



FACSIMILE TRANSMISSION FROM:

DENNY CHIN
United States District Judge

Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1020
New York, New York 10007-1312

Telephone: (212) 805-0200

Facsimile: (212) 805-7906

DATE:

12/15/08

TIME:

1:04 PM

TO:

Leo V. Gagion

FIRM:

Dewey & LeBoeuf LLP

FAX NO.:

(212) 259-6333

MESSAGE:

**** YOU ARE REQUIRED TO FAX COPIES OF THE ATTACHED
DOCUMENT TO ALL COUNSEL OF RECORD IN THIS CASE ****

Number of Pages (including this cover page): 4

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 -----x
 SECURITIES EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 STEVEN BYERS et al., :
 :
 Defendants. :
 -----x

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #
 DATE FILED: 12-15-08

ORDER
 08 Civ. 7104 (DC)

CHIN, District Judge

Before the Court is the application of the Receiver and his attorneys, Dewey & LeBoeuf, LLP ("D&L"), for fees and expenses for the period August 11-31, 2008. Certain creditors have objected. The Court has been advised that the Receiver and D&L are preparing a response to the objections. In submitting a response, the Receiver and D&L may wish to address, inter alia, the following questions and concerns:

1. In the application, D&L states that "[t]he blended hourly rate for legal services performed by D&L professionals in August (excluding the Receiver) was approximately \$478 per hour. Accordingly, no further reduction was necessary to ensure that the blended rate for legal services did not exceed \$550 per hour." (First Joint Monthly Application ("Appl.") ¶ 18). Are summer associates and paralegals considered "D&L professionals" for these purposes? Does the blended rate of \$478 include time spent by summer associates and paralegals?

2. It is difficult to evaluate the reasonableness of the hourly rates for most of the lawyers listed. For example, Ilona B. Coleman, Bryan Westhoff, Nancy Riley, Sara Trum, and Robin Moore -- all simply described as "Associate" -- have substantial hours billed at hourly rates of, respectively, \$605, \$605, \$550, \$605, and \$605. Without knowing anything about their backgrounds, it is difficult for the Court to determine whether the requested hourly rates are reasonable. While I do not need descriptions of the backgrounds for all the lawyers, it would be helpful to have them for the lawyers who spent substantial amounts of time on these matters.

3. While I accept the representations that the requested hourly rates are D&L's standard hourly rates for the individuals involved, I wonder whether the rates are high for legal services rendered in connection with a securities receivership proceeding. Is it reasonable to bill at hourly rates of \$700 to \$850 to \$950 for partners and \$425 to \$550 to \$605 for associates in the context of a securities receivership? Is it reasonable to bill at hourly rates of \$285 for summer associates and \$175 to \$275 for paralegals? Have courts in other receivership cases awarded fees applying such rates?

4. In the Receiver's letter to the Securities and Exchange Commission (the "SEC") dated July 3, 2008, a copy of which was provided to the Court, the Receiver recognized "the public service nature of this engagement," and stated that D&L was prepared to extend a discount in the form of a cap on its

blended hourly rate or a 10% reduction in its standard hourly rates. The present application requests a blended hourly rate of \$478. While this rate is below the cap of \$550, in essence there is no discount at all, as the blended rate was reached applying D&L's standard rates. Should there be a discount in light of the public service nature of the engagement and the possibility, if not likelihood, that investors and creditors will sustain significant losses?

5. The SEC apparently requested a reduction of \$70,620.50 in fees. D&L agreed. (Appl. ¶ 19). What was the reason for this reduction?

6. Certain creditors have objected, among other things, to the number of hours incurred. In fact, for the 20-day period from August 11-31, 2008, D&L seeks compensation for 5,503.15 hours in attorney and paralegal time. (Appl. Ex. B). While the matters in question are extremely complex, the questions raised by these creditors are fair ones.

7. Finally, the Court has asked the SEC to state in writing (1) whether it supports the application of the Receiver and D&L for fees and reimbursement of expenses and (2) whether it believes that the requested amounts are fair and reasonable.

SO ORDERED.

Dated: New York, New York
December 15, 2008


DENNY CHIN
United States District Judge