bankruptcy. Most are not compensable because professionals do not charge a client for preparing invoices, even if detailed. Reasonable charges for preparing interim and final fee applications, however, are compensable, because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid.” LCFG, B.2.f. This rationale applies to all cases, including those not subject to the LCFG.

8. Will the USTP object to non-legal professionals seeking the reimbursement of legal fees for defending objections to fee applications?

A: Yes, using standards analogous to those discussed above that apply to attorneys seeking compensation for fee defense work. Regardless of whether the fee defense request is made by a legal or financial professional, the result must be the same based on *ASARCO*: A professional’s legal fees for litigating fee objections cannot be paid. Non-lawyer professionals, such as financial advisors, are entitled to no better and no worse treatment than lawyers with respect to legal fees for defending objections to fee applications in a bankruptcy case.

Because legal fees for defending fee application objections cannot be paid as compensation under section 330(a)(1)(A), those same legal fees cannot be reimbursed as expenses under section 330(a)(1)(B). Section 330(a)(1)(B) allows the award of “necessary” expenses. But those expenses must relate and be incident to the work for which the professional can be compensated under section 330(a)(1)(A). Otherwise, in *ASARCO*, Baker Botts need only have retained outside counsel to defend its fee applications and expensed the legal fees for reimbursement rather than seek compensation for them.

Updated September 25, 2015

2017 BANKRUPTCY BATTLEGROUND WEST

EXHIBIT A

CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES WITH FEE APPLICATIONS

(See Guidelines ¶ C.3. for definitions of terms used in this Exhibit.)

CATEGORY OF TIMEKEEPER (using categories already maintained by the firm)		BLENDED HOURLY RATE	
		BILLED OR COLLECTED Firm or offices for preceding year, excluding bankruptcy	BILLED In this fee application
Delete	Sr./Equity Partner/Shareholder		
Delete	Jr./Equity Partner/Shareholder		
Delete	Counsel		
Delete	Sr. Associate (7 or more years since first admission)		
Delete	Associate (4-6 years since first admission)		
Delete	Jr. Associate (1-3 years since first admission)		
Delete	Staff Attorney		
Delete	Contract Attorney		
Delete	Paralegal		
Delete	Other (please define)		
Add	Click Add button to add additional timekeeper category		
	All timekeepers aggregated		

Case Name: _____
Case Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

UST Form 11-330-A (2013)