U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE: JEFFREY EDWARD CONDIT, Debtor	§ § §	CASE NO. 02-51179-RLJ-11
IN RE: PAUL J. CONDIT, Debtor	§ § §	CASE NO. 02-51180-RLJ-11
IN RE: PAUL JAMES CONDIT II, Debtor	§ § §	CASE NO. 02-51181-RLJ-11

MEMORANDUM OPINION

Before the court is the First and Final Application for Approval of Compensation and Reimbursement of Expenses filed by James, Goldman & Haugland P.C. ("James & Goldman"). James & Goldman represented the debtors in each of these related bankruptcy cases and seeks compensation in the amount of $29,191.50 and reimbursement of expenses in the amount of $7,869.89 in the case of Paul J. Condit; compensation in the amount of $22,025 and reimbursement of expenses in the amount of $3,693.74 in the case of Paul James Condit II; and compensation in the amount of $24,423.50 and reimbursement of expenses in the amount of $3,949.43 in the case of Jeffrey Condit.

Washington Mutual Bank F.A. ("Washington Mutual"), a major creditor in these cases, filed its objection to the fee application, contending the requested fees are excessive. Washington Mutual argues that these three cases should have been filed under Chapter 7 from the outset as the debtors' proposed liquidation plans were unconfirmable, resulting in unnecessary fees and expenses. Additionally, Washington Mutual argues that certain services

provided by James & Goldman were unnecessary and provided no benefit to the estates. Hearing on the fee applications in all three cases was held on April 21, 2003.

I. CASE HISTORIES

Paul J. Condit, Paul James Condit II, and Jeffrey Condit (collectively "Debtors") filed separate Chapter 11 petitions on July 29, 2002, in the Bankruptcy Court for the Western District of Texas. Paul J. Condit, since deceased, was the father of Paul James Condit II and Jeffrey Condit. At the time of Debtors' filings in the Western District, this court had before it the Chapter 7 case of Texas Equipment Company Inc. ("Texas Equipment"). Debtors owned Texas Equipment, and had guaranteed its debt to Washington Mutual. In connection with their guarantees, Washington Mutual obtained a judgment in federal district court holding Debtors jointly and severally liable for an amount in excess of $6.7 million. This judgment, and Washington Mutual's subsequent attempts at post-judgment discovery, which led to the entry of a show cause order as to why Debtors should not be held in contempt in federal district court, prompted Debtors to file their Chapter 11 petitions. The Condits hired James & Goldman as bankruptcy counsel. James & Goldman timely sought approval of employment, which the court granted on August 7, 2002.

Major creditors of Texas Equipment and Debtors, together with Texas Equipment's Chapter 7 trustee, filed a motion with this court seeking a transfer of venue of Paul James Condit II's and Jeffrey Condit's cases to the Northern District of Texas, which this court granted on August 29, 2002 pursuant to Rule 1014(b) of the Federal Rules of Bankruptcy Procedure. Shortly thereafter, the Bankruptcy Court for the Western District, Judge Ronald B. King presiding, granted similar motions for transfers of venue then pending before that court, likewise

transferring venue of Paul James Condit II's and Jeffrey Condit's cases, and additionally transferring the case of Paul J. Condit to this court. James & Goldman unsuccessfully contested the motions to transfer venue in both courts.

On October 9, 2002, Washington Mutual filed objections to exemptions in each of Debtors' cases. These objections have been continued at the request of the parties several times, and are currently set for hearing in June. The section 341 meetings were conducted in all three cases on November 12, 2002, and again on December 23, 2002. Rule 2004 examinations of all three Debtors were conducted during November, 2002. James & Goldman attended the section 341 meetings and the Rule 2004 examinations, and provided responses to creditors' requests for production.

Debtors filed disclosure statements in November and December, 2002, and filed plans of liquidation on December 2, 2002. The plans generally provided for the establishment of liquidating trusts, which would liquidate all of each Debtors' non-exempt property. The plans provided for discharge of all prepetition debts. The plans did not provide for any funding from future income. While unclear from the plans, it appears, based on Debtors' schedules, that the plans would have paid only a small fraction of each Debtor's debts. It also appears, however, that the plans provided that all of each Debtor's non-exempt property would be liquidated.

The schedules in these cases are lengthy. However, as amended during November, 2002, the schedules generally reflect the following:

Paul J. Condit: total assets of $785,330; total liabilities of $21,491,702.76; monthly income of $2,851.25; monthly living expenses of $2,090;

Paul James Condit II: total assets of $1,484,545.05; total liabilities of $23,772,550.73; monthly income of $9,540.93; monthly living expenses of $3,425.04;

Jeffrey Condit: total assets of $1,358,499.83; total liabilities of $23,790,541.04; monthly income of $11,746.17; monthly living expenses of $2,921.

Washington Mutual and the United States Trustee filed motions for the appointment of Chapter 11 trustees in each of the three cases during January, 2003, arguing fraud as the basis for such appointment. The court granted the motions to appoint Chapter 11 trustees by orders dated January 24, 2003. The court appointed separate Chapter 11 trustees by orders dated March 10, 2003. Such trustees thereafter recommended that all three cases be converted to Chapter 7, to which none of the Debtors has responded. The court has granted motions to appoint substitute counsel in the cases of Paul James Condit II and Jeffrey Condit. Finally, Washington Mutual has filed adversaries against each of the Debtors, seeking to deny discharge and to hold specific debts nondischargeable.

II. DISCUSSION

The court bears the responsibility of determining the appropriateness of all compensation and reimbursement of expenses sought by a debtor's attorney, even in the absence of an objection. *See Gardere & Wynne v. Turoff (In re Hunt)*, 196 B.R. 356, 359 (N.D. Tex. 1996). The party seeking a fee award or reimbursement bears the burden of proving his entitlement thereto. *See In re Hunt*, 196 B.R. at 359; *In re Mflex Corp.*, 172 B.R. 854, 860-61 (Bankr. W.D. Tex. 1994).

James & Goldman seeks compensation and reimbursement of expenses under section 330. Section 330 authorizes the court to award to a professional "reasonable compensation for actual, necessary services rendered . . . and [] reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1)(A)-(B) (2003). Through use of the terms 'actual' and 'necessary,' section

330 mandates that, in order to be compensated or reimbursed from the estate, "any work performed by legal counsel on behalf of a debtor must be of material benefit to the estate." *Andrews & Kurth L.L.P. v. Family Snacks Inc. (In the Matter of Pro-Snax Distribs Inc.)*, 157 F.3d 414, 426 (5th Cir. 1998). *Accord In re Bennett*, 133 B.R. 374, 378 (Bankr. N.D. Tex. 1991) (Akard, J.). In the Fifth Circuit, this test does not look to the reasonableness of services or expenses at the time that such services or expenses are incurred. *See In the Matter of Pro-Snax Distribs. Inc.*, 157 F.3d at 426. Rather, the test is an objective after-the-fact test: "whether [] services resulted in an identifiable, tangible, and material benefit to the bankruptcy estate," regardless of the reasonableness of such services at the time that they were rendered. *Id.*

Thus, for example, "counsel is entitled to compensation from the estate "'for analyzing the debtor's financial condition; rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; the actual preparation and filing of the petition (and required schedules and statements); and representing the debtor at the Section 341 meeting of creditors.'" *In re Leff*, 88 B.R. 105, 108-09 (Bankr. N.D. Tex. 1988) (quoting In the Matter of Tabala, 48 B.R. 871, 873 (S.D.N.Y. 1985)). Preparation of schedules inures to the estate's benefit because creditors and other parties in interest have a clear view of the financial status of the estate. *See id.* Likewise, counsel's services to a debtor-in-possession with respect to such debtor-in-possession's duties may confer an actual benefit on the estate, and may therefore be compensated from the estate. *See In re Dawson*, 180 B.R. 478, 479 (E.D. Tex. 1994).

Conversely, when the services of a debtor's attorney are designed to benefit the debtor personally, such services are not compensable from the estate. *See, e.g., In re Hunt*, 196 B.R. at 362; *In re Bennett*, 133 B.R. at 378 ("actual, necessary services means services that benefit the

debtor's estate, not the debtor"). For example, counsel may not be compensated from the estate for defending the debtor against an action to bar the debtor's discharge; any benefit from such representation is derived by the debtor only. *See e.g., Stewart v. Law Offices of Dennis Olson*, 93 B.R. 91, 95 (N.D. Tex. 1988), *aff'd sub nom*, 878 F.2d 1432 (5th Cir. 1989). Counsel may similarly not be compensated from the estate for services that it renders for its own benefit, such as, for example, defending itself against sanctions or ethical violations. *See In re Hunt*, 196 B.R. at 360. When the debtor's counsel's services are duplicative of the trustee's services, compensation from the estate is not allowed. *See In the Matter of Pro-Snax Distribs. Inc.*, 157 F.3d at 426. Additionally, counsel may not be compensated for work performed after the appointment of a Chapter 11 trustee. *See id.* at 425.

III. APPLICATION

A. Compensation

What follows is a line item analysis of James & Goldman's billing statements, categorizing such line items into eight general categories. This analysis assumes that the hourly fees charged by James & Goldman are reasonable, insofar as no arguments to the contrary have been raised, and it in fact appearing that such hourly rates are reasonable for this location and given the experience of the attorneys involved. This analysis further assumes that the number of hours billed for a given assignment are likewise reasonable.

Category 1: Case Administration

This category is comprised of line items involving general case administration, including such line items as: preparing and filing the petition; advising the debtor as to filing; advising and assisting the debtor with his duties as debtor-in-possession; preparing, filing, and amending

schedules; preparing and filing statements of financial affairs and operating reports; locating assets and determining liabilities; scrutinizing proofs of claim; assuming Conservation Reserve Program executory contracts; and discussions with creditors concerning the estate and its administration.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	48.7 hours	@ $ 195 / hour	=	$ 9,496.50	
Aimee Gillette	58.9 hours	@ $ 65 / hour	=	$ 3,828.50	Total = $ 13,635
Jamie T. Wall	3.1 hours	@ $ 100 /hour	=	$ 310	

Paul James Condit II

Wiley F. James	22 hours	@ $ 195 / hour	=	$ 4,290	
Aimee Gillette	37 hours	@ $ 65 / hour	=	$ 2,405	Total = $ 6,748
Jamie T. Wall	.4 hours	@ $ 100 / hour	=	$ 40	
Martha Rodriguez	.2 hours	@ $ 65 / hour	=	$ 13	

Jeffrey Condit

Wiley F. James	23.7 hours	@ $ 195 / hour	=	$ 4,621.50	
Aimee Gillette	42.7 hours	@ $ 65 / hour	=	$ 2,775.50	Total = $ 7,739.50
Jamie T. Wall	3.1 hours	@ $ 100 /hour	=	$ 310	
Martha Rodriguez	.5 hours	@ $ 65 / hour	=	$ 32.50	

The court allows the fees in this category. These services benefitted the estate and assisted the debtors-in-possession in carrying out their duties. *See In re Dawson,* 180 B.R. 478, 479 (Bankr. E.D. Tex. 1994); *In re Leff,* 88 B.R. 105, 108-09 (Bankr. N.D. Tex. 1988) ("counsel is entitled to compensation from the estate for analyzing the debtor's financial condition; rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; the actual preparation and filing of the petition (and required schedules and

statements"); *In the Matter of Nu-Process Indus. Inc.*, 13 B.R. 136, 138 (Bankr. E.D. Mich. 1981).

Had these cases been filed under Chapter 7, the trustee would have had to perform many of the services in this category. A trustee would have incurred attorney's fees for many of the same services that were performed by James & Goldman. Thus, the services in this category had little to do with the filing of these cases under Chapter 11.

Category 2: Venue

This class is comprised of services rendered in response to motions to transfer venue to the Northern District of Texas. Initially, these three cases were filed in the Western District of Texas, though both Jeffrey Condit and Paul James Condit II resided in the Northern District of Texas. The Trustee for Texas Equipment, creditor Washington Mutual, and creditors Vaughn and Carolyn Culwell, filed motions to transfer venue, both in the cases pending in the Western District, as well as in Texas Equipment's case in the Northern District because Jeffrey Condit and Paul James Condit II were affiliates of Texas Equipment as that term is employed in Rule 1014(b). James & Goldman opposed these motions, thereby incurring fees which it now seeks to recover from the estates. Both the Bankruptcy Court for the Northern District of Texas, with respect to Jeffrey Condit and Paul James Condit II, and the Bankruptcy Court for the Western District of Texas, with respect to all three Debtors, granted the motions to transfer venue.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	4.2 hours @ $ 195 / hour	=	$ 819	
Aimee Gillette	1.2 hours @ $ 65 / hour	=	$ 78.50	Total = $ 1,497.50
Jamie T. Wall	6 hours @ $ 100 /hour	=	$ 600	

Paul James Condit II

Wiley F. James	14.4 hours @ $ 195 / hour	=	$ 2,808	
Aimee Gillette	1.3 hours @ $ 65 / hour	=	$ 84.50	Total = $ 3,492.50
Jamie T. Wall	6 hours @ $ 100 / hour	=	$ 600	

Jeffrey Condit

Wiley F. James	13.8 hours @ $ 195 / hour	=	$ 2,691	
Aimee Gillette	1.2 hours @ $ 65 / hour	=	$ 78	Total = $ 3,369.00
Jamie T. Wall	6 hours @ $ 100 /hour	=	$ 600	

The court denies all fees in this category. First, filing these cases in the Western District of Texas was improper given Texas Equipment's filing in the Northern District, and given that the Western District was a district of improper venue with respect to Jeffrey Condit and Paul James Condit II. Filing in the Western District and, more importantly, contesting the motions to transfer venue, needlessly increased costs for all involved and were ultimately futile.

Additionally, James & Goldman presented the court with no good reason why the cases were filed in the Western District of Texas, or why the Debtors fought the motions seeking transfer of venue. Without any evidence as to what such reason may have been, the only conclusion is that the initial filing in the Western District, and the subsequent resistance to transferring the venue, was not undertaken to benefit the Debtors' estates. The only apparent reasons for resisting the transfer of venue was to benefit the Debtors, as opposed to their creditors – most of which reside in the Northern District – as well as to benefit James & Goldman, which offices in the Western District.

James & Goldman bears the burden of proving entitlement to fees incurred and failed to carry its burden regarding this category of fees.

Category 3: Employment and Fee Applications

This category consists of services rendered by James & Goldman in connection with obtaining court approval of its employment, and in connection with preparing the current fee applications.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	2.3 hours @ $ 195 / hour	=	$ 448.50	
Aimee Gillette	5.2 hours @ $ 65 / hour	=	$ 338	Total = $ 817
Martha Rodriguez	.4 hours @ $ 65 / hour	=	$ 26	

Paul James Condit II

Wiley F. James	2.3 hours @ $ 195 / hour	=	$ 448.50	
Aimee Gillette	5.5 hours @ $ 65 / hour	=	$ 357.50	Total = $ 832
Martha Rodriguez	.4 hours @ $ 65 / hour	=	$ 26	

Jeffrey Condit

Wiley F. James	2.3 hours @ $ 195 / hour	=	$ 448.50	
Aimee Gillette	5.5 hours @ $ 65 / hour	=	$ 357.50	Total = $ 806

An attorney may be compensated from the estate for the reasonable time that such attorney expends in preparing an application for employment and in preparing a fee application. *See Braswell Motor Freight Lines Inc. v. Crutcher, Burke & Newsom (In the Matter of Braswell Motor Freight Lines Inc.)*, 630 F.2d 348, 351-52 (5th Cir. 1980); *In re Office Prods. of Am. Inc.*, 136 B.R. 964, 977 (Bankr. W.D. Tex. 1992). It appears that the time spent preparing the current fee applications was reasonable. Thus, the court allows compensation for services comprising this category.

Category 4: Plan and Disclosure Statement

Because these cases were filed under Chapter 11, James & Goldman incurred fees and costs in preparing and filing disclosure statements and plans of liquidation. The line items comprising this category include the following: preparing and filing the plans; preparing disclosure statements; discussing liquidation plans with the United States Trustee and creditors; and attempting to find a suitable liquidating trustee.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	15.2 hours @ $ 195 / hour	=	$ 2,964	
Aimee Gillette	12 hours @ $ 65 / hour	=	$ 780	Total = $ 4,062.50
Martha Rodriguez	4.9 hours @ $ 65 / hour	=	$ 318.50	

Paul James Condit II

Wiley F. James	15.7 hours @ $ 195 / hour	=	$ 3,061.50	
Aimee Gillette	17.2 hours @ $ 65 / hour	=	$ 1,118	Total = $ 4,479.00
Martha Rodriguez	4.6 hours @ $ 65 / hour	=	$ 299.50	

Jeffrey Condit

Wiley F. James	17.8 hours @ $ 195 / hour	=	$ 3,471	
Aimee Gillette	29.5 hours @ $ 65 / hour	=	$ 1,917.50	Total = $ 5,688
Martha Rodriguez	4.6 hours @ $ 65 / hour	=	$ 299.50	

The court denies a portion of the fees in this category. "Chapter 11 cases which lack viable chances of reorganization may place the fees of counsel at risk." *In re Mflex Corp.*, 172 B.R. 854, 857 (Bankr. W.D. Tex. 1994) (quoting In re Green, 138 B.R. 403, 408 (Bankr. S.D.N.Y. 1992)). A court should deny compensation for services rendered in connection with a Chapter 11 plan that has no hope of confirmation, because such services are neither necessary nor beneficial. *See, e.g., In re Polishuk*, 258 B.R. 238, 249 (Bankr. N.D. Okla. 2001)

(disallowing compensation to Chapter 11 counsel because, based on readily available financial information, debtor had no prospect of reorganizing, and plan had no prospect of confirmation); *In re Mflex Corp.*, 172 B.R. at 857-58 (disallowing compensation for counsel that overestimated ability of Chapter 11 debtor to reorganize). Such services are not necessary because a non-confirmable Chapter 11 case that converts to Chapter 7 could have been brought as a Chapter 7 in the first instance, without the corresponding expenses of a Chapter 11 case, and such services are not beneficial because no plan is confirmed. *See id.*

The Fifth Circuit spoke to this issue, stating:

> The district court's instruction to the bankruptcy court, to consider strongly the debtor's lack of success in obtaining confirmation of the Chapter 11 plan, is consistent with the standards identified by Congress in § 330, which require that–at the time the services are performed–the chances of success must outweigh the costs of pursuing the action. Even though the bankruptcy court found support for the Chapter 11 plan among creditors other than the Petitioning Creditors, and, if the plan had been confirmed, the estate could have been brought to a swifter conclusion than if the case were brought under Chapter 7, we find that [law firm] should have known from the outset that the Debtor's prosecution of a Chapter 11 plan would fail . . .

Andrews & Kurth L.L.P. v. Family Snacks Inc. (In the Matter of Pro-Snax Distribs Inc.), 157 F.3d 414, 426 (5th Cir. 1998).

Similarly, James & Goldman should have known from the outset that Debtors had little prospect of reorganization. The ratio of Debtors' liabilities to their assets was approximately twenty-to-one. Washington Mutual, the largest creditor, moved for conversion to Chapter 7, and, presumably, made its position known that it would not vote for the plans. The UST and Washington Mutual filed motions to appoint Chapter 11 trustees, which the court granted. Each of the Chapter 11 trustees recommended conversion to Chapter 7. In recommending conversion, the trustees for each of these cases unanimously reported that "no plan can be conceived that

would have viability." Additionally, the plans filed in these cases were plans of liquidation. Debtors could have accomplished the same result by filing under Chapter 7, thereby avoiding the costs associated with filing plans and disclosure statements. In short, it is clear from the schedules, Washington Mutual's actions, and from Debtors' plans of liquidation, that Debtors never had a prospect of confirming their plans, and that filing these cases under Chapter 11 was of no real benefit to anyone – least of all to the Debtors.

James & Goldman argues that it filed these cases under Chapter 11 based on a belief that John Condit, a non-debtor relative, would contribute several hundred thousand dollars towards Debtors' plans, thereby making reorganization possible. However, James & Goldman introduced no evidence regarding the likelihood of such an arrangement, nor did James & Goldman introduce any evidence regarding the time at which it became apparent that John Condit would not help fund plans of reorganization. More importantly, however, under the Fifth Circuit's test, the issue is not the reasonableness of filing under Chapter 11 at the time of filing, but rather "whether [] services resulted in an identifiable, tangible, and material benefit to the bankruptcy estate." *Id.* In fact, the Fifth Circuit specifically rejected a test that looks to the reasonableness of services at the time that such services are performed. *See id.* Thus, whatever James & Goldman's motives in filing under Chapter 11 were, whether reasonable or not, is irrelevant: no plan was confirmed; the only plans filed were plans of liquidation which were not confirmable. *See id.*

Moreover, it should have become apparent to James & Goldman at some point during these cases that John Condit would not contribute towards the plans. *See In re Old S. Transp. Co. Inc.*, 134 B.R. 660, 666 (M.D. Ala. 1991) (reducing fee award for work performed after it

should have become evident to debtor-in-possession's attorney that reorganization would not succeed). The fact that the plans that were filed were liquidating plans demonstrates that James & Goldman, at the time that it prepared and filed such plans, knew that John Condit would not so contribute. At that point, James & Goldman should have converted these cases to Chapter 7. *See id.*

The court notes, however, that the Debtors, upon counsel's advice, agreed to the appointment of Trustees in the Chapter 11 cases. Plus, the Debtors do not oppose conversion of the cases to Chapter 7. The court can therefore conclude that the Debtors, with counsel's advice, came to the realization that a Chapter 11 reorganization was not feasible.

As is typical with most cases filed in a Chapter 11, particularly filings by individuals or closely held entities, the Debtors undoubtedly believe that a reorganization was possible. Indeed, this court is familiar with cases which, from an objective analysis, did not appear to be a viable candidate for reorganization but, typically with creditors' consent, culminated in a confirmed plan. The court recognizes that counsel had difficult clients as evidenced by the pending contempt action in the District Court. In addition, during James & Goldman's representation, the court has not been saddled with types of problems often associated with difficult or stubborn parties. James & Goldman certainly deserves much credit for this. On balance, the court is of the opinion that the fees in this category should be reduced by one-half. The court therefore allows fees in this category in the Paul J. Condit case of $2,031.25; in the Paul James Condit II case of $2,240; and in the Jeffrey Condit case of $2,844.

Category 5: Section 341 Meeting / Rule 2004 Examinations

The line items falling within this category include expenses related to attendance at the section 341 meetings, attendance at the Rule 2004 examinations, and responses to production in connection with Debtors' Rule 2004 examinations.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	30.4 hours @ $ 195 / hour	=	$ 5,928	
Aimee Gillette	3.4 hours @ $ 65 / hour	=	$ 221	Total = $ 6,155.50
Martha Rodriguez	.1 hours @ $ 65 / hour	=	$ 6.50	

Paul James Condit II

Wiley F. James	23.8 hours @ $ 195 / hour	=	$ 4,641	
Aimee Gillette	3.1 hours @ $ 65 / hour	=	$ 201.50	Total = $ 4,849
Martha Rodriguez	.1 hours @ $ 65 / hour	=	$ 6.50	

Jeffrey Condit

Wiley F. James	23.7 hours @ $ 195 / hour	=	$ 4,621.50	
Aimee Gillette	2 hours @ $ 65 / hour	=	$ 130	Total = $ 4,758
Martha Rodriguez	.1 hours @ $ 65 / hour	=	$ 6.50	

The services comprising this category were actual and necessary services that benefitted the estate. Attendance at section 341 meetings and compliance with Rule 2004 examinations and discovery are duties of a debtor-in-possession. As such, James & Goldman's assistance with such duties was necessary, and conferred a benefit on the estate. Furthermore, the information obtained at the section 341 meetings and Rule 2004 examinations benefitted the estate and its creditors. All parties in interest learned of the status of the cases, of the Debtors' intentions, and of the estates' assets and liabilities. Such information inured to the benefit of all involved.

Additionally, such information is of assistance to the Chapter 11 and Chapter 7 trustees, who will be able to refer to such information in the administration of their respective estates.

Accordingly, the court allows compensation and reimbursement of expenses for those line items that fall within this category. *See, e.g., In re Washington*, 232 B.R. 814, 817 (Bankr. S.D. Fla. 1999) (holding that counsel may be compensated for time spent for preparation of, and appearance at, Rule 2004 examination); *In re Prudhomme*, 152 B.R. 81, 89 (Bankr. W.D. La. 1992); *In re Leff*, 88 B.R. 105, 108-09 (Bankr. N.D. Tex. 1988) (holding that debtor's attorney may be compensated out of the estate for attendance at section 341 meeting); *In the Matter of Nu-Process Indus. Inc.*, 13 B.R. 136, 138 (Bankr. E.D. Mich. 1981).

Category 6: Exemptions

This category includes those line items representing services rendered in connection with defending Debtors' stated exemptions against objections thereto filed by Washington Mutual, including the filing of responses to Washington Mutual's objections.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	6.9 hours @ $ 195 / hour	=	$ 1,345.50	
Aimee Gillette	2.5 hours @ $ 65 / hour	=	$ 162.50	Total = $ 1,508

Paul James Condit II

Wiley F. James	4.1 hours @ $ 195 / hour	=	$ 799.50	
Aimee Gillette	2.3 hours @ $ 65 / hour	=	$ 149.50	Total = $ 949

Jeffrey Condit

Wiley F. James	6.6 hours @ $ 195 / hour	=	$ 1,287	
Aimee Gillette	2.5 hours @ $ 65 / hour	=	$ 162.50	Total = $ 1,959.50
Jamie T. Wall	5.1 hours @ $ 100 /hour	=	$ 510	

Hearings on such objections have been continued numerous times at the request of the parties. Thus, the success or lack thereof of services rendered in connection with objections to exemptions cannot be ascertained. Regardless, the court denies compensation related to exemptions, because such services are, by definition, not beneficial to the estate. Contesting objections to exemptions works to the benefit of Debtors personally, and results in no benefit to the estate.

Accordingly, the court denies compensation for fees represented by this category. *See, e.g., Mayer, Glassman &Gaines v. Washam (In re Hanson)*, 172 B.R. 67, 73 (B.A.P. 9th Cir. 1994) (holding that "services rendered in defending exemptions are not for the benefit of the estate"); *In re Kloubec*, 251 B.R. 861, 865 (Bankr. N.D. Iowa 2000); *In re Howerton*, 23 B.R. 58, 59 (Bankr. N.D. Tex. 1982) (holding that attorney may not be compensated from the estate for work performed in connection with securing the debtor's exemptions).

Category 7: Appointment of Chapter 11 Trustee / Conversion to Chapter 7

This category consists of line items related to contesting the UST's and Washington Mutual's motions for the appointment of Chapter 11 trustees or for conversion to Chapter 7.

The breakdown of the billing statements for this category is as follows:

Paul J. Condit

Wiley F. James	1.6 hours @ $ 195 / hour	=	$ 312	
Aimee Gillette	2.8 hours @ $ 65 / hour	=	$ 182	Total = $ 494

Paul James Condit II

Wiley F. James	3.3 hours @ $ 195 / hour	=	$ 643.50	
Aimee Gillette	.8 hours @ $ 65 / hour	=	$ 52	Total = $ 695.50

Jeffrey Condit

Wiley F. James	.3 hours @ $ 195 / hour	=	$ 58.50	
Aimee Gillette	.7 hours @ $ 65 / hour	=	$ 45.50	Total = $ 104

The fees in this category are quite small relative to the total fees charged. Plus, as set forth above regarding the Debtors' plans and disclosure statements, the Debtors consented to the appointment of Chapter 11 Trustees and have not opposed conversions of these cases to Chapter 7. Accordingly, the court allows compensation for the services represented by this category.

Class 8: Show Cause Order

James & Goldman represented Paul J. Condit prepetition, in a lawsuit pending in the District Court for the Northern District of Texas. Immediately before the filing of his Chapter 11 petition, the district court issued a show cause order as to why sanctions should not issue against Paul J. Condit for his failure to comply with post-judgment discovery. In so doing, James & Goldman billed 1.6 hours at $195 per hour for one attorney, amounting to $292.50, and 2.8 hours at $65 per hour for a paralegal, amounting to $182. James & Goldman seeks recovery of these fees from the estate.

The court disallows these fees. Such fees arose prepetition, on a matter unrelated to bankruptcy or to a pending bankruptcy filing. *See In re Matthews*, 154 B.R. 673, 675 (Bankr. W.D. Tex. 1993) (holding that attorney may be compensated from the estate for prepetition services, but only such services "rendered in contemplation or connection with the case"). Any benefit derived from such services was for Paul J. Condit individually, with no apparent benefit to his estate.

B. Reimbursement of Expenses

As with compensation for services, counsel for debtor may be reimbursed from those expenses that are actual and necessary expenses and which confer a benefit on the estate. *See* 11 U.S.C. § 330(a)(1)(B) (2003). Such expenses must be reasonable. *See In re Poseidon Pools of Am.*, 216 B.R. 98, 101 (E.D.N.Y. 1997); *In re ACT Mfg. Inc.*, 281 B.R. 468, 488 (Bankr. D. Mass. 2002). Counsel may not be compensated for expenses that normally fall within overhead, and are customarily treated as such. *See, e.g., Stroock & Stroock & Lavan v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.)*, 127 F.3d 1398, 1402 (11th Cir. 1997).

The party seeking reimbursement of expenses under section 330(a) bears the burden of proving his entitlement to such expenses. *See Continental Ill. Nat'l Bank & Trust Co. of Chicago v. Charles N. Wooten Ltd. (In the Matter of Evangeline Ref. Co.)*, 890 F.2d 1312, 1326 (5th Cir. 1989); *In re The Bennett Funding Group Inc.*, 213 B.R. 234, 244 (Bankr. N.D.N.Y. 1997). The bankruptcy court has considerable discretion over the amount of costs and expenses that it reimburses, or refuses to reimburse. *See In re Hillsborough Holdings Corp.*, 127 F.3d at 1404.

<u>Filing Fees</u>

James & Goldman seeks reimbursement of $870 in each of these cases for filing fees, consisting of $830.00 for filing each Chapter 11 petition, and a $20 filing fee each time that Debtors amended their schedules. These costs were actual and necessary costs that benefitted the estate. *See In re Larsen*, 190 B.R. 713, 718 (Bankr. Me. 1996); *In re Meyers*, 169 B.R. 273, 276 (Bankr. D.R.I. 1997). *See also* Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at

¶ III.V. (filing fees "are reimbursable at actual cost"). Accordingly, the court allows reimbursement for $870 in filing fees in each of these cases. *See id.*

Travel Expenses

The total amount of claimed expenses for travel, including expenses listed under the headings 'milage' and 'parking,' is as follows: Paul J. Condit – $861.52; Paul James Condit II – $621.44; Jeffrey Condit – $636.55.

As set forth above, James & Goldman, as the applicant for reimbursement, bears the burden of proving that these expenses were actual and necessary expenses, that they benefitted the estate, and are reasonable in amount. *See Continental Ill. Nat'l Bank & Trust Co. of Chicago v. Charles N. Wooten Ltd. (In the Matter of Evangeline Ref. Co.)*, 890 F.2d 1312, 1326 (5th Cir. 1989). James & Goldman is charged with the duty of presenting such expenses to the court in a manner that enables the court to make an independent evaluation, in connection with the fee application and the record of the case, of which items of expense were actual, necessary, and reasonable, and accordingly reimbursable from the estate. *See id.* at 1326. *See also* FED. R. BANKR. P. 2016(a); *In re Polishuk*, 258 B.R. 238, 240 (Bankr. N.D. Okla. 2001) (noting that the court "need not speculate or theorize" as to the work performed or expenses incurred). While the application for reimbursement need not reach an "ideal level of completeness," a failure to provide sufficient detail, or to provide adequate testimony explaining items of expense, with the consequent result that the court is unable to accurately determine whether such items are reimbursable under section 330, is grounds for denying or reducing reimbursement. *In the Matter of Evangeline Ref. Co.*, 890 F.2d at 1326. *See also In re Grosswiller Dairy Inc.*, 257 B.R. 523, 530 (Bankr. D. Mont. 2000); *In re The Bennett Funding Group Inc.*, 213 B.R. 234, 244

(Bankr. N.D.N.Y. 1997); *In re Chapel Gate Apartments Ltd.*, 64 B.R. 569, 575 (Bankr. N.D. Tex. 1986).

James & Goldman's lists of costs and expenses include numerous line items related to travel expenses. However, there is no description of the purpose of the travel. For example, this court held a hearing on the motion to transfer venue on August 26, 2002, at which counsel was present on behalf of Paul James Condit II and Jeffrey Condit. No line item representing travel on or about this date exists with respect to such hearing. Similarly, a review of the docket and of the fee application shows that the first section 341 meetings and Rule 2004 examinations of all three Debtors occurred on November 12-13, 2002. No line item representing travel on or about this date exists. Further review of the fee application and docket reveals that second section 341 meetings were conducted on December 10, 2002. Once again, the list of costs and expenses is silent with respect to travel on or about this date.

Instead, the list of costs and expenses shows travel expenses during the same three periods in each of these cases: travel on October 31, 2002; travel on December 24 and 28, 2002; and travel on February 4, 2003. The case of Paul J. Condit lists additional travel expenses on September 20, 2002. The purpose of travel on these dates is not readily apparent from the fee application or from a review of the docket. James & Goldman offered no testimony regarding such purpose, its necessity or reasonableness. James & Goldman merely lumped all travel expenses under the heading 'travel expense,' with no description concerning the purpose of the travel expense.

Moreover, there is no evidence concerning the reasonableness of any given travel expense – reasonableness both as to incurring such expense and reasonableness as to the amount of such

expense. Since the court cannot determine the purpose of the travel expenses, or the reasonableness thereof, the court would be justified in denying reimbursement for all travel expenses. *See In re Grosswiller Dairy Inc.*, 257 at 530 (noting that requirement of adequate detail applies to explaining purpose of claimed compensation); *In the Matter of UDC Homes Inc.*, 203 B.R. 218, 222 (Bankr. D. Del. 1996) (noting that requirement of adequate detail applies to reasonableness of claimed compensation).

The court considers this result too harsh. The court will therefore reimburse a reduced portion of claimed travel expenses. *See In re Auto Parts Club Inc.*, 224 B.R. 445, 451-52 (Bankr. S.D. Cal. 1998); *In re Amdura Corp.*, 139 B.R. 963, 986 (Bankr. D. Colo. 1992). The court will reimburse the portion of the claimed travel expenses that is equal to the ratio of fees awarded over fees claimed:

> It is apparent in reviewing the statements for out-of-pocket fees and expenses, that many of the expenses relate to legal services for which compensation is to be denied. For example, there is travel expense, telephone calls, overhead secretarial time, copying expenses, etc. that pertains to such matters as cash collateral, the examiner motion, the retention of W & S as counsel and the application for fees. The Court is unable to determine with any degree of certainty which expenses are directly applicable to such categories. Under these circumstances it is reasonable and appropriate that the overall application for out-of-pocket expenses be disallowed in the same proportionate amount as the fees.

In re Amdura Corp., 139 B.R. at 986. For example, if one-half of the services claimed are not necessary and are of no benefit, then it is assumed that one-half of the claimed travel expenses were incurred in furtherance of such services, and that one-half of claimed travel expenses, therefore, should not be reimbursed from the estate. *See id.*

The ratios are as follows: 79% in the case of Paul J. Condit ($23,132.75 out of the $29,191.50 claimed); 69% in the case of Paul James Condit II ($15,364.50 out of the $22,025

claimed); and 66% in the case of Jeffrey Condit ($16,251.50 out of the $24,423.50 claimed). Applying these ratios results in reimbursement for travel expenses as follows: $680.60 in the case of Paul J. Condit; $428.79 in the case of Paul James Condit II; and $420.12 in the case of Jeffrey Condit.

UCC Searches

James & Goldman seeks reimbursement of UCC searches provided by Capital Services Inc. In the case of Paul J. Condit, such expenses total $578.06, and in the case of Paul James Condit II, such expenses total $102.84. No such expense appears in the case of Jeffrey Condit.

As stated by the court in its analysis of category 1 (Case Administration), services related to analyzing a debtor's financial condition, locating assets and determining liabilities of the debtor, and determining the validity of liens in bankruptcy, are compensable because such services are actual and necessary services which benefit the estate and assist the debtor-in-possession in the fulfilment of its duties. *See, e.g., In re Dawson*, 180 B.R. 478, 479 (Bankr. E.D. Tex. 1994); *In re Leff*, 88 B.R. 105, 108-09 (Bankr. N.D. Tex. 1988); *In the Matter of Nu-Process Indus. Inc.*, 13 B.R. 136, 138 (Bankr. E.D. Mich. 1981). If such services may be compensated from the estate, than costs related to such services should likewise be reimbursable from the estate. *See* Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.Z. (UCC searches "are reimbursable at actual cost"). It is reasonable to assume that conducting UCC searches enabled the debtors-in-possession to accurately schedule their assets and their liabilities, and that such searches enabled all involved to ascertain the true lien status of the estates' assets as well as priorities and treatment. *See generally In re Perkins*, 244 B.R. 835, 842 (Bankr. D. Mont. 2000). It is also reasonable to assume that any benefits derived from such

UCC searches inured to the benefit of the Chapter 11 trustees and the Chapter 7 trustees. The court therefore allows reimbursement for UCC searches. *See* Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.Z.

Express Mail / Certified Mail

James & Goldman seeks reimbursement of expense items labeled as 'express mail,' and 'certified mail.' In the case of Paul J. Condit, such expenses total $999.88; such expenses total $394.34 in the case of Paul James Condit II; and such expenses total $429.25 in the case of Jeffrey Condit.

Expenses for express mail and certified mail must be explained and substantiated, both regarding their necessity and their reasonableness. *See, e.g., In re Larsen*, 190 B.R. 713, 718 (Bankr. D. Me. 1996) ("Charges for express mail and certified mail will not be reimbursed in the absence of an explanation of their purpose and need"). As provided by local standing order, overnight delivery "is reimbursable at actual cost *where it is shown to be necessary*." Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.L (emphasis added). Where counsel offers no explanation for the necessity of such expenses, the court should disallow reimbursement. *See In re Anderson Grain Corp.*, 222 B.R. 528, 536 (Bankr. N.D. Tex. 1998) (Akard, J.) (disallowing reimbursement for "Federal Express charges where the necessity for such expenses is not explained"); *In re The Bennett Funding Group Inc.*, 213 B.R. 234, 251 (Bankr. N.D.N.Y. 1997) ("Without supporting information, the Court cannot determine the necessity of such service or the savings to the estates, if any, represented by the use of overnight delivery, and therefore the Court shall disallow $3,000 in Federal Express charges").

James & Goldman offered no explanation or testimony concerning the necessity of employing express mail or certified mail, although it is reasonable to conclude that the use of certified mail was necessary in some situations. With respect to express mail, the court disallows reimbursement because of a lack of evidence that the use of express mail was necessary. *See id.* The court will allow reimbursement for certified mail in the amounts requested: $646.84 in the case of Paul J. Condit; $223.01 in the case of Paul James Condit II; and $223.01 in the case of Jeffrey Condit.

Transcript Fees

James & Goldman seeks reimbursement for transcript fees related to the section 341 meetings and Rule 2004 examinations of each of the Debtors. Such costs amount to: $283.40 in the case of Paul J. Condit; $186.25 in the case of Paul James Condit II; and $144.76 in the case of Jeffrey Condit.

By local standing order, court reporter fees "are reimbursable at actual cost." Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.W. *See also In re Reconversion Technologies Inc.*, 216 B.R. 46, 58 (Bankr. N.D. Okla. 1997) (allowing reimbursement for transcript fee). Accordingly, the court allows reimbursements for these expenses. *See id.*

External Photocopying

James & Goldman seeks reimbursement for external photocopying expenses in the following amounts: $672.98 in the case of Paul J. Condit; $547.65 in the case of Paul James Condit II; and $547.65 in the case of Jeffrey Condit.

By local standing order, outside photocopying "is reimbursable at actual cost." Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.J. However, as set forth above,

certain services rendered by James & Goldman are not compensable. Logic dictates that a portion of James & Goldman's outside photocopying expenses were incurred in furtherance of such non-compensable services. Thus, the court will reduce reimbursement for outside photocopying expenses to the ratio of fees allowed over fees claimed, as the best indication of what percentage of outside photocopying expenses were incurred in furtherance of compensable services. *See In re Amdura Corp.*, 139 B.R. 963, 986 (Bankr. D. Colo. 1992) (awarding reimbursement of claimed expenses in same percentage of claimed compensation allowed).

The appropriate reimbursable outside photocopying expenses are: Paul J. Condit – $531.65; Paul James Condit II – $377.87; and Jeffrey Condit – $361.44.

Internal Photocopying/ Outgoing Faxes / Incoming Faxes / Telephone

James & Goldman seeks reimbursement for in-house photocopying, incoming facsimile transmissions, outgoing facsimile transmissions, long distance telephone charges, conference call charges, and cellular phone charges. Such expenses amount to: $3,542.89 in the case of Paul J. Condit; $971.22 in the case of Paul James Condit II; and $1,321.22 in the case of Jeffrey Condit.

By local standing order, internal photocopying is reimbursable at the rate of $.20 per page. *See* Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.I. Similarly, incoming facsimile transmissions are reimbursable at the rate of $.20 per page, while outgoing facsimile transmissions are reimbursable at actual cost. *Id.* at ¶ III.N. Long distance telephone charges are reimbursable at "actual cost." *Id.* at ¶ III.O. James & Goldman's applications in each of these cases represent that "[e]xpenses are reimbursed at the rate of $.20 per page for in-house photocopying and $.20 per page for facsimile pages received. Long Distance Charges and outgoing facsimiles were charged to the Debtor at actual costs."

As with external photocopying, it is reasonable to assume that a portion of these expenses were incurred in the furtherance of non-compensable services. Thus, the court will reimburse these expenses at the ratio of fees awarded over fees claimed, as the best indication of what percentage of such expenses were incurred in the furtherance of compensable services. *See In re Amdura Corp.*, 139 B.R. at 986 (awarding reimbursement of claimed expenses in same percentage of claimed compensation allowed).

The appropriate reimbursement for internal photocopying and facsimile expenses are: Paul J. Condit – $2,798.88; Paul James Condit II – $670.14; Jeffrey Condit – $872.

Miscellaneous

James & Goldman seeks reimbursement in the amount of $40 for "[s]ervices paid thru petty cash" in the case of Paul J. Condit. The fee application fails to explain or otherwise indicate the nature and cost of the services paid by James & Goldman from petty cash. James & Goldman provided no testimony on this point. Accordingly, the court disallows reimbursement for this expense for a failure to adequately explain the purpose and reasonableness of said expense. *See, generally, In re Grosswiller Dairy Inc.*, 257 B.R. 523, 530 (Bankr. D. Mont. 2000); *In re Chapel Gate Apartments Ltd.*, 64 B.R. 569, 575 (Bankr. N.D. Tex. 1986).

James & Goldman seeks reimbursement, in the case of Paul J. Condit, in the amount of $15 paid to the clerk for the Northern District of Texas for research, as well as reimbursement in the amount of $6.16 for research on Pacer. By local order, computerized research "is reimbursable at actual cost." Bankr. N.D. Tex. Standing Order 2000-7 (December 24, 2000) at ¶ III.F. The court allows reimbursement in the amount of $21.16 for research conducted at the clerk's office and on Pacer. *See id.*

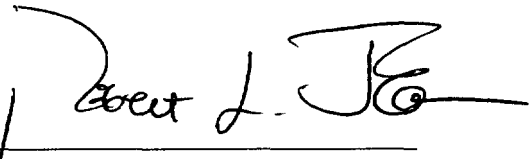
D. Retainer / Prepayment

James and Goldman's applications disclose that each debtor prepaid James & Goldman $800 towards the filing fees. Additionally, James & Goldman's applications disclose that each debtor paid James & Goldman a $5,000 retainer in connection with bankruptcy representation. Such retainers are currently in James & Goldman's trust account. The applications seek approval to apply such retainers against Debtors' accounts. James & Goldman may apply the retainer against the allowed compensation and expenses. *See In re Equipment Servs. Inc.*, 290 F.3d 739, 747 (4th Cir. 2002), *cert. granted* 123 S. Ct. 1480 (U.S. March 10, 2003) (No. 02-693) (holding that attorney for Chapter 11 debtor was entitled to apply prepetition retainer against compensation and expenses awarded by bankruptcy court even though case was converted to Chapter 7); *In re Hasset Ltd.*, 283 B.R. 376, 378-79 (Bankr. E.D.N.Y. 2002); *In re Johnson*, 234 B.R. 671, 676 (Bankr. S.D. Tex. 1999); *In re Pulsifer*, 156 B.R. 1, 2 (Bankr. D. Me. 1993).

IV. CONCLUSION

Upon the foregoing, the court allows compensation of $23,132.75 and expenses of $6,410.59 in the Paul J. Condit case; compensation of $15,364.50 and expenses of $2,858.90 in the Paul James Condit II case; and compensation of $16,251.50 and expenses of $2891.33 in the Jeffrey Edward Condit case. The claim of James & Goldman in each case for expenses is reduced by $800 to account for application of the prepaid filing fee made in each case, and its claim for compensation in each case is reduced by $5,000 to account for application of the retainer.

SIGNED: June 13, 2003.



ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE