

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

HUMMINGBIRD TOY COMPANY, INC.

Case No. 93-11273 K

Debtor

Having considered the interim fee applications of Farner and Farner, the objections thereto, the Supplemental Application of Farner and Farner and the Creditor's Committee Counsel's letter of July 18 renewing its earlier objections in part, and after due deliberation it is

ORDERED, that the objections are sustained in part and overruled in part. As I stated in my letter of May 6, 1994, "this Court does not compensate attorneys for reviewing or researching Rules of Practice or local customs and procedures; counsel is not entitled to educate himself or herself with regard to these fundamental requirements of practice in this Court at the expense of creditors. Finally, that the firm does not employ a paralegal is not a basis to charge lawyer's rates for paralegal work at the expense of creditors."

I do not understand why counsel has ignored these comments, in the supplemental application. The following entries are disallowed:

<u>Date</u>	<u>Atty.</u>	<u>Matter</u>	<u>Time</u>
5/5/93	TAW	Calls re: "protocol"	.3
		Filing at court	1.0
		Prepare cover sheet	.4
		Draft letter	.1
5/7/93	TAW	Call re: procedure	. 2
		Drafting cover letters	
.2			
5/18/93	WCF	"Input information in computer"	2.57
5/24/93	TAW	Calls re: procedure	.3
		Filing at court	.9
5/25/93	TAW	Draft cover letters	.3
		Prepare aff. of service	.1
6/1/93	TAW	Draft cover letter	.1
		Review rules	.8
		Call re: return date	.1
6/2/93	WCF	Give Debtor a copy of schedules	.1
6/3/93	TAW	Provide info to J. Getman	.1
6/10/93	TAW	Call re motion date	.3
6/11/93	TAW	Draft cover letter	.1
7/8/93	TAW	Review rules	.4
		Amend list	.1
7/30/93	TAW	Meeting with MRS and WCF	.1
8/2/93	TAW	Generating a service list	1.6
8/3/93	TAW	Telling M & T to correct zip code	.2
8/19/93	TAW	Correcting service list	.2
10/20/93	MRS	Filing of motion	. 3

10.77hrs.

Although such work had to be done by someone, some of it is mere office overhead (such as calling this court for a date or drafting a cover letter), and some of it might be compensable at para-legal or office-assistant rates. None of it should be billed at rates of \$110 to \$150 per hour. Although I might have merely reduced the rate, I am disallowing it all, for failure of the applicant to conform this application to my earlier comments. A blended rate of \$120/hr. will apply. Hence \$1292.40 is disallowed.

As noted in the Committee's objections, counsel has spent a great deal of time performing work that one would think could be performed by the Debtor's management or by other consultants or specialists already advising the Debtor. For an example of the former, consider the time spent by a \$150/hr. lawyer in examining the invoices, and the checks the debtor sent in payment of antecedent debts in the 90 days preceding bankruptcy: 4.4 hours by WCF on 5/4/93, 4.7 hours by WCF on 5/12/93, and over 3 hours by WCF on 5/15/93. There is no reason why the office staff of a Debtor this size could not have produced a suitable report, rather than having a \$150/hr. attorney examine raw data for a total cost to creditors of over \$1800.

Similarly, it appears that counsel spent many hours working on the Debtor's schedules. The schedules should be completed by the debtor, with review by counsel.

Also significant is the time spent by counsel consulting with the Debtor over business management matters beyond the extent needed for counsel to understand the client and for the client to understand the requirements of law. For example, 0.4 hours by WCF on 5/5/93 regarding a pricing proposal for "steins"; .45 hours by WCF on 5/19/93 reviewing a budget schedule; discussions by WCF on 5/26/93 regarding payment terms as to Learning Curve Toys, followed by .7 hours by MRS discussing the same thing; .49 hours by WCF on 6/30/93 regarding the "strength of [Learning Curve] in future orders [so as to advise the Debtor as to] management decisions";

2.5 hours by MRS on 10/5/93 to conference re: long term business relationship with Learning Curve and its new partner and as to possible increase.

Even more time was spent by attorneys consulting with consultants. For example, 3.38 hours spent by MRS on 8/18/93, the bulk of which consisted of a telephone conference with the management consultant necessitating modification of a motion to extend exclusivity. Most puzzling are the following entries relating to consultations with insurance "experts" and "specialists" concerning efforts to save money on worker's compensation insurance and review of same: .5 hours by MRS on 10/6/93; .62 hours by MRS on 10/8/93; .65 hours by MRS on 10/13/93; .57 hours on 10/14/93 by MRS; .9 hours by MRS on 10/15/93; .5 hours by MRS on 10/20/93; approx. 1.7 hours by MRS on 10/19/93; 1.75 hours by MRS on 10/20/93; 1 hour by MRS on 10/21/93 and .7 hours by him on 10/22/93; .37 hours by MRS on 10/26/93; 1.8 hours by TAW on 10/29/93; 7 hours by TAW on 11/2/93; 4.5 hours by TAW on 11/3/93; and 1.6 hours by MRS on 11/3/93.

While the efforts regarding the worker's compensation matter may have been productive, was 17.86 hours of attorney time (approximately \$12,500) on this matter reasonable and necessary in light of the fact that the Debtor has a management consultant and dealt with three insurance specialists?

Overall, the Court is left with the impression of counