

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



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

04-10463
Chapter 11 Cases
Jointly Administered

ORDER

ALLOWING, IN PART, THE FIRST INTERIM APPLICATIONS FOR FEES AND EXPENSES OF
(1) WILMER CUTLER PICKERING HALE AND DORR, LLP,
(2) AKIN GUMP STRAUSS HAUER & FELD, LLP,
AND (3) OBUCHOWSKI & EMENS-BUTLER

On August 20, 2004, Wilmer Cutler Pickering Hale and Dorr, LLP, (“WCPHD”), special counsel to the Debtors, filed a first interim fee application for allowance of compensation and reimbursement of expenses for the period from March 30, 2004 through June 30, 2004 (doc # 517) (“WCPHD’s First Application”). In response to a request by the United States Trustee for a further breakdown and detail of the expenses WCPHD seeks to have reimbursed, WCPHD filed a Supplement and Amendment to the First Application (doc. # 644)(“the WCPHD Supplement”) on September 28, 2004 . No objections have been filed to WCPHD’s First Application or to the WCPHD Supplement and the United States Trustee has filed a consent to allowance of the fees and expenses sought. Also on August 20, 2004, Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), counsel for the Official Committee of Unsecured Creditors, filed an application for interim allowance of compensation and reimbursement of expenses for the period from April 7, 2004 through June 30, 2004 (the “Akin Gump Application”) (doc. # 516). No objections have been filed to this application and the United States Trustee consented to the Akin Gump Application on September 10, 2004. On September 20, 2004, Obuchowski & Emens-Butler, local counsel for the Debtors-in-Possession filed an application for first allowance of compensation and reimbursement of expenses for the period of March 31 through August 31, 2004 (doc. # 608) (the “Obuchowski Application”). No objections have been filed to the Obuchowski Application and the United States Trustee has consented to the allowance of the fees and expenses sought.

In the interest of judicial economy and consistent application of the principles governing allowance of fees in this District, the Court addresses all three applications for allowance of professional fees and reimbursement of expenses in this Order.

When this Court analyzes applications seeking payment of fees from a bankruptcy estate, it strives to balance the fiduciary obligation of a chapter 11 debtor to spend its limited assets in a judicious fashion so as to maximize the ultimate distribution to its creditors against the importance of compensating the professionals who advise the chapter 11 debtor fairly, so as to encourage competent and experienced professionals to continue to participate in chapter 11 cases. See In re S.T.N. Enterprises, Inc., 70 B.R. at 832. It is a tautology that without competent and experienced advisors, debtors-in-possession would have little likelihood of success in their reorganization efforts. Hence, it is in the best interest of the estate to compensate professionals commensurate with their expertise and the benefit their efforts yield to the estate. Congress has declared that 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. The Bankruptcy Code emphasizes the duty to safeguard debtor-in-possession assets by specifically imposing upon bankruptcy courts a supervisory obligation 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. Thus, notwithstanding the absence of any objection -- and notwithstanding the affirmative consent of the United States Trustee -- 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; In re S.T.N. Enterprises, Inc., 70 B.R. 823, 831 (Bankr. D. Vt. 1987); In re ACT Mfg., Inc., 281 B.R. 468, 474 (Bankr. D. Mass. 2002). The rationale for the bankruptcy courts' 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). However, it is equally important that the fees be sufficient to entice competent professionals to apply their skills in the bankruptcy system, and to assist debtors seeking to navigate the complexities of the Bankruptcy Code.

I. THE CRITERIA FOR ALLOWANCE OF PROFESSIONALS' FEES AND EXPENSES IN THIS DISTRICT

Before WCPHD's First Application, the WCPHD Supplement and the Akin Gump Application were filed, and during the period for filing objections to these applications, the Court issued multiple orders allowing and disallowing various fees and expenses in connection with fee applications submitted by other professionals in this case (see docs. 583, 624, and 645). Based upon the subject fee applications as well as the fee applications previously submitted, it seems appropriate for the Court to take this opportunity to highlight and summarize the pertinent requirements for compensation within this District. The salient criteria this Court applies when considering fee applications, and with which all counsel practicing here should be conversant, is In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987). Professionals must comply

with the standards set forth in S.T.N., or articulate grounds for a waiver of, or divergence from, the principles enunciated in that touchstone case when seeking allowance of fees and reimbursement of expenses in this District. Moreover, in order for the Court to be able to discern whether the fees and expenses may be allowed and paid from the estate, the professional must file an application that includes accurate and detailed time records, having scrupulously omitted any entries which conflict with the mandates established by S.T.N. The Bankruptcy Code makes clear that in order to be compensated from the estate, the professionals must demonstrate – not just recite – that the fees sought are reasonable, necessary, and of benefit to the estate and that the expenses sought to be reimbursed are actual and necessary and that no other reasonable, less expensive alternatives were available. In its analysis of fee applications, the Court relies, in particular, on the following principles, established by STN:¹

- An attorney is entitled to reasonable compensation for actual, necessary services based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services outside bankruptcy. Id. at 831 (citing 11 U.S.C. § 330 (a)).
- The attorney applying for legal fees in a bankruptcy case bears the burden of proving the reasonableness of the fees. In order to sustain this burden, the applicant must present a carefully detailed application and supporting documentation. Id. at 832. (internal citations omitted).
- At the very least, every application must include a specific *analysis* of each task for which compensation is sought. Id. (emphasis added).
- When different services are lumped together, the Court cannot determine whether the time allotted for each is reasonable. This Court will summarily disallow time for discrete legal services merged together in the application for fees. Id.
- An application for fees must clearly identify each discrete task billed to the estate, indicating the date it was done, the precise amount of time spent, by whom it was done and the person's hourly rate. Id.
- Items such as meetings, conferences, correspondence and telephone calls should identify the participants, describe the substance of the communication, explain its outcome, and justify its necessity. Id. at 833.
- When billing for legal research, the applicant should identify each specific issue, and should explain why this issue needed to be researched and what use was made of the research in the bankruptcy case. Id.
- At the most rudimentary level, arithmetic should be correct. Id. at 835.

¹ This list of excerpts from STN is presented in response to issues raised by prior fee applications in this case; it is intended to illustrative and instructive, not exhaustive.

- When claiming reimbursement from the estate for expenses incurred in the case, the professional must furnish enough specificity for the Court to establish whether a given expense was both actual and necessary under 11 U.S.C. § 330(a)(2). Only fully documented, actual, out-of-pocket expenses will be reimbursed. The applicant must substantiate the need for each item of expense. Id.
- Any entry of time that aggregates individual services will be disallowed. Id. at 836.
- Time spent traveling to or from a single location may be compensated at one-half the professional's hourly rate. Id. at 837.
- Time devoted to strictly administrative activities such as mailing or delivering papers, photocopying, word processing, organizing files, and tracking inventory must not be compensated from the debtor's estate. Id. at 838.
- Duties appropriate for non-legal staff are part of an attorney's overhead expenses and must not be billed to the estate. Id.
- Time spent by paralegals and other paraprofessionals is compensable from the estate, and such compensation is subject to the same scrutiny as that of the attorney or professional in the case. Id. at 842.
- Long distance telephone charges and extraordinary postal expenses, if supported, and if justified for the benefit of the estate, may be reimbursed. Id. at 844. Local telephone calls and routine postage expenses are part of overhead.
- An attorney's overhead will categorically not be reimbursed. Overhead expenses are those incurred day to day by a law office regardless of whom it represents. Overhead expenses typically include rent, insurance, taxes, utilities, secretarial and clerical pay, library, computer costs, office supplies, local postage and telephone charges, meals, and local travel. This list is not intended to be exclusive. Id.

As set forth in a previous order in this case (doc. # 645), notwithstanding the holding in S.T.N., the Court has allowed reimbursement for the reasonable cost of working meals in this case. To the extent S.T.N. can be interpreted to establish a bright-line rule prohibiting reimbursement for the costs of out-of-state professionals' meals, the Court has declined to adopt such a bright-line rule. Rather, the Court will determine whether meals are reimbursable from the estate depending upon the facts and circumstances of the case as well as the specific reason for the retention of the out-of-state professional applying for reimbursement. Generally, if the Court deems that it is appropriate for out-of-state professionals to be retained and the meal expenses in question are reasonable and otherwise meet the criteria for allowance, reimbursement for working meals will be permitted. However, in accordance with this Court's independent duty to protect the estate and the creditors from overreaching professionals and established precedent, such expenses must be actual and justified as necessary. See In re S.T.N. Enterprises, Inc., 70 B.R. at 844. Specifically, the applicant has the

burden to demonstrate that (1) there were no other reasonable alternatives available that would have been less expensive; and (2) there is good reason for the estate to pay the expense (looking to ensure that the applicant is using good judgment and not expending estate resources on extravagances). Id. Additionally, the Court may require the applicant to file supporting documentation as a prerequisite to allowance. Id. at 834.

The subject fee applications seek reimbursement for computer-accessed legal research (CALR). CALR, such as WESTLAW or LEXIS has two distinct expense components. There is a fixed cost subscriber fee, which the Court finds to be analogous to the cost of subscribing to legal digests and reporters. That is an overhead expense. CALR also has a time charge for accessing its databases to perform legal research, analogous to the time charges of an attorney doing research in texts. Courts are divided as to whether CALR time charges should be eligible for reimbursement from bankruptcy estates. Many courts have declined to allow any CALR charges as reimbursable expenses. See, e.g., In re Belknap, Inc., 103 B.R. 842 (Bankr. W.D. Ky.1989) (computer research charges disallowed as overhead); In re Command Services Corp., 85 B.R. 230, 234-235 (Bankr. N.D.N.Y.1988) (“This Court has consistently held that [CALR] expenses are not reimbursable from the Debtor's estate.”); In re First Software Corp., 79 B.R. 108, 120 (Bankr. D. Mass.1987); In re Cuisine Magazine, Inc., 61 B.R. 210 (Bankr.S.D.N.Y.1986); and In re Sapolin Paints, Inc., 38 B.R. 807, 816 (Bankr.E.D.N.Y.1984) (“Lexis research is simply another method for performing research which also constitutes part of the services which are included in the hourly rate.”). Other courts have taken the opposing view and have allowed CALR use charges to be reimbursed. See, e.g., In re Wizard Enterprises, Inc., 109 B.R. 708 (Bankr. W.D. La.1990) (CALR reimbursable); In re Leonard Jed Co., 103 B.R. 706, 712 (Bankr. D. Md.1989) (reimbursement for “computer research attributable to work done for this particular client” allowed.); In re UNR Industries, Inc., 72 B.R. 796, 802 (Bankr. N.D. Ill.1987) (Lexis research reimbursed); In re Paolino, 71 B.R. 576 (Bankr. E.D. Pa.1987) (cost incurred for lexis research, if properly documented, will be allowed as reimbursable expense); In re Seneca Oil Co., 65 B.R. 902, 913 (Bankr. W.D. Okla.1986) (Disallowance of charges for computerized legal research and other non-overhead expenses “could result in an increase in hourly rates, discourage the use of helpful research tools, or reduce incentives for professionals to practice before bankruptcy courts.”); In re Tom Carter Enterprises, Inc., 55 B.R. 548, 552 (Bankr. C.D. Cal.1985) (computer research expense approved); and In re Jensen-Farley Pictures, Inc., 47 B.R. 557, 585 (Bankr. D. Utah 1985) (Court stated that, although some courts disallowed reimbursement for various expenses, including legal computer costs, it was going to allow those costs to be reimbursable due to “the practice within the profession of billing them to regular clients.”). It is important to note that all courts which have allowed CALR use charges as a reimbursable expense have allowed reimbursement only of reasonable and necessary CALR costs, pursuant to the standards set forth in § 330. The S.T.N. case did not address this issue and the time has come for this Court to supplement that case with a ruling on the allowability of CALR.

This Court finds the case of In re Drexel Burnham Lambert Group, Inc., 133 B. R. 13 (S.D.N.Y. 1991), to be persuasive. There, the Southern District of New York allowed reimbursement for computerized legal research services expenses, such as Lexis and Westlaw, to the extent of the invoiced cost from the vendor. Id at 32. After considering the controlling statute, relevant case law and the guiding principles for allowance of fees and expenses in this District, this Court has determined that it will allow reimbursement for CALR use costs, provided the applicant (1) demonstrates that the use charges incurred were reasonable and necessary (which necessarily includes a description of the research topic and the length of time spent on each topic); (2) affirms that the applicant bills its non-bankruptcy clients for CALR use charges, including the rate at which it bills its non-bankruptcy clients; and (3) certifies the invoiced cost from the vendor. With this information the Court can make the findings required by § 330 and to be certain that only actual, reasonable and necessary expenses are being paid by the bankruptcy estate.

II. WCPHD's FIRST APPLICATION

After considering WCPHD's First Application and the WCPHD Supplement 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 allows the application for payment of the attorneys' fees in part, grants the application for payment of paraprofessionals' fees in part, and allows reimbursement of expenses in part.

The Court finds WCPHD's attorney's fees earned from April 7, 2004 through June 30, 2004 (the "WCPHD Application Period") in the amount of \$196,561.50 to be compensable.² Specifically, the Court finds the services reflected by this portion of the fee to be 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). Accordingly, \$196,561.50 sought in connection with services rendered by attorneys are approved and allowed.

However, there are certain fees sought in connection with services which the Court finds ineligible for compensation. Specifically, WCPHD's First Application requests the Court allow payment of attorneys' fees for 353 hours of travel time totaling \$20,176. Each of the nine travel entries was billed at the attorney's full billing rate, \$490 to \$600 per hour. Additionally two of the nine entries for travel time, those dated March 31, 2004 and April 1, 2004, lump travel and meetings together, and therefore make it impossible for the Court to determine whether the time allotted for each of these entries is reasonable. In re S.T.N. Enterprises, 70 B.R. at 832. The Court will give WCPHD the benefit of the doubt and allow all of the travel related entries at one-half of the attorney's rates. Consequently, \$10,088 of the attorneys' fees sought by WCPHD for travel time are allowed and \$10,088 of this request is disallowed.

² Notwithstanding the Court's disallowance of a portion of the amount sought by WCPHD, the Court notes that it found the time sheet detail from WCPHD, the descriptions contained therein, and the organization of the information to be exemplary; they significantly facilitated the Court's analysis and determination of compensability.

The Court also finds certain of the paraprofessionals' fees earned during the WCPHD Application Period to be non-compensable and therefore paraprofessionals' fees are approved only in part. Paraprofessionals' fees are approved in the amount of \$7,585.50. However, \$3,450.00 sought in paraprofessionals' fees incurred during the WCPHD Application Period are disallowed in accordance with S.T.N., 70 B.R. at 838. Specifically, 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:

- making copies 1.4. hours @ \$150/hour
- organizing documents 4.8 hours @ \$150/hour
- photocopying, labeling, and organizing document production 13.4 hours @ \$150/hour.

THE WCPHD SUPPLEMENT

Having reviewed the WCPHD Supplement, the Court finds certain of the expenses incurred during the WCPHD Application Period are not compensable and therefore it does not approve reimbursement of all expenses sought. The Court approves reimbursement for expenses to the extent of \$7,568.25. The request for reimbursement of the remaining \$3,346.75 is denied in accordance with S.T.N. The Court finds the \$101.25 sought for reimbursement of "After Hours Support" to constitute customary overhead expenses. Thus, they are not compensable from the estate. In re S.T.N. Enterprises, 70 B.R. at 838.

The WCPHD Supplement lacks sufficient specificity for this Court to determine whether the \$699.10 sought for reimbursement of travel expenses and the \$3,245.50 sought for reimbursement of computerized research are reasonable, necessary or justified. There is no information as to the travel expenses WCPHD incurred for the Court to determine whether the expenses are actual, necessary, or justified. Also, there is no information in the WCPHD Supplement for the Court to determine how much time was spent on which research tasks for the computerized research expense. It may be that the amount sought to be reimbursed for computerized research is reasonable and compensable from the estate. However, time spent researching or analyzing abstract legal issues is inherently not compensable. In re S.T.N. Enterprises, 70 B.R. at 838. The Court disallows the reimbursement for these travel expenses and computerized research expenses without prejudice at this time.

In the WCPHD Supplement, WCPHD seeks the Court's permission to draw down \$1,689.15 from its retainer as reimbursement for certain expenses incurred prior to the Petition Date but which were not reflected in WCPHD's accounting system until after the Petition Date. As a general rule, professionals may not be

reimbursed for pre-petition expenses post-petition. However, the Court finds good cause to make an exception to the general rule and allow the estate to reimburse the applicant for pre-petition expenses post-petition in this instance because (i) the reimbursement of pre-petition expenses was specifically contemplated by the parties, (ii) the applicant's understanding regarding reimbursement of unbilled pre-petition expenses was disclosed in paragraph 6 of the Statement that accompanied the Motion to Retain WCPHD, (iii) the retention motion was granted on the basis of the terms set forth in the Statement, (iv) the amount in issue is not significant within the context of this particular case, and (v) no party in interest has objected to this arrangement. Thus, the Court hereby authorizes WCPHD to draw down \$1,689.15 from its retainer as reimbursement for expenses incurred prior to the Petition Date.

III. THE AKIN GUMP APPLICATION

After considering the Akin Gump 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 allows the application for payment of the attorneys' fees in part, grants the application for payment of paraprofessionals' fees in part, and disallows reimbursement of expenses at this time.

Having reviewed the Akin Gump Application, the Court finds the attorney's fees earned during the Application Period to be compensable to the extent of \$824,083.75. The Court finds the services rendered by the applicant to the extent of that amount 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). However, the Court disallows \$16,802 of the requested attorneys' fees at this time. Fees in connection with the following services are disallowed because the description provided by Akin Gump, or lack thereof, make it impossible for the Court to determine whether they were reasonable, necessary and of benefit to the estate, as required by 11 U.S.C. § 330(a)(3).

- | | |
|--|-------------------------|
| • organize due diligence documents | 1.8 hours @ \$300/hour |
| • compile index of diligence materials | 2.3 hours @ \$240/hour |
| • inventory and index diligence | 7.7 hours @ \$300/hour |
| • work on due diligence | 10.1 hours @ \$400/hour |
| • review diligence materials | 21.5 hours @ \$240/hour |
| • work on due diligence pre-petition | 10.5 hours @ \$400/hour |

It is unclear whether these services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of problem, issue, or task addressed. 11 U.S.C. § 330(a)(3)(D). Based upon the lack of documentation and description, the Court disallows compensation for these entries at this time. The Court will allow Akin Gump an opportunity to supplement the its application to provide a more detailed description and explanation for these time entries, so the Court may assess the nature and value of these services against the STN requirements.

The Court also finds certain of the paraprofessionals' fees earned during the Application Period to be non-compensable and therefore paraprofessionals' fees are approved only in part; paraprofessionals' fees are allowed only to the extent of \$16,870. The remaining \$12,057³ sought in paraprofessionals' fees incurred during Akin Gump's Application Period are disallowed in accordance with S.T.N. Enterprises. 70 B.R. at 838. Specifically, 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:

• retrieve and review docket	7.4 hours
• create and revise contact list	6.1 hours
• review and organize case materials	25.5 hours
• update service list and mailing labels	1.3 hours
• retrieve pleadings	6.7 hours
• prepare and update calendar of events	16.4 hours
• construct binder	1.8 hours
• construct e-mail list	1.1 hours
• send Skadden production for scanning	3.0 hours
• organize and index due diligence response files	8.0 hours
• print and organize copy set of Skadden production	1.0 hours
• update index of due diligence files	1.5 hours
• copying latest Skadden production	3.6 hours
• create folders and file documents for deposition	3.5 hours
• page checking and preparing copies for experts	2.9 hours
• copying exhibits, preparing binders and redwelds	2.1 hours

The Akin Gump Application also seeks reimbursement for expenses in the amount of \$31,230.47. The Akin Gump Application contains no information whatsoever about the expenses for which it seeks to be reimbursed. Akin Gump merely provides a table of expenses that contains the following entries:

• courier service/ postage	\$ 310.73
• long distance telephone/ conference calls	\$ 2,010.64
• duplicating/ third party duplicating costs	\$ 3,415.20

³ The Court arrived at this number by analyzing the time entries of various paralegals whose billing rates range from \$125 to \$180 an hour.

