

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

IN RE:

LADY BALTIMORE FOODS, INC.,	)	Joint Administration
	)	
Debtor.	)	Case No.: 02-43428-11
	)	
LADY BALTIMORE OF MISSOURI, INC.,	)	
	)	
Debtor.	)	Case No. 02-43429-11
_____	)	

**ORDER PARTLY APPROVING AND PARTLY DENYING FOURTH INTERIM  
APPLICATION BY SPENCER FANE BRITT AND BROWNE, LLP  
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED  
AND REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED  
FOR THE PERIOD JANUARY 11, 2004 THROUGH APRIL 30, 2004**

This matter comes before the Court upon the Fourth Interim Application by Spencer Fane Britt and Browne, LLP (“SFBB”), Counsel for Unsecured Creditors’ Committee, for Allowance of Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred for the Period January 1, 2004 through April 30, 2004 (the “Application”). The Court, after being duly advised in the premises, and after noting that no objections have been filed, finds that the Application should be approved, except in the amounts, and for the reasons, noted below.

**Paraprofessional time and hourly rate**

Use of paralegals can be especially value when they can render certain legal services, such as the research of legal issues or drafting legal pleadings, at less cost than if those same services were performed by an attorney. The Tenth Circuit Court of Appeals has acknowledged the “widespread

custom of separately billing for the services of paralegals ....”<sup>1</sup> and requires courts to scrutinize the reported hours and the suggested rates in the same manner it does for lawyer time and rates.<sup>2</sup> The Supreme Court has also noted that “[p]urely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.”<sup>3</sup> This is obviously especially important in bankruptcy cases, because every dollar spent on legal services is a dollar less for the creditors.<sup>4</sup>

If the services performed by a paraprofessional consist of typing, data entry, checking court dockets or court dates, manually assembling, collating, marking, processing, photocopying or mailing documents, organizing files, making copies, delivering or mailing papers, or making or receiving routine telephone calls, the task is clerical in nature and not compensable. Such tasks are traditionally charged to overhead and included in the professionals’ hourly rate, as they can and should be performed by competent legal secretaries without additional charge to the client.

In this fee application, SFBB is seeking reimbursement for work done by paraprofessional D. C. Katsulis at rates between \$105 and \$120.56 per hour. Below is a list of the work billed by SFBB for Katsulis’ time which, without more complete information, appears to be secretarial in nature:

<b>Date</b>	<b>Service</b>	<b>Time</b>	<b>Amount</b>
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<sup>1</sup>*Ramos v. Lamm*, 713 F.2d 546, 558 (10<sup>th</sup> Cir. 1983), *overruled on other grounds by Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 483 U.S. 711 (1987).

<sup>2</sup>*Id.* at 559.

<sup>3</sup>*Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989).

<sup>4</sup>*In re Bennett Funding Group, Inc.*, 213 B.R. 234, 247 (Bankr. N.D.N.Y. 1997).

01/08/04	DCK	Prepare invoices for interim fee application	.20	24.11
01/14/04	DCK	Update calendars regarding hearing on adversarial case; update pleadings notebook.	.50	60.28
01/19/04	DCK	Update pleadings notebooks; organize and label files for Mr. Goldstein; research <sup>5</sup> order regarding Karbank Realtors.	1.30	156.73
01/23/04	DCK	Prepare fax of response to brief; <sup>6</sup> fax response; prepare letter to court clerk to accompany response; fedex copy to court; mail copies to 2 attorneys.	1.00	120.56
02/06/04	DCK	Telephone conversation with Al Shapiro regarding stipulation; telephone conversation with court clerk regarding filing via fax; telephone conversation with Al Shapiro regarding filing via fax; correction to Stipulation and fax back to Mr. Shapiro; <sup>7</sup>	1.30	156.73
02/09/04	DCK	Review motions and calendar deadlines for Mr. Goldstein.	.60	72.33
02/16/04	DCK	Review pleadings and calendar events for Mr. Goldstein.	.50	60.28
02/18/04	DCK	Organize and create files, calendar events for Mr. Goldstein	1.20	144.67
02/20/04	DCK	Organize and update files	1.50	180.84

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<sup>5</sup>The use of the term “research” by itself does not assist this Court in determining if it is the kind of work that requires specialized training and experience, or not. If the task performed was merely searching through PACER to see if an order had been entered, any competent legal secretary could perform that task.

<sup>6</sup>If the paralegal actually prepared a brief, clearly this would be compensable at paralegal rates. This entry is unclear on whether that is the case, however a review of the fee application of Mr. Goldstein for the same date reveals he has charged 5.05 hours, or \$1,449.63, to prepare the brief, so it appears the work done by this paralegal was not legally substantive. Again, this is unclear.

<sup>7</sup>Again, this Court is unable to determine if these were telephone calls of inquiry, or of negotiation, or something requiring more than legal secretarial skills.

03/01/04	DCK	Telephone conversation with Linda @ Tom O'Neal's office regarding motion to lift stay (.3); calendar events for Mr. Goldstein (.2); request copies of attachments to motion to lift stay (.3); telephone conversation with Alicia Burris regarding motion to lift stay (.3); received email copy of motion to lift stay in Word Perfect and convert to WORD (.7).	2.20	231.00
03/02/04	DCK	Prepare documents for Mr. Goldstein. <sup>8</sup>	.80	84.00
03/09/04	DCK	Review order regarding employment of auctioneer (.3); discuss with Mr. Goldstein (.2); fax revised copy to Ms. Protzmann at Polsinelli's office (.3).	1.20	126.00
03/10/04	DCK	Research and provide documentation regarding Third Interim App of Cohen McNeil Pappas and Shuttleworth to Mr. Goldstein (.3); email to Polsinelli's office regarding status of adversary case (.2); calendar upcoming events for Mr. Goldstein (.2).	.70	73.50
03/11/04	DCK	Research deadlines for motions regarding several motions and calendar same for Mr. Goldstein.	1.20	126.00
03/12/04	DCK	Prepare objection to motion to lift stay regarding Commerce Bank including filing via federal express and service of same <sup>9</sup> .	1.50	157.50

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<sup>8</sup>The Court cannot determine what documents are referenced, or whether their compilation requires the exercise of professional judgment warranting compensation at the paraprofessional's hourly rate. If it is, for example, getting together exhibits for a trial, that may well be compensable at a higher rate. If it is, for example, simply locating documents from a file, copying them, and putting them into a notebook, it could well be clerical.

<sup>9</sup>While preparation of an objection to a motion to lift stay is likely compensable at the higher paraprofessional rate, arranging service of the document by federal express and mailing out service of the document is not. Because SFBB has failed to indicate how much time was spent on each task in this paragraph, it is impossible to know how much of the time requested is for compensable services. For that reason, the Court must deny the entire amount at this time.

03/15/04	DCK	Prepare notice of monthly fee application, third interim fee application, order approving third interim fee application including telephone conversation with Judge Karlin's clerk Becky regarding court dates.	2.00	210.00
03/17/04	DCK	Research and review motion for extension of time to file plan including calendar events for Mr. Goldstein. <sup>10</sup>	.80	84.00
03/19/04	DCK	Telephone conversation with Becky Carter, court clerk regarding response to motion; Address issues related to motion to extend time to respond to several motions with deadlines on March 22, 2004 including preparation of motion and corresponding order; prepare federal express package and mail same as above; fax copies of invoices to accounting for Lady Baltimore.	3.00	315.00
04/07/04	DCK	Prepare copies of claims register for Mr. Goldstein	.50	52.50

**TOTALS:            26.10    \$2,913.21**

The Court is well aware that some work that may appear to be clerical may not necessarily be so. Without an explanation of why the services were delegated to a highly paid paralegal, instead of being absorbed in the firm's overhead by a competent legal secretary, however, the Court must require the applicant to carry its burden of proof regarding the reasonableness and necessity of the services, at the rate requested, as it must in every other area of its fee application.<sup>11</sup>

The hourly rate being requested for this paralegal is equal to the rate charged by some licensed lawyers in this Court, and thus this Court has some concern whether \$120/hour is truly a reasonable rate

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<sup>10</sup>Again, the use of the term "research" by itself does not assist this Court in determining if it is the kind of work that requires specialized training and experience, or not.

<sup>11</sup>*In re Bennett Funding Group, Inc.*, 213 B.R. at 248.

for a paraprofessional.<sup>12</sup> Because neither the U.S. Trustee nor any other party has objected to this rate, however, this Court will not at this time find the rate to be unreasonable.<sup>13</sup>

Instead, this Court will require that SFBB, and all other counsel, fully and completely justify the time spent at such a rate. Where a fee application requests compensation for a paraprofessional's work, that individual's experience and qualifications should be noted on the first fee application in which the request appears. This Court has been unable to find that information for this paralegal.

Accordingly, the Court will at this time disallow \$2,913.21 of the SFBB fee application, which is the amount attributable to tasks which appear, without more information, to be properly handled by a legal secretary, and attributable to overhead. Because this is the Court's first opinion on the issue of paralegal time, however, and because no party objected to the fee request, the Court will deny this \$2,913.21, without prejudice. If fees for services herein disallowed were in fact services that required special training or education and experience, or the exercise of professional judgment not expected of a competent legal secretary, SFBB may submit to this Court an affidavit, with a Supplemental Fourth Application, of those tasks which it contends should be compensated at the paraprofessional rate, with a thorough explanation of what tasks were performed, and why they should be compensated at a

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<sup>12</sup>For example, in a new Chapter 11 filed in this Court this week, the motion to employ counsel for the debtor seeks reimbursement for paralegal time at \$45/hour. Furthermore, debtor's counsel seeks reimbursement for its associate lawyers at \$120/hour, the same rate being sought for a paraprofessional who presumably does not have a law degree. *See In re Brackett*, Case No. 04-41877 (Doc. No. 3).

<sup>13</sup>The Court also notes that it has likely previously approved paraprofessional fees, even in this case, which on more thorough review would have revealed the same problems noted herein. The Court regrets it did not issue an opinion the first time this issue surfaced, so that the parties could have sooner known the Court's position on this issue.

paralegal rate instead of being absorbed as part of overhead. If such a supplement is to be filed, it shall be filed by **August 5, 2004**, at which time the Court will determine if any of the \$2,913.21 should, in fact, have been allowed, had an adequate description of the services, and the skill and training of the paralegal, been earlier provided.

**IT IS, THEREFORE, ORDERED** that the Application is hereby approved in the amount of \$13,112.54 for services. The sum of \$2,913.21 is disallowed, without prejudice, as noted above. Because no party entered an objection to this fee application, and thus SFBB was deprived of presenting evidence that it is entitled to reimbursement of these amounts for these services, the denial of these amounts is without prejudice to SFBB submitting a renewed request for these amounts, accompanied by an appropriate affidavit(s) explaining why it should, in fact, be awarded these sums as reasonable and necessary fees. Any such supplemental fee application shall be filed by **August 5, 2004**.

**IT IS, FURTHER, ORDERED** that the captioned Debtors are hereby authorized to release and direct payment to SFBB the sum of \$13,112.54 for services rendered by SFBB on behalf of the Committee for the period January 1, 2004 through April 30, 2004, for which SFBB has not been paid; and

**IT IS, FURTHER, ORDERED** that the captioned Debtors are hereby authorized to release and direct payment to SFBB the sum of \$245.33 for expenses incurred by SFBB on behalf of the Committee for the same period, for which SFBB has not been paid.

**IT IS SO ORDERED** this 16th day of July, 2004.

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JANICE MILLER KARLIN  
United States Bankruptcy Judge  
District of Kansas

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the **ORDER PARTLY APPROVING AND PARTLY DENYING FOURTH INTERIM APPLICATION BY SPENCER FANE BRITT AND BROWNE, LLP FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED FOR THE PERIOD JANUARY 11, 2004 THROUGH APRIL 30, 2004** was deposited in the United States mail, postage prepaid on this 16th day of July, 2004 to the following:

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DEBRA C. GOODRICH  
Judicial Assistant to:  
The Honorable Janice Miller Karlin  
Bankruptcy Judge