

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

**DETERMINING ALLOWANCE OF SUPPLEMENTAL 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 were filed to WCPHD’s First Application or to the WCPHD Supplement and the United States Trustee 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 were 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 were filed to the Obuchowski Application and the United States Trustee consented to the allowance of the fees and expenses sought.

On October 22, 2004, the Court issued an 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 (doc. # 698) (the “October 22nd Order”). In the October 22nd

Order, the Court denied allowance of certain fees and certain expenses and allowed WCPHD, Akin Gump and Obuchowski & Emens-Butler, as the Applicants, to Supplement their respective applications as they deemed appropriate for those fees and expenses that were denied allowance without prejudice.

On November 3, 2004, WCPHD filed a Second Supplement and Amendment to WCPHD's First Application (doc. # 726) (the "WCPHD Second Supplement"). On November 5, 2004, Akin Gump filed a supplement to the Akin Gump Application (doc. # 730) (the "Akin Gump Supplement"). On November 4, 2004, Obuchowski & Emens-Butler filed a supplement to the Obuchowski Application (doc. # 728) (the "Obuchowski Supplement"). The Court will address each in turn.

I. THE WCPHD SECOND SUPPLEMENT

The WCPHD Second Supplement specifically seeks reimbursement for travel and computerized research expenses in the aggregate amount of \$3,063.68. While WCPHD's First Application sought \$3,944.60, WCPHD has withdrawn its request for reimbursement of \$394.10 in travel expenses. The reason for the downward adjustment is unclear to the Court, and the WCPHD Second Supplement provides no guidance as to why the lesser amount is sought other than a statement that "Counsel is willing to agree to this lesser amount" (doc. # 726, p. 1).¹ Thus, the Court will only consider the \$3,063.68 request presently before it in the WCPHD Second Supplement.

The WCPHD Second Supplement provides details on the remaining \$305.00 in travel expenses WCPHD seeks to have reimbursed. The Court finds these expenses to be reasonable and appropriate and, accordingly, approves the \$305.00 in travel expenses that were previously disallowed.

The WCPHD Second Supplement also provides details for the \$3,245.50 expense for computer-accessed legal research (CALR), including WESTLAW and LEXIS charges. In accordance with the October 22nd Order, this Court will allow reimbursement for CALR use costs, to the extent 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.

¹ To the extent the lesser amount is the result of closer scrutiny of WCPHD's First Application, the Court strongly urges counsel to review their requested expenses with such scrutiny prior to the initial submission of a fee application to the Court.

WCPHD provided a table that sets forth the date the research was done, the name of the professional conducting the research, the topic and the cost.² The cost provided reflects the charge to WCPHD but does not reflect any discounts WCPHD may receive from its providers. According to the WCPHD Second Supplement, it would be an onerous task to request counsel to allocate precisely the amount of a discount, if any, would be attributable to the research conducted on behalf of the Debtor. With this in mind, WCPHD has agreed to reduce its present and all future requests for the expenses incurred for CALR by 15%. The Court finds this approach to be reasonable. Based upon the more detailed articulation of the expenses and this 15% reduction, the Court approves the reimbursement of \$2,758.68 in CALR expenses as actual and necessary expenses that are compensable from the estate. 11 U.S.C. § 330.

II. THE AKIN GUMP SUPPLEMENT

The Akin Gump Supplement requests the Court allow attorneys' fees in the amount of \$16,802.00 and allow reimbursement for actual and necessary expenses in the amount of \$30,641.91 (doc. # 730, p. 2), both of which the Court previously denied without prejudice. The \$30,641.91 for reimbursement of expenses, like the WCPHD Second Supplement, reflects a reduction or "discount" of \$232.82 for certain meal expenses.

In the October 22nd Order, the Court disallowed \$16,802.00 of the requested attorneys' fees because the description provided by Akin Gump made it impossible for the Court to determine whether these fees were reasonable, necessary and of benefit to the estate, as required by 11 U.S.C. § 330(a)(3). Based upon the Akin Gump Supplement and the detail provided therein, the Court finds the \$16,802.00 of the requested attorneys' fees for diligence-related services to be fully and properly compensable. Specifically, the Court finds these services to be 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 \$16,802.00 in attorneys' fees sought in the Akin Gump Supplement are approved and allowed in full.

