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## New York Bankruptcy Court Reduces Requested Fees by \$44,000 for Unreasonable and Excessive Time Billed

In May 2011, the Bankruptcy Court of the Southern District of New York reduced fees charged for professional services in preparing the Bankruptcy Fee Application by \$44,000, nearly 50% of the \$88,072.10 requested. While not adopting a hard cap on what percentage of professional fees may relate to the preparation of the fee application itself, the court found the fees requested—amounting to 8% of the total time billed—to be unreasonable and excessive.

Pursuant to section 330 of the Bankruptcy Code, the court has an important independent duty to review fee applications and evaluate the compensation requested. In doing so, the court may reduce fees if the services provide no real benefit to the estate, or if the request for compensation is based on incomplete or inaccurate time records. Fee applications must also comply with Bankruptcy Rule 2016, which requires a “detailed statement of (1) the services rendered, the time expended and expenses incurred, and (2) the amounts requested.”

Notwithstanding the fact that the requested amount was supported by detailed time entries in the billing statements, the court found the fees requested to be unreasonable and excessive. Looking to other jurisdictions for guidance, the court noted fees charged for the preparation of fee applications were generally limited to 3-5% of the total fees requested. While declining to set a cap in the instant court, the Bankruptcy Judge noted that a charge of 8% of the total fee application was “simply too high,” and failed to satisfy the “reasonably likely to benefit the estate” standard laid out by section 330 of the Bankruptcy Code.

Additionally, the court found that the fee request was “replete with time entries where the estate was billed for reviewing time records” which – as opposed to fee applications—is not compensable.

# THE FEE REQUEST WAS “REPLETE WITH TIME ENTRIES WHERE THE ESTATE WAS BILLED FOR REVIEWING TIME RECORDS” WHICH – AS OPPOSED TO FEE APPLICATIONS – IS NOT COMPENSABLE

**Implications for Legal Billing:** The court goes to some length to note that the issues addressed in this opinion are a recurring problem in bankruptcy fee applications by legal, accounting, and financial professionals. While fee applications may be specific to bankruptcy proceedings, clients should be aware that time spent entering and reviewing time records is not compensable in any case and that they should never be billed for maintaining time records, or for reviewing or discussing bills.

Furthermore, unreasonable and excessive time billed does not necessarily mean unusual or especially egregious behavior by the attorney. Because of this, clients

should insist on detailed billing statements and pay particular attention to exactly what they are being charged for.

\* In re Mesa Air Group, Inc., 449 B.R. 441 (Bankr. S.D.N.Y. 2011). Full copies of court decisions may be available through counsel or through various Internet links or paid services.

By Dan Engoren

**Sterling Analytics** is a consulting and advisory firm that helps companies reduce their legal expenses. Our proven methodologies are based on legal precedent, guidelines and ethical standards that compel law firms to significantly modify improper billing practices. Although our clients come from a broad range of industries with different legal budgets, they share a concern about their legal expenses and are looking for solutions to manage outside counsel while maintaining the highest service level standards. We are able to audit legal fees based on our extensive database of proprietary benchmark data and our solid understanding of traditional legal practices. Our process is fair, independent, cost effective and maintains attorney-client privilege. We are able to measure the extent to which our clients' legal expenses exceed industry standards, and will manage the negotiation and recovery of excessive fees. To institutionalize cost controls, we assist clients by installing systems and protocols that monitor billing activity and catch improper practices.

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