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United States Bankruptcy Court
Albuquerque, New Mexico
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United States Bankruptcy Court
Albuquerque, New Mexico

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE	§	CASE NO. 11-01-10779-SA
	§	Chapter 11
FURR'S SUPERMARKETS, INC.	§	
	§	
Debtor.	§	

RESPONSE OF PRICEWATERHOUSECOOPERS, LLP TO UNITED STATES TRUSTEE'S MEMORANDUM IN SUPPORT OF OBJECTION TO APPLICATION FOR EMPLOYMENT OF PRICEWATERHOUSE COOPERS, LLP

TO THE HONORABLE JAMES S. STARZYNSKI, UNITED STATES BANKRUPTCY JUDGE:

Comes now PricewaterhouseCoopers, LLP ("PwC"), proposed financial consultants for the Debtor, and files its Response of Pricewaterhouse Coopers, LLP to United States Trustee's Memorandum in Support of Objection to Application for Employment of PricewaterhouseCoopers, LLP (the "Response"). In support of the Response, the Trustee respectfully represents:

I. BACKGROUND

1. On February 1, 2001, PwC was retained by the Debtor to provide financial advisory services in preparation for the bankruptcy filing. *See Proffer of Testimony of Loretta Cross in Support of the PwC Application* (the "*Cross Proffer*"), filed concurrently herewith, at ¶ 7.

2. On February 2, 2001, PwC received a retainer from the Debtor in the amount of $200,000 (the "$200,000 Retainer"). Consistent with PwC's ordinary operating procedures, the $200,000 Retainer was deposited in PwC's operating cash management system as a credit balance on the Furr's account. The $200,000 Retainer was applied as a credit balance to the Debtor's account for services rendered or to be rendered on and after February 1, 2001. *Cross Proffer* at ¶ 8.

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3. On a daily basis, between February 1, 2001 and the date of the filing of the Bankruptcy Case, PwC professionals and employees posted their time entries for work performed on behalf of the Debtor. Each day, the daily posting of time entries lowered the Debtor's $200,000 credit balance by the corresponding amount of each time entry. PwC completed posting its time entries for all prebankruptcy services prior to the filing of the Debtor's chapter 11 petition. For the period from February 1, 2001 through the date of the filing of Bankruptcy Case, the fees and expenses that PwC earned and incurred assisting the Debtor with it's prebankruptcy planning and negotiations amounted to $128,541 and $9,676.75, respectively, for a total of $138,217.75. *Cross Proffer* at ¶ 9. PwC has transferred the credit balance ($61,782.25) into a segregated account as a prepetition bankruptcy retainer (the "Bankruptcy Retainer"). *Cross Proffer* at ¶ 10.

4. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the United States Bankruptcy Code. On the Petition Date, the Debtor filed its Application for Order Under 11 U.S.C. 327(a) and Fed. R. Bank. P. 2014 Authorizing the Employment of PriceWaterhouseCoopers, L.L.P. as the Debtor's Financial Consultants (the "PwC Retention Application"). The PwC Application was supported by the Declaration of Loretta Cross.

5. On March 8, 2001, the Office of the United States Trustee (the "OUST") filed its United States Trustee's Objection to Application for Employment of PricewaterhouseCoopers, LLP (the "OUST Objection").

6. On April 5, 2001, the Debtor filed the Amended and Restated Declaration of Loretta Cross in support of the PwC Retention Application ("Amended Declaration"). The Amended Declaration addressed the concerns raised by the OUST in the OUST Objection.

7. On April 6, 2001, this Court held a preliminary hearing on, among other things, the PwC Retention Application. The Court has scheduled a final hearing on the PwC Retention Application on April 20, 2001 at 10:00 a.m.

8. On April 16, 2001, the OUST filed its United State Trustee's Supplemental Objection to Application for Employment of PricewaterhouseCoopers, LLP (the "OUST Supplemental Objection") and its United States Trustee's Memorandum in Support of Objection to Application for Employment of PricewaterhouseCoopers, LLP (the "OUST Memorandum").

II. LEGAL ARGUMENT

9. Most of the concerns raised by the OUST in the OUST Objection and the OUST Supplemental Objection have been resolved to the satisfaction of all parties involved. In the OUST Memorandum, the OUST addresses its two remaining objections. The OUST argues that (i) the terms of the retainer paid to PwC are not reasonable; and (ii) PwC's hourly rates are not reasonable.

A. PwC's Retainer is Reasonable

10. Section 328 of the Bankruptcy Code provides:

> (a) The trustee [or debtor in possession] or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.

11 U.S.C. § 365(a).

11. The OUST argues that the $200,000 Retainer paid by the Debtor to PwC prepetition is not reasonable. The OUST argues that (i) PwC has attempted to change the characterization of the $200,000 Retainer; (ii) PwC's receipt of the $200,000 Retainer may have been a preference which would disqualify PwC from representing the Debtor; (iii) PwC deposited the $200,000

Retainer into its general operating account; and (iv) PwC has not adequately disclosed whether PwC applied the $200,000 Retainer to PwC's prepetition billings pre- or postpetition. PwC respectfully submits that the OUST's arguments are misplaced.

The Characterization of the $200,000 Retainer is Irrelevant

12. The OUST Memorandum refers to three different types of retainers common in the legal profession: (1) classic retainers; (2) advance payment retainers; and (3) security retainers. The OUST argues that PwC has attempted to reclassify the $200,000 Retainer from a "security" retainer to a "advance payment" retainer. The OUST is apparently anticipating an argument by PwC that the Bankruptcy Retainer is not property of the estate. The OUST's concerns are unfounded. PwC has not attempted to change the characterization of the $200,000 Retainer because PwC never "classified" the $200,000 Retainer. Consistent with PwC's ordinary operating procedures, the $200,000 Retainer was deposited in PwC's operating cash management system as a credit balance on the Furr's account for services rendered or to be rendered on and after February 1, 2001. *See Cross Proffer* at ¶ 8.

13. Any "classification" of the $200,000 Retainer is irrelevant to the PwC Application. Bankruptcy courts have addressed issues regarding classification of retainers for legal professionals because, in some cases, legal professionals have attempted to shield prepetition retainers from bankruptcy court scrutiny by classifying retainers as "earned on receipt" or "advance fee" and therefore not property of the bankruptcy estate. *See, e.g., In re Hathaway Ranch Partnership*, 116 B.R. 208, 216-17 (Bankr. C.D. Cal. 1990); *In re Gray's Run Technologies, Inc.*, 217 B.R. 48, 53 (Bankr. M.D. Pa. 1997). This position seems to be the OUST's concern as well. PwC, however, has never asserted that the $200,000 Retainer was "earned on receipt" or that title to the $200,000

Retainer passed from the Debtor to PwC upon receipt. *Cross Proffer* at ¶ 11. PwC understands that the unapplied portion of the Bankruptcy Retainer is property of the estate. *Id.* PwC understands that the Bankruptcy Retainer cannot be applied by PwC to postpetition invoices absent Bankruptcy Court approval. *Cross Proffer* at ¶ 12. PwC has placed the Bankruptcy Retainer in a segregated account pending Court approval of its postpetition fees. *Cross Proffer* at ¶ 10.

PwC's Receipt of the $200,000 Was Not a Preference

14. The Letter Agreement between PwC and the Debtor provides that PwC may reserve its retainer for application against its final invoice. The OUST argues that this provision in effect gives PwC a security interest and "may" create a preference issue if PwC is allowed to enforce that provision. The soundness of the OUST's preference analysis aside, PwC has agreed to withdraw that provision and apply the Bankruptcy Retainer to its fees as such fees are approved by the Bankruptcy Court. *Cross Proffer* at ¶ 12.