In the Akin Gump Application, the Applicant failed to provide sufficient detail for the Court to determine whether the expenses incurred were properly compensable from the estate. Having reviewed the Akin Gump Supplement, the Court finds certain of the \$30,641.91 in expenses for which Akin Gump seeks reimbursement during Akin Gump's Application Period are not compensable. The Court approves reimbursement for expenses to the extent of \$23,872.17. The request for reimbursement of the remaining \$6,769.74 is denied, for the reasons set forth below, in accordance with S.T.N. Enterprises, 70 B.R. at 838, and the Court's October 22nd Order.

² While the best evidence of the invoiced cost from the vendor is clearly the invoice received from the vendor, the Court appreciates that with firms the size of WCPHD that have offices across the nation, such invoices may not be readily available for each office or each client.

The Court disallows \$526.00 sought for reimbursement of chauffeur transportation on April 18, 2004. While in some circumstances, especially in New York City, this expense may be justified as actual and necessary, there is insufficient information in the Akin Gump Supplement for the Court to make that determination. The Court notes that the various ground transportation expenses for which Akin Gump seeks reimbursement range from \$14.00 to a high of \$174.34, absent the April 18th expense. The Court also notes that the highest airfare expense in the Akin Gump Supplement is \$466 on May 28, 2004. In light of the other travel expenses for which reimbursement is sought, the April 18th expense for chauffeur transportation in the amount of \$526.00 seems extravagant and the Applicant has not provided any basis for determining otherwise. In re S.T.N. Enterprises, 70 B.R. at 836. Accordingly, this expense is disallowed.

In the same vein, there is an expense for a hotel in New York for one night, April 30, 2004, in the amount of \$770.81. While the Court appreciates that New York City has higher lodging rates than many other locales, including Vermont, in light of the other expenses submitted for lodging this expense appears excessive and, again, the Applicant has not provided any basis for determining otherwise. In re S.T.N. Enterprises, 70 B.R. at 836. Accordingly, the request for allowance of this \$770.81 is denied.

The Court also finds the Akin Gump Supplement lacks sufficient information for the Court to determine whether the following expenses should be considered overhead expenses or reasonable and necessary expenses specific to this case. Thus, the Court disallows the following expenses:

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| 5/2/04 | Telephone – Cell/Pagers Verizon Wireless | \$ 29.20 |
| 6/2/04 | Telephone – Cell/Pagers Verizon Wireless | \$ 17.79 |

Finally, the Akin Gump Supplement seeks reimbursement for CALR expenses, but fails to provide sufficient specificity for this Court to ascertain whether the following entries sought for reimbursement of computerized research is reasonable, necessary or justified. 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 denies allowance of reimbursement for the following CALR expenses:

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| 5/19/04 | Issues related to KERP objection | \$ 37.29 |
| 5/21/04 | CALR Issues related to KERP objection | \$ 35.93 |
| 5/26/04 | CALR Case law pertaining to employee issues | \$ 3.05 |
| 6/11/04 | CALR Procedural Issues related to claims process (personal injury) | \$ 17.00 |
| 6/11/04 | CALR Procedural Issues related to claims process (personal injury) | \$ 76.50 |
| 6/13/04 | CALR Research into various procedural issues | \$ 12.75 |
| 6/13/04 | CALR Research into various procedural issues | \$ 382.50 |
| 6/13/04 | CALR Research into various procedural issues | \$ 29.75 |
| 6/13/04 | CALR Research into various procedural issues | \$ 56.10 |
| 6/13/04 | CALR Research into various procedural issues | \$ 7.23 |
| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 4.25 |

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| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 459.00 |
| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 59.50 |
| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 497.25 |
| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 60.78 |
| 6/17/04 | CALR Research into employment issues (KERP issues) | \$ 18.06 |
| 6/18/04 | CALR Follow up into additional questions re: employment issues | \$ 8.50 |
| 6/18/04 | CALR Follow up into additional questions re: employment issues | \$ 360.40 |
| 6/18/04 | CALR Follow up into additional questions re: employment issues | \$ 23.38 |
| 6/18/04 | CALR Follow up into additional questions re: employment issues | \$ 7.23 |
| 6/25/04 | CALR Follow up into additional questions re: employment issues | \$ 23.38 |
| 6/25/04 | CALR Follow up into additional questions re: employment issues | \$ 10.84 |
| 6/04/04 | CALR Research UCC Article 9 | \$ 200.99 |
| 6/11/04 | CALR Procedural Issues related to claims process (personal injury) | \$ 250.87 |
| 6/17/04 | Research into employment issues | \$ 776.18 |
| 6/20/04 | Research re: KERP issues | \$ 15.28 |
| 6/20/04 | Research re: KERP negotiation issues | \$ 155.94 |
| 6/25/04 | Research privilege issues | \$ 718.64 |
| 6/30/04 | Research re: KERP litigation issues | \$ 742.87 |
| 6/30/04 | Research Business Judgment Rule | \$ 374.50 |

Based upon the information and description provided in the Akin Gump Supplement, it appears as though Akin Gump seeks reimbursement for time spent researching or analyzing abstract legal issues which is inherently not compensable. In re S.T.N. Enterprises, 70 B.R. at 838. Consequently, the Court denies allowance of reimbursement for CALR expenses in the amount of \$ 5,425.94.

The Court finds the remaining \$23,872.17 in expenses incurred and detailed in the Akin Gump Supplement to be reasonable and appropriate and, accordingly, they are approved and allowed.

III. THE OBUCHOWSKI SUPPLEMENT

In the Obuchowski Supplement, Obuchowski & Emens-Butler request the Court to allow \$154.75 in expenses previously denied in the Obuchowski Application. After considering the Obuchowski Supplement and Lexis bill submitted,³ the Court finds the expenses sought to be reimbursed are reasonable and justified and are approved and allowed.⁴

³ The Obuchowski Supplement includes the best evidence of the actual expense incurred for CALR, namely the invoice from the data provider. While it may not be feasible for some firms to provide this, based upon the size of the firm and how the firm is billed by the provider, the Court notes that where feasible, the bill from the provider is the preferred supporting documentation for allowance of CALR expenses.

⁴ The Court acknowledges the mathematical error in the October 22nd Order with regard to the Obuchowski Application and finds the computation set forth in the Obuchowski Supplement to be accurate.

THEREFORE, IT IS HEREBY ORDERED that


1. The request set forth in the WCPHD Second Supplement is granted.
 - A. Expenses in the amount of \$3,063.68 as requested in the WCPHD Second Supplement are approved and allowed.
 - B. The Debtors are hereby authorized and directed to pay to Wilmer Cutler Pickering Hale and Dorr LLC (to the extent not previously paid) \$3,063.68 for reimbursement of expenses

2. The request set forth in the Akin Gump Supplement is granted in part and denied in part.
 - A. The following fees and expenses as set forth in the Akin Gump Supplement are approved and allowed:
 - (i) \$16,802.00 for attorneys' fees; and
 - (ii) \$23,872.17 for reimbursement of expenses.
 - B. 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:
 - (i) \$16,802.00, representing fees earned by Akin Gump Strauss Hauer & Feld, LLP during the application period and
 - (ii) \$23,872.17 representing the expenses incurred by Akin Gump Strauss Hauer & Feld, LLP during the application period.

3. The request set forth in the Obuchowski Supplement is granted.
 - A. Expenses in the amount of \$154.75 as requested in the Obuchowski Supplement are approved and allowed.
 - B. The Debtors are hereby authorized and directed to pay Obuchowski & Emens-Butler \$ \$154.75 for reimbursement of expenses.

SO ORDERED.

November 29, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge