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IN RE: WORLDWIDE DIRECT, INC., et al., Debtors.**Case Nos. 99-108 (MFW) through 99-127 (MFW), Chapter 11, (Jointly Administered Under Case No. 99-108 (MFW))****UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE***316 B.R. 637; 2004 Bankr. LEXIS 1735; 43 Bankr. Ct. Dec. 234***October 29, 2004, Decided****January 19, 1999, Filed****DISPOSITION:** Objection was sustained in part and fees requested were reduced accordingly.is applicable to contested matters pursuant to *Rule 9014*.**LexisNexis(R) Headnotes**

[**2]

COUNSEL: [**1] For WORLDWIDE DIRECT, INC., Debtor: Bruce Bennett, Hennigan Bennett & Dorman, Los Angeles, CA; James L. Patton, Young Conaway Stargatt & Taylor, LLP, The Brandywine Bldg., WILMINGTON, DE; Michael Seidl, Pachulski, Stang, Ziehl, Young & Jones, Wilmington, DE; Robert S. Brady, Young Conaway Stargatt & Taylor LLP, The Brandywine Bldg., Wilmington, DE; Steven K. Kortanek, Klehr Harrison Harvey Branzburg & Ellers, Wilmington, DE.

This case is before the Court on the Objection of the Liquidating Trustee to the Sixth and Final Verified Application of Hennigan, Bennett & Dorman ("HBD") for Allowance of Compensation and for Reimbursement of Expenses ("the Final Fee Application"). For the reasons stated below, we sustain the objection in part and reduce the fees requested accordingly.

For Neal Ossen, Esq., the Chapter 7 Trustee of Shared Technologies Cellular, Inc., Trustee: Gwendolyn M. Lacy, Connolly Bove Lodge & Hutz, The Nemours Building, Wilmington, DE.

I. FACTUAL BACKGROUND

Julie L. Compton, U.S. Trustee, Office of the U.S. Trustee, Wilmington, DE.

On January 19, 1999, Worldwide Direct, Inc., SmarTalk TeleServices, Inc., and several affiliates (collectively "the Debtors") filed voluntary petitions under chapter 11 of the Bankruptcy Code. HBD was retained as counsel for the Debtors. Immediately prior to the filing, the Debtors had executed an asset purchase agreement with AT&T for the sale of substantially all of the Debtors' assets. Pursuant to auction procedures approved by Order dated February 26, 1999, the sale was advertised and prospective alternative bidders were contacted, but ultimately no other bidder submitted an alternative offer for the Debtors' assets and businesses. By Order dated March 18, 1999, we approved the sale to AT&T pursuant to the original asset purchase agreement.

For Official Committee of Reclamation Creditors, Creditor Committee: Steven K. Kortanek, Klehr Harrison Harvey Branzburg & Ellers, Wilmington, DE.

JUDGES: Mary F. Walrath, United States Bankruptcy Judge.

On April 27, 2000, the Debtors and the Official Unsecured [**3] Creditors Committee ("the Committee") filed a Second Amended Joint Consolidated Liquidating Plan of Reorganization ("the Plan") which was ultimately confirmed by Order dated June 7, 2001. Under the Plan, Goldin Associates, L.L.C. ("the Liquidating Trustee") was appointed to liquidate the Debtors' remaining assets, review claims, and make a distribution to creditors.

OPINIONBY: Mary F. Walrath**OPINION:**[*641] **OPINION** n1

Throughout the case, HBD and the other professionals served monthly bills on interested parties and filed quar-

n1 This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to *Federal Rule of Bankruptcy Procedure 7052*, which

terly fee applications which were generally approved. On August 14, 2001, HBD filed the Final Fee Application, which seeks fees of \$5,872,609.90 (after voluntary reductions of \$763,225.23) and expenses of \$1,042,422.46.

The Liquidating Trustee filed an objection to the Final Fee Application on December [*642] 3, 2001, based on a draft fee audit report ("the Fee Audit Report") performed by Legal Cost Control ("the Fee Auditor") which raised 24 categories of objections. A Supplemental Objection was filed by the Liquidating Trustee on March 1, 2002, which objected principally to the allowance of fees for temporary attorneys and paralegals used by HBD for document review and analysis. The sum of the categories of objections [**4] raised by the Liquidating Trustee totals \$1,740,695.95 in fees and \$988,641.05 in expenses.

HBD filed a Reply to the Liquidating Trustee's Objections on March 15, 2002, and an initial hearing on the Final Fee Application was held on May 16, 2002. A final hearing was held on December 5, 2002, where the scope of the Objections was narrowed to four categories. The matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. §§ 1334 & 157(b)(1), (b)(2)(A), (B), & (O).

III. DISCUSSION

A. Admissibility of Fee Audit Report

At the hearing, HBD objected to our consideration of the Fee Audit Report, asserting that it was unreliable and not based on any acceptable method of review. Although the Fee Auditor asserted that his analysis was done in accordance with "generally accepted legal auditing principles," he acknowledged that there is no such thing and that, instead, he utilized internal procedures only (which he refused to produce asserting they are proprietary). Although the engagement letter and other promotional material described what his firm did, the Fee Auditor [**5] testified that they did not explain what he did in this case. Consequently, we agree with HBD that the Fee Audit Report cannot be considered an expert report done in accordance with generally accepted methodologies of performing such a report. See, e.g., *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94, 125 L. Ed. 2d 469, 113 S. Ct. 2786 (1993) (noting that pertinent considerations in determining the reliability of expert testimony include whether the method has been subjected to peer review and accepted within the scientific community).

Even as a factual witness, however, the Fee Auditor

was less than helpful. The Fee Auditor testified that in preparing the report he only reviewed the fee applications themselves. He did not review any pleadings, transcripts of hearings, the docket or claims in the case to familiarize himself with the issues or litigation that HBD handled. Nor did he talk to HBD or to anyone else involved in the case to ascertain what HBD had done.

On cross examination of the Fee Auditor it became evident that the Fee Audit Report was factually inaccurate in numerous ways. For example, the Fee Auditor retyped the HBD time entries into his computer base and there were [**6] numerous errors in that process (in description and in amount of time recorded). Further, in doing so, the entries were removed from their categories and other entries that provided context to what was done. In addition, the Fee Auditor admitted that there were duplications in his categories of objections; that is, some time entries or expenses were objectionable on more than one basis. Therefore, the overall objection to the fees and expenses was less than the sum of the categories (\$ 2,729,337). The Fee Auditor could not identify the exact amount of reduction being requested, however. Finally, the Fee Auditor was not aware that HBD had already agreed to reduce its fees and expenses. Therefore, [*643] there were some items in the Fee Audit Report which had already been reduced (namely, charges for copies and facsimiles).

Because the Fee Auditor did not follow an accepted methodology of performing a fee examination and the Fee Audit Report itself has numerous factual errors, we conclude that it is not reliable. We, therefore, have reviewed the Final Fee Application itself to determine the validity of the remaining objections of the Liquidating Trustee.

B. Remaining Objections

1. [**7] Blocked/Grouped Description

The Liquidating Trustee continues to press an objection to the entries identified as "blocked/grouped" in the Fee Audit Report. It appears from our review of these entries that the Liquidating Trustee is objecting because the time is "lumped" and it is unclear how much time was spent on each function within the entry.

"Courts have refused repeatedly to approve unitemized disbursements for services that are lumped together in a single entry, because such action inhibits the court from estimating the reasonableness of the individual services and their value to the debtor's estate." *In re Ward*, 190 B.R. 242, 246 (Bankr. D. Md. 1995). See also. *In re Green Valley Beer Corp.*, 281 B.R. 253, 259 (Bankr. W.D. Pa. 2002); *In re Poseidon Pools of America, Inc.*, 180 B.R. 718, 731 (Bankr. E.D.N.Y. 1995).

The Court in *In re Leonard Jed Co.* noted that lumping