- facsimile \$ 23.00
- meals/ committee meeting expenses \$ 1,143.97
- secretarial overtime \$ 355.71
- travel expenses \$ 7,681.71
- computerized research/research charges \$16,289.48

Secretarial overtime is considered an overhead expense and is not compensable from the estate. In re S.T.N. Enterprises, 70 B.R. at 838. Accordingly, the \$355.71 sought in secretarial overtime is disallowed. Because the Akin Gump Application provides no explanation or justification for the remaining \$30,874.73 in expenses it claims to be reimbursable, the Court is unable to determine whether these expenses are properly compensable from the estate. Based upon the lack of documentation, description and/or justification, the Court disallows reimbursement of the delineated expenses without prejudice at this time. The Court will allow Akin Gump an opportunity to supplement its application to provide a more detailed description and explanation for these expenses so that the Court may evaluate whether they are reasonable and justified. In re S.T.N. Enterprises, 70 B.R. at 836.

IV. THE OBUCHOWSKI APPLICATION

After considering the Obuchowski Application in light of the standards set forth in S.T.N., the Court grants the application for payment of the attorneys' fees in full and approves the reimbursement of expenses, in part. Having reviewed the Obuchowski Application, the Court finds all attorney's fees earned during the Application Period to be compensable. Specifically, the Court finds the services rendered by the applicant were reasonable, necessary and of great benefit to the estate. 11 U.S.C. § 330(a); In re JLM, Inc., 210 B.R. 19, 24 (2d Cir. BAP 1997). Accordingly, the fees sought in connection with services rendered by attorneys are approved and allowed in full.

The Obuchowski Application seeks reimbursement for expenses in the amount of \$2,754.11. The Court finds certain of the expenses incurred during the Obuchowski Application period are not compensable and therefore it does not approve reimbursement of all expenses sought. The Court approves reimbursement for expenses to the extent of \$2,599.36. The request for reimbursement of the remaining \$154.75 is denied, for the reasons set forth below, in accordance with S.T.N. Enterprises, 70 B.R. at 838.

The Obuchowski Application seeks reimbursement of telephone charges in the amount of \$112.70. However, the Obuchowski Application lacks sufficient information for the Court to determine whether those expenses should be considered overhead expenses or reasonable and necessary expenses specific to this case. Accordingly, the Court disallows the expenses for telephone usage without prejudice. The Obuchowski Application also seeks reimbursement for CALR expenses in the amount of \$42.05, but fails to provide sufficient specificity for this Court to determine whether the \$42.05 sought for reimbursement of computerized

research is reasonable, necessary or justified. The Court cannot determine how much time was spent on which research tasks for the computerized research expense. It may be that the amount sought to be reimbursed for computerized research is reasonable and compensable from the estate. However, time spent researching or analyzing abstract legal issues is inherently not compensable. In re S.T.N. Enterprises, 70 B.R. at 838. There is simply not enough information provided for the Court to discern the nature of the research done or determine whether the subject computerized research expenses sought are compensable. Consequently, the Court disallows reimbursement for telephone and computerized research expenses without prejudice at this time. The Court will allow Obuchowski & Emens-Butler an opportunity to supplement its application to provide a more detailed description and explanation for these expenses so that the Court may evaluate whether they are reasonable and justified. In re S.T.N. Enterprises, 70 B.R. at 836.

The Court notes that the Obuchowski Application includes a request for reimbursement of charges incurred through use of the Public Access to Court Electronic Records (“PACER”). Such charges were not addressed by S.T.N. and it seems appropriate for this Court to address the allowance of this category of expense at this time. PACER expenses are akin to a copying charges as the party who downloads or prints a document or docket from the electronic records of the Court does this in lieu of having the Clerk’s Office copy the [paper] document for him or her. Clearly it is more efficient for both the consumer and the court system that consumers use PACER to obtain copies of court documents, and if the applicant sought reimbursement of a conventional copying expense in such a situation, it would typically be allowed. Thus, PACER charges will be allowed as a reimbursable expense provided the applicant provides the required justification of the expense, describing the documents obtained and explaining why it was a necessary and reasonable expense. Since the PACER charges in the Obuchowski Application are of such a *de minimis* amount (\$26.04), the Court will, as it has with *de minimis* questionable expenses in all applications in this case, allow reimbursement of the instant PACER expense at this time. However, going forward, PACER expenses must be justified in order to be allowed.

