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
DALLAS DIVISION

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| IN RE: | § | |
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| AVATEX CORPORATION, | § | CASE NO. 02-81268-SAF-11 |
| | § | (Jointly Administered) |
| D E B T O R S. | § | |

**MEMORANDUM OPINION AND ORDER**

Ware, Snow, Fogel & Jackson, L.L.P., attorneys for the Official Committee of Unsecured Creditors of Avatex Corp., the debtor, moves the court for the final allowance of compensation and reimbursement of expenses under 11 U.S.C. § 330(a). Avatex objected to a portion of the request, as did the United States Trustee. The court conducted a hearing on the motion on May 30, 2003.

The determination of compensation and reimbursement of expenses under 11 U.S.C. § 330(a) for attorneys employed under 11 U.S.C. § 1103 constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and (O) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law required by Bankruptcy Rules 7052 and 9014.

To determine reasonable compensation under section 330(a) for the services rendered, the court must determine the "nature and extent of the services supplied by" the attorneys. In re First Colonial Corp. of Am., 544 F.2d 1291, 1299 (5th Cir.), cert. denied, 431 U.S. 904 (1977). The court must also assess the value of the services. These two factors comprise the components for the lodestar calculation. See Cobb v. Miller, 818 F.2d 1227, 1231 (5th Cir. 1987). Generally, the lodestar is calculated by multiplying the number of hours reasonably expended by reasonable hourly rates. Hensley v. Eckerhart, 461 U.S. 424 (1983). To determine the hours reasonably expended the court must assess the tangible benefit provided to the bankruptcy estate by the services rendered. In re Pro-Snax Distribs., Inc., 157 F.3d 414, 426 (5th Cir. 1998).

The court may then adjust the compensation based on the Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), factors. Blanchard v. Bergeron, 489 U.S. 87, 91-92 (1989). The Johnson factors may be relevant for adjusting the lodestar calculation but no one factor can substitute for the lodestar. Id. Rather, the lodestar shall be presumed to establish a reasonable fee with adjustments made when required by specific evidence. Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546, 554-55 (1986).

Ware, Snow has the burden to show that its requested compensation is reasonable and was necessary for the proper administration of the estate. In re Beverley Mfg. Corp., 841 F.2d 365, 371 (11th Cir. 1988). To assist the court in determining the reasonableness of the requested fees, the attorney is ethically obligated to exercise reasonable billing judgment. The law firm must make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise not necessary. Hensley, 461 U.S. at 434.

In an effort to comply with that obligation, and in response to the comments of the United States Trustee, Ware, Snow has voluntarily reduced its fee request from $172,536.50 to $160,868.50, and its expense request from $7,334.49 to $4,952.49. The United States Trustee agrees that this voluntary reduction addresses concerns about inadequate descriptions of work performed, clumping of time, paralegal rates charged for ministerial tasks, and similar objections. In addition, the voluntary reduction also addresses *de minimus* charges that should not be billed to a client and staffing levels for particular conferences and meetings.

Both Avatex and the United States Trustee further contend, in essence, that some of the work performed was either excessive or did not benefit the bankruptcy estate. The court turns to those issues. In doing so, the court first finds that Ware, Snow

requested compensation based on a blended hourly rate of $264 per hour. That rate is within the prevailing range of hourly rates in the community for similar services by attorneys of reasonably comparable skill, experience and reputation. See Missouri v. Jenkins, 491 U.S. 274, 286 (1989).

With regard to the time expended and benefit to the estate, the court must analyze the services in light of the exigencies faced by the committee and its counsel. Avatex filed its petition for relief under Chapter 11 of the Bankruptcy Code on December 12, 2002. On that same day, Avatex filed its proposed plan of reorganization and its disclosure statement. On February 10, 2003, the United States Trustee appointed the committee. But, on the very next day, at a duly noticed hearing, the court approved an amended disclosure statement and voting procedures, and set the confirmation hearing for April 11, 2003. Avatex filed its amended disclosure statement pursuant to the February 11, 2003, hearing, and the court entered its order approving the disclosure statement on February 19, 2003. The committee filed an application to employ Ware, Snow on February 25, 2003. Ware, Snow therefore confronted the exigency of a case proceeding to confirmation before it was employed. It had to devote considerable effort and resources to discharge its duties to its client, the committee. That necessitated a considerable workload in a compressed time period. Ware, Snow often did not have the

luxury to reflect on the most efficient way to complete a task; rather, it had to proceed with all deliberate speed and concentration.

The court reviews the work performed in that context. Most significantly, Ware, Snow engaged 116 hours worth of services on plan related matters, including the plan, the trust agreement, the employment agreement of Robert Stone and the voting procedures for the plan. Avatex conceded that it had a strained relationship with several members of the committee. Given the timing and that history, Ware, Snow had to focus particular attention on the trust agreement and the employment agreement. But, as Stone explained, several items, such as clarification of the voting procedures and the lack of plan releases, could have been resolved by phone conferences, thereby minimizing expenses to the estate. Ware, Snow should have explored the conference avenue. Even with the compressed time and the strained relations, counsel should have consulted with counsel for the debtor. In addition, in the plan subject area, Ware, Snow spent six hours of time working on plan releases for counsel. That provided no benefit to the estate. To address these items the court would disallow 11 hours of services. All other time for plan matters was reasonable and necessary and benefitted the estate.

Ware, Snow spent 180 hours investigating assets and potential causes of actions against insiders. The committee requested that work to assess potential recoveries and members' positions on the plan and trust. Avatex intended from the commencement of the case to transfer any such causes of action to a trust to pursue. The trust, at its expense, will have to duplicate or replicate much of the work performed by Ware, Snow. That discounts the value to the estate of the work performed. To address that discount of the value of the work, the court disallows 18 hours of work.

Prior to the commencement of the case, Avatex entered a settlement in a class action lawsuit styled Zuckerman, et al. v. FoxMeyer Health Corp., et al., pending in the United States District Court in this district. Post-petition but prior to the formation of the committee, Avatex moved the court to approve the settlement. By order entered February 5, 2003, the district court withdrew the reference of that motion. Once again, Ware, Snow had to address an issue on an expedited basis. The committee questioned the wisdom of the settlement. Ware, Snow assessed that Avatex would spend limited estate resources to settle claims at the equity priority level.

Stone contends that Avatex and the committee had a good faith disagreement on the wisdom of the settlement. The approval of the settlement remains pending in the district court. Never-

theless, the court concludes that the 161 hours spent on the project by Ware, Snow was excessive. Based on a project analysis, Ware, Snow should have exercised reasonable billing judgment to discount the charges for briefing the issues. The question of payment of estate resources to resolve a class action equity level dispute should have been accomplished at less expense. The court disallows 16 hours of work.

Avatex also complains about charges for the Presby project. Again, Ware, Snow confronted an expedited issue. The court held hearings on the Presby matter on February 27 and 28, and on March 4, 2003. The committee had not filed its application to employ Ware, Snow until February 25, 2003. The court finds the work performed reasonable and necessary, with a benefit to the estate.

Except for the voluntary reductions by Ware, Snow and the specific disallowances made above, the court finds the time spent reasonable and necessary, with a benefit to the estate.

With a $264 per hour blended rate, the specific disallowances total $11,880. The United States Trustee recommends that the disallowance be in the amount of $10,000. The court accepts that recommendation, considering the effect of the voluntary reduction on the blended rate. No further adjustment need be made under the Johnson factors.

Accordingly, the court allows compensation of $150,868.50 and reimbursement of expenses of $4,952.49.

Based on the foregoing,

**IT IS ORDERED** that Ware, Snow, Fogel & Jackson, L.L.P., is awarded final compensation for the period February 11, 2003, through April 22, 2003, in the total amount of $150,868.50 for services rendered in connection with the case, and that the firm be reimbursed for out-of-pocket expenses incurred for the period February 11, 2003, through April 22, 2003, in the total amount of $4,952.49, for a total of $155,820.99.

**IT IS FURTHER ORDERED** that the debtor and/or the Avatex Liquidating Trust shall pay $155,820.99 to Ware, Snow, Fogel & Jackson, L.L.P.

Signed this 2nd day of July, 2003.

Steven A. Felsenthal
United States Bankruptcy Judge