AMERICAN BANKRUPTCY INSTITUTE

2017 Alexander L. Paskay Memorial Bankruptcy Seminar

BUSINESS SESSION

Show Me the Money! The ABC's of Getting Paid Your Attorney's Fees

Hon. Michael G. Williamson, Moderator
U.S. Bankruptcy Court (M.D. Fla.); Tampa

Adam L. Alpert
Bush Ross, P.A.; Tampa

Jill E. Kelso
Office of the U.S. Trustee; Orlando

Brian A. McDowell
Holland & Knight LLP; Orlando

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SHOW ME THE MONEY!: CURRENT ISSUES ON ATTORNEY'S FEES

I. Fee Applications

A. *Baker Botts, LLP v. ASARCO LLC*, 135 S.Ct. 2158 (2015)

1. Section 330(a)(1) does not permit bankruptcy courts to award fees to § 327(a) professionals for defending fee applications

2. Time spent litigating a fee application is not labor performed for or disinterested service to the bankruptcy estate, as required under § 330.

B. Determining When *Baker Botts* Applies

1. *In re John Dargon Stanton, III,* 559 B.R. 781 (Bankr. M.D. Fla. 2016) (J. Williamson) (approving fees incurred by counsel for Ch. 7 trustee for supplementing Ch. 7 fee application to include details otherwise required in Ch. 11 fee applications in response to objection to initial fee application by US Trustee).

(a) *Baker Botts* does not create a temporal rule.

(b) Test under *Baker Botts* is whether fees were incurred in service to the estate.

C. US Trustee Program Policies, Guidelines and FLMB Local Rules

1. United States Trustee Program Policy and Practices Manual – Volume 2: Chapter 7 Case Administration (September 2016) – Chapter 2-2, Section 2-2.4.3 Retention and Compensation of Professionals

2. United States Trustee Program Policy and Practices Manual – Volume 3: Chapter 11 Case Administration (July 2016) – Chapter 3-7: Employment of Professionals and Chapter 3-8: Compensation of Professionals1

3. Appendix A–Guidelines for Reviewing Applications for Compensation Filed Under 11 U.S.C. § 330, applicable in (1) larger chapter 11 cases by those seeking compensation who are not attorneys, (2) all chapter 11 cases below the larger case thresholds, and (3) cases under other chapters of the Bankruptcy Code. See 28 C.F.R. Part 58, Appendix A.

4. Middle District of Florida – Local Bankruptcy Rule 2016-1: Compensation of Professionals

5. Middle District of Florida – Form Cover Sheet for Fee Applications

D. Other Select Cases

1. *In re Pelican Real Estate, LLC, et al.*, Case No. 6:16-bk-03817-RAC (Bankr. M.D. Fla. October 18, 2016)(J. Colton)(approving retention of attorney for a court-

appointed examiner pursuant to 11 U.S.C. § 105(a) and providing that attorney shall be compensated for its services and reimbursed for its expenses "pursuant to standards equivalent to those set forth in 11 U.S.C. §§ 330 and 331").

2. *In re Newcastle Marine, Inc.*, Case No. 3:15-bk-01147-PMG (Bankr. M.D. Fla. October 16, 2015)(J. Glenn)(declining to approve compensation to counsel who was not retained in accordance with Section 327).

3. *Walton v. Clark & Washington*, 469 B.R. 383 (Bankr. M.D. Fla. 2012)(J. Williamson)(determining that practice pursuant to which debtor's counsel enters two separate agreements with debtor clients—one for prepetition services and one for postpetition services—is acceptable with certain specified modifications).

II. Finality of Interim Awards

A. Interim Fee Awards Can Be Revisited

1. Section 331 permits interim fee awards

2. Section 330(a)(5) authorizes courts to require professionals to disgorge fees where interim awards exceed final award

3. Courts universally interim fee awards can be revisited at final fee award stage

B. Parties in Interest Can Be Estopped from Raising Belated Objection

III. Fees in § 523 Proceedings

A. Fees as Element of Damages Claim

1. *Cohen v. de la* Cruz, 118 S.Ct. 1212 (1998) (holding that discharge exception for actual fraud prevented discharge of all liability arising from debtor's fraud, including award of attorneys' fees and costs)

2. The full liability traceable to fraud is nondischargeable

B. Prevailing Party Fees

1. Section 523 does not contain prevailing party fee provision

2. *TranSouth Financial Corp. v. Johnson*, 931 F.2d 1505 (11th Cir. 1991) (holding that creditor may recover its attorney fees, as part of nondischargeable debt, if such fees are provided for by contract or statute)

IV. Proof of Reasonableness

A. Expert Witnesses Generally Not Necessary

1. Fee experts normally are not necessary to assist bankruptcy courts

2. Bankruptcy court deal with fee applications every day

B. Instances Where Experts are Appropriate -

1. *In re Keller Financial Services of Florida, Inc.*, 248 B.R. 859 (Bankr. M.D. Fla. 2000) (J. Glenn) (determining reasonableness of attorneys' fees based, in part, upon expert testimony as to reasonableness of rates charged by debtor's counsel)

V. Case Digests for 11 U.S.C. §§ 327-331 and Fed. R. Bankr. P. 2014 and 2016

VI. Use of Proposals for Settlement/Offers of Judgment in Bankruptcy

A. Fed. R. Bankr. P. 7068 applied Fed. R. Civ. P. 68 to adversary proceedings.

1. Only defendant can make offer of judgment under Fed. R. Civ. P. 68

2. "Costs" in Fed. R. Civ. P. 68 only includes attorney's fees if permitted to be recovered in the statute or contract giving rise to the claim in the adversary proceeding

3. 11 U.S.C. § 544, 547, 548, and 549 do not independently give rise to claims for attorney's fees

B. State Law Applies to Adversary Proceedings Based Upon State-Law Claims

1. F.S. 768.79 and Fla. R. Civ. P. 1.442. Either plaintiff or defendant may serve proposal for settlement in any action for damages under Florida law

2. *Menchise v. Akerman Senterfitt*, 532 F.3d 1146 (11th Cir. 2008) (holding that Florida offer of judgment statute applies to state law actions filed in federal courts located in Florida).

3. *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So.3d 362 (Fla. 2013) (holding that Florida offer of judgment statute does not apply to actions in which a plaintiff seeks both damages and equitable relief, and in which the defendant has served a general offer of judgment that seeks release of all claims).

When an estate asset consists of future payments, the trustee should attempt to discount the future income stream to an appropriate present value and liquidate the asset as expeditiously as possible. If the discounted payments cannot be liquidated, or the asset cannot otherwise be assigned for the benefit of creditors, the trustee should consider interim distributions to creditors as funds become available, provided that claims are resolved and sufficient funds are reserved to administer the estate.

10) EMPLOYMENT OF PROFESSIONALS

a. GENERAL STANDARDS

Under section 327, a chapter 7 trustee may employ professionals, including attorneys, accountants, appraisers or auctioneers to "represent or assist the trustee" in performing trustee duties under title 11. Those professionals may be awarded compensation for actual and necessary services and reimbursement for actual and necessary expenses, pursuant to section 330.

The employment of professionals must be approved by the court. Court approval must be sought prior to the rendering of any services. 11 U.S.C. § 327(a). Issues such as disinterestedness and necessity of employment are more appropriately addressed when court approval is sought and obtained prior to work by the professional. Generally, courts do not authorize compensation for services rendered prior to court-ordered employment. However, some courts permit retroactive or nunc pro tunc orders of employment in special circumstances, but even where permitted, such orders should be rarely sought.

b. DEFINITION OF PROFESSIONALS

The list of "professional persons" provided by section 327(a) – attorneys, accountants, appraisers, liquidators, auctioneers – is not exhaustive. The trustee must seek court approval only if the person sought to be employed is a "professional person" within the scope of section 327(a). The trustee may find it necessary to employ brokers, underwriters, farm managers, private investigators, or others to assist in the administration of estate assets. If an issue arises regarding the need to obtain court approval of the employment, the trustee should consider the following:

1) Does the person play a central role in the administration of the estate?

2) Does the person possess discretion or autonomy over some part of the estate?

3) Does the person have special knowledge or skill usually achieved by study and educational attainments?

4) Does the person operate under a license or governmental regulation?

When in doubt, it is recommended that the trustee err on the side of caution and seek court approval of the employment.

c. EMPLOYMENT STANDARDS

The threshold question for the employment of any professional is the necessity of employment. The trustee must determine whether the services of a professional are needed and whether the cost is warranted. 11 U.S.C. §§ 330 and 704(a). Further, the trustee needs to determine at the outset the level of professional work required and the estimated costs and benefits associated with the work.

As a general rule, professional persons employed by a trustee must be disinterested and must not have an interest adverse to the estate. 11 U.S.C. §§ 327(a) and 101(14). There are some exceptions. If a trustee is authorized to operate the debtor's business under section 721, and if the debtor has regularly employed professional persons on salary, the trustee may retain or replace such professional persons. 11 U.S.C. § 327(b). Representation of a creditor does not disqualify a person from representing the trustee, unless there is an objection from another creditor or the United States Trustee and the court finds there is an actual conflict of interest. 11 U.S.C. § 327(c). The trustee may retain an attorney for a "specified special purpose," even though the attorney previously represented the debtor, if the attorney does not hold or represent an adverse interest to the debtor or the estate with respect to the subject matter of the employment. 11 U.S.C. § 327(e).

The employment of a professional with a conflict of interest can result in denial of compensation to the professional under section 328(c) and to the trustee under section 326(d).

The trustee may not employ a person who has served as an examiner in the case. 11 U.S.C. § 327(f).

d. EMPLOYMENT PROCEDURES

Section 327 does not require notice and hearing procedures to hire professionals, only court approval. The trustee must provide a copy of the employment application to the United States Trustee. Fed. R. Bankr. P. 2014(a).

The form of applications for employment is governed by Fed. R. Bankr. P. 2014 and 6005. An employment application must state:

1) The specific facts necessitating employment;

2) The name of the person employed;

3) The reasons for selecting the firm or individual;

4) The professional services to be rendered;

5) The proposed arrangements for compensation; and

6) The professional's connections with the trustee, debtor, creditors, and other parties in interest.

Fed. R. Bankr. P. 2014(a). The application must be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, including the trustee, their respective attorneys and accountants, the United States Trustee, or any person employed by the United States Trustee. Fed. R. Bankr. P. 2014(a).

Fee sharing arrangements are prohibited. 11 U.S.C. § 504.

The trustee and the professional person should discuss and agree upon the terms and conditions of employment, including the manner of compensation, with the understanding that the court must approve the fee for professional persons and may increase or decrease it depending upon the circumstances, even to the extent of recapturing monies paid as interim fees. 11 U.S.C. § 328(a).

e. SUPERVISION OF PROFESSIONALS

It is critical that the trustee oversees the work performed by professionals and exercises appropriate business judgment on all key decisions. The trustee must actively supervise estate professionals to ensure prompt and appropriate execution of duties, compliance with required procedures and reasonable and necessary fees and expenses. 28 U.S.C. § 586, 28 C.F.R. § 58.6(a) (7).

The trustee is advised to pay particular attention to the activities of professionals who are not closely regulated by state authorities or who take physical possession of estate property and funds, such as auctioneers, liquidators, brokers, collection agents and property managers. The general standards for supervising auctioneers (see Handbook Chapter 4.C.10.g) apply equally to other professionals who take possession of estate funds and property.

f. TRUSTEE AS ATTORNEY OR ACCOUNTANT FOR THE ESTATE

A trustee, with court approval, may act as an attorney or accountant for the estate, if such employment is in the best interest of the estate. 11 U.S.C. § 327(d). A trustee must be sensitive to the best interest of each individual estate and any conflict of interest problems that may be posed by acting as an attorney or accountant for the estate. 11 U.S.C. § 327. The trustee may not be employed as counsel or accountant to provide services that a trustee could perform without professional assistance. The trustee shall not submit boilerplate applications to employ the trustee as a professional in every case without specifying the necessity for the services.

If a trustee acts as the trustee's own attorney or accountant, detailed time records of the tasks performed as attorney or accountant must be maintained. A trustee acting as attorney or accountant under section 327(d) may receive compensation only for services performed in that capacity and not for the performance of regular trustee duties. 11 U.S.C. § 328(b).

The demarcation of the roles of the trustee and the professional must be made to ensure that an estate incurs only appropriate costs for administration. The cost of administration and its financial effect upon creditors demand careful scrutiny of the trustee's application to employ themselves or others. Abuses in the process of a trustee serving dually as attorney or accountant may be the basis for suspension or removal from the panel.

Attorneys and accountants shall not be compensated for performing the statutory duties of the trustee. 11 U.S.C. § 704, Fed. R. Bankr. P. 2015(a). The following list includes examples of services considered to fall within the duties of a trustee:

1) preparing for and examining the debtor at the meeting of creditors in order to verify factual matters;

2) Examining proofs of claim and filing routine objections to the allowance of any claim that is improper;

3) Investigating the financial affairs of the debtor;

4) Furnishing information to parties in interest on factual matters;

5) Collecting and liquidating assets of the estate by employing auctioneers or other agents and soliciting offers;

6) Preparing required reports;

7) Performing banking functions; and

8) In appropriate cases, filing applications for employment of professionals and supervising those professionals.

The aforementioned trustee duties are not compensable as legal or accounting services unless sufficiently documented to show that special circumstances exist.

g. AUCTIONEERS

(1) General Standards

The trustee may employ auctioneers as professional persons pursuant to sections 327(a) and 328(a) to sell property of the estate. All auction sales require notice pursuant to Fed. R. Bankr. P. 6004(a).

The trustee must actively supervise the activities of the auctioneers to ensure that estate property is protected against loss, that property is sold for reasonable prices to independent buyers, that auction proceeds are promptly and fully remitted, that auctioneers timely submit accurate sale reports, and that auctioneer expenses are actual and necessary and paid in accordance with legal requirements. 28 U.S.C. § 586, 28 C.F.R. § 58.6(a)(7).

Methods by which a trustee can supervise auctioneers include personally attending auction sales, sending an assistant or staff person to attend auction sales, thoroughly reviewing auctioneer reports, and independently verifying reported information. When the auctioneer assumes control over estate property for a period of time prior to sale, the trustee should keep an inventory of the items stored and periodically verify that the assets still exist and are in good condition.

The trustee must immediately advise the United States Trustee of concerns with respect to auctioneers and must immediately report situations which could result in a loss to the estate. Failure to appropriately supervise auctioneers may result in claims against the trustee individually. 28 U.S.C. § 586, 28 C.F.R. § 58.6(a)(7).

A representative of the United States Trustee may attend auctions.

(2) Compensation

An auctioneer's compensation must be approved by order of the court. 11 U.S.C. § 328, Fed. R. Bankr. P. 6005. Any buyer's premium must be fully disclosed in the employment application and considered in determining the reasonableness of the total compensation.

Although auctioneers, outside of a bankruptcy context, usually deduct their commissions and expenses from the sales proceeds and remit a net amount to the seller, this practice may not be employed with regard to bankruptcy estate funds, unless it is specifically authorized by order of the court. The order authorizing the employment must specify the percentage fee to be charged by the auctioneer and may authorize the deduction of the commission and the costs of sale from the sales proceeds, with the effect of the auctioneer remitting the net sales proceeds to the trustee.

(3) Bonding and Insurance

The trustee must ensure that auctioneers are adequately bonded, prior to auction or taking possession of estate property, in an amount that is sufficient to cover all receipts from the sale. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586. The bond must be in favor of the United States of America and is distinct from any other auctioneer's bond required under state law. All original bonds must be forwarded to the United States Trustee.

The trustee needs to verify that the auctioneer maintains insurance for lost or stolen property in the event that the trustee decides to make a claim against the insurer in the event of such losses. Insurance claims for lost or stolen property must be made promptly, and the trustee must immediately inform the United States Trustee of such claims. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

(4) Turnover of Proceeds

As a general rule, the auctioneer should immediately turn over auction proceeds to the trustee. In any event, all proceeds must be turned over within thirty days of the auction. The United States Trustee may have additional requirements. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

If an auctioneer fails to account for or to turnover auction proceeds within thirty days, the trustee must promptly notify the United States Trustee and take immediate action to recover the funds, including initiating a proceeding against the auctioneer's bond11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

If the trustee discovers that the auctioneer has commingled estate auction proceeds with business operating or personal accounts, the trustee must immediately notify the United States Trustee. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586.

(5) Auctioneer's Report of Sale

The auctioneer must submit to the trustee, the United States Trustee and must also file with the court an itemized statement of the property sold, the name of each purchaser, and the price received for each item, lot, or for the property as a whole if sold in bulk. Fed. R. Bankr. P. 6004(f). In all cases, the auctioneer must present an affidavit or declaration listing all costs and expenses incurred with the report of sale.

The trustee must ensure that the auctioneer files the report promptly upon completion of the auction. 28 U.S.C. § 586. If the report has not been provided within thirty days after the auction, the trustee must request a copy and ensure that it has been filed with the court and United States Trustee, or as otherwise provided by local rules and practices. 28 U.S.C. § 586.

The trustee must compare the auctioneer's report of sale to the initial inventory and obtain an explanation for any discrepancies. 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586. The trustee also should scrutinize items marked "stolen" or "missing." As noted earlier, the trustee should attempt to recover the value of lost or stolen items by filing a claim with the auctioneer's insurer or by initiating a proceeding against the auctioneer's bond, as appropriate.

11) COMPENSATION AND EXPENSES OF TRUSTEES

Trustee compensation is governed by section 330 and treated as a commission, subject to the limitations set forth in section 326. The compensation allowable in section 326 consists of varying percentages of all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

The United States Trustee will not object to a full commission except in rare and unusual circumstances. Examples of rare and unusual circumstances may include cases where it appears that the trustee has delegated a substantial portion of case administration, i.e., trustee duties, to an attorney or where the trustee's case administration fell below acceptable standards.

Section 330 also allows the recovery of actual, necessary expenses. Overhead expenses of a trustee are not reimbursable from the estate.

Section 331 permits a trustee to apply to the court for interim compensation or reimbursement of expenses pursuant to section 330. The United States Trustee will ordinarily object to a trustee's application for interim compensation, unless the application is linked to an interim distribution to creditors. However, when a trustee is heavily engaged in the administration of a case over an extended period of time and the trustee is providing substantial services to the estate, those factors may present good cause for interim compensation to the trustee.

12) COMPENSATION OF PROFESSIONALS

Section 330(a) authorizes professionals employed by the trustee under section 327(a) to be compensated from the estate for actual services rendered that are necessary to the administration of a case or beneficial at the time at which the service was rendered toward completion of the case. Professionals may not be compensated for performing work that the trustee can do without professional assistance. Particular care must be taken to avoid "double-dipping" when the trustee also serves as an attorney or accountant in a case. 11 U.S.C. § 327.

Pursuant to section 330, after notice and a hearing, and subject to section 328, the court may award a professional person employed pursuant to section 327 reasonable compensation for actual, necessary services. Section 330 also allows the recovery of actual, necessary expenses. Overhead expenses of a professional are not reimbursable from the estate.

Pursuant to 28 U.S.C. § 586(a)(3), as amended, applications for compensation and reimbursement of expenses filed by professionals must be prepared in accordance with the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330. See the Supplementary Materials for more information about the fee guidelines.

Unless otherwise permitted by the court, the professional may make application for interim compensation and reimbursement of expenses not more than once every 120 days. 11 U.S.C. § 331. The trustee has a fiduciary obligation to review professional fee applications and to object when appropriate.

Unless otherwise ordered by the court, all creditors and parties in interest must receive notice of all fee applications over $1,000.00. Fed. R. Bankr. P. 2002(a)(6).

CHAPTER 3-7: EMPLOYMENT OF PROFESSIONALS

3-7.1 STATUTORY FRAMEWORK: 11 U.S.C. § 327 and FED. R. BANKR. P. 2014

Sections 327, 1103, and 1107 govern the employment of professionals in connection with a chapter 11 case. For professionals employed by creditors' committees pursuant to section 1103, *see* Manual 3-4.2. The following discussion is primarily directed at the employment of professionals by debtors in possession and chapter 11 trustees. Unless the professional comes within the limited exception provided for by section 327(b), prior court approval of the employment of a professional person is necessary.

The retention process is designed to ensure public confidence in the bankruptcy system, prevent abuses, and achieve some degree of economy in the administration of the case by limiting the retention of professionals to only those instances where it can be demonstrated that the services are necessary. Furthermore, the requirements of section 327 "serve the important policy of ensuring that all professionals appointed pursuant to [the section] tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities." *Rome v. Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994). 28 U.S.C. § 586(a)(3)(I) specifically requires the United States Trustee to monitor employment applications and, when appropriate, to file with the court comments with respect to the approval of such applications.

Court approval of a professional person's employment is contingent upon a finding that the applicant has met a two-pronged test:

1. the professional must be disinterested, pursuant to section 327(a); and

2. the professional must not hold or represent an interest adverse to the estate.

The question of whether a professional meets the standards of the law is one for the court to adjudicate after a full disclosure of the facts. A failure to disclose constitutes an independent basis for disqualification.

A professional's conflict of interest may render him or her ineligible to serve as a professional under section 327(a). Despite the requirements of that section and the definition of a "disinterested person" that appears in section 101(14), a professional is not necessarily disqualified from employment because of representation of both the trustee and a creditor. Section 327(c) requires the presence of an actual conflict of interest; however, the statute does not define an actual conflict of interest. Whether the professional's representation is precluded

is dependent on a detailed consideration of the relevant circumstances. Few *per se* rules exist in this area, but case law can provide some guidance regarding specific situations.

Some courts require an actual conflict of interest to render counsel not disinterested. Other courts find a potential conflict is disabling. Some courts find that there is no distinction between a potential or an actual conflict. Generally, a finding of actual conflict warrants disqualification of a professional under section 327(a). In addition, under the appropriate circumstance, the appearance of impropriety or an appearance of potential conflict can be grounds for disqualification of counsel.

Pursuant to section 328(c), the court may deny allowance of compensation for services and reimbursement of expenses to a professional employed pursuant to section §§ 327 or 1103 if the court finds that at any time during the employment the professional was not a disinterested person or held or represented an interest adverse to the estate.

The United States Trustee should promptly examine the application for employment and its accompanying verified statement not only to determine if the proposed professional service is necessary, but also to ascertain if any disclosures suggest questionable relationships, divided loyalties, or disqualifying adverse interests. Issues that may warrant closer scrutiny include multiple debtor representation, simultaneous representation of a limited partnership and a general partner, representation of a corporation and an affiliate or shareholder, receipt of a preference or unpaid fees, security interests taken to secure the payment of fees or other unusual arrangements for compensation, and prior or concurrent representation of a major creditor. Where appropriate, the United States Trustee should require further disclosure or comment on any unusual aspects of the application. The United States Trustee should object to the employment when the services are unnecessary or duplicative, the applicant is not disinterested, or representation of adverse interests warrants disqualification.

Bankruptcy Rule 6003(a) provides that applications to employ professionals cannot be granted within 21 days of the filing of the petition, except to the extent that relief is necessary to avoid immediate and irreparable harm. The United States Trustee should object when relief is sought contrary to Rule 6003(a).

Fed. R. Bankr. P. 2014(a) requires that a copy of the employment application be transmitted to the United States Trustee, but it does not specify any additional parties that must be served. The issue of notice may be addressed by local rule or customary practice. When appropriate, however, the United States Trustee may suggest that only interim orders authorizing employment be entered *ex parte* pending notice and opportunity for objection by parties in interest before the order is permitted to become final.

The contents of an employment application are dictated by Fed. R. Bankr. P. 2014. It must contain all of the following elements:

1. specific facts showing the necessity of the employment;
2. the name of the person to be employed;
3. the reasons for the selection;
4. the professional services to be rendered;
5. any proposed arrangement for compensation; and
6. all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.

Fed. R. Bankr. P. 2014 disclosure requirements are to be strictly construed. All facts that may have any bearing on the disinterestedness of a professional must be disclosed. It is the responsibility of the professional, not of the court, to ensure that all relevant connections have been brought to light. Failure to disclose relevant connections is an independent basis for the disallowance of fees or disqualification.

The best practice is for the professional to file an application for employment as soon as possible after the petition date or retention, whichever comes first, even though Rule 6003 does not permit the court to enter the order approving the retention in the first 21 days of the case absent "immediate and irreparable harm." Rule 6003 bars entry of the order in the first 21 days, not the filing of the application. Once the court enters the order, it can be effective as of the date of the employment application.

Professionals perform services at their peril before they file an application for employment. Any approval of employment seeking an effective date before the application was filed should be considered as a request for *nunc pro tunc* approval. Some circuits enforce a rule denying compensation to professionals for work done prior to the filing of an application for employment unless, as a matter of fundamental fairness, the court approves a *nunc pro tunc* application. Some courts limit entry of *nunc pro tunc* employment orders to extraordinary circumstances and not merely because the approval requirement was overlooked. Mere oversight and inadvertence of counsel are not extraordinary circumstances.

Courts permitting a liberal *nunc pro tunc* approach generally consider if:

1. the application would have been approved originally by the court;

2. evidence appears in the record that demonstrates that the court and other interested parties had actual knowledge of the services being rendered;

3. an application seeking an order *nunc pro tunc* has been filed as soon as the matter is brought to the applicant's attention; and

4. a sustainable objection has not been filed to the application for fees.

The United States Trustee should enforce the requirement of prior court approval and object to the entry of *nunc pro tunc* orders, if appropriate.

3-7.1.1 Retention of Crisis Managers under 11 U.S.C. § 363

In some cases, the debtor may seek to retain a crisis manager, restructuring adviser, or chief restructuring officer (collectively, "crisis manager"). Although the specific terms of the retention and duties of these persons will vary from case to case, the hallmark of such engagements is that the crisis manager predominantly will assume duties that, outside of bankruptcy, typically would be performed by an officer or full-time employee of the debtor.

Because the nature of the crisis manager's duties arguably renders him or her non-disinterested, and therefore ineligible to be retained as a professional under section 327, debtors frequently seek to authorize the employment of such persons as a non-ordinary course transaction under section 363(b).

Although the USTP has never conceded that crisis managers fall outside the scope of section 327, which governs the retention of professionals, it has been the policy of the USTP not to object to applications to retain crisis managers under section 363(b) as long as certain conditions are observed. These conditions are memorialized in the *Jay Alix Protocol*, a 2003 stipulation between the United States Trustee for Region 3 and a crisis manager.

Among other key terms, the *Jay Alix Protocol* requires the crisis manager to limit itself to a single function in the bankruptcy case. The crisis manager may not fully supplant the debtor's existing management, but must remain answerable to the debtor's independent board of directors. In addition, the *Jay Alix Protocol* requires the crisis manager to file fee applications under procedures similar to those applicable to professionals under section 330 and limits the indemnification rights that the crisis manager's firm may receive. An individual crisis manager may be indemnified to the same extent as state law, the bylaws or other documents of corporate governance permit the indemnification of individual officers or directors, along with insurance coverage under the debtor's D&O policy The firm or corporate entity for which the crisis manager works may not be indemnified. The *Jay Alix Protocol* does not have
the force of law. Rather, it is a compromise that the USTP historically has offered to debtors and crisis managers. As a result, if the debtor or crisis manager rejects any term of the *Jay Alix Protocol*, the United States Trustee retains the right to

object to all issues regarding the crisis manager's employment, including the request to be retained under section 363 rather than section 327.

3-7.1.2 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016(b) and 2017

Every attorney for a debtor must file the statement required by section 329 within 14 days of the order for relief setting forth the compensation paid or agreed to be paid for services rendered or to be rendered in contemplation of or in connection with the bankruptcy case and the source of such compensation. Fed. R. Bankr. P. 2016(b) also requires disclosure of any agreement to share compensation with any other entity, other than a member or regular associate of the attorney's law firm. Fed. R. Bankr. P. 2017 permits the court on the motion of a party in interest or on its own initiative to determine whether any payment or transfer to an attorney is excessive. Pursuant to section 329(b), the court may order the return of any excessive payments to the estate or the entity that made the payment.

3-7.1.3 Definition of Professional Person

Professional persons employed pursuant to section 327 or 1103 may be awarded compensation pursuant to sections 330 and 331. Clearly, the statute recognizes that attorneys, accountants, appraisers, and auctioneers are professional persons for whom prior court approval of employment would be required. Occasionally, it is necessary for the trustee, debtor in possession, or committee to contract with outside firms or individuals who do not fall within these categories for assistance in the performance of their statutory duties. In these circumstances, the question sometimes arises whether an order of employment is required. The classic definition of professional person for purposes of section 327(a) limits the term to "persons in those occupations which play a central role in the administration of the debtor proceeding." *In re Marion Carefree Ltd. Partnership*, 171 B.R 584 (Bankr. N.D. Ohio 1994); *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981). The degree of autonomy and discretion exercised by the firm or individual in question is also a relevant consideration in determining whether the requirements of section 327(a) apply. *In re Bicoastal Corp.*, 149 B.R. 216 (Bankr. M.D. Fla. 1993); *In re Park Ave. Partners Ltd. Partnership*, 95 B.R. 605 (Bankr. E.D. Wis. 1988).

3-7.1.4 Auctioneers and Appraisers

The court must approve the retention of appraisers and auctioneers who must meet the same statutory requirements as other professionals. 11 U.S.C. § 327(a). Fed. R. Bankr. P. 6005 requires that the order of retention fix the amount or rate of compensation. The rule further provides that no employee or officer of the judiciary or of the Department may act as an appraiser or auctioneer, and provides that no residence or licensing requirement is to be required, even though most states require an auctioneer to be licensed and bonded. It is not unusual for an

appraiser to be compensated on a per diem basis and an auctioneer to be compensated at a percentage of the gross proceeds of sale. Local rules may govern the maximum allowable percentage to auctioneers. The appraiser and the auctioneer should not be the same person. An obvious conflict arises where the same person appraises items that he or she will be auctioning, and the United States Trustee should object if it is proposed that one person be employed in both capacities.

Auctioneers must be bonded since they handle significant amounts of cash belonging to estates. The amount may be set by local rules, but the United States Trustee should require a bond of an amount sufficient to protect the estate. The bonds are generally filed with the clerk of the court. All proceeds of an auction sale are to be delivered to the trustee or the attorney for the debtor in possession as soon as they are received.

All auction sales are to be noticed pursuant to Fed. R. Bankr. P. 6004(a), and the auctioneer must submit an itemized statement of the property sold, the name of each purchaser, and the price received. Fed. R. Bankr. P. 6004(f)(1).

3-7.1.5 11 U.S.C. § 327(e)

An attorney who may be ineligible for employment under section 327(a) because of the attorney's prior representation of the debtor may be hired under section 327(e) if the employment is for a specified special purpose, other than to "represent the trustee in conducting the case," provided that the employment is in the best interest of the estate and the attorney does not hold or represent an interest adverse to the estate with respect to the particular matter for which such attorney is employed. Note that section 327(e) applies only to attorneys. *See* 3 COLLIER ON BANKRUPTCY § 327.04[9][a] ("The exception for the retention of special purpose services applies exclusively to attorneys"). Accountants and other professional persons are not eligible for employment pursuant to that section. *See In re Andover Togs, Inc.,* 2001 U.S. Dist. LEXIS 2690 (S.D.N.Y. Mar. 13, 2001).

An analysis of whether special counsel qualifies for employment under section 327(e) should begin with an understanding of applicable ethical regulations. Certain potential conflicts are capable of being waived after full disclosure and consent. Most often, the question will become whether the conflicting interest that makes counsel ineligible for employment under section 327(a) is such that counsel is rendered incapable of exercising independent professional judgment on behalf of the client. If the employment necessarily requires that one interest be served at the expense of the other, an adverse interest exists that should disqualify counsel for employment pursuant to section 327(e).

3-7.2 THE DISINTERESTED PERSON REQUIREMENT FOR EMPLOYMENT OF PROFESSIONALS AND APPOINTMENT OF TRUSTEES AND EXAMINERS

The disinterested person requirement of the Bankruptcy Code applies when professionals are employed pursuant to 11 U.S.C. § 327(a), and in the appointment of trustees and examiners, 11 U.S.C. §§ 701, 1104, 1202(a), and 1302(a).

3-7.2.1 Statutory Framework: 11 U.S.C. §§ 101(14) and 327(a)

Disinterested person" is defined at section 101(14) as a person that:

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within two 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.

Section 327(a) of the Bankruptcy Code involves the application of a two-pronged test. First, the professional must be disinterested as defined in section 101(14). Second, the professional must not hold or represent an interest adverse to the estate. Failure to meet either condition of employment can result in disqualification.

3-7.2.2 11 U.S.C. § 101(14)(A)-(B)

The language of section 101(14)(A)-(B) mandates a literal approach to the disinterested person requirement and sets forth in detail a series of characteristics that disqualify a person from being "disinterested." These paragraphs do not call for any "weighing" or "balancing" of the impact of disqualification. A judicial determination that a person's characteristics would pose problems for the administration of the bankruptcy estate is not a prerequisite for disqualification. Each paragraph refers to characteristics of a person that are either carefully defined within the Bankruptcy Code or are easily understood. *See, e.g.*, 11 U.S.C. § 101(10) ("creditor"), (17) ("equity security holder"), and (31) ("insider"). If a professional has the characteristic, then disqualification is automatic. The fact that the interest in question may arguably be considered *de minimus* is of no importance in the analysis. Since the language of the statute is clear, it must be applied as written.

An agreement to subordinate a claim to payment of all other claims in a case will not cure a disinterestedness problem. However, waiver of the claim will render an applicant disinterested and thus in compliance with the statute.

3-7.2.3 Overlap of 11 U.S.C. § 101(14)(C) and 11 U.S.C. § 327(a)

A more difficult inquiry must be undertaken to determine whether the professional meets the adverse interest standard of sections 101(14)(C) and 327(a). Subparagraph (C) of section 101(14), the so-called "catch-all" provision, provides that a person is disinterested if the person:

> 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.

Section 327(a) provides that the trustee may employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons. . . ." There is thus some overlap between the no adverse interest requirement of section 327(a) and the materially adverse interest standard of section 101(14)(C). Viewed practically, persons failing one of the requirements will often fail the other as well.

The conclusion that retention is improper requires a careful consideration and weighing of the totality of the circumstances presented; it is not, however, a balance of impropriety against the alleged disruption disqualification will create. If the circumstances reveal a conflict impeding the exercise of independent judgment by the professional, an objection to the retention should be made.

There are differences between sections 327(a) and 101(14)(C). Section 327(a) refers merely to an interest that is "adverse," whereas section 101(14)(C) refers to a "materially adverse" interest. This would suggest that a somewhat broader standard is contained in section 327(a). Subparagraph (C) of section 101(14), however, appears to be more stringent than section 327(a) in one regard. The adverse interest clause of section 327(a) merely precludes the employment of persons holding or representing an interest adverse to the estate, whereas subparagraph (c) expands the proscription to include interests that are materially adverse not only to the estate, but also to any class of creditors or equity security holders.

These statutory distinctions complicate the analysis that must be undertaken. Further complexity results from the provision of section 327(c) that states that a professional is not disqualified for employment "solely because of such person's employment by or representation of a creditor, unless there is an objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." Thus, a professional is not ineligible for employment simply because he/she represents a

creditor, absent an actual conflict. Furthermore, section 1107(b) provides that, notwithstanding the requirements of section 327(a), a person is not disqualified for employment by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case. Proper application of these varied statutory provisions demands a painstaking analysis of the unique facts and circumstances presented in each case.

3-7.3 SPECIAL PROBLEMS IN RELATED CASES

3-7.3.1 Appointment of a Trustee

A trustee appointed in a chapter 11 case must meet the disinterested person requirement. 11 U.S.C. § 1104(d). Notwithstanding this requirement, when multi-debtor partnerships or related corporate debtors are involved, the responsibilities of the trustee to pursue assets and resist claims within the context of these entities may raise added concerns about potential conflicts. The determination of whether one or more trustees should be appointed in these circumstances rests upon a careful evaluation of the overall potential for conflict, i.e., the need for the varied interests involved in the cases to be separately administered.

The definition of a disinterested person proscribes various types of disqualifying interests. As a general matter, section 101(14) does not disqualify persons because of whom they represent, but rather because of the nature of their personal status – for example, because they personally are creditors of the debtor or they personally "have an interest" that is "materially adverse" under subparagraph (C). Therefore, the mere fact that a trustee may assert a claim against one estate in his or her representative capacity for another estate does not make him or her a "creditor" in an individual sense for purposes of applying 11 U.S.C. § 101(14)(A). *In re BH & P, Inc.*, 949 F.2d 1300 (3d Cir. 1991).

Moreover, the "materially adverse" requirement of section 101(14)(C) should not be read to prevent a single trustee from serving in related cases. A standard that automatically disqualifies a trustee from serving in jointly administered cases where there are inter-debtor claims is overbroad. Indeed, the provisions of Fed. R. Bankr. P. 2009 specifically allow the appointment of a single trustee for jointly administered cases. The United States Trustee must weigh a number of competing interests when deciding whether a single trustee can serve in such cases. A single trustee is often able to maximize the return to jointly administered estates through increased economy and efficiency. Moreover, jointly administered estates will virtually always have inter-debtor claims or potential claims. Were the use of a single trustee precluded in jointly administered estates, these cases would be exposed to increased costs and inefficiency. *In re BH & P, Inc.*, 949 F.2d 1300 (3d Cir. 1991).

However, there are circumstances where the appointment of one trustee in multiple cases may be inappropriate. Fulfilling fiduciary obligations to one estate may require that the trustee take actions that adversely impact the others. Genuine conflicts may arise. The presence and size of assets to pursue in the related estates, the disputed nature of the claims, and the relationship of the various classes of unsecured creditors must be examined. The issue to be resolved is whether the need for advocating competing interests among and between the estates is such that it interferes with the ability of the trustee to exercise independent judgment on behalf of one or more class of creditors. If creditors of the different estates will be prejudiced by conflicts of interest of a common trustee, the court should order the appointment of separate trustees for jointly administered cases. See Fed. R. Bankr. P. 2009.

There are related corporate debtor circumstances where multiple representation by trustees is allowed. The case of *In re O.P.M. Leasing Services, Inc.*, 16 B.R. 932 (Bankr. S.D.N.Y. 1982), is illustrative. In *O.P.M.*, a single trustee was appointed for two related debtors, a parent company and its subsidiary, in reorganization cases under chapter 11. Notably, different trustees had been appointed for the individual owners of the parent company in their liquidation cases. Objections were made to the multiple representation at late points in the cases during contested adversary proceedings between the corporate debtors and individual stockholders. The bankruptcy court found that the corporate debtors possessed a decisive "unity of interest and singleness of purpose" in prevailing in the adversary proceedings against the individual shareholders, even though there was a potential conflict between the parent and the subsidiary as to their respective rights to share in proceeds of the litigation and even though there were other inter-corporate claims. *In re O.P.M.*, 16 B.R. at 938.

In cases involving multiple representation of related debtors, steps can be taken to cure conflicts. The *O.P.M.* court noted that the potential conflict regarding the debtors' respective rights to litigation proceeds did not require the appointment of different trustees because apparent conflicts of interest "might be resolved in a number of ways," including the appointment of special counsel. *In re O.P.M.*, 16 B.R. at 939 (quoting *In re General Economics Corp.*, 360 F.2d 762, 766 (2d Cir. 1966)). The appointment of separate or special counsel has been endorsed by several courts as an acceptable remedial measure.

O.P.M. illustrates the pragmatic approach of having a single trustee administer related debtor cases with inter-affiliate claims, particularly where an objection is raised late in the case. The issue is resolved by balancing the degree to which the circumstances interfere with the ability of the trustee to provide independent judgment against the impact that disqualification will have on the administration of the estate. The reality of the circumstances must be examined, not the hypothetical. Consideration must be given to the economic costs of appointing different trustees.

Finally, to the extent the United States Trustee decides to appoint one trustee, the trustee must be made aware of his or her own independent obligation to be on the lookout for any real or apparent conflicts and to make such disclosure or to take whatever steps are necessary and appropriate.

3-7.3.2 Retention of Professionals

In related cases, the professional's representation of all the debtors ultimately depends upon whether the professional's capacity for independent judgment and the vigorous pursuit of the interests of a particular debtor are infringed upon. As with the case of the multiple debtor trustee, the cost of obtaining different professionals, as well as the expense that accrues when a professional is employed late in a case, are significant factors. The nature of disclosure at the time of retention, whether the interests of related estates are parallel or conflicting, and the type of the inter-debtor claims are also significant. The size and nature of inter-debtor claims, whether they are disputed or hold priority status, and whether the various debtor interests diverge in some material way must also be examined. Ultimately, the efficiency and economy that favors multiple representation must be weighed against the need that the interests of each of the estates be adequately represented.

CHAPTER 3-8: COMPENSATION OF PROFESSIONALS

3-8.1 DETERMINATION OF REASONABLE COMPENSATION, 11 U.S.C. § 330 AND FED. R. BANKR. P. 2016(a)

Section 330(a) authorizes the court, after notice and a hearing, to award to a trustee, an examiner, or other professional person employed under section 327 or 1103 –

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

The court is also authorized to award less than the amount of compensation requested. 11 U.S.C. § 330(a)(2).

Section 330(a)(3) provides:

> In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
>
> (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Fed. R. Bankr. P. 2016(a) prescribes that any entity seeking interim or final compensation for services or reimbursement of expenses shall file a detailed statement of the services rendered, the time expended, the expenses incurred, and the total amount requested. If the amount requested exceeds $1,000, Fed. R. Bankr. P. 2002(a)(6) requires at least 21 days' notice to creditors and parties in interest of the hearing set to consider the application. This period may be reduced for cause pursuant to Fed. R. Bankr. P. 9006(c)(1).

Section 330(a)(4)(A) establishes limitations on the award of compensation:

> Except as provided in subparagraph (B), the court shall not allow compensation for –
>
> (i) unnecessary duplication of services; or
>
> (ii) services that were not –
>
> (I) reasonably likely to benefit the debtor's estate; or
>
> (II) necessary to the administration of the case.

These guidelines grew out of court decisions beginning with *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), a civil rights case. In that case, the court identified the following twelve factors to be considered in awarding reasonable compensation:

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 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.

The *Johnson* factors were deemed applicable to bankruptcy cases in *In re First Colonial Corp. of America*, 544 F.2d 1291, 1299 (5th Cir. 1977), *cert. denied*, 431 U.S. 904 (1977), in which the Fifth Circuit stated as follows:

> [B]ankruptcy judges . . . may abuse their discretion either by failing to apply proper legal standards and follow proper procedures in making the determination . . . or by basing the award upon findings of fact that are clearly erroneous.
>
> * * *
>
> In order to establish an objective basis for determining the amount of compensation that is reasonable for an attorney's services, and to make meaningful review of that determination possible on appeal, we held in *Johnson* . . . that a district court must consider. . . twelve factors in awarding attorneys' fees. . . . Although *Johnson* involved a suit brought under 42 U.S.C.A. § 2000e et seq., the guidelines we established there are equally useful whenever the award of reasonable attorneys' fee is authorized by statute. *Id.* at 1298-99 (citations omitted).

Courts generally apply the *Johnson* factors in conjunction with a "lodestar" analysis. The "lodestar" is obtained by multiplying the "reasonable" number of hours times a "reasonable" hourly rate. The resulting lodestar may then be adjusted up or down according to the special circumstances of the case. *See Lindy Bros. Builders, Inc. v. Am. Radiator & Sanitary Corp. (Lindy Bros. I)*, 487 F.2d 161, 168 (3d Cir. 1973); *Lindy Bros. Builders, Inc. v. Am. Radiator & Sanitary Corp. (Lindy Bros. II)*, 540 F.2d 102, 117 (3d Cir. 1976). In the context of federal fee-shifting statutes, the Supreme Court has held that there is "[a]

strong presumption that the lodestar figure – the product of reasonable hours times a reasonable rate – represents a 'reasonable' fee." *Pennsylvania v. Delaware Valley Citizens Council for Clean Air (Delaware Valley I)*, 478 U.S. 546, 565 (1986). The *Johnson* factors assist in determining the initial "reasonable" hourly rate, as well as the final adjustments to the lodestar. *See In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988); *In re Casco Bay Lines, Inc.*, 25 B.R. 747, 755 (B.A.P. 1st Cir. 1982) (the lodestar theory serves to "provide an analytical framework for the trial court's application of the *Johnson* . . . criteria"). *See also Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 878-79 (11th Cir. 1990); *In re Peoples Sav. & Inv., Inc.*, 103 B.R. 264, 271 (Bankr. E.D. Okla. 1989); *In re Stable Mews Assocs.*, 49 B.R. 395, 398 (Bankr. S.D.N.Y. 1985). On recalculating the lodestar, *see In re Narragansett Clothing Co.*, 160 B.R. 477, 482-83 (Bankr. D.R.I. 1993).

What is a reasonable hourly rate? "Congress expressed its intent that there should be no distinction between fees set in bankruptcy cases and those set in non-bankruptcy cases." *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d at 878. *See also In re UNR Indus., Inc.*, 986 F.2d 207, 209-10 (7th Cir. 1993). Therefore "the starting point for the calculation of fees is the applicant's 'normal billing rate'." "Generally, so long as the rates being charged are the applicant's normal rates charged in bankruptcy or non-bankruptcy matters alike, they will be afforded a presumption of reasonableness." *In re Jefsaba, Inc.*, 172 B.R. 787, 798 (Bankr. E.D. Pa. 1994) (citations omitted). As the rate must be reasonable "so must the time spent by the professionals on the various tasks to be performed." *Id.* Indeed,

> We review fee applications paying particular attention to the level of professional . . . billing time *viz-a-viz* the complexity of the task being performed. The nature, extent and complexity of the task . . . determines the level of professional . . . who should perform the task, and, consequently, the reasonableness of the fees charged . . . It is unreasonable for a senior attorney to perform routine tasks such as preparing a debtor's schedules . . . . Consequently, fees charged at a senior attorney's hourly rate for such services are unreasonable.

Id. at 796-97 (citation omitted).

The determination of the reasonable hourly rate is a matter of proof of comparable rates charged to non-bankruptcy clients. *See, e.g.*, *In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 853 (3d Cir. 1994); *In re Jefsaba*, 172 B.R. at 798. *See also In re River Landings, Inc.*, 180 B.R. 701, 704 (Bankr. S.D. Ga. 1995), where the court noted that applying counsel "met her burden [of showing comparable rates] by presenting the testimony and affidavits of four local attorneys of comparable skill, experience, and reputation in bankruptcy and other commercial matters."

The United States Trustee faces an interesting challenge when presented with a fee application by non-local counsel who seek rates comparable to their home jurisdiction and usually well in excess of local rates. Rigid enforcement of a policy allowing only local rates is inappropriate, as each situation has its own facts and circumstances that must be taken into account. Some courts may require that reasonable rates for attorneys should be the rate for comparable competence and services in a comparable community. *See, e.g.*, *In re El Paso Refinery, L.P.*, 257 B.R. 809, 827 (Bankr. W.D. Tex. 2000). At a minimum, this may require billing rates comparable to those in the community where the attorneys and other timekeepers live and work, if circumstances require the use of professionals outside the community where the case has been filed. *See id.* at 832; *In re Western Co. of North America*, 123 B.R. 546, 549 (N.D. Tex. 1991). In determining reasonable compensation allowable to non-local counsel, the courts should begin with counsels' customary rates, and then make reductions based on other factors if necessary. *See Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.*, 50 F.3d 253, 260-61 (3d Cir. 1995).

3-8.1.1 Fee Guidelines

Section 586(a)(3)(A) of title 28 was amended in 1994 to require review of applications for compensation and reimbursement under section 330 "in accordance with procedural guidelines adopted by the Executive Office of the United States trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment) . . . ." The guidelines were promulgated and, after an opportunity for comment had passed, were published as Appendix A to 28 C.F.R.§ 58 (*see* http://www.justice.gov/ust/eo/rules_regulations). The guidelines established a policy favoring project billing that simplifies the review process. The guidelines do not take the place of local rules or precedent. However, many courts have adopted the guidelines, in whole or in part, as a local rule. In addition, some United States Trustees have established exceptions to the guidelines for small fee applications.

The review of fee applications is time-consuming and complex. The Bankruptcy Code abandons the principle of economy and conservation of the estate that was the philosophy of the Bankruptcy Act, H.R. Rep. No. 595, 95th Cong., 1st Sess. 330 (1977), yet requires an analysis of benefit to the estate, not in hindsight but tested from the point of view at the time the service was rendered. The courts are obligated to review the applications yet have little time to do so. It is the role of the United States Trustee to assist in the fulfillment of their duty by identifying the problem areas, thus preventing abuse of the system.

The fee guidelines set out the elements that the United States Trustee should look for in evaluating an application for compensation. If the application is deficient such that the United States Trustee cannot analyze it efficiently and effectively,

then the United States Trustee must decide whether to file a comment or an objection. The deficiencies usually fall into the following categories:

1. failure to obtain prior court approval of the employment;
2. inadequate disclosure of relationships or possible conflicts;
3. non-compliance with timing or format requirements;
4. inadequate descriptions of services rendered;
5. services performed outside the scope of employment;
6. inappropriate rounding or lumping of time;
7. duplication of effort, inefficient delegation, or excess time spent in performance of a given task;
8. services not reasonably likely to benefit the estate or not necessary to the administration of the case;
9. overhead items inappropriately billed or expensed;
10. inadequate documentation of expenses; and
11. excessive charges for preparing the fee application.

Before filing an objection or comment to a fee application, the United States Trustee should generally confer with the applicant not only to confirm the facts warranting objection, but also to determine if the deficiency can be remedied either by amendment of the application or by voluntary adjustment of the request.

3-8.1.2 Fee Guidelines for Attorneys in Larger Chapter 11 Cases

The United States Trustee Program has guidelines for reviewing attorney compensation in larger chapter 11 cases. These Guidelines are formally titled "Appendix B–Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases." Appendix B to 28 C.F.R.§ 58 (*see* http://www.justice.gov/ust/eo/rules_regulations). They are posted in the Federal Register at 78 FR 36248 and at 78 FR 40507 (date correction only). For purposes of these Appendix B Guidelines, a larger chapter 11 case is defined as a chapter 11 case with $50 million or more in assets and $50 million or more in liabilities, aggregated for jointly administered cases and excluding single asset real estate cases as defined in 11 U.S.C. § 101(51B). These Appendix B Guidelines are a statement of the USTP's policy governing its review of attorney fee applications in larger chapter 11 cases. They communicate to professionals and the general public the criteria used by United States Trustees in the review of fee applications, the USTP's expectations of professionals, and possible bases for

USTP objections to the payment of fees and reimbursement of expenses. These Appendix B Guidelines do not supersede local rules, court orders, or other controlling authority.

Although the Appendix B Guidelines technically relate to the review of fee applications filed under sections 330 and 331 of the Bankruptcy Code, the United States Trustee's duties under the Appendix B Guidelines extend well beyond the fee application phase of the case. The Appendix B Guidelines will have an impact in connection with the retention and compensation of attorneys, and the Appendix B Guidelines consequently should be consulted throughout the case, from the petition date until the filing of the final fee applications. Reference should be made to the Appendix B Guidelines and accompanying step-by-step guide for full information. United States Trustees must notify the Executive Office, both the AGC for Chapter 11 and the Assistant Director for Planning and Evaluation, when a case is filed subject to the Appendix B Guidelines.

3-8.2 RETAINERS

A retainer has been defined as the fee that a client pays when he or she employs an attorney to act for him or her, thereby preventing that attorney from working for an adversary. *Black's Law Dictionary* 1183 (5th ed. 1979). Section 328(a) permits the court to authorize the employment of professional persons on any reasonable terms and conditions, including a retainer.

The United States Trustee must scrutinize retainers for several reasons:

1. to assure that the amount of a retainer is not so substantial as to drain a chapter 11 debtor of all of its working capital;

2. to prevent overreaching by counsel who might be taking advantage of a debtor who is not in a position to effectively negotiate the terms of its representation;

3. to review whether the amount of a retainer is likely to give one administrative claimant a preference over other administrative claims in the event of liquidation;

4. to assure that the retainer is paid from a proper source; and

5. to analyze any potential conflicts.

Of course, not all of these concerns will be present in each case. For example, in a large chapter 11 case, it is likely that the debtor will be able to negotiate an arms-length agreement for its legal representation. In small

cases, however, the same equality of bargaining power may not exist. As a general rule, the United States Trustee should view retainer agreements as contractual agreements that have been negotiated at arms length between parties with equal bargaining positions and, absent facts that tend to raise questions as described in a specific case, the United States Trustee should not object to retainers.

Pursuant to section 329 and Fed. R. Bankr. P. 2016(b) and 2017, the amount and source of pre-petition retainers must be disclosed. Post-petition retainers that are paid from the estate may result in an unauthorized transfer under section 549 unless they are paid after the 21-day notice requirements of Fed. R. Bankr. P. 2002(a)(6) or court order and authorized in compliance with the substantive provisions for compensation found in sections 330 and 331 and Fed. R. Bankr. P. 2016(a). Post-petition retainers paid from some source other than the estate must be disclosed as required by Fed. R. Bankr. P. 2016(b) and 2017. Post-petition retainers may implicate cash collateral. In those cases, sections 363 and 364 apply.

So-called "evergreen" retainers present special problems. These arrangements can take several forms. For example, counsel may propose that it receive a pre-petition retainer to hold throughout the pendency of a case, while any interim fee awards to counsel are paid from the debtor's operating funds. The retainer is, thus, held in reserve as a form of guarantee against the risk of nonpayment. Alternatively, counsel who has received and exhausted a pre-petition retainer may seek to replenish that fund by requesting an additional lump sum cash payment. Arguably, these arrangements place an additional strain on a debtor's already precarious cash position. While it has been held that the payment of an evergreen retainer is not objectionable *per se* (*In re Benjamin's-Arnolds, Inc.*, 123 B.R. 839, 840 (Bankr. D. Minn. 1990)), such retainers should be closely scrutinized by the United States Trustee to ensure that they are not improvident under the circumstances. *See In re Pan American Hosp. Corp.*, 312 B.R. 706, 709-11 (Bankr. S.D. Fla. 2004).

Payments may be made by debtors to their counsel or other professionals during the "gap" period following the filing of an involuntary proceeding and prior to entry of an order for relief pursuant to Section 303(f). Section 549(b) allows attorneys who provide services to a gap period putative debtor to be paid for contemporaneous services during the gap period, without court order. There is no need for counsel to seek court authorization for employment until an order for relief is entered and the debtor becomes a debtor in possession.

From the practitioners' viewpoint, one of the most critical issues is whether retainers can be used by the professional without the necessity of obtaining a court order. The issue turns on whether the funds used to pay the retainer are

considered to be property of the estate. Case law is sharply divided on this issue.

Perhaps the most thorough analysis holding that pre-petition retainers do not constitute property of the estate is set forth in *In re McDonald Brothers Constr., Inc.*, 114 B.R. 989, 998-1003 (Bankr. N.D. Ill. 1990). The *McDonald Brothers* court looked to state law to determine what type of retainer was negotiated by the parties. *Id.* If state law permits a pre-petition retainer to be fully earned at the time of payment, then those funds would not have been owned by the debtor at the time of its filing and, thus, would not become part of the debtor's estate. *Id.*

The reasoning of those cases holding that pre-petition retainers are property of the estate is set forth in *In re NBI, Inc.*, 129 B.R. 212 (Bankr. D. Colo. 1991). The *NBI, Inc.* court suggested that the *McDonald Brothers* decision was based on two erroneous assumptions – first, that the "reasonableness" of a contractual agreement between the debtor and its counsel is governed in a bankruptcy proceeding by the same factors applicable under state law that govern in non-bankruptcy settings, and second, that counsel and the debtor may, through a pre-petition retainer contract, remove funds from the estate and, in so doing, eliminate the requirement that counsel present formal fee applications. *In re NBI, Inc.*, 129 B.R. at 221-22. Taken to its logical conclusion, pre-petition retainers, as property of the estate, are simply held in trust by counsel and may not be taken into income absent compliance with the procedures and substantive requirements governing all fee requests. The rationale enunciated in *In re NBI, Inc.* is the better view and reflects the Program's position on this issue.

If a retainer is construed to be property of the estate, there are additional considerations. For example, a final fee application would be necessary even if the amount requested did not exceed the amount of the retainer. In a failed chapter 11 case that is converted to an administratively insolvent chapter 7 case, a professional who received a retainer could be required to repay the retainer into the estate due to the administrative priority accorded to chapter 7 expenses by section 726(b).

Questions have arisen concerning whether pre-petition retainer contracts that contain "fully earned upon receipt" clauses can be sustained in chapter 11 cases. The *NBI, Inc.* court held that such clauses are *per se* contrary to the Bankruptcy Code. *Id.* at 222-23. Even the *McDonald Brothers* court recognized the court's power to invalidate a "fully earned upon receipt" clause. *In re McDonald Bros. Constr.*, 114 B.R. at 995-96.

Pre-petition retainers also may trigger a preference analysis. Frequently, counsel may be owed money for pre-petition services not rendered in

connection with the chapter 11 filing. Counsel who receives payment prior to a filing needs to determine how the funds will be applied. If counsel deems this payment as a retainer for future services, counsel will likely have to waive his or her pre-petition claim in order to be disinterested. If, on the other hand, counsel applies all or a portion of this payment to pre-petition services, counsel is subject to potential preference actions, as well as disqualification, since counsel arguably would be required to advise the debtor as to whether or not to pursue that potential preference. *In re Pillowtex*, 304 F.3d 246, 252-55 (3d Cir. 2002).

In some jurisdictions, counsel receives security interests in some or all of a debtor's assets as a retainer. The issue that arises in this situation is whether counsel can qualify as "disinterested," notwithstanding his or her security interest. In *In re Carter*, 116 B.R. 123, 126 (Bankr. E.D. Wis. 1990), the court noted the split in the two circuits that have addressed this issue. The Eighth Circuit (*In re Pierce*, 809 F.2d 1356, 1362-63 (8th Cir. 1987)) has adopted a *per se* rule that counsel cannot be disinterested in such circumstances, while the First Circuit (*In re Martin*, 817 F.2d 175, 183 (1st Cir. 1987)) provides a more flexible approach requiring the analysis of numerous factors. These cases are not as inapposite as they might first appear. *Pierce* involved a mortgage interest that was taken to secure the pre-petition claim of debtor's counsel, and it represents the traditional view that a creditor is disqualified to serve as a professional. *Martin* addresses the far more difficult situation that is presented when counsel acquires a security interest in consideration for its agreement to represent the debtor in a bankruptcy proceeding. This will most likely occur when debtors are cash poor and unable to pay a retainer. Assuming that only bankruptcy-related services are involved, counsel who receive security interests in property are not totally unlike those who receive a cash retainer insofar as both guarantee payment for services rendered or to be rendered in connection with the bankruptcy case.

Security interests in property are far more suspect than cash retainers. In the case of a security interest, counsel becomes a stakeholder in the reorganization process, and may be particularly concerned with negotiations and plans that involve its collateral. As a result, counsel may be unable to exercise independent judgment. Such arrangements also create the potential for overreaching by counsel. For these reasons, the taking of such security interests must be closely scrutinized.

3-8.2.1 Success Fee

Professionals, particularly investment bankers and financial advisors, may include a base fee based on hourly or flat rates plus a success fee that may also be referred to as a bonus, transaction fee, completion fee, or incentive

fee. The employment order should specify that the success fee is subject to review under section 330 rather than pre-approved under section 328, and the success fee should be defined by measurable standards establishing that the professional added value to the case. *See Matter of Texas Securities, Inc.*, 218 F.3d 443, 445-446 (5th Cir. 2000), citing *Matter of National Gypsum*, 123 F.3d 861 (5th Cir. 1997). *See also In re Amberjack Interests, Inc.*, 326 B.R. 379, 386-87 (Bankr. S.D. Tex. 2004); *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. 574, 578-80 (Bankr. N.D. Tex. 2004).

3-8.2.2 Fee Enhancement

Reasonable compensation in general and fee enhancement in particular are within the sound discretion of the court. In cases that have boasted rare or exceptional results, such as unexpected full payment plans following protracted and litigious chapter 11 cases, where the debtor initially appeared to be on the brink of administrative insolvency, professionals employed under section 327 have sought court approval under Section 330(a) for fee enhancements. Generally, courts have taken the view that such applications must be based on "rare and extraordinary" circumstances that justify increasing fees calculated pursuant to standard or market rates charged by the professionals for bankruptcy and non-bankruptcy work. The starting point for any enhancement request is the "lodestar" fee, discussed above. The basis for a court's granting an enhancement must be founded upon measurable standards establishing the extent to which an applicant's representation of the debtor or official committee was superior to that which one would reasonably expect in light of the fees charged during the bankruptcy case. *See El Paso Refinery L.P.*, 257 B.R. at 835-836. Work well done with excellent results, but which do not exceed the expectations from the professionals may not warrant a fee enhancement. *Id.* at 842.

Reasonable compensation in general and fee enhancements in particular are within the discretion of the court. However, as stated above, absent specific evidence to the contrary, there is a strong presumption that the lodestar constitutes reasonable compensation. *See Pennsylvania v. Delaware Valley Citizens' Council For Clean Air*, 478 U.S. 546, 565 (1986); *In re Celotex Corp.*, 232 B.R. 484, 487 (M.D. Fla. 1998)(denial of fee enhancement to official committee due to foreseeability of complexity of litigation at the commencement of representation).

The United States Supreme Court has revisited the issue of fee enhancements in the context of a civil rights fee shifting case arising under 42 U.S.C. § 1988. In *Perdue v. Kenny A.*, 130 S.Ct. 1662, 559 U.S. 542(April 21, 2010), the Supreme Court reversed an enhancement of 75 percent granted by the district court and affirmed by the Eleventh Circuit. The Supreme Court

acknowledged that the lodestar has "achieved dominance in the federal courts" since 2002, and held that the calculation of an attorney's fee based on the lodestar may be increased due to superior performance, but only in rare and extraordinary circumstances. The lodestar permits a meaningful judicial review that was not possible under the factors enumerated by the Fifth Circuit in *Johnson v Georgia Highway Express*, a civil rights case, discussed above at Manual 3-8.1. Like *Johnson*, bankruptcy courts should find *Perdue* to be equally useful to bankruptcy fee enhancement requests. *But see In re Pilgrim's Pride Corp.,* 690 F.3d 650, 662-63 (5th Cir. 2012) ("The Trustee argues that we should extend *Perdue* to the bankruptcy arena because the decision clarifies how to apply the lodestar method, cabins the discretion of bankruptcy judges, and leads to more uniform and predictable results. We decline this invitation because *Perdue* did not unequivocally, *sub silentio* overrule our legion of precedent in the field of bankruptcy.").

The Supreme Court set forth six important rules behind its decision in *Perdue*:

1. A "reasonable" fee is one that is sufficient to induce a capable attorney to undertake the case. Perdue, 130 S.Ct. at 1672-73;

2. There is a "strong" presumption that the lodestar fee is sufficient to achieve this goal. *Id.* at 1673;

3. Although the Supreme Court has never sustained an enhancement fee based on performance, there may still be rare and exceptional circumstances that support an enhancement. *See Id.*; and

4. The lodestar calculation includes most, if not all, relevant factors constituting a reasonable fee, and an enhancement should not be awarded based on a factor subsumed in the lodestar calculation. For example, novelty and complexity of a case are fully reflected in the number of billable hours while the special skills, experience, and quality of an attorney's performance are normally reflected in the reasonable hourly rate. *See Id.;*

5. The burden of proving the justification for an enhancement is borne by the applicant. *See Id.; and*

6. The applicant must produce "specific evidence" that supports the award requested. *See Id.*.

The Supreme Court also made clear that the quality of the attorney's performance should not be treated separately from any outstanding results obtained. The two elements are to be treated as a single factor for purposes of

evaluating an enhancement request. Superior results are relevant only to the extent they are the product of superior attorney performance. Otherwise, the results have no relevance. *See Id.* at 1674.

Once the court determines that facts and circumstances warrant an enhancement, there is little guidance concerning the amount of the enhancement. Case law reflects awards from flat dollar amounts to percentages of fees charged during the bankruptcy case. Again, *Perdue* may be instructive as the Supreme Court addressed three examples of when an enhancement may be proper:

1. When the lodestar calculation does not adequately measure the attorney's true market value, e.g., when the hourly rate is determined by a formula that fails to consider anything other than the number of years since the attorney's admission to the bar. *See Id.*;

2. When the attorney's performance includes an extraordinary outlay of expenses during exceptionally protracted litigation. *See Id.*; and

3. When extraordinary circumstances dictate that the attorney's performance required exceptional delays in the payment of fees. *See Id.* at 1675.

Although the foregoing list of examples may not be exhaustive, it certainly limits rare and exceptional enhancement awards to adjusting hourly rates to compensate for the time value of money, and prevents enhancement request from serving as vehicles for financial windfalls to professionals in the chapter 11 case.

3-8.3 INTERIM COMPENSATION, 11 U.S.C. § 331

Section 331 provides that

> A trustee, an examiner, a debtor's attorney, or any professional person employed under Section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief . . . or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under Section 330 . . . .

This statute reflects Congressional acknowledgment that bankruptcy professionals should not be in the position of financing the reorganization effort by being required to defer payment of their fees. *In re UNR Indus., Inc.*, 30 B.R. 613, 617 (Bankr. N.D. Ill. 1983).

An interim application filed pursuant to section 331 must be evaluated on the same basis as a final application under section 330, i.e., the nature, extent, and value of the services, the time spent, and the cost of comparable services. The value of the services cannot be fully ascertained until the conclusion of the case when the overall results obtained are quantifiable. As a result, many courts impose a holdback on interim fees rather than allow interim compensation in the full amount sought. *See In re Bank of New England Corp.*, 134 B.R. 450, 458-59 (Bankr. D. Mass. 1991). A holdback serves several purposes. First, it is not always possible to predict administrative solvency at the conclusion of the case, particularly if super-priorities pursuant to section 364 have been granted in connection with post-petition financing. Interim fee allowances are always subject to reexamination and adjustment at the final hearing. 11 U.S.C. § 330(a)(5). However, interim payment percentages should be crafted to guard against the unpleasant task of seeking the disgorgement of fees already paid in the event of administrative insolvency. *See, e.g.*, *U.S. Trustee v. Johnston*, 189 B.R. 676, 677 (N.D. Miss. 1995); *In re Gherman*, 114 B.R. 305, 307 (Bankr. S.D. Fla. 1990). Second, although professionals need not finance the case, the allowed percentages should be balanced against the debtor's need for working capital. It may be that certain debtors simply cannot afford to reorganize and pay the fees associated with the effort at the same time. Third, the holdback may provide an incentive to the professional to pursue the case diligently to a conclusion so that the amounts held back can finally be awarded and paid.

Professionals are allowed to apply for interim compensation every 120 days pursuant to section 331. However, not all chapter 11 cases are appropriate candidates for use of this procedure. Where the hardship visited upon the professional by the deferral of fees is slight due to relatively little investment of time and other resources balanced against the debtor's dubious prospects for successful reorganization, lack of available cash, questionable interim results, or other reasons, it may be advisable to oppose any payment of interim fees.

Professionals engaged in a large reorganization case will generally seek at an early stage of the case court approval for interim payment procedures at intervals more frequent than once every 120 days. For example, in *In re Knudsen Corp.*, 84 B.R. 668, 671-72 (B.A.P. 9th Cir. 1988), professionals were allowed to receive monthly payments on account pending court approval at periodic formal fee hearings. In an instance where substantial professional time is devoted to a case on a monthly basis, it is consistent with the purpose and intent of section 331 for the United States Trustee to participate in the negotiation of an appropriate fee review procedure order. Any such order should provide for a United States Trustee review of invoices prior to payment and preserve the right of objection at all stages of the procedure. Formal court approval should be provided for at regular periodic intervals after notice and a hearing. Holdbacks on fees should be provided for in an appropriate case.

3-8.4 RESPONSIBILITY OF PARTIES TO CONTROL COSTS

The United States Trustee should seek to establish a structure that encourages the parties in a case to actively supervise the work of the professionals. The parties themselves are in the best position to control costs. *See, e.g.*, *In re S.T.N. Enters., Inc.*, 70 B.R. 823 (Bankr. D. Vt. 1987). To achieve this goal there must be an obligation placed on the debtor and the creditors' committees to review and evaluate the proposed actions of professionals. Similarly, the professionals should have a corresponding obligation to delineate their proposed actions and the prospective costs. Particular attention should be directed toward eliminating duplicate efforts. The point is to persuade both the professionals and the parties to make a judgment as to the potential costs and benefits a particular effort will entail.

Whether at the initial debtor interview, the initial organizational meeting of creditors, or at a specific meeting called by the United States Trustee to discuss fees, the United States Trustee should seek to have the parties structure a mechanism that will evaluate the work of the professionals before it is commenced. The debtor and creditors' committee should review the proposed actions of any professional, although there will be an exception for those matters where the need to maintain confidentiality with the client is such to limit the review to the client. Failing such an agreement, the United States Trustee should consider moving for the entry of an order requiring such a structure.

3-8.5 FEE PROCEDURE ORDERS

In larger reorganization cases, various bankruptcy courts have issued administrative orders that address procedural and, to some extent, substantive requirements for all fee applications in a given case. Fee procedure orders structured for a particular case serve the same function as the United States Trustee's guidelines. The orders set forth the law of the case and, to the extent the terms of the orders are inconsistent with the United States Trustee's guidelines, the terms of the order obviously control. The underlying rationale favoring these orders is that the orders promote judicial economy while providing the practitioners with a clearer understanding of the requirements pertaining to all fee applications. The common items addressed in these orders include the deadlines and scheduling for filing fee applications; the court's requirements as to the detail necessary for substantiating various expenses; the court's views as to certain recurring problems (e.g., inter-office conferences, lumping time entries, general legal research, etc.); the frequency or intervals at which the court will entertain fee applications; and the dates set aside for hearings on fee applications. In concept, the United States Trustee should support such orders as they fulfill the stated goals of judicial economy and reduction of costs to the estate.

These orders are also used as a vehicle for allowing interim compensation without the necessity of full hearings. Particularly in larger cases, orders tend to be entered that provide that interim fees can be awarded at various pre-determined percentages subject to the applicant periodically filing complete fee applications. Arguably, this assists both the fee applicant and the reviewer. The fee applicant is assured of prompt payment of his or her fee requests, subject to a later review, and the reviewer is encouraged to scrutinize the time entries on a more frequent basis.

"Automatic" payment procedures are arguably allowed by the "more often if the court permits" language of section 331. The United States Trustee should discourage the use of this procedure except in rare instances. To the extent that professionals insist on such procedures, the United States Trustee should request safeguards, which may include:

1. A holdback of a percentage of the fees requested, which could range from 20 percent to more than 50 percent depending on the projected solvency of the estate;

2. An opportunity to object and request hearings based on reviews of the "automatic" fee petitions;

3. A provision in the order directing debtor's counsel to review all interim fee requests and to file a written analysis of its review;

4. A provision in the order requiring all applicants to file formal applications periodically, and prohibiting the debtor from paying any applicant who is not in compliance with that provision of the order; and

5. Other safeguards as appear necessary.

3-8.6 TRUSTEE COMPENSATION

A trustee's compensation is determined under section 330 and the statutory cap set out in 11 U.S.C. § 326(a). That section provides that:

> In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less . . . and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

The United States Trustee must review a trustee's application to determine that the requested compensation does not exceed the statutory limitation and is reasonable. For example, in *In re H & S Motor Freight, Inc.*, 23 F.3d 1431 (8th Cir. 1994), the trustee attempted to charge the statutory rate increased by amendment although the case had been filed long before. The United States Trustee objected and prevailed on appeal.

Many trustees view the maximum fee as a minimum. But unlike chapter 7 trustees who are paid on commission based upon section 330(a)(7), chapter 11 trustees are explicitly included in section 330(a)(3), which requires that the court consider "the time spent on such services" and "the rates charged for such services" in determining reasonable compensation. Consequently, evidentiary support for any fee requested is required.

There are instances where a reasonable fee is clearly less than the maximum allowed. "The fact is that the Bankruptcy Code provides no formula for determining the minimum compensation that a trustee is entitled to be paid . . . . Nowhere has § 326 been construed to create an entitlement to the maximum amount provided for under that section . . . ." *In re Draina*, 191 B.R. 646, 648 (Bankr. D. Md. 1995). *See also In re Dorn*, 167 B.R. 860, 866 n.11 (Bankr. S.D. Ohio 1994).

A trustee may seek an interim payment of compensation and expenses pursuant to section 331, although there appears to be some statutory conflict with section 326 if there has not been a distribution. *See In re Heatherly*, 179 B.R. 872, 874-75 (Bankr. W.D. Tenn. 1995); *In re Tom Carter Enters*, 49 B.R. 243, 245-46 (Bankr. C.D. Cal. 1985). In *Heatherly*, the court read the distribution as modifying the limitation on the fee and not on eligibility for an interim allowance.

Fed. R. Bankr. P. 2016 applies to trustees. The trustee must file a detailed statement of the work performed, time expended, and expenses incurred and bears the burden of proving the application. *See In re Evangeline Refining Co.*, 890 F.2d 1312, 1326 (5th Cir. 1989). The United States Trustee guidelines are applicable to the trustee's request for fees. As a matter of practice, therefore, the trustee should maintain contemporaneous time records. *Id.*

Interim awards are interlocutory and subject to full review and adjustment at a later date. *See In re Hutter*, 45 Fed. Appx. 71 (2nd Cir. 2002), *citing In re Stable Mews Assocs.*, 778 F.2d 121, 123 n.3 (2d Cir. 1985).

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture.

19 CFR Part 161

Customs duties and inspection, Imports, Law enforcement.

Amendments to the Regulations

For the reasons stated above, parts 12, 145, and 161 of the Customs Regulations (19 CFR parts 12, 145, and 161), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues and a specific authority citation for new § 12.150 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

2. Part 12 is amended by adding a centerheading and new § 12.150 to read as follows:

Merchandise Subject to Economic Sanctions

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally.* Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure.* When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses.* OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property.* Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information.* For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., N.W., Annex 2nd Floor, Washington, D.C. 20220.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.56 [Amended]

2. Section 145.56 is amended by removing the words ''North Korea, North Vietnam, Cuba, or Rhodesia'' and adding, in their place, the words ''certain designated countries''; and by adding the parenthetical words ''(See also 19 CFR 12.150)'' at the end of the section before the period.

PART 161—GENERAL ENFORCEMENT PROVISIONS

1. The general authority citation for Part 161 is revised, and a specific authority citation for section 161.2 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624, 1646a;

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9;

42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.;*

50 U.S.C. App. 1–44, 2411.

* * * * *

2. Section 161.2 is amended by adding paragraph (a)(3) and removing the parenthetical authority citations at the end of the section. The revision reads as follows:

§ 161.2 Enforcement for other agencies.

(a) * * *

(1) * * *

(2) * * *

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–12373 Filed 5–16–96; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 58

United States Trustees; Guidelines Relating to the Bankruptcy Reform Act of 1994

AGENCY: Department of Justice.

ACTION: Final internal procedural guidelines.

SUMMARY: The Department of Justice is establishing internal procedural guidelines for reviewing applications for compensation and reimbursement of expenses filed by case trustees and professionals under section 330 of Title 11, United States Code. These procedural guidelines are not intended to supersede local rules, but are to be read as complementing the procedures set forth in local rules.

To keep all published rules, regulations, and guidelines pertaining to the United States Trustee Program in one section of the Code of Federal Regulations, the title to 28 CFR 58 will be amended to include the Bankruptcy Reform Act of 1994.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or Kathleen Dunivin Schmitt, Attorney, (202) 307–1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This action is in response to the Bankruptcy Reform Act of 1994, which amended 28 U.S.C. 586(a)(3)(A) to direct United States Trustees to review applications for compensation and reimbursement of expenses in accordance with procedural guidelines adopted by the Executive Office for United States Trustees. The guidelines are to be applied uniformly by the United States Trustees, except when circumstances warrant different treatment.

Executive Order 12866

These guidelines have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director, Executive Office for United States Trustees, has determined that these guidelines are not a ''significant regulatory action'' under Executive Order 12866 section 3(f), Regulatory Planning and Review. These guidelines pertain to the internal management of the Department and as such are not subject to central Office of Management and Budget review pursuant to section 6 of Executive Order 12866. Accordingly, these guidelines have not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

The Director, Executive Office for United States Trustees, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed these guidelines and by approving them certifies that these guidelines will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts, and Trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The heading of Part 58 is revised to read as set forth above.

2. The authority citation for Part 58 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 586(e), 588(d).

3. Appendix A is added to Part 58 to read as follows:

Appendix A to Part 58—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. (''Code''), in accordance with procedural guidelines (''Guidelines'') adopted by the Executive Office for United States Trustees (''Executive Office''). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee

application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or ''lumped'' together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc,) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A—Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§ 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

Dated: April 25, 1996.

Joseph Patchan,

Director.

[FR Doc. 96–11799 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA 96–008]

RIN 2115–AA97

Safety Zone; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in the vicinity of the South East side of Pier ''J'' in the Long Beach Outer Harbor, California. The event requiring the establishment of this safety zone is the Pier ''J'' breakwater construction project. Duration of this project is estimated to be 11 months. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with the vessels engaged in these operations. The safety zone includes all waters within the boundaries defined by the line connecting the following coordinates:

Latitude	*Longitude*
33° 44.5′N.	118° 11.2′W.
33° 44.5′N.	118° 10.9′W.
33° 44.3′N.	118° 10.8′W.
33° 44.0′N.	118° 10.8′W.
33° 44.0′N.	118° 11.1′W.

Entry into, transit through, or anchoring within the safety zone by vessels or persons other than those engaged in the construction project, or vessels servicing the Maersk terminal is prohibited unless authorized by the Captain of the Port.

DATES: Effective Date: This rule is effective at 12:01 a.m. PDT on April, 24, 1996 and will remain in effect until 12:01 a.m. PST on March 31, 1997, unless cancelled earlier by the Captain of the Port Los Angeles-Long Beach, Ca.

Comments: Comments on this regulation must be received by June 17, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, Ca 90802. Comments received will be available for inspection and copying within the Port Safety Division at MSO Los Angeles-Long Beach. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel J. Walsh, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until late in the planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the project.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 96–008) for the regulation and also include their name, address, and reason(s) for each comment presented. Persons wanting acknowledge of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Based upon the comments received, the scope of the regulation may be changed.

Discussion of Regulation

The project to construct a breakwater around the Pier ''J'' Maersk terminal entrance has already been initiated. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with vessels engaged in these operations. This safety zone will be enforced by U.S. Coast Guard personnel. The Coast Guard Auxiliary and the Long Beach Lifeguards will assist in the enforcement of the safety zone. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port of his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. The safety zone does not extend into the vessel traffic lanes. It will have little or no impact on commercial vessels transiting through the harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). As discussed in the ''Regulatory Evaluation'' section, because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the

Rule 2016-1

COMPENSATION OF PROFESSIONALS

(a) ***General.*** Requests for compensation for professional services and reimbursement of expenses are governed by Fed. R. Bankr. P. 2016 and this rule.

(b) ***Retainers.*** Professionals may apply prepetition and approved postpetition retainers in the ordinary course towards compensation for professional services and reimbursement of expenses without a separate order; however, professionals must fully disclose and account for all retainers in their Rule 2016 Disclosure Statement and in all subsequent applications for compensation. This rule does not relieve professionals from the obligation to file interim and/or final fee applications. The Court may order disgorgement of applied fees and costs at any time. This rule does not preclude any challenge to the entitlement or the reasonableness of any retainer.

(c) ***Applications for Compensation for Professional Services and Reimbursement of Expenses.***

(1) ***Chapter 7 Cases.***

(i) Except as provided for in Local Rule 2015-1, professionals employed by a Chapter 7 trustee shall file final applications for fees and expenses incurred during a Chapter 7 case upon completion of services or upon notification by the trustee that the case is ready to close.

(ii) In cases that have been converted to Chapter 7, all final applications of professionals for fees and expenses incurred in the case prior to conversion shall be filed within 90 days after the date of the order converting the case.

(iii) All applications, whether interim or final, shall contain the amounts requested and a detailed itemization of the work performed including: (1) the name of the individual performing the work; (2) the amount of time expended for each item of work; (3) the hourly rate requested; (4) the date of employment; (5) a discussion of the criteria that are relevant in determining the compensation to be awarded; (6) a detail of reimbursable costs; and (7) a verification stating that the fees and costs for which reimbursement is sought are reasonable for the work performed, and that the application is true and accurate.

(2) ***Chapter 11 Cases.***

(i) ***General Information Requirements.*** Applications for interim or final compensation of less than $5,000 shall conform to the requirements of section (c)(1)(iii) of this rule. Applications for compensation that exceed $5,000 in the aggregate shall also contain the information set forth below unless ordered otherwise.

1. The first page of the application shall be the Chapter 11 Fee Application Summary available on the Court's website. However, if the application is served using the negative notice procedures of Local Rule 2002-4, the negative notice legend and the title of the application shall be located on the first page of the application and the Summary shall be the second page of the application.

2. Time shall be itemized by project category. Examples of project categories include General Case Administration, Asset Sales, Claims Administration and Objections, Fee Applications and Objections, Cash Collateral, Relief from Stay Proceedings, Avoidance Actions, Plan and Disclosure Statement, and Valuation.

3. The narrative portion of the application shall provide information by project category as to the types of services performed, the necessity for performing the services, the results obtained, the benefit to the estate, and other information that is not apparent from the activity descriptions or that the applicant wishes to bring to the attention of the Court. In addition, the narrative portion of the application may describe special employment terms, billing policies, expense policies, voluntary reductions, reasons for the use of multiple professionals for a particular activity, or reasons for substantial time billed relating to a specific activity.

4. All applications shall include complete and detailed activity descriptions billed in tenths of an hour (six minutes). Each activity description shall include the type of activity (*e.g.*, phone call, research) and the subject matter (*e.g.*, cash collateral motion, § 341 meeting, etc.). Activity descriptions shall not be lumped – each activity shall have a separate description and a time allotment.

(ii) ***Applications to Permit Monthly Payment of Interim Fee Applications.*** In larger Chapter 11 cases, upon motion and after notice and hearing, the Court may consider the approval of procedures for monthly payment of interim fee applications for professionals.

(iii) ***Final Applications.*** To be considered at the confirmation hearing, a professional fee application shall be filed 30 days prior to the confirmation hearing unless ordered otherwise. The Court will not consider any application for compensation unless all creditors receive at least 21-days' notice of the hearing. The notice of hearing shall at a minimum identify the applicant and the amounts requested. A final application may include an estimate of the amount of additional fees and costs to be incurred through confirmation. The final application may be supplemented at, or prior to, the confirmation hearing, so long as the amount sought is within the estimate. Final applications may be supplemented up to 14 days after entry of the confirmation order for work performed beyond the amount estimated and allowed at confirmation. Supplements to final applications shall be subject to Court approval after notice and hearing.

(iv) ***Post-Confirmation Professional Fees.*** Unless otherwise ordered by the Court, professional fees and costs incurred after confirmation in connection with actions against third parties are subject to Court approval.

(3) ***Chapter 13 Cases.*** Compensation for professional services or reimbursement of expenses by attorneys for Chapter 13 debtors shall be governed by the prevailing practice in the Division in which the case is pending.

(d) ***Creditors' Attorney's Fees.*** Applications for attorney's fees made on behalf of a creditor, other than requests under 11 U.S.C. § 503(b)(2), (3), and (4), are not governed by this rule. Nevertheless, any party in interest may seek a judicial determination of such fees.

(e) ***Expense Reimbursement Guidelines.*** The Court may establish expense reimbursement guidelines to address expenses such as photocopying, facsimile transmissions, computerized research, and meals and travel. Such guidelines will be posted on the Court's web site.

(f) ***Waiver Procedure.*** An application to employ a professional within the scope of this rule may include a request that the Court waive, for cause, one or more of the information requirements of this rule. Such waivers may be appropriate for ordinary course professionals and professionals seeking *de minimus* payments and may be granted at the Court's discretion.

Notes of Advisory Committee

2015 Amendment

This amendment provides that when fee applications are served using the negative notice procedures of Local Rule 2002-4, the negative notice legend and the title of the application shall be located on the first page of the application and the Chapter 11 Fee Application Summary [previously titled the Chapter 11 Fee Application Cover Page] shall be the second page of the application. This amendment is effective July 1, 2015.

2014 Amendment

This amendment adds subsection (c)(2)(iv), requiring Court approval for post-confirmation professional fees and costs, unless otherwise ordered by the Court. This amendment is effective July 1, 2014.

2012 Amendment

This amendment establishes the procedures to be used by professionals in seeking compensation in Chapter 7, 11, and 13 cases. Local Rule 2015-1 authorizes Chapter 7 trustees to incur and pay expenses, including payments to professionals, not to exceed $500 in the aggregate without order of the Court.

This amendment is effective March 15, 2012.

1997 Amendment

This amendment conforms the existing Local Rules to the uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference's Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance is intended. This amendment was effective on April 15, 1997.

This rule was formerly Local Rule 3.04. The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.

1995 Amendment

This amendment to Local Rule 3.04 requires that applications of professionals for compensation also be served on the debtor, debtor's attorney, and any trustee appointed under 11 U.S.C. §§ 1104, 1202, or 1302.

These amendments were effective on February 15, 1995.

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

In re

Chapter 11
Case No.

Debtor.
_____/

Application of _____ for Compensation for Services Rendered
and Reimbursement of Expenses as Counsel to the _____
for the Period from _____through _____

Name of Applicant: _____

Services Provided to: _____

Date of Retention: _____

Period for this Application: _____

Amount of Compensation Sought: _____

Amount of Expense Reimbursement: _____

Amount of Original Retainer: _____ Current Balance: _____

Blended Hourly Rate this Application: _____ Cumulative: _____

This is an:___interim___final application.

Disclose the following for each prior application:

		Requested				Approved		Paid		Holdback
Filed	Period	Fees	Hrs.	Rate	Exps.	Fees	Exps.	Fees	Exps.	
Total										

SEC.	J	CASE	CITE	COMMENT
327	Ba	Celotex	123 B.R. 917	Conflict with representing official committee of asbestos claimants.
327	Ba	Outdoor	183 B.R. 645	Fl. Bar Rule 4-1.10; Trustee's law firm disqualified in pending preference action where new associate, two and one-half years earlier, had participated in representation of defendant in preference action.
327	Ba	Matassini	95 B.R. 817	503 not available to persons ineligible under 327.
327	Be	Sharon Steel	152 B.R. 447	Appointment of professionals who are prepetition creditors.
327	Br	Florida	92 B.R. 536	Nunc Pro Tunc employment approval denied.
327	Co	Princeton	249 B.R. 813	Where there has been no showing of excusable neglect, the court cannot retroactively approve the employment of a professional.
327	Co	Jones	138 B.R. 289	Requirements for employment nunc pro tunc.
327	Co	Ruff	179 B.R. 967	When a court approved broker's services to the estate have been fully performed, the broker's right to payment of the fee is a current property right, even though conditional on court approval. Thus, an IRS notice of lien for nonpayment of tax by the broker attaches to the fee. When approved by the Bankruptcy Court, the Trustee becomes personally obligated to make payment to the IRS.
327	Co	Princeton	249 B.R. 813	Subordination of a creditor’s claim, as opposed to waiver, is insufficient for purposes of employment under 327.
327	Cr	Beam	109 B.R. 514	Nunc Pro Tunc approval of debtor's employment of professional is not per se prohibited and may in appropriate cases be approved on that basis.
327	Cr	Vernell	2007 WL 2746624	(e)- Ownership of a security interest in a debtor’s property does not, in and of itself, create an adverse interest that would disqualify special counsel from representing a debtor pursuant to Sec. 327(e).
327	Cr	Lawrence	217 B.R. 658	Very fact-specific case seeking disqualification of creditor's counsel based on counsel's prior representation of debtor's mother. Disqualification denied.
327	Fr	Murphy	178 B.R. 13	Debtor's attorney who held mortgage on exempt property was "disinterested."
327	Fu	Craig	265 B.R. 624	Provisions in attorneys' retainer agreement permitting attorneys to move for dismissal or conversion of case in event debtor becomes delinquent in payment of attorneys' fees precluded the employment of the attorneys.
327	Gl	Finao Corp.	2005 WL 419704	(a) - An attorney’s representation of the shareholders of a corporate debtor does not necessarily constitute the representation of an interest adverse to the estate under §327(a); the party objecting to the representation must demonstrate some additional conflict between the shareholder and the debtor. Good discussion of factors considered.
327	Gl	United Containers	305 B.R. 120	(c) - Creditor’s attorneys not disqualified solely because of representation of claimants of debtor prior to Chapter 11 petition.

327	Gl	Keller Financial Services of Florida	248 B.R. 859	Law firm is not entitled to an award of compensation for its postpetition services as its employment was never approved by the Bankruptcy Court.
327	Gl	Keller Financial Services of Florida, Inc.	243 B.R. 806	Law firm employed as counsel for Chapter 11 Debtors submitted fee application. Trustee and the official committee of noteholders filed joint objection. The Trustee and the Committee asserted that the law firm was not disinterested as of July 16, 1998, as a result of its representation of claimants, and that the law firm should therefore be denied compensation pursuant to § 328(c) of the Bankruptcy Code. The Court held that since the law firm did not undertake the representation of the claimants until a Chapter 11 Trustee had been appointed at which time the law firm was no longer counsel for trustee or for Debtors-in-possession, the Court would not disapprove compensation for the law firm. However, the Bankruptcy Code did not authorize an award of compensation to the law firm for services rendered after date on which Chapter 11 trustee was appointed, since § 330 provides only for compensation to an attorney employed by the trustee.
327	Hy	ITG Vegas	2007 WL 1087212	BAPCPA: (a)- Entity that debtor sought to employ as a political consultant and lobbyist was not a “professional person” and thus could be retained pursuant to 11 U.S.C. §363(b) without having to be disinterested.
327	Je	Abrass	250 B.R. 432	(a), (e); Law firm representing unsecured creditor in Chapter 13 case could not be retained by trustee to conduct discovery and investigate debtor's assets, because they could not qualify as general or special counsel.
327	Ki	Edgewater Sun Spot, Inc.	174 B.R. 626	Debtor's counsel "disinterested," even though a member of SBA regional advisory counsel where SBA guaranteed debtor's loans and debtor's former counsel's wife owned stock in and served on board of holding company of bank which routinely purchased notes from bank against whom debtor had filed lender liability action. 11 U.S.C. 327(a).
327	My	Herrera-Edwards	524 B.R. 845	Debtor’s objection to consultant’s administrative claim sustained because consultant’s employment never approved by the court under 327 and 330(a).
327	Ol	Creative Desperation	415 B.R. 882	(a)— A debtor’s former counsel’s undisclosed conflicts of interest precluded said counsel from representing the debtor in any capacity during pendency of debtor's Chapter 11 case; such lack of disinterestedness also required disgorgement of fees received and disallowance of any additional fees that said counsel might have otherwise earned for services rendered on the debtor’s behalf.
327	Ol	Moon Thai	2010 WL 3211981	(a)- Proposed counsel for the debtor was obligated to disclose prior representation of debtor's principal individually because such a fact bears on disinterestedness.
327	Ol	Moon Thai	448 B.R. 576	(a)- Problems with the work product of Brown, Van Horn, a debtor law firm, warranted barring the firm and attorneys from any practice before the Bankruptcy Court based on evidence that many of the problems had been caused by it taking on too many cases, thus resulting in incompetent practice.
327	Pa	Wooley's	150 B.R. 814	Fees for debtor's attorney not denied due to lack of disinterestedness or conflict; post-petition fees paid not approved unless held in escrow.

327	Pa	Bicoastal	149 B.R. 216	Investment advisors, business and financial consultants, and asset mangers are professional persons whose employment by bankrupt debtor requires prior court approval.
327	Pa	Lakeside	120 B.R. 231	(a). Real estate company sought to be employed not disinterested, not permitted even for specifically designed transaction.
327	Pa	Mulberry	142 B.R. 997	Disqualification of law firm representing parent company and all its subsidiaries which were all debtors was not justified on ground of conflict of interest.
327	Pa	River Ranch	176 B.R. 603	Professional persons are "persons in those occupations which play a central role in the administration of the debtor's case." Environmental consultant is not such a professional.
327	Pa	Marine Outlet	135 B.R. 154	Application for employment by Ch. 11 estate of special counsel failed to disclose special counsel's prior representation of Debtor's principal, an actual conflict, required forfeiture of all attorneys fees.
327	Pa	Presidential	172 B.R. 359	Court denies motion to disqualify Chapter 11 debtor's counsel finding that the counsel for the corporate debtor had in fact not represented the individual principals, but had such been the case, an adverse interest would have existed.
327	Pa	Koch	195 B.R. 794	327(a), 330(a)(4)(A); Law firm not authorized by the court to be employed as attorneys for the trustee, and whose work included services duplicative of services normally performed by the trustee were not entitled to attorney's fees.
327	Pa	Sovereign Oil Company	216 B.R. 666	Operator of natural gas wells was granted administrative expense claim even though it never filed application to be employed as professional.
327	Pa	Maynard	172 B.R. 353	Although Section 327 prohibits an attorney from simultaneously representing a creditor and a trustee as general counsel, the cases are uniformly in agreement that this prohibition does not apply where the attorney is representing the trustee only as special counsel employed for a specific and limited purpose.
327	Pr	Superior Aviation	298 B.R. 474	(a) - Absent "extraordinary circumstances," a court will heed the plain language of 327(a) and Rule 2014, which state that professionals who assist in the administration of a bankruptcy estate will not be compensated unless their assistance receives the prior approval of the court.
327	Ra	Mandell	203 B.R. 345	Trustee not authorized to employ herself as real estate broker. 327 only authorizes the retention of the Trustee's firm in the capacity of accountant or attorney.
327	XX	Florida	110 B.R. 570	327(a) - professional person and 327(b) ordinary course of business - nunc pro tunc discussion.
327	XX	Immenhausen	159 B.R. 45	District Court remanded, since record did not include findings of fact to support the Bankruptcy Court's modification of prior retention order to limit representation of debtor to that which individual lawyer of firm originally retained by debtor could provide with assistance of local counsel.
327	XX	Sunbum5	2011 WL 4529648	Trustee sought authorization to employ Law Firm to assist in recovering a potential preferential transfer. Law Firm had already filed notice of appearance as representing a creditor of the debtor in Chapter 7. The Law Firm also represented the creditor in pending state court litigation brought by the debtor against the

				creditor, so the Law Firm sought a ruling by the bankruptcy court that a conflict did not exist. Despite the state court litigation having no value to the estate, the district court reversed the bankruptcy court's order finding that no conflict existed. "[T]he Law Firm represented 'an interest adverse to the estate' and did not qualify to serve as the Trustee's counsel . . . ."
327	XX	Cecil	2012 WL 3231321	(c), (e)-- Chapter 13 trustee cannot appoint creditor's counsel as special counsel to debtor pursuant to § 327(c) as a matter of law since this subsection does not apply to Chapter 13 cases nor pursuant to § 327(e) as the plain language allows the employment of an attorney that has represented the debtor as special counsel, not an attorney that has represented the creditor.
327	XX	Forizs & Dogali	2012 WL 4356266	Applying section 327 and Rule 2014, district court affirmed the decision of the bankruptcy court granting a motion to disqualify special counsel to the Trustee where the counsel's original disclosure regarding the claims held by a creditor that it represented were accurate, but the creditor later filed a claim in the case that materially changed the prior disclosures. The duty to disclose a possible conflict is a continuing obligation.

SEC.	J	CASE	CITE	COMMENT
328	Ba	Trust America	175 B.R. 413	328(c); Where a professional is not a "disinterested person, or represents or holds an interest adverse to the interests of the estate with respect to the matter on wich the professional person is employed," it will be denied allowance of compensation. 328(c), 1103(B); Obtaining consents of differing creditors does not eliminate conflicts of interest because neither 1103(b) nor 328(c) may be waived.
328	Br	Meiers	2005 WL 1498317	Court determined under First Colonial and Johnson standards that reasonable hourly rate for Trustee's counsel was $200/hour.
328	Cr	Pan American	312 B.R. 706	Evergreen retainers are permissible for professionals in chapter 11 cases, but the combination of an evergreen retainer and a shortened fee application period in this case is unnecessary and unreasonable.
328	Fu	Craig	265 B.R. 624	"Earned-on-receipt" retainers are not per se unreasonable.
328	Gl	Keller Financial Services of Florida, Inc.	243 B.R. 806	Law firm employed as counsel for Chapter 11 Debtors submitted fee application. Trustee and the official committee of noteholders filed joint objection. The Trustee and the Committee asserted that the law firm was not disinterested as of July 16, 1998, as a result of its representation of claimants, and that the law firm should therefore be denied compensation pursuant to § 328(c) of the Bankruptcy Code. The Court held that since the law firm did not undertake the representation of the claimants until a Chapter 11 Trustee had been appointed at which time the law firm was no longer counsel for trustee or for Debtors-in-possession, the Court would not disapprove compensation for the law firm. However, the Bankruptcy Code did not authorize an award of compensation to the law firm for services rendered after date on which Chapter 11 trustee was appointed, since § 330 provides only for compensation to an attorney employed by the trustee.
328	Je	Leslie	211 B.R. 1016	Trustee's attorney who performs unnecessary services or provides insignificant benefit to the estate should not be compensated for those services.
328	My	Allen	2005 WL 1212606	A real estate appraiser is entitled to compensation for services rendered subsequent to the date the Application to Employ Real Estate Appraiser was filed, but is not entitled to compensation for services rendered prior to filing of the Application.
328	Ol	Creative Desperation	415 B.R. 882	(c)— A debtor’s former counsel’s undisclosed conflicts of interest precluded said counsel from representing the debtor in any capacity during pendency of debtor's Chapter 11 case; such lack of disinterestedness also required disgorgement of fees received and disallowance of any additional fees that said counsel might have otherwise earned for services rendered on the debtor’s behalf.
328	Pa	Heidkamp	334 B.R. 711	Portion of a fee application for creditor's counsel was denied to the extent that the fees were incurred for monitoring other matters which served no purpose for the creditor.
328	Pa	Klein	328 B.R. 597	Attorney for petitioning creditor in an involuntary bankruptcy case should not ordinarily be compensated for work performed for the trustee after the date of the order for relief, absent a section 327 retention by the trustee.
328	Pa	Florida Peach	110 B.R. 589	Attorney fees denied where attorney had conflict.

328	Pa	Sovereign Oil Company	216 B.R. 666	Operator of natural gas wells was granted administrative expense claim even though it never filed application to be employed as professional.
328	Pr	Haggerty	215 B.R. 84	(b); Attorney for trustee's entitlement to allowance of attorney fees.
328	Pr	Polk	215 B.R. 250	(b); Attorney for trustee's entitlement to allowance of attorney fees.
328	Pr	Olympia	176 B.R. 962	Section 328 applies when the court approves a fee arrangement prior to services being rendered.
328	XX	Air Safety International	308 B.R. 90	Having correctly found that it had the power to modify its order to employ trustee's special co-counsel, the court should have held an evidentiary hearing (1) on the alleged fraud warranting modification of the order, and (2) on the distribution of costs to counsel.
328	XX	New River	497 Fed. Appx. 882	(c)-- Commission of real estate broker employed by debtor pursuant to 11 U.S.C. § 327, whose fees were approved by bankruptcy court pursuant to 11 U.S.C. § 330(a), was subject to disgorgement where real estate broker acted under conflict of interest during employment to sell marina for corporate Chapter 11 debtor, and so ordering disgorgement of commission paid broker was warranted on theory broker held interest adverse to estate; broker discussed and had expectation of being involved with marina's buyers and marina after the sale, broker was working on buyers' behalf prior to closing, discussions gave broker reason to close sale even if it was not in estate's best interest, and broker paid $37,500 for buyers' benefit out of his commission from closing to keep buyers from walking away from the sale. Release of liability of professionals pursuant to plan, including release of real estate broker employed by debtor's estate pursuant to 11 U.S.C. § 327, does not affect bankruptcy court's authority over fees paid to professionals, including to disgorge fees paid, even after conclusion of bankruptcy case.
328	XX	Denison	2012 WL 75768	(c)- Post-confirmation, bankruptcy court appropriately reconsidered order authorizing employment of broker entered during pendency of chapter 11 case based on broker's self-dealing and failure to disclose prior and continuing relationship with buyer.
328	XX	Edgewater	183 B.R. 938	The standard for review of an award of attorney's fees is abuse of discretion; determination of fees of an agent of the estate is a core proceeding within the exclusive jurisdiction of the Bankruptcy Court.

SEC.	J	CASE	CITE	COMMENT
330	Ba	B.I.B.	165 B.R. 293	Typographical error in Chapter 7 trustee's preliminary report, in understating attorney fees requested by debtor's former attorneys from that which they had previously claimed, did not excuse creditors from objecting to fee application in timely fashion.
330	Ba	Bilgutay	108 B.R. 333	Fee applications - Gives a good outline of what should be considered and included in preparing fee applications.
330	Ba	B.I.B.	165 B.R. 293	Creditors of debtor who fail to timely object to fee application filed by attorneys who represented debtor prior to conversion of case to chapter 7, could not rely on objection filed by unrelated creditor six years earlier on an unrelated issue. Creditors therefore waived their right to object. B.R. 8013; 11 U.S.C. Sec. 330.
330	Br	Columbian	88 B.R. 409	Attorneys Fees Refund to Creditors' Committee.
330	Br	Hepburn	84 B.R. 855	Attorney Fee-refund to debtor.
330	Br	Miami	101 B.R. 383	Court considers various fee applications setting out relevant criteria.
330	Br	Gherman	101 B.R. 367	Use of estate funds for criminal counsel disallowed.
330	Br	Mack Properties	381 B.R. 793	(a)(7)– Statutory cap on trustee compensation, based on total amount of disbursements in case, continued to be just that, a cap rather than an entitlement, even after Congress amended the Code to label the fee awarded to trustee as “commission”; labeling the trustee’s fee a “commission” did not eliminate the requirement that the court must conduct an analysis to determine whether the fee was reasonable.
330	Br	Church of God Valley of Blessing	2008 WL 5606582	Attorney’s fees and costs determined to be reasonable based on twelve Johnson factors: (1) the time and labor involved; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due 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; (12) awards in similar cases.
330	Br	Church of God Valley of Blessing	2008 WL 5586695	Application for allowance of attorney’s fees determined to be deficient.
330	Br	Main Street USA	2008 WL 5633633	After applicant failed to provide substantiation in its fee application as to recovery claimed for the estate, Court awarded reduced professional fees on an interim basis upon consideration of criteria set forth in In re First Colonial Corp. of Am., 544 F. 2d 1291 (5th Cir. 1977) and Johnson v. Ga. Hwy. Express, Inc., 488 F.2d 714.
330	Br	C&D Dock Works	437 B.R. 443	(a)- Trustee recovered assets totaling $15 million in case that was filed as no-asset chapter 7. Trustee filed application for chapter 7 administrative fee for trustee’s commission in the amount of $437,250. Court found that chapter 7 trustee’s compensation is to be held to a reasonableness standard pursuant to plain language of Code. In light of the recovery obtained, trustee was entitled to compensation in the maximum amount of $473,250 allowed by

				the statutory caps. It was only as a result of the trustee's efforts in investigating and litigating complex insurance issues for more than two years that case ultimately generated $15 million for the payment of priority and general unsecured claims. While the statutory caps are just that, caps, and not entitlements, a $473,250 award was proportionate to the services that the trustee had performed and was warranted based on the trustee's exemplary efforts and the extraordinary results obtained.
330	Br	Florida	97 B.R. 652	Court discussed Loadstar and reviews various fee applications.
330	Co	Holub	129 B.R. 293	Atty fees - compensation of atty for trustee reduced - disc. of factors
330	Co	Harris	143 B.R. 95	3-1/2 year delay in distribution of estate assets required 50% reduction of Trustee's fee.
330	Co	Kitchen Lady	144 B.R. 544	Attorney for chapter 7 trustee not entitled to compensation for review of special counsel's work.
330	Co	Braniff	117 B.R. 702	Sets forth requirements for fee applications.
330	Cr	Flowers	178 B.R. 553	Bonuses and fee enhancements should only be awarded in exceptional cases where the results are exceptional and not adequately compensated by applicant's hourly rate.
330	Cr	Valladares	415 B.R. 617	United States Trustee moved to compel disgorgement of fees by law firm that represented individual Chapter 11 debtor. Debtor's counsel violated terms of retention order—which specified that law firm would be compensated only after notice and hearing, and only if bankruptcy court awarded compensation—by not filing fee application with court prior to accepting payment of fees from corporations that individual Chapter 11 debtor controlled. Court ordered the disgorgement of all compensation paid to debtor's counsel.
330	Cr	Pan American Hospital	373 B.R. 773	(a)(2)- Capital financial market advisor fees were subject to the reasonableness standards of § 330. Court awarded compensation that is less than the amount requested.
330	Cr	Latham	131 B.R. 239	Chapter 11 Debtor counsel may only get fees if demonstrates a benefit to the estate.
330	Fr	Labor Finders	179 B.R. 340	Professionals were not entitled to payment of administrative expenses when efforts expended were predominantly to protect and advance interest of client. It did not provide direct, significant, or demonstrable benefit to the estate.
330	Fr	Charles	295 B.R. 399	Paralegal or paraprofessional time is compensable, provided the labor was not purely clerical or secretarial in nature but, instead, required the use of independent professional judgment.
330	Fr	Palm Beach Cruises	208 B.R. 78	NY law firm cut rates where case was handled in Southern District of Florida because test is the average rate for local attorneys.
330	Fr	Kahn's	184 B.R. 398	Fee apps if granted would have exhausted estate. "Such an outcome will not be sanctioned by this court in a case wherein counsel for the trustee has been required to perform only routine services involving a minimum of court appearances and no litigation, and wherein no significant recovery of assets has been effected for the benefit of the estate."

330	Fr	Carter	326 B.R. 892	Tasks performed by paralegal employed by trustee's attorney were secretarial in nature, considered part of attorney's overhead, and not compensable. Tasks include preparation of notices of appearance, certificates of service, telephone conferences with court copy service regarding obtaining copies, preparation of correspondence and notices, etc.
330	Fr	Toney	171 B.R. 414	Court reduces fee award to Chapter 7 Trustee's attorney noting that if pending fee applications were awarded in full, all proceeds of estate will be utilized to pay administrative fees of professionals leaving nothing for unsecured creditors.
330	Fr	Kahn's	184 B.R. 389	Reduction of claim for trustee's attorney's fees for services which could be handled by paralegal and for overstating hours.
330	Fr	Finlasen	250 B.R. 446	Attorney representing debtors in Chapter 13 case would be allowed only reduced amount of attorney's fees based on his failure to memorialize date of each time entry contained in his fee application, and evidence that his time entries largely represented a "rote" list used to substantiate his fee request.
330	Fr	Kaufman	171 B.R. 905	Court finds the fees which have been awarded to the chapter 11 trustee and her counsel have been significantly reduced from the amounts requested. The reductions are warranted based upon an analysis of the administration of this estate by the trustee and her counsel.
330	Fr	Barrie	164 B.R. 378	Services performed by counsel and accountant did not generate any benefit to bankruptcy estate or to creditors requiring 75% reduction in amount of fees requested; attorney for debtor has fiduciary duty not only to debtor, but fiduciary obligation to act in best interest of entire estate, including creditors; if debtor is not fulfilling its fiduciary obligation to estate, it is responsibility and duty of debtor's counsel to bring such matters to attention of court.
330	Gl	Jankowski	382 B.R. 533	Court awarded fees to chapter 7 attorney and chapter 7 trustee in connection with chapter 7 case that was converted to chapter 13 case and later dismissed. Compensation of chapter 7 trustee or attorney whose employment has been approved by bankruptcy court, pursuant to which "reasonable compensation" may be awarded to trustee or attorney for their "actual, necessary services," post-conversion for their pre-conversion services. The fact the case was dismissed does not render services unnecessary. Section 330 of the Bankruptcy Code requires only that the services in question had a reasonable likelihood of benefitting the estate at the time they were provided, not that they actually provided a benefit.
330	Gl	Keller Financial Services of Florida, Inc.	243 B.R. 806	Law firm employed as counsel for Chapter 11 Debtors submitted fee application. Trustee and the official committee of noteholders filed joint objection. The Trustee and the Committee asserted that the law firm was not disinterested as of July 16, 1998, as a result of its representation of claimants, and that the law firm should therefore be denied compensation pursuant to § 328(c) of the Bankruptcy Code. The Court held that since the law firm did not undertake the representation of the claimants until a Chapter 11 Trustee had been appointed at which time the law firm was no longer counsel for trustee or for Debtors-in-possession, the Court would not disapprove compensation for the law firm. However, the Bankruptcy Code did not authorize an award of compensation to the law firm for services rendered after date on which Chapter 11 trustee was appointed, since § 330 provides only for compensation to an attorney employed by the trustee.

330	Gl	The Academy, Inc.	2005 WL 950642	(a)(1)(A) - "Reasonable compensation for actual, necessary services..." Special counsel's time entries established reasonable compensation for actual, necessary services. (a)(1)(B) - "Reimbursement for actual, necessary expenses..." Special counsel's food and lodging expenses relating to depositions adjourned in Atlanta, Georgia, were considered actual and necessary expenses.
330	Gl	Debtor Atty Fees in Ch 13	374 B.R. 903	Court, sua sponte, issued an order regarding presumptively reasonable attorneys' fees for Chapter 13 cases filed in the Middle District of Florida.
330	Gl	O'Callaghan	304 B.R. 887	Chapter 7 debtor was entitled to reimbursement of costs as the prevailing party in an adversary proceeding filed by creditor seeking to determine the dischargeability of a debt and to deny the debtor his discharge.
330	Gl	United Containers	305 B.R. 120	(a)(1) - Prior approval is required for compensation to professional persons. Nunc pro tunc approval is available if delay results from excusable neglect and employment would have been approved.
330	Hy	Southeast Banking	314 B.R. 250	Although lodestar method is appropriate for determining reasonable professional's fees, fees may be enhanced by an appropriate multiplier in a case where the professional has achieved exceptional results.
330	Is	Villaverde	2016 WL 1179343	In considering a fee application filed by debtor's counsel for compensation that greatly exceeded the chapter 13 "no-look" fees, the court reviewed each line item of the fee application to determine where upward or downward adjustments should be made based on reasonableness of the time spent, necessity of the task performed, and benefit to the debtor.
330	Je	Enterprise Technology	2016 WL 1470797	(a)(1)-- Chapter 7 trustee settled a fraudulent transfer adversary proceeding, but the recovery was less than the administrative costs incurred. Bankruptcy court reduced trustee's statutory fee for work performed as trustee, reduced trustee's fees incurred as accountant, and reduced fees allowed to litigation counsel.
330	Je	Gencor	286 B.R. 170	Court approved $300,000 fee enhancement for debtor's counsel based on their ability to reach consensual resolution of involuntary case resulting in a 100% distribution to unsecured creditors and was accomplished in a short period of time (10 months).
330	Je	Westport	2010 WL 4318910	(a)(1)(A),(B)- Special counsel for debtor filed an interim application for compensation. The debtor objected on the grounds that the fees should be paid by the debtor's title insurance company, because this bankruptcy case was necessitated by title company's failure to find a title defect in the debtor's real property. Court held that the estate, and not the title company, should bear the cost of special counsel's fees. Many of the legal fees incurred did not result from the title defect and thus the fees should be the responsibility of the estate.
330	Je	Leslie	211 B.R. 1016	Fee reduction is justified if trustee's attorney incurs significant fees on simple legal matters.
330	Je	Telligenix	2013 WL 6684206	The most important consideration to a fee increase or decrease is the results obtained.

330	Je	Becker	469 B.R. 121	(a)(3)- Chapter 13 Trustee failed to timely object to attorney fees requested by debtor's counsel, who sought total fees of $9,990. Court used loadstar method to determine fees, which consisted of multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended, with the loadstar fee adjusted upward or downward in light of additional factors.
330	Je	Pearlman	2014 WL 2900110	Application for approval of attorney fees partially approved consistent with applicant’s concessions.
330	Ki	Central Florida	207 B.R. 742	25% deduction of atty fees where debtor's counsel failed to review monthly operating reports which reflected growing post-petition IRS debt along with operational problems.
330	Ki	Shearer	124 B.R. 862	Attorneys fees in discharge case.
330	Ki	Finevest	165 B.R. 949	Court sua sponte finds fees of Chapter 13 debtor's attorney unreasonable and orders disgorgement.
330	Ma	Atlas	202 B.R. 1019	Fee enhancement for Chapter 7 Trustee's special counsel was justified based on exceptional results obtained.
330	Ma	St. Johns	2002 WL 959281	Fees were determined to be fair and reasonable, and should be allowed.
330	Mc	Blue Stone Real Estate	487 B.R. 573	(a)(1)(A)-- Creditor objected to Chapter 11 post-confirmation Distribution Agent's application for professional compensation because, in the creditor's opinion, the Distribution Agent's efforts yielded minimum recoveries and provided little benefit to the estate. The bankruptcy court stated that it does not determine reasonableness of professional's requested compensation through hindsight as the Bankruptcy Code requires only that services in question had reasonable likelihood of benefiting estate at time they were provided. "Services may be necessary to the administration of the estate without financially benefitting the estate." The court noted that the debtor's bankruptcy involved a "charged atmosphere" that required heightened scrutiny of possible avoidance actions and allowance of claims. The court proceeded to utilize the lodestar analysis and found the Distribution Agent's fees were reasonable.
330	My	Allen	2005 WL 1212606	A real estate appraiser is entitled to compensation for services rendered subsequent to the date the Application to Employ Real Estate Appraiser was filed, but is not entitled to compensation for services rendered prior to filing of the Application.
330	Ol	Sanders	521 B.R. 389	The court required the debtor's attorney seeking compensation for her representation of debtor and debtor-in- possession to account for all trust account transactions related to debtor or debtor's case because there was a discrepancy between the amount of the fee retainer paid by debtor, and the balance purportedly remaining in the fee retainer account. Additionally, based upon her “shockingly sloppy" performance in the case, the court lowered the attorney's hourly rate from $450 an hour to $250.
330	Ol	New River	451 B.R. 586	The Bankruptcy Court has continuing subject-matter jurisdiction to review fees under § 330. The non-disclosure of an adverse interest to the estate warranted a disgorgement of professional fees.
330	Ol	Apodaca	401 B.R. 503	Pursuant to the terms of the retainer agreement executed by a chapter 13 debtor and her attorney, the bankruptcy court found that the attorney was not entitled to the in excess of $6,300.00 requested in her fee application, but was entitled to $5,159.00 in

				fees and expenses for the services she provided in the debtor's case. Pursuant to Florida law, the court construed ambiguities in the retainer agreement against the drafting party, the chapter 13 attorney, and found that 11 U.S.C. §§ 330(a)(3)(B) and 330(a)(4)(B) warranted fees and expenses of $5,159.00, which were reasonable and necessary in the circumstances of the case.
330	Pa	Bicoastal	121 B.R. 653	Analysis of proper fees - overhead/clerical/paralegal creditors committee fees for preparing fee app. time entry requirements.
330	Pa	Gulf Coast Orthoped Center	243 B.R. 135	Fees not reasonable where action dismissed for lack of prosecution and services did not produce meaningful benefit to the estate.
330	Pa	Dunkin's Diamonds, Inc.	420 B.R. 572	Ten percent reduction in fee application of counsel for committee of unsecured creditors was warranted where the fee application contained $6,160 of duplicate time entries for co-counsel. Reduction in fees for financial advisor to committee of unsecured creditors inured to the benefit of the general unsecured creditors, rather than to the debtor.
330	Pa	Hillsborough Holdings	221 B.R. 917	Upon allowance, in accordance with remand order of Court of Appeals, of expenses claimed by law firms representing Chapter 11 debtors and bondholders' committee, bankruptcy court had discretion to adjust firms' hourly billing charges if found to be excessive in light of claimed expenses, and would exercise its discretion to disallow fee enhancements previously ordered.
330	Pa	Schumann	89 B.R. 223	Attorneys Fees-- Factors.
330	Pa	G.I.C.	122 B.R. 148	Fees paid in contemplation of Bankruptcy Rule 2017.
330	Pa	Sovereign Oil Company	216 B.R. 666	(a); Operator of natural gas wells was granted an administrative expense claim even though it never filed application to be employed as professional.
330	Pa	Hillsborough	125 B.R. 837	Fee request by financial advisor to bondholder's committee disallowed; insufficient records, excessive.
330	Pa	Grunau	355 B.R. 329	BAPCPA. Although BAPCPA required additional work to be formed under the means test, Chapter 13 debtor's attorney's fees over $2,000 were not reasonable under Section 330 where case did not present any unique issues that required additional legal research or argument outside of any other routine Chapter 13 case, and since any means test work due to BAPCPA is ministerial and non-legal.
330	Pa	Dunkin's Diamonds, Inc.	420 B.R. 883	Agreement between United States Trustee and local counsel for the unsecured creditors committee to reduce counsel's fees by ten percent sufficiently addressed concerns of duplication, lumping of time entries, and insufficient task detail on time entries.
330	Pa	Gulf Coast Orthopedic Center	265 B.R. 318	Debtor's counsel did not disclose connections with corporate insiders holding claims against the estate; court did not apply per se rule denying all compensation.
330	Pa	Vetzel	84 B.R. 786	Administrative Rent--Contract Rate.
330	Pa	Koch	195 B.R. 794	327(a), 330(a)(4)(A); Law firm not authorized by the court to be employed as attorneys for the trustee, and whose work included services duplicative of services normally performed by the trustee were not entitled to attorney's fees.
330	Pa	Siesta	95 B.R. 812	Attorney compensation--undisclosed adverse interest.

330	Pa	Siesta	84 B.R. 789	Attorneys Fees, bar date for application, conflict, overhead expenses.
330	Pa	Hillsborough	191 B.R. 937	Basis under which enhancement fees would be paid to the professionals who represented the major constituents involved in the reorganization process.
330	Pa	Brown	190 B.R. 689	Interest on a trustee's commission and fees and costs awarded to trustee's counsel is payable from the date on which such commissions and fees are awarded by order of the Court.
330	Pa	GGC	178 B.R. 862	Section 105 authorizes the Bankruptcy Court to stay its final order to the Chapter 11 Trustee to disburse funds pending the appeal by the Trustee's attorney of the court's disallowance of attorney's fees.
330	Pa	Industrial	86 B.R. 718	Administrative Rent--60 Day Period--Insiders.
330	Pr	Olympia	176 B.R. 962	Section 330; The reasonableness standard contained in Section 330 generally applies when the Court approves the appointment of a professional but does not specifically approve the terms of employment; Section 328 applies when the court approves a fee arrangement prior to services being rendered.
330	Pr	Haines	150 B.R. 827	Special counsel awarded only reasonable hourly rate; lodestar method.
330	We	Summit	84 B.R. 863	Attorney's Fees--Bonus.
330	We	Electro	130 B.R. 621	Non-disclosure of representation of more than one creditor disallows firm from representing creditor's committee.
330	Wi	Ford	446 B.R. 550	Pursuant to Sec. 330 and Rule 2016, a professional seeking to keep a pre-petition retainer as full compensation for services to a chapter 11 debtor must comply with statutory and rule-based requirements for allowance of fees by filing a detailed fee application and obtaining court approval therefor.
330	Wi	Newman	2003 WL 751327	(a)(4)(B) - If an attorney chooses to be compensated via the lodestar method, the attorney must include time records made contemporaneously at the time services are provided. Attorneys representing Chapter 13 debtors may seek compensation using the "lodestar" method or the presumptively reasonable fee provided in this case. The lodestar method analyzes twelve factors derived from the ABA Code of Professional Responsiblity, including the services provided, the time spent on such services, the hourly rate charged, and other factors that attempt to establish an objective criteria for reasonableness of fees. Under the presumptively reasonable fee schedule, $2,500.00, inclusive of all costs except the filing fees, is determined to be presumptively reasonable in a Chapter 13 case in which a Plan is confirmed. This amount is subject to several conditions as set forth in the case, including the timing of the payment of this fee. In cases where the Chapter 13 case is converted or dismissed, $1,500.00 is the presumptively reasonable fee, subject to certain conditions set forth in the case.
330	XX	Premier Construction	2015 WL 3407857	Bankruptcy Court did not abuse its discretion in deciding attorneys fee issue without a hearing as the record was sufficient for the Judge to fully consider the objections without an evidentiary hearing.
330	XX	Daikin	868 F.2d 1201	Appeal from order awarding fees dismissed where no objection below. Exceptions to general rule.

330	XX	Hillsborough	127 F.3d 1398	(a); Reimbursement of expenses incurred by bondholder's committee.
330	XX	Mulberry	151 B.R. 948	Fees disallowed where attorney conferences inadequately described and time 'lumped' and in large blocks; proper overhead allowed.
330	XX	Golden	164 B.R. 670	Attorney who was replaced as counsel for debtor shortly after Chapter 11 petition was filed was properly required to disgorge retainer, based on attorney's failure to provide billing statement or to otherwise establish nature or value of services performed.
330	XX	Hillsborough	164 B.R. 673	Interim fee award in bankruptcy case was interlocutory judgment, not appealable as of right.
330	XX	Westwood Community	2006 WL 940647	(a). Denial and disgorgement of Debtor's counsel's fees was appropriate where fees were not derived from funds that were property of the estate, but rather were proceeds of an improper assessment against non-debtor property. Moreover, Debtor's counsel assumed the risk of nonpayment and disgorgement of interim fees if estate proved insolvent. Finally, interim fee awards are always subject to modification or revision on final application.
330	XX	Dees	158 B.R. 302	To extent of any approved fees, prepetition fund held by debtor's counsel was deemed collateral securing payment of approved fees and was not available to satisfy United States Trustee's claim for unpaid quarterly fees.
330	XX	Immenhausen	164 B.R. 1004	The Bankruptcy Court Order on Compensation is NOT an appealable Interlocutory Order.
330	XX	Hillsborough	164 B.R. 673	Leave to appeal interlocutory order on an award of attorneys' fees is denied; fee awards are interlocutory orders and not appealable as a matter of right.
330	XX	American Steel Product, Inc.	197 F.3d 1354	Debtor’s attorney may not use sec. 330 to recover attorney’s fees and costs from debtor’s estate in chapter 7 and chapter 11 cases.
330	XX	Denison	2012 WL 75768	District court affirmed bankruptcy court’s order disgorging $490,000 from brokers who failed to disclose their conflict of interest with the buyers and were paid in excess of the four percent commission authorized under their listing agreement.
330	XX	Citation Corp.	493 F.3d 1313	In reviewing the reasonableness of bankruptcy professional’s requested fees, it was appropriate for bankruptcy court to use “lodestar” analysis.
330	XX	New River	497 Fed. Appx. 882	(a)(2)-- Creditor is party in interest for purposes of seeking disgorgement of fee award paid to professional in bankruptcy case.
330	XX	Crowe & Dunlevy	2006 WL 20509	Bankruptcy Court’s order that substantially reduced attorney’s fees and costs claimed for an appeal would not be reversed when the objection was detailed as to time expended and costs incurred, it properly addressed the factors contained in Sec. 330, and the total fee award did not appear unreasonable.

SEC.	J	CASE	CITE	COMMENT
331	Ma	St. Johns	2002 WL 959281	Fees were determined to be fair and reasonable, and should be allowed.
331	Pa	Bicoastal	117 B.R. 700	Accountant's time spent on non-accounting functions such as reviewing fee applications was not compensable.

SEC.	J	CASE	CITE	COMMENT
2014	Hy	M.T.G. Limited, Inc.	2007 WL 2156378	Where plan administrator had prior relationship with partnership, he must disclose all of his connections with the partnership. Failure to disclose relationship did not require disgorgement of all professional fees, where plan administrator did not give special treatment to the partnership. Unauthorized payments by plan administrator to himself, however, were ordered disgorged.
2014	Ol	Moon Thai	2010 WL 3211981	Attorney seeking employment by bankruptcy estate must disclose existence of even "arguable" conflict if "only to explain it away." Entire firm may be disqualified based on lack of disinterestedness by one member of the firm.
2014	Pa	Gulf Coast Orthopedic Center	265 B.R. 318	Debtor's counsel did not disclose connections with corporate insiders holding claims against the estate; court did not apply per se rule denying all compensation.
2014	XX	Sportman's Link	2014 WL 6910676	An individual who paid attorney retainer for corporate bankruptcy case did not have a pecuniary interest in the retainer he paid and therefore lacked standing to seek disgorgement.
2014	XX	Forizs & Dogali	2012 WL 4356266	Applying section 327 and Rule 2014, district court affirmed the decision of the bankruptcy court granting a motion to disqualify special counsel to the Trustee where the counsel's original disclosure regarding the claims held by a creditor that it represented were accurate, but the creditor later filed a claim in the case that materially changed the prior disclosures. The duty to disclose a possible conflict is a continuing obligation.
2014	XX	Denison	2012 WL 75768	Post-confirmation, bankruptcy court appropriately reconsidered order authorizing employment of broker entered during pendency of chapter 11 case based on broker's self-dealing and failure to disclose prior and continuing relationship with buyer.
2014	XX	Franken	2011 WL 294413	District Court upheld Bankruptcy Court's sanctions for Debtor's counsel failure to make disclosure requirements of Bankruptcy Rule 2014.
2014	XX	Jennings	199 Fed. Appx. 845	Debtor's law firm failed to disclose fully its connections with eleven debtor clients and one actual and two potential conflicts of interests. Court is "not obliged to hunt around and ferret through thousands of pages in search of basic disclosures." The district court upheld the law firm's disqualification in all related cases.

SEC.	J	CASE	CITE	COMMENT
2016	Fr	Migiano	242 B.R. 759	In determining reasonable chapter 13 attorneys' fees and costs, the Court looks to the twelve factors in Johnson v Georgia Highway Express, Inc.
2016	Je	Whaley	282 B.R. 38	An attorney must disgorge fees paid to him prior to conversion of a case from Chapter 13 to Chapter 7 when he did not disclose receipt of the compensation.
2016	Ki	Harris	458 B.R. 591	Debtors filed adversary proceedings against attorneys and mortgage servicers alleging damages for alleged undisclosed fee splitting scheme. The servicers received payments, including payments for attorneys' fees, directly from debtors outside of the debtors' Chapter 13 plans; the attorneys did not seek compensation from the estate itself. Attorneys and servicers moved to dismiss the adversary proceedings. The court looked to sections 1306(a)(2) and 1327(b) as to whether post-confirmation earnings were property of the estate and therefore subjected the attorneys to Rule 2016. Since the payments outside the plan occurred post-confirmation, the property used to pay the attorneys' fees was not property of the estate; thus Rule 2016 did not apply and the court dismissed the debtors' adversary proceedings.
2016	My	Allen	2005 WL 1212606	A real estate appraiser is entitled to compensation for services rendered subsequent to the date the Application to Employ Real Estate Appraiser was filed, but is not entitled to compensation for services rendered prior to filing of the Application.
2016	Pa	Waldorf	2005 WL 419714	Debtor's counsel required to disgorge a portion of fees received by her due to failure to disclose. $1,500 allowed as reasonable fee.
2016	Pa	Knights	190 B.R. 966	(b); Disgorgement of grossly excessive fees improperly disclosed.
2016	Pa	Cupboards	190 B.R. 969	(b); Collection of balance of retainer post-petition by debtor's counsel without court approval, through submission of false third-party invoices to debtor, subjects counsel to forfeiture of all fees collected from debtor.
2016	Pa	Hillsborough	132 B.R. 482	Details statements for fee applications.
2016	XX	Jacks	642 F.3d 1323	(a)- Assuming that Section 506(b) and Rule 2016(a) require disclosure of post-petition fees in some circumstances, those provisions are not violated when a creditor merely records its costs incurred in association with a mortgagee's bankruptcy, for internal bookkeeping purposes, and makes no attempt to collect the fees or otherwise add them to the debtor's principal balance under the mortgage.
2016	XX	Fink v. Waage	2007 WL 2875450	(b)- District court remanded to bankruptcy court issue of appropriate amount of attorneys' fees of debtor's counsel as the district court was unable to ascertain how bankruptcy court arrived at the fees it determined were reasonable.