V. CONCLUSION

To the extent the instant applications have met the statutory and S.T.N. criteria for allowance the fees and expenses requested have been allowed. However, where an application lacked sufficient detail to demonstrate that the fees or expense were reasonable, necessary and of benefit to the estate, or to adequately describe the legal services and expenses, the Court has denied allowance.

The Court recognizes that most of the applicants seeking allowance of fees and expenses in this case do not regularly practice in this District. In light of the high quality of legal work the professionals have done in this case, the outstanding and generally successful efforts made to frame and resolve complex legal issues expeditiously, and the Court’s commitment to compensate professionals commensurate with their skills and

performance in the case, the Court has heretofore treated various applicants' failure to file applications which satisfied the criteria set forth in S.T.N. as inadvertence and allowed them an opportunity to supplement their applications. However, this approach creates additional burdens on the Court and applicant alike. In light of the multiple decisions this Court has now issued articulating the requirements for allowance of fees and expenses and emphasizing the need to comply with the requirements set forth in S.T.N., it appears the time for allowing remedial supplements to fee applications has passed. Future fee applications will be either allowed or denied, based upon the information set forth in the application, by measuring the application content against the requirements for compensation in this District, as described in S.T.N. and the orders entered on fee applications in this case.


Therefore, for the reasons set forth above, IT IS HEREBY ORDERED that

1. WCPHD's First Application and the WCPHD Supplement are allowed in part and disallowed in part.
2. The following fees and expenses as set forth in WCPHD's First Application and the WCPHD Supplement are approved and allowed:
 - (A) \$196,561.50 for attorneys' fees;
 - (B) \$7,585.50 for paraprofessionals' fees; and
 - (C) \$7,568.25 for reimbursement of expenses.
3. The Debtors are hereby authorized and directed to pay to Wilmer Cutler Pickering Hale and Dorr, LLP (to the extent not previously paid) the sums of:
 - (A) \$204,147.00, representing fees earned by Wilmer Cutler Pickering Hale and Dorr, LLP during the application period and
 - (B) \$7,568.25, representing the expenses incurred by Wilmer Cutler Pickering Hale and Dorr, LLP during the application period.
4. If WCPHD would like to supplement its First Application to provide a more thorough description of the remaining expenses, such supplement must be filed by November 5, 2004.
5. WCPHD are hereby authorized to draw down \$1,689.15 from its retainer as reimbursement for expenses incurred prior to the Petition Date.
6. The Akin Gump Application is allowed in part and disallowed in part.
7. The following fees as set forth in the Akin Gump Application are approved and allowed:
 - (A) \$ 824,083.75 for attorneys' fees; and
 - (B) \$ 16,870.00 for paraprofessionals' fees.
8. The Debtors are hereby authorized and directed to pay to Akin Gump Strauss Hauer & Feld, LLP (to the extent not previously paid) the sum of \$840,953.75, representing fees earned by Akin Gump Strauss Hauer & Feld, LLP during the application period.
9. If Akin Gump would like to supplement the Akin Gump Application to provide a thorough description of its expenses, such supplement must be filed by November 5, 2004.

10. The Obuchowski Application is allowed in part and disallowed in part.
11. The following fees and expenses as set forth the Obuchowski Application are approved and allowed:
 - (A) \$42,689.46 for attorneys' fees; and
 - (B) \$2,599.36 for reimbursement of expenses.
12. Obuchowski & Emens-Butler are hereby authorized to apply the pre-petition retainer of \$37,998.35 plus the accrued interest thereon toward the allowed fees and expenses and directed to provide the Debtors with an invoice reflecting the current value of the retainer.
13. The Debtors are hereby authorized and directed to pay Obuchowski & Emens-Butler the difference between (a) the allowed fees and expenses and (b) the pre-petition retainer of \$37,998.35 plus the accrued interest thereon.
14. If Obuchowski & Emens-Butler would like to supplement its application to provide a thorough description of its expenses, such supplement must be filed by November 5, 2004.

SO ORDERED.

October 22, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge