UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

FIBERMARK, INC.,
FIBERMARK NORTH AMERICA, INC., and
FIBERMARK INTERNATIONAL HOLDINGS, INC.,
Debtors.

Case # 04-10463
Chapter 11
Jointly Administered

ORDER
GRANTING IN PART THE FIRST INTERIM FEE APPLICATION OF KPMG, LLP AND DISALLOWING THE REIMBURSEMENT OF EXPENSES

On October 19, 2004, KPMG, LLP, as auditors and providers of certain accounting, tax and employee benefit services to the Debtors, filed a First Interim Application for Compensation and Reimbursement of Expenses for the period from March 30, 2004 through June 30, 2004 (the "Application Period") (doc # 681) (the "First Application"). The United States Trustee filed a consent to the First Application. After considering the First Application in light of the standards set forth in In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987), and prior fee application rulings in this case, the Court grants the application for allowance of part of the professionals' fees, denies allowance of the balance of the fees and denies reimbursement of the expenses, at this time.

There is an inherent public interest that must be considered in awarding fees in a bankruptcy case. Senate Report No. 95-989, 95th Congress, 2d Session 40 (1978). U.S. Code Cong. & Admin. News 1978, p. 5787. Accordingly, the Bankruptcy Code imposes upon this Court a supervisory obligation not only to approve counsel and other professionals' employment, but also to allow a professional's compensation in a bankruptcy case only to the extent that the professional demonstrates the compensation sought is reasonable, and the underlying services and expenses were both reasonable and necessary. 11 U.S.C. §§ 327 - 330. Notwithstanding the absence of an objection by any party -- and the consent of the United States Trustee -- to the First Application, this Court has an independent judicial responsibility to evaluate the appropriateness of allowing the fees and expenses requested. 11 U.S.C. § 330 (a)(3) and Bankruptcy Rules 2016 and 2017; S.T.N. Enterprises, Inc., 70 B.R. at 831; In re ACT Mfg., Inc., 281 B.R. 468, 474 (Bankr. D. Mass. 2002). Moreover, a bankruptcy judge's duty is to conduct a discrete inquiry into every request for professional compensation and that duty cannot be delegated. See In re Zamora, 251 B.R. 591, 596 (D.Colo.2000). This responsibility is especially acute when the professional seeks compensation out of a bankruptcy estate. S.T.N. Enterprises, Inc., 70 B.R. at 832. The rationale for the bankruptcy court's independent duty to review fee

applications has been described as "a duty to protect the estate 'lest overreaching...professionals drain it of wealth which by right should inure to the benefit of unsecured creditors.'" In re Keene Corp., 205 B.R. 690, 695 (Bankr. S.D. N.Y.1997).

The First Application seeks the allowance of $ 94,806.00 in professional fees for services rendered during the Application Period.[1] This amount reflects a voluntary downward adjustment of the applicant's rates by 30%.[2] Having reviewed the First Application, the Court finds certain of the professional fees earned during the Application Period are not compensable and therefore, the professionals' fees are approved only to the extent of $77,115.95. Specifically, the Court finds the services rendered by the applicant to the extent of $77,115.95 were reasonable, necessary and of benefit to the estate. 11 U.S.C. § 330(a); In re JLM, Inc., 210 B.R. 19, 24 (2d Cir. BAP 1997). The remaining $17,690.05 (which is already reduced by the 30% discount), sought in the First Application are disallowed in accordance with S.T.N. Enterprises. 70 B.R. at 838.

At the outset, the Court observes that the format of the First Application fails to satisfy basic standards of clarity. One of the fundamentals of good accounting practice is that when a document consists of a lead schedule and detailed schedules, the total shown on each detailed schedule should be conspicuously evident on the lead schedule, i.e., the detail schedule should "tie" to the lead schedule. Such is not the case with the First Application. Exhibit A to the First Application, entitled *Summary of Hours and Fees Incurred by Professional and Category, March 30, 2004 through June 30, 2004,* has the characteristics of a lead schedule just as, for example, Exhibits D1, D2, and D3 have the characteristics of detail schedules. Thus, if one were to read Exhibit D1, one would expect to be able to tie its total of $105,707 to an identical number on Exhibit A. However, that figure is nowhere visible on the lead schedule.[3] As the applicant, KPMG bears the burden

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[1] As described below, it is not clear how KPMG arrived at the amount designated as the total fees sought. The Court has revised the computations set forth on Exhibit A to (it believes) accurately reflect, and tie to, the computations on the detailed summaries.