The Characterization of the $200,000 Retainer is Irrelevant

15. The OUST argues that the $200,000 Retainer is unreasonable because PwC deposited the $200,000 Retainer into its general operating account. In support of this position, the OUST cites the *Hathaway Ranch Partnership* case. In that case, counsel for the debtor received a $50,000 prepetition bankruptcy retainer. Debtor's counsel characterized the retainer as an "earned upon receipt" retainer to be applied to future services to be performed during the bankruptcy. Debtor's counsel did not segregate the unearned portion of the retainer in its trust account. Debtor's counsel also did not intend to file a fee application for approval of its application of the retainer against postpetition services. The court, noting that earned upon receipt retainers were valid under California law, concluded nonetheless that such retainers had to be deposited into the attorney's trust

account and were subject to bankruptcy court oversight. *Hathaway Ranch Partnership*, 116 B.R. at 217-18. This case is irrelevant to the PwC Application. PwC does not contest the authority of the Bankruptcy Court to review its invoices for postpetition services. PwC has segregated the Bankruptcy Retainer in a separate account, and will seek Court approval of its fee application prior to applying the Bankruptcy Retainer against postpetition fees. *Cross Proffer* at ¶¶ 10, 12.

PwC Has Accounted for the Prepetition Application of the $200,000 Retainer

16. The OUST argues that PwC has not accounted for its prepetition application of the $200,000 Retainer against prepetition services. The OUST is concerned that PwC may have applied the $200,000 Retainer postpetition and therefore not be "disinterested." PwC, however, properly applied the $200,000 Retainer to its prepetition services prior to the bankruptcy filing. *Cross Proffer* at ¶ 9 and Exhibit B thereto.

B. PwC's Hourly Rates are Reasonable and Customary

17. The OUST argues that PwC's hourly rates are excessive. The OUST cites a nonbankruptcy 10th Circuit case, *Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983), for the proposition that PwC cannot seeks hourly rates higher than the hourly rates of professionals in the Albuquerque area. The OUST does not cite any bankruptcy authority for this proposition, and admits that it does not know what the hourly rates are for financial consultants of PwC's experience and expertise in the Albuquerque area.

18. In establishing guidelines for the reasonableness of compensation, bankruptcy courts in the 10th Circuit consider, among other things, (i) the time and labor involved; (ii) the novelty and difficulty of the questions; (iii) the skill required to perform the professional services properly; (iv) the experience, reputation and ability of the professionals; and (v) awards in similar cases. *See*

First National Bank of Lea County v. Niccum (In re Permian Anchor Servs., Inc.), 649 F.2d 763, 768 (10th Cir. 1981) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)); *In re Vista Foods USA, Inc.*, 234 B.R. 127-28 (Bankr. W.D. Okla. 1999). Under this analysis, PwC's rates are reasonable. PwC is uniquely qualified to represent the Debtor in this case. The members of the practice group at PwC who will be working in this case have specific expertise in (i) the supermarket industry; and (ii) the retail sector. *Cross Proffer* at ¶ 5. Loretta Cross has participated in several supermarket bankruptcy cases, including (i) the *Food Barn Stores, Inc.* bankruptcy filed in Kansas City, Missouri; (ii) the *Homeland Stores, Inc.* bankruptcy of Oklahoma City, Oklahoma; and (iii) the *Stanley Stores, Inc.* bankruptcy filed in Houston, Texas. *Id.* Professionals of PwC have also participated in various other supermarket bankruptcy cases, including (i) the *Bruno's, Inc.* bankruptcy filed in Alabama; (ii) the *Jitney Jungle, Inc.* bankruptcy filed in Louisiana; and (iii) the *Appletree Stores, Inc.* bankruptcy filed in Houston, Texas. *Id.*

19. PwC is not aware of any accounting or financial consulting firms in the Albuquerque, New Mexico market with similar experience or expertise in supermarket bankruptcies who can provide the accounting and financial services necessary for the Debtor's reorganization. PwC's experience and expertise will allow it to provide the services necessary to the Debtor in accomplishing a reorganization, including (i) valuing the Debtor's assets and business, including leasehold interests; (ii) analyzing executive compensation packages and retention programs; and (iii) identifying and assisting with the implementation of operational improvement. In addition, PwC's expertise in the supermarket industry will lend credibility to the Debtor's reorganization efforts vis-a-vis the Official Committee of Unsecured Creditors, the Office of the United States Trustee, secured creditors, and other parties in interest. *Cross Proffer* at ¶ 6.

20. Other bankruptcy courts in the Tenth Circuit have permitted professionals to charge hourly rates consistent with those rates charged by practitioners in the professional's geographic area, as opposed to the geographic area where the bankruptcy case is pending. *See, e.g., Order Establishing Fee Application Procedure and Fee Guidelines for Professionals* entered in *In re Commercial Financial Services, Inc.*, Case No. 98-05162-R (Bankr. N.D. Okla. Jan. 7, 1999), attached hereto as **Exhibit A**.

21. PwC's requested hourly rates are similar to those approved in other bankruptcy cases in which PwC has been involved in other states. *Cross Proffer* at ¶ 14 and Exhibit C attached thereto. Exhibit C to the Cross Proffer is a schedule of recent and ongoing bankruptcy cases in various states in which PwC represents, or represented, the Debtor, the Official Committee of Unsecured Creditors or a secured lender. The ranges of rates approved by the bankruptcy court in these cases were as follows: $450-570 for partners, $268-485 for Directors and Managers, and $100-$250 for others. The proposed ranges of rates for PwC in this case are $425-$595 for Partners, $300-$540 for Directors and Managers, and $100-$325 for others. These proposed ranges of rates are comparable to those approved in recent and pending bankruptcies in other states. *Cross Proffer* at ¶ 14 and Exhibits 1 through 11 to the Evidence Submission being filed concurrently herewith. Exhibits 1 through 11 of the Evidence Submission consist of copies of pleadings and orders approving the retention of PwC in various bankruptcy cases in various states at hourly rates comparable to the hourly rates sought in the PwC Retention Application.

22. In addition to the bankruptcy cases listed on Exhibit C, PwC is currently employed by the secured lender group in the *Sun Healthcare, Inc.* bankruptcy case. Sun Healthcare is an Albuquerque-based company that filed for relief under Chapter 11 in Delaware. PwC is receiving

hourly rates comparable to those requested in the Application for its work for the secured lender group in the *Sun Healthcare, Inc.* bankruptcy. *Cross Proffer* at ¶ 15.

WHEREFORE, PwC respectfully requests that the Court approve the PwC Retention Application pursuant to the terms and conditions that the parties have otherwise agreed upon, at the hourly rates set forth in the Application.

Respectfully submitted this 18th day of April, 2001.

Charles A. Beckham, Jr.
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Telephone: (713) 547-2243
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COUNSEL FOR
PRICEWATERHOUSECOOPERS, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response was served upon the parties on the attached service list by overnight mail on the 18th day of April, 2001 in accordance with the Federal Rules of Bankruptcy Procedure.

Charles A. Beckham, Jr.

IN RE FURR'S SUPERMARKETS, INC.
CASE NO. 11-01-10779-SA
SERVICE LIST

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 07 1999

TIMOTHY R. WALDRIDGE, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
COMMERCIAL FINANCIAL	)	Case No. 98-05162-R
SERVICES, INC. and	)	Chapter 11
	)	
CF/SPC NGU, INC.,	)	Case No. 98-05166-R
	)	Chapter 11 Jointly Administered
Debtors.	)	with Case No. 98-05162-R

ORDER ESTABLISHING FEE APPLICATION PROCEDURE AND FEE GUIDELINES FOR PROFESSIONALS

This matter comes on before the Court *sua sponte*. A status conference and a case management conference were held on January 5, 1999, wherein the Court accepted comments from counsel regarding a procedure for applying for professional fees and expenses. The Court FINDS that good cause exists for establishing an orderly and uniform procedure for professionals seeking compensation and reimbursement of expenses from the estate.

Further, because of the size and complexity of the case, the possibility of numerous appeals, the number of professionals retained or to be retained by the estate, and the existence of various committees and creditors whose counsel may seek compensation from the estate for services benefiting the estate, the Court finds that good cause exists for establishing fee guidelines in order to (1) encourage professionals to cooperate with other professionals in making assignments of tasks with the goal of minimizing duplication of efforts and cost to the estate; (2) inform professionals in advance as to the categories of fees and expenses the Court generally will or will not allow to be paid from the estate so that professionals may make informed decisions in the course of their employment; and (3) promote more expedient, beneficial and meaningful fee applications.

IT IS THEREFORE ORDERED that the Fee Application Procedure and Fee Guidelines set forth below are applicable and shall be followed in this case.

FEE APPLICATION PROCEDURE

1. *Budgets*

All professionals seeking to be employed by the estate shall file with the Court a projected quarterly budget. Quarterly budgets shall be filed and served on the 15th day of each March, June, September and December for the subsequent calendar quarter for as long as the professional remains employed by the estate. Each projected budget shall contain descriptions of services to be rendered and expenses to be incurred, the approximate dates and anticipated costs of such services and expenses, and a description of any actual expense incurred or service performed (or not performed) that deviated significantly from budgeted expenses or service. Budgets shall be served upon the Debtor-in-Possession and all persons and entities listed on the most recent Master Service List.

DOCKETED 1-7, 1999.
Clerk, U.S. Bankruptcy Court
Northern District of Oklahoma

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2. **Allocation of Work and Preparation of Billing Statements**

a. **Least Costly Means of Obtaining Desired Result.** Professionals shall allocate the work to be performed by members of their firms in accordance with the best interests of their clients and shall exercise billing judgment especially with regard to time spent in inter- or intra-office communications, research, revision and editing. Work shall be assigned so as to obtain reliable results in the most economic fashion possible. **The rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it.**

b. **Rules and Procedures Applicable to Preparation of Billing Statements.** Billing statements submitted to the Debtor-in-Possession and attached to the fee application shall comply in all respects with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, the Guidelines for Compensation of Professionals prepared by the Office of the United States Trustee, and the Fee Guidelines set forth below in this Order. To the extent possible, all professionals shall coordinate to establish uniform category designations for areas of representation in which more than one professional participates.

c. **Apportionment Between and Among Different Estates.** Professionals may apply for compensation only in connection with the scope of representation set forth in the application for retention, as modified by the retention order. Professionals authorized to perform services for more than one debtor shall apportion fees and expenses between such estates according to the relative benefit to each estate.

3. **Fee Applications**

a. **Interim fee applications.** Professionals shall file interim applications for the allowance and payment of fees and expenses pursuant to 11 U.S.C. § 331 every 120 days. All allowances of interim fees and expenses are subject to the Court's review of the same upon submission of a final fee application pursuant to 11 U.S.C. § 330.

b. **Review of Proposed Application.** Before filing an application for allowance and payment of compensation and reimbursement of expenses, the professional seeking compensation and/or reimbursement shall submit a **proposed application** and supporting billing statements (the "Proposed Application") to the Debtor-in-Possession, the Assistant United States Trustee and the Creditors' Committee(s) for review and comment (the "Reviewing Entities"). The professional and the Reviewing Entities shall confer in good faith to attempt to clarify ambiguities and resolve objections to the Proposed Application.

c. **Filing and Service of Fee Application.** Following such a conference, and having resolved all resolvable objections, the professional may file its application and supporting billing statements with the Court (the "Fee Application"). The Fee

Application shall contain a representation by the professional/applicant (1) that the Reviewing Entities have reviewed the Fee Application and have **no objections**, or (2) that the professional/applicant met and conferred with the Reviewing Entities in good faith in an attempt to clarify ambiguities and resolve objections. The Fee Application shall be served upon most current Master Service List.

d. **Service of Notice of Hearing on Fee Application.** All Fee Applications will be set for hearing. Prior to filing the Fee Application, the professional/applicant should call **Brenda Nickels, Courtroom Deputy, at (918) 581-7646**, to obtain a hearing date for the Fee Application. The Fee Application submitted for filing shall be accompanied by a "Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing", which Notice shall contain the following: (1) the contents of a "Notice of Hearing on Compensation" required by Bankruptcy Rule 2002(c)(2); (2) a statement that the Fee Application is available for inspection and copying at the office of the professional/applicant (or its designated copy service), giving the address and telephone number of the professional/applicant (or its designated copy service); and (3) the following language in bold type:

> **You are hereby notified that you have until _____, 1999 (specific date calculated as seven days prior to the hearing date) to file a written response or objection to the relief requested in the above-described Fee Application. If no response or objection is timely filed, the Court may grant the requested relief without further notice.**

The "Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing" shall be served upon the Master Service List at least 20 days prior to the date set for hearing, pursuant to Bankruptcy Rule 2002(a)(6).

e. **Objections.** A Reviewing Entity or any other party in interest having unresolved objections must file a **written objection** to the Fee Application at least seven (7) days prior to the date of the hearing on the Fee Application, or the objection may not be heard. The objection must identify the charges in dispute with sufficient specificity to direct the Court to the relevant page(s) and line item(s) at issue, state the reason for the objection, and provide any relevant legal authority. **Objections to the Fee Application shall be served upon the professional/applicant, the Reviewing Entities and the Master Service List.**

f. **Resolution of Objections.** In the event that an objection is resolved prior to the hearing, the professional/applicant shall immediately advise **Brenda Nickels, Courtroom Deputy, at (918) 581-7646**, and file a short supplement describing the modification to the Fee Application, if any, resulting from the resolution of the written objection. If the resolution results in no change to the Fee Application, the objecting party shall immediately file a pleading withdrawing its objection.

FEE GUIDELINES

These Fee Guidelines supplement the Bankruptcy Code and Rules, the relevant and binding case law interpreting the Bankruptcy Code and Rules, and the United States Trustee Guidelines, all of which apply in this case.

Criteria for Evaluating Fee Applications

The Court will consider the following criteria in evaluating Fee Applications filed in this case:

1. **Hourly Rates.** The primary criterion used to evaluate the reasonableness of the hourly rate charged will be the amount reasonably charged by a person possessing the skill, experience and expertise **required to perform the given task.** As stated in the Fee Application Procedures, **the rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it.** The Court will consider the human resources of the firm seeking compensation (and the resources of local counsel, if applicable), including the availability of para-professionals, in determining an hourly rate appropriate for a task. Professionals shall consider this rule when exercising billing judgment in preparation of the billing statement.

2. **Locality**. Professionals and para-professionals may charge hourly rates consistent with those charged by a practitioner in the professional's geographic area possessing education, experience, expertise, and skills commensurate with the professional and para-professional seeking compensation. Local prevailing rates must be demonstrated by competent evidence at the hearing on the Fee Application.

3. **Travel Time.** Travel time will be compensated at the professional's regular hourly rate unless the professional is performing services for and billing another client during the travel time, in which case the professional will not be compensated for the time billed to another client. In light of the availability of telephone conferences, e-mail, facsimile transmission and other sophisticated communications technology that substantially reduces the necessity of being present in the locality where business is being transacted, the Court will compensate only **one** professional for travel time unless a showing is made that more than one professional was required for the meeting, court appearance or other event for which travel time is sought. The restriction on compensation for travel time does not necessarily restrict compensation for more than one professional working on a task if the task requires more than one professional.

4. **Duplication of Services**. Compensation will not be allowed for duplication of services. For instance, only those professionals who materially participate in a hearing will be compensated for the hearing, unless a showing is made as to why a second professional was required. The availability of local counsel, local counsel's human resources, and local counsel's familiarity with the issues will be considered.

5. **Billing Judgment**. A professional shall exercise billing judgment in presenting its Fee Application. The Court cannot determine whether billing judgment was exercised unless all services and expenses are included in the Fee Application presented to the Court; therefore, a professional shall make the Court aware of its billing judgment by indicating in the Fee Application the services that were performed but for which no compensation is sought. Examples of "no charge" entries include services that were not productive, excessive or duplicative, and services which primarily benefited another party or the professional, rather than the estate (not including Fee Applications, however).

6. **Expenses**. Copying costs shall be limited to $.20 per page if copying is performed in-house, or the actual cost if copying is performed by a service. Reimbursement of incoming fax costs shall be limited to $.20 per page; out-going faxes will be reimbursed at actual cost. Absent a showing of necessity, overnight or courier service delivery will not be a reimbursable expense.

SO ORDERED this 7th day of January, 1999.

Dana L. Rasure

DANA L. RASURE, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

MSL SEJ 1-7-99
initial/date
I:\RASURF\cfs\orders\Order re fee appl and fee guidelines