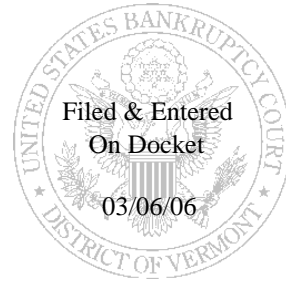


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



**In re:
FIBERMARK, INC.,
FIBERMARK NORTH AMERICA, INC., and
FIBERMARK INTERNATIONAL HOLDINGS, INC.,
Debtors.**

**Chapter 11 Case
04-10463
Jointly Administered**

ORDER

GRANTING THE THIRD AND FINAL FEE APPLICATIONS OF RYAN SMITH & CARBINE LTD.

On September 6, 2005, Ryan Smith & Carbine, Ltd. (“RS&C”), local counsel to the Former Official Committee of Unsecured Creditors (the “Former Committee”), filed an application for allowance of compensation for services rendered, and reimbursement of expenses incurred, for the period from February 1, 2005 through July 31, 2005, and its final fee application for all services rendered in this case, (doc. # 1856) (referred to herein together as “RS&C’s Final Fee Application”). No party has filed an objection to the amount of fees sought. However, on January 31, 2006, the United States Trustee filed a Statement (doc # 2110) questioning the computation of the total fees outstanding and asserting that it appeared RS&C owed the Debtors a refund of \$1,306.25. On February 9, 2006, RS&C sent the Debtors a check in the amount of \$1,306.25 in order to avoid litigation of the mathematical question the U. S Trustee had raised (doc # 2125). The Court therefore deems the amount sought in RS&C’s Final Fee Application to be reduced by the \$1,306.25 refund, and considers the application to be unopposed.

The Court had entered an order on November 9, 2005, deferring consideration of RS&C’s Final Fee Application because it included fees, *inter alia*, for analysis and advice concerning the trading order, corporate governance issues and inter-creditor disputes, all of which were the subject of an evidentiary hearing set to address the applications of the other professionals of the Former Committee [Akin, Gump, Strauss, Hauer & Feld, LLP (“Akin Gump”), counsel to the Former Committee, and Chanin Capital Partners, LLC (“Chanin”), the Former Committee’s financial advisors and investment bankers].

Last month the parties in interest reached a settlement regarding the Akin Gump fee applications and a hearing is set for March 8th on the motion to approve that settlement stipulation. Additionally, there are cross-motions for summary judgment filed in connection with the pending Chanin fee applications. Accordingly, it appears the context in which each of the subject fee applications will be considered is distinct. Therefore, the Court has determined that there is no longer a compelling reason to link the three applications or defer consideration of the instant RS&C Final Fee Application.

At a hearing held on February 28, 2006, the Court announced that if RS&C filed a memorandum of law in support of the fees RS&C seeks in connection with the inter-creditor disputes, its cooperation with the Examiner and the preparation of its final fee application, the Court might be able to render a decision without an evidentiary hearing. On March 2, 2006, RS&C filed a very thorough memorandum of law articulating the basis for its requested fees on each of these three items (doc # 2160). In that memorandum, RS&C urges the Court to render a decision based upon the record in the case, and specifically to consider findings included in the Examiner's Report (doc. # 1629). The Court is persuaded by the current record that it need not conduct an evidentiary hearing to rule on RS&C's Final Fee Application, however, it will decline the invitation to rely on the Examiner's Report, in rendering its decision. The Court has not yet made a determination as to the admissibility of the Examiner's Report. Moreover, there is now an ample record for the Court to evaluate the merits of RS&C's Final Fee Application without recourse to the Examiner's findings. The record in this case makes clear that the parties in interest have engaged in extensive discovery and carefully scrutinized the conduct of all of the professionals of the Former Committee. Although objections have been interposed with respect to applications filed by other professionals of the Former Committee, no party in interest has objected to RS&C's Final Fee Application or alleged any improper motive or actions by RS&C in its representation of the Former Committee.

Moreover, based upon its review of the Third Application, the Final Application, and the recently filed memorandum of law, the Court is persuaded that it would be unfair to deny RS&C compensation for its representation of the Former Committee in connection with the inter-creditor disputes and the Examiner's investigation. RS&C found itself in a distinctly unenviable position in this case. It is no secret that there was a falling out among the members of the Former Committee, and that some members of the Former Committee alleged – and the Examiner concluded – that Akin Gump had breached its fiduciary duty to the Former Committee. RS&C served as local counsel to Akin Gump but it was not painted with the same brush in either the allegations or the Examiner's conclusions. The disintegration of committee functionality, coupled with the grave allegations against Akin Gump, created an ethical quandary that required RS&C to exercise meticulous care in identifying who its client was, defining its relationship with Akin Gump, and determining to whom it owed a fiduciary duty. Additionally, as local counsel to the Former Committee, RS&C had a duty to devote its time, efforts and expertise to benefit the estate, and to comply with the Order directing all counsel to cooperate with the Examiner, independent of any position or action taken by Akin Gump. As the record and lack of objections make clear, RS&C rose to the occasion. Accordingly, the Court deems it appropriate to grant RS&C the fees it seeks for services rendered in connection with the inter-creditor dispute and its cooperation in the Examiner's investigation.

With respect to the final issue the Court raised, the cost of RS&C's preparation of the subject fee application, it is now clear that the fees sought for preparation of the fee application in the RS&C Final Fee Application actually encompass preparation of two fee applications, and thus constitute approximately ten percent of the total fees sought. Given the level of complexity of this case, the scope of work covered by the application preparation component of the fee, and RS&C's conscientiousness in complying with the fee application process, this component of the fee application seems reasonable.

Thus, AFTER DUE CONSIDERATION of the entire record in this case, including in particular the Debtor's report of fees paid, the narrative included in the RS&C Final Fee Application, the detailed explanation of fees and expenses, the RS&C response to the U. S. Trustee's Statement, and the RS&C memorandum of law responding to the questions raised by the Court at the February 28th hearing,


THE COURT FINDS that all services provided by RS&C during the period covered by the Third Fee Application were necessary and of benefit to the estate; and finds that all expenses for which it seeks reimbursement during that period were actual and reasonable. See 11 U.S.C. § 330(a); In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D.Vt. 1987); In re JLM, Inc., 210 B.R. 19 (2d Cir BAP 1997).

Accordingly, IT IS HEREBY ORDERED that both the Third Fee Application and the Final Fee Application of Ryan Smith & Carbine, Ltd. are GRANTED (with adjustment for RS&C's voluntary refund of \$1,306.25 to the Debtors); and

IT IS FURTHER ORDERED that the Debtor shall pay Ryan Smith & Carbine, Ltd. fees and expenses totaling **\$88,681.08**, to the extent not already paid, as full and final compensation for all services rendered and reimbursement of all expenses incurred, for RS&C's representation of the Former Committee in this case.

SO ORDERED.

March 6, 2006
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge