

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 99C-21130
)	
GENEVA STEEL COMPANY,)	Chapter 11
)	
Debtor.)	ORDER ALLOWING REDUCED
)	FEEES AND EXPENSES

The Final Fee Application of Watson Wyatt Worldwide ("Watson"), human resource strategy consultant to the Debtor, came before the Court on April 26, 2001. Chris L. Schmutz of Schmutz, Mohlman & Rohbok, LLC, and Kirkland L. Hicks, as general counsel of Watson in Washington D.C., appeared in behalf of Watson. Stephen E. Garcia of Kaye Scholer LLP and Weston L. Harris of Parsons, Davies, Kinghorn & Peters, appeared in behalf of Geneva Steel Company ("Geneva" or "Debtor"), the Reorganized Debtor, and the Official Committee of Bondholders ("Bondholders' Committee"). Peter J. Kuhn appeared in behalf of the United States Trustee.

FACTS

On February 1, 1999, Geneva filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.



On May 17, 2000, Geneva and Watson executed an engagement letter dated May 11, 2000, for Watson to provide human resource strategy consultation services to Geneva for a fixed fee range of \$40,000 to \$50,000.

Geneva and Watson executed a second engagement letter dated August 11, 2000, for Watson to provide a number of projects relating to human resource management. Attachment I to the August 11, 2000, engagement letter ("Attachment I") describes the projects and the fixed fee range for each project as follows:

Project Planning	\$14,000 - \$16,000
• Planning meeting to develop project plan, time-line, resources and refine human resources philosophies	
Communications	\$18,000 - \$29,000
• Develop People Vision	
• Determine communication media for People Vision	
- Production of materials are not included	
• Develop communications strategy	
Total Compensation	\$65,000 - \$80,000
• Base pay compensation philosophy and strategy	
• Develop Management and broad-based incentive strategies	
• Design Sales Incentive Plan	
• Implementation steps	
Recruiting/Selection	\$6,000 - \$10,000
• Develop recruiting philosophy and strategy	
• Implementation steps	
Performance Management	\$10,000 - \$13,000
• Develop performance management strategy and approach	
• Implementation steps	
Employee Recognition	\$6,000 - \$10,000
• Develop employee recognition strategy	
• Implementation steps	

Training and Development	\$14,000 - \$18,000
• Design training strategy	
• Implementation steps	
TOTAL	\$133,000 - \$176,000

The engagement letter dated August 11, 2000, provides that the term of the agreement begins upon mutual execution. The engagement letter was executed by Geneva on August 15, 2000.

On September 26, 2000, Geneva filed Debtor's Application to Employ Watson Wyatt Worldwide as Human Resource Consultant ("Application to Employ") as a professional under 11 U.S.C. § 327. The Application to Employ contained both the engagement letter dated May 11, 2000, and the engagement letter dated August 11, 2000, as exhibits, and was mailed along with the notice of hearing on the Application to Employ to all parties on Master Service List #17.

Paragraph #3 of the Application to Employ states in part that:

Watson Wyatt has agreed to analyze current human resources practices and design new human resources strategies. These services have been broken down into discrete sub-projects, which Watson Wyatt has agreed to complete for fixed amounts. The aggregate cost of these sub-projects is approximately \$230,000. Following the development of the human resources strategies, Watson Wyatt will provide consulting services to Geneva to implement those strategies. A fixed price for each consulting-related sub-project will similarly be established and agreed upon by Watson Wyatt and Geneva before services are performed.

Beyond this disclosure, little or no information was provided to the Court or to parties in interest about the nature, importance or necessity of additional consulting services or that implementation of the projects or sub-projects was not included in the fixed fee price.

According to Watson, no effort was made to seek appointment under § 327 earlier than September because Watson was advised by the Debtor's top management that court approval of employment was not needed because Watson's services were in the "ordinary course" of the Debtor's business.

The Application to Employ seeks appointment of Watson *post facto*¹ to May 20, 2000.

The Application to Employ was approved by Order of this Court on October 28, 2000.

Watson's first interim fee application filed November 17, 2000, sought compensation of \$259,404 in fees and expenses of \$37,859 for a total of \$297,263. The first interim fee application covered the period from May 1, 2000, through September 30, 2000.

The Bondholders' Committee objected to Watson's first fee application on the ground that the Bondholders' Committee had insufficient knowledge of the work performed by Watson to evaluate whether Watson's request was reasonable.

By stipulation with the Bondholders' Committee, Watson agreed to a holdback of one-third of the requested fees and expenses, resulting in an Order holding back \$98,988.58 and directing interim payment to Watson in the amount of \$198,274.42.

Watson's Final Fee Application filed March 5, 2001, seeks fees and expenses as follows:

¹Prior cases have characterized applications requesting retroactive court approval of employment performed prior to judicial approval under § 327 as "nunc pro tunc." However, the more appropriate term is "*post facto*." See In re Albrecht, 233 F.3d 1258 (10th Cir. 2000).

FIXED FEE PROJECTS

Phase ² I	\$50,000.00
Phase II	\$218,185.75
Total Fixed Fee Projects	\$268,185.75

HOURLY PROJECTS

Performance Management	\$3,282.50
Base Pay	\$36,028.70
Employee Communications	\$1,814.60
HR Organization Structure	\$3,347.60
Corporate Logo	\$3,050.45
August 25 th Announcement	\$1,240.60
HR Strategy Redesign Time-Line	\$8,389.50
Total Hourly	\$57,153.95

GRAND TOTAL FEES \$325,339.70

TOTAL EXPENSES \$44,004.00

TOTAL FEES AND EXPENSES \$369,343.70

Having received \$198,274.42 in interim payments, Watson now seeks allowance of all requested fees and an Order directing payment of \$171,069.28.

Watson would expect to be paid an additional \$450,000 to implement the projects developed by Watson.

The Reorganized Debtor and the Bondholders' Committee (collectively referred to as the "Reorganized Debtor"), jointly filed an objection to Watson's application arguing that Watson's services provided minimal benefit to the estate because most projects developed by

²In its Final Fee Application, Watson indicates that its services were originally envisioned to be divided into three phases: Phase I - Discover (identify human resources programs and culture already in place); Phase II - Invent (prescribe specific programs to improve human resource performance in key areas identified by the HCL); and Phase III - Deliver (implement Phase II designs and strategies).

Watson were never implemented, and without implementation, they are of no value. The Reorganized Debtor argues that Watson should be awarded no more fees than those already paid (\$198,274.42) and that the Court should disallow \$171,069.28 of Watson's request.

ANALYSIS

Although the Reorganized Debtor's objection focuses only on a single issue (benefit to the estate), a bankruptcy court has an independent duty to review professional fee applications, even if no party in interest objects. In re Albrecht, 245 B.R. 666 (10th Cir. BAP 2000). Accordingly, this ruling will address numerous issues identified by the Court during its own review of Watson's Final Fee Application.

Post Facto Appointment

Watson's Application to Employ was filed with the Court on September 26, 2000, and seeks appointment of Watson effective May 20, 2000. Watson argues that *post facto* appointment is appropriate because Watson did not learn of the need to apply for appointment as a professional until September 2000, that time pressure to perform caused Watson to focus on the work and not on appointment, and that *post facto* appointment will not prejudice other creditors. The Application to Employ *post facto* and notice of hearing were served on all parties listed on Master Service List #17 in September 2000. No objections were filed. Because Watson's Application to Employ specifically requests appointment effective to May 20, 2000, and was noticed to creditors in that way, the Court will grant Watson's Application to Employ effective May 20, 2000, as requested, but will go no further. In doing so, the Court must disallow \$32,432.50 in fees itemized prior to May 20, 2000. A professional who provides services to the estate when not appointed by the court is simply

will be disallowed. In re Rocky Mountain Helicopters, Inc., 186 B.R. 270, 272-273 (Bankr. D. Utah 1995). While it cannot be said that Watson knew or should have known that its professional services would provide no value to Geneva at the outset of its engagement, by September 26, 2000, when Watson had completed most of its services, Watson knew or should have known that its services would be of little or no value to Geneva without Watson's continued professional services in Phase III - Deliver (implement Phase II designs and strategies).

Little or no information is found in the Application to Employ that would put the reader on notice that Watson's services for the fixed fee projects do not include implementation of the projects.³ In fact, the Application to Employ affirmatively represents that at least five of the Phase II projects will be implemented by Watson as part of the fixed fee price. Attachment I describes seven projects to be performed by Watson for a fixed fee. Five of the fixed fee projects include "implementation steps" as a part of the services provided for the fixed fee. Those projects are: "Total Compensation," "Recruiting/Selection," "Performance Management," "Employee Recognition," and "Training and Development."

Without implementation of the fixed fee programs, the services provided by Watson appear to be of little or no value. Watson must have known this and should have disclosed the need for Phase III, implementation, as part of the Application to Employ. This failure to

³When Watson wanted to advise others that a service was not included, Watson made it clear. On Attachment I under the "Communications" project description, Watson specifically provides that "Production of materials are not included." Watson could have excluded "implementation" of the fixed fee projects in a similar fashion, but did not do so.

which Watson can be awarded compensation for the Phase II work performed prior to August 15, 2000.

Duplication of Services

Three projects for which Watson agreed to provide service on a fixed fee basis are:

<u>Fixed Fee Project</u>	<u>Fees</u>
Performance Management	\$13,000.00
Compensation	\$124,000.00
Base pay compensation philosophy and strategy	
Implementation steps	
Communications	\$27,323.75

Three projects for which Watson seeks additional fees for consultation work at

Watson's hourly rates are:

<u>Consulting Project</u>	<u>Fees</u>
Performance Management	\$3,282.50
Base Pay	\$36,028.70
Employee Communications	\$1,814.60
Total	\$41,125.80

A review of the itemized time entries shows that hours were billed by Watson for "Performance Management" consultation work during the same time period that the "Performance Management" fixed fee project was underway. In fact, one professional employed by Watson billed time to "Performance Management" fixed fee project on the same day that time was billed to "Performance Management" consultation work.⁷ Similar billings

⁷On August 14, 2000, R Sandoval itemized time for the "Performance Management" fixed fee project described as "Typing and producing of binder material for Jenny, Lynda and Luellen's trip to Geneva Steel." On the same day, R Sandoval itemized time for "Performance Management" consulting for work described as: "Edit presentation for September 6 and 7 meeting." Without additional detail, it is not possible to distinguish between the tasks and projects. In fact, from the little information provided, it appears that R Sandoval was working on the fixed fee project in both billings.

identified by the Court overlap with other deficiencies. For that reason, the Court will reduce Watson's fees only to the extent requested by the Reorganized Debtor. Therefore, it is hereby

ORDERED that Watson will be allowed fees and costs totaling \$198,274.42, and it is further

ORDERED, that based upon the above opinion, Watson's request for additional fees and costs above those allowed above is disallowed.

DATED this 17 day of August, 2001.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of August, 2001, I served a true and accurate copy of the foregoing ORDER on the following by depositing the same in the United States mail, postage prepaid, addressed as follows:

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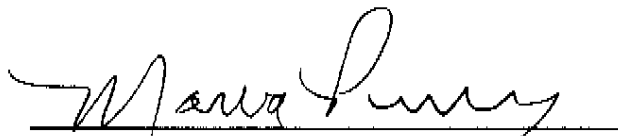
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