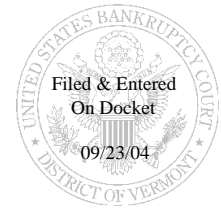


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

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

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

ORDER
GRANTING IN PART THE INTERIM APPLICATION FOR ALLOWANCE OF
COMPENSATION FOR RYAN SMITH & CARBINE LTD.,
AND GRANTING THE REIMBURSEMENT OF THEIR EXPENSES

On September 1, 2004, Ryan Smith & Carbine, Ltd. (the “Applicant”), Local Counsel for the Official Committee of Unsecured Creditors (the “Committee”) filed its Application for Interim Allowance of Compensation and for the Reimbursement of Expenses for Services Rendered During the Period From April 7, 2004 through July 31, 2004 (doc. #555) (the “Interim Application”). The Court approved the retention of Ryan Smith & Carbine, Ltd on May 19, 2004, *nunc pro tunc* to April 7, 2004 (doc. # 241). No objections have been made to the Interim Application. After considering the Interim Application in light of the standards set forth in In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987), the Court grants the application for payment of the attorneys’ fees in part and approves reimbursement of expenses in full.

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’s employment, but also to ensure that the fees sought by counsel in a bankruptcy case are reasonable, and that the services and expenses were actually and necessarily incurred. 11 U.S.C. §§ 327 - 330. Notwithstanding the absence of any objection -- and the consent of the United States Trustee -- to the Interim Application, this Court has an independent judicial responsibility to evaluate the appropriateness of the fees and expenses requested. 11 U.S.C. § 330 (a)(3) and Bankruptcy Rules 2016 and 2017; STN 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 attorney fees 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 attorneys seek compensation out of a bankruptcy estate. STN Enterprises, Inc., 70 B.R. at 832.

Although the Interim Application is labeled as an application for fees for the period of April 7, 2004 through July 31, 2004, it actually seeks payment for some attorney's fees (in the amount of \$1,356.25) for work completed between March 31, 2004 and April 6, 2004 (doc. #555, Exhibit B, p. 4). Because *nunc pro tunc* approval of Ryan Smith & Carbine Ltd.'s retention was not effective until April 7, 2004, the Court finds that the attorney fees incurred prior to that date are not compensable. See 11 U.S.C. § 503 (b)(2); see also, In re Keren Ltd. Partnership, 189 F.3d 86 (2d Cir. 1999).

The Court finds the attorney's fees earned from April 7, 2004 through July 31, 2004 (the "Application Period"), in the amount of \$ 25,356.25¹ to be fully and properly compensable. Specifically, the Court finds the services rendered by the applicant were reasonable, necessary and of benefit to the estate, pursuant to 11 U.S.C. § 330(a). See also In re JLM, Inc., 210 B.R. 19, 24 (2d Cir. BAP 1997). Accordingly, the fees sought in connection with services rendered by Ryan Smith & Carbine Ltd, during the Application Period are approved, and allowed in full.


The Court finds the expenses incurred during the Application Period to be reasonable and appropriate and, accordingly, they are approved and allowed *in toto*.

THEREFORE, IT IS HEREBY ORDERED that

1. The Interim Application of Ryan Smith & Carbine Ltd. is allowed in part and disallowed in part.
2. The following fees and expenses requested in the Interim Application are approved and allowed:
 - (A) \$25,356.25 for attorney and paraprofessional's fees; and
 - (B) \$ 1,479.93 for reimbursement of expenses.
3. The Debtors are hereby authorized and directed to pay to Ryan Smith & Carbine Ltd. (to the extent not previously paid) the sum of:
 - (A) \$24,918.75, representing fees earned by Ryan Smith & Carbine, Ltd. during the Application Period and
 - (B) \$ 1,479.93, representing the expenses incurred by Ryan Smith & Carbine, Ltd. during the Application Period.

SO ORDERED.

September 22, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

¹ While the Court does not have a duty to double-check the arithmetic in fee applications, it detected that the instant Interim Application contained a mathematical error caused by the failure to include 5 hours of travel time for attorney Anderson (\$437.50) in the tabulation of amount due, and the Court has taken the liberty of adding that in when it computed the total amount of compensable attorney fees.