[2] Although KPMG provides no explanation for the 30% reduction that was applied across-the-board, the Court has considered that reduction in determining the amount of compensation allowed and disallowed. In other words, the amount of fees that the Court has allowed reflects the gross allowance minus 30% and the Court has likewise reduced the amount disallowed by 30%.

[3] As part of its review, the Court added or "footed" Exhibit D1 and reached a total of $105,733, not $105,707, a difference of $26. The Court ultimately concluded that the $26 difference is the result of the fact that while Exhibit D1 displays amounts in the column marked Fees (Hours x Rate = Fees) in whole dollars rounded up, the grand total for the Fees column (last page of Exhibit D1) reflects the accumulation of the extended amounts, in actual dollars and cents, with that total then rounded. If KPMG had been consistent in its use of dollar and/or cents amounts, such that whatever method chosen footed, the Court could have focused solely on the legal question of whether the fees were reasonable, rather than having to engage in time-consuming sleuth work to identify the methodology responsible for the inconsistent totals on lead and detail schedules .

In this instance one must go through the following steps in order to verify the accuracy, and indeed understand the methodology of the data presentation, to tie the detail information from certain exhibits to the total of

of proving that the fees it seeks are compensable. S.T.N. Enterprises, 70 B.R. at 832. Part of that burden is to present the information in a readily comprehensible and internally consistent fashion. While this Court has an independent judicial obligation to review and rule on each fee application filed, it should not have to spend time figuring out what the application is seeking or recompute the amount due because of a lack of clarity or methodological inconsistency.

Although the fees incurred prior to KPMG's retention date of April 19, 2004 were not readily identifiable as such on the detail schedules, KPMG's time records revealed the following amounts on Exhibits D1 and D2 were incurred for services rendered prior to the retention date:

Exhibit D1	4/7/04	$	300
Exhibit D1	4/8/04	$	900
Exhibit D2	4/8/04	$	708
Exhibit D2	4/8/04	$	1,652
Exhibit D2	4/9/04	$	590
	Total:	$	4,150

The Court was unable to match the $3,265 deduction that KPMG utilized as the figure for pre-retention date fees. Consequently, the Court did its own computation and disallows $885 in professional fees, which it finds to be the difference between the actual billing records submitted as detailed above and the deduction used by KPMG, because they were incurred prior to the date of KPMG's retention. See 11 U.S.C. §503(b)(2); see also, In re Keren Ltd. Partnership, 189 F.3d 86 (2d Cir. 1999). To remain consistent with the general treatment of the remaining disallowances, this disallowance is reduced by 30% to $619.50.

$84,243, on the lead schedule (Exhibit A) for the column titled Fees, May-04 in the section that addresses fees by Professional:

Total per Schedule D1, Quarterly Review, March 30, 2004 through May 31, 2004	$	105,707
Add, total per Schedule D2, Retention and Employment Matters, March 30, 2004 through May 31, 2004	$	18,499
Add, sub total per schedule D3, Travel, March 30, 2004 through May 31, 2004	$	1,610
Subtotal	$	125,816
Delete one-half of travel fees incurred as found on Schedule D-3, Travel, March 30, 2004 - May 31, 2004	$	(805)
Delete Voluntary Reduction, 30% (KPMG's Self-Determined Figure)	$	(37,503)
Delete fees incurred prior to the Retention Date	$	(3,265)
Total	$	84,243

Time devoted to administrative activities such as mailing or delivering papers, photocopying, word processing, and organizing files constitutes overhead expenses and is not compensable from the debtor's estate. See id. The Court finds the following tasks to be administrative activities, and accordingly denies allowance of compensation for the amounts of time specified, and then reduces that by the 30% factor:

Date Performed	Description	Time	Rate	Amount
4/26/04	Prelim work for Quarterly review (set up binder, print press releases and KPMG docs)	2.0 hrs	$275	$550.00
4/27/04	Upon arrival at FMK, set up computer and take out binders	.01	$275	$ 28.00
5/03/04	Obtain and print FMK info (press releases, bankruptcy info from Internet for review of Q1 occurrences)	0.5	$275	$138.00
5/18/04	Compile Q1 binder including revision of the Interim Review Checklist, filing workpapers and client prepared documents, locating and printing final version of the 10Q	0.2	$175	$ 35.00

KPMG also seeks compensation in the amount of $575 for two entries that are described as "down time waiting on Fibermark." While the Court is mindful that KPMG's senior associate who billed this time at her full rate could have been working for (and hence been compensated by) other clients during these times, but apparently determined she was unable to do so under the circumstances, the Court does not find it appropriate to have the Debtors bear the cost of this associate's full billing rate for over two hours' worth of time that is of absolutely no benefit to the estate, particularly where KPMG has not provided any explanation as to why the professional not have been working on this or other professional matters during that "down time." KPMG must bear some responsibility to use time effectively. To impose this expense on the Debtor's estate is contrary to the spirit of the Bankruptcy Code and tips the balance too heavily in favor of KPMG and too far against the estate. However, the Court routinely allows professionals to receive one-half the professional's hourly rate while traveling to or from a single location in connection with his or her retention in a given case, the Court will allow compensation at one-half the senior associate's rate for a total of $287.50, less the 30% reduction for this "down time," and disallow an equal amount.

KPMG also seeks compensation in the amount of $1,358 for research "on bankruptcy issues and reporting" and "searching on-line for filed 10-Q's of other filers who are in chapter 11" on May 5, 2004 and May 10, 2004, respectively. This amount should not have been billed to the Debtor because it is well established that time spent researching or analyzing abstract issues is inherently not compensable. In re S.T.N. Enterprises, 70 B.R. at 838. KPMG, in its own words, is "a firm of accountants, auditors, and tax advisors

with diverse experience and extensive knowledge in the fields of accounting and taxation." Application at ¶ 5. The Debtors assert in their application to employ KPMG that they selected KPMG because of "KPMG's extensive experience in, and knowledge of, the fields of auditing, accounting, taxation and employee benefit counseling." (doc. # 244, ¶ 8). Based upon the representations made to the Court and the reputation of KPMG, the Court starts with the premise that KPMG has a high level of familiarity with accounting and reporting issues for publicly traded companies that have sought Chapter 11 protection. Indeed, it is that level of skill that provides the legal basis for the Court's allowance of the hourly rates KPMG charges. This applicant cannot command the hourly rate of an expert and then be compensated for basic educational tasks. Thus, the Court finds that KPMG is not entitled to compensation for these general education tasks and accordingly, denies allowance of fees for them.[4]

For services provided in connection with "Retention & Employment Matters," KPMG seeks compensation for 32.6 hours, or a total of $18,499. Since the Court has already disallowed three entries in this category for work completed prior to April 19, 2004, the amount in question is actually $15,549. None of the professionals who performed services within this category billed their time at a rate of less than $540 per hour. The services in this category include, *inter alia*, preparing an engagement letter, preparing an affidavit, requesting a relationship search, reviewing e-mails, revising the affidavit and various other tasks which would not appear to necessarily require the expertise of a senior partner in an accounting firm with expertise in chapter 11 bankruptcy issues. The descriptions fail to demonstrate that the amount of compensation sought is reasonable. 11 U.S.C. § 330 (a). There is no explanation or detailed analysis articulating why these tasks require such high levels of expertise. Accordingly, the Court denies compensation for these services at this time.[5]

Additionally, KPMG seeks compensation for services rendered in connection with preparing the First Application and the Retention Application. While this Court has long recognized that a professional may be compensated for time spent on the preparation of a fee application, S.T.N. Enterprises, 70 B.R. at 835, the prerequisite for allowance is the professional's demonstration that the fees sought are reasonable and the time spent was reasonable and necessary. Senior level professionals, including partners, a senior manager, and the director of KPMG, all worked on the First Application, at billing rates ranging from $475 per hour to $600 per hour. By way of comparison, the application discloses that senior associates working on the case billed at $275 per hour. KPMG is an accounting firm with extensive experience in bankruptcy cases and thus it would seem reasonable to expect that senior associates might have the skills to prepare – or at least assist in

[4] This results in a disallowance of $1,358.00, less the 30% reduction, or $ 950.60.

[5] The Court disallows $15,549.00, less the 30% reduction, or $10,884.30.

the preparation of – a fee application. The burden is on KPMG to demonstrate why only such expensive professionals were qualified to prepare the First Application, and it has not met this burden. Moreover, notwithstanding the high level of expertise KPMG dedicated to preparing the First Application, the schedules KPMG prepared and attached to the First Application are quite confusing, in that, on their face, they do not foot and tie (see footnote 3 *supra*). If KPMG is holding itself out as an expert in bankruptcy case accounting, and seeking compensation at this level – which is, on average, more than three times the customary rate for bankruptcy accounting services in this District – it is incumbent upon KPMG to submit an application that both demonstrates its expertise and justifies its compensation. Based upon the scanty descriptions and the detail irregularities of the First Application, the Court concludes that KPMG has not satisfied the statutory criteria for allowing compensation at the rates charged and for the fees sought in connection with preparation of the fee application. Hence, the Court disallows all compensation in the category of fee application preparation at this time.[6] 11 U.S.C. § 330 (a).

To the extent KPMG would like to supplement the First Application to articulate why such levels of expertise were necessary in the categories of "Retention & Employment Matters" and "Fee Statement Preparation and Retention Application" for services rendered after the retention date, it may do so within ten (10) business days of entry of this Order.[7] KPMG, as the applicant that seeks compensation for services provided, bears the burden of proving the reasonableness of the fees it seeks. S.T.N. Enterprises, 70 B.R. at 832.

KPMG also seeks reimbursement for expenses incurred during the Application Period in the amount of $ 1,870, which it supports with nothing more than a table summarizing the amount of expenses incurred. The Court finds the First Application lacks sufficient specificity for this Court to determine whether the $1,870 sought as reimbursement of expenses is reasonable, necessary or justified. 11 U.S.C. § 330(a); S.T.N. Enterprises, 70 B.R. at 836. See also, In re Fibermark, No. 04-10463, * 4 (Bankr. Vt. filed Nov. 29, 2004) (doc. #783); In re Fibermark, No. 04-10463, * 10 (Bankr. Vt. filed Oct. 22, 2004) (doc. # 698); In re Fibermark, No. 04-10463, * 2-3 (Bankr. Vt. filed Sept. 30, 2004) (doc. # 645). Accordingly, the Court disallows the full amount KPMG seeks as reimbursement for expenses.

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[6] The Court disallows $6,441.00, less the 30% reduction, or $ 4,508.70.

[7] On October 22, 2004, the Court issued an order in this case detailing the fee application standards for this District. See In re Fibermark, No. 04-10493 (Bankr. Vt. filed Oct. 22, 2004) (doc. # 698), and declaring "In light of this Court's rulings on other fee applications in this case, the Court explicitly stated that "the time for allowing remedial supplements to fee applications has passed." Id. at 12. However, in light of the fact that the Court issued that decision after KPMG's First Application had already been filed, the Court deems it just to allow KPMG an opportunity to supplement its First Application.

THEREFORE, IT IS HEREBY ORDERED that

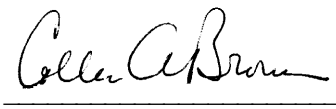
1. The First Application is allowed in part and disallowed in part.

2. Fees in the amount of $77,115.95 as set forth in the First Application are approved and allowed.

3. The Debtors are hereby authorized and directed to pay to KPMG LLP (to the extent not previously paid) $ 77,115.95, representing fees earned by KPMG, LLP during the Application Period.

4. If KPMG would like to supplement the First Application to provide a more thorough explanation as to why such high levels of expertise were necessary for the services rendered in the categories "Retention & Employment Matters" and "Fee Statement Preparation and Retention Application" and to demonstrate that the requested fees are reasonable and compensable from the estates, it must file that supplement within ten (10) business days of the date of this Order.

SO ORDERED.



January 14, 2005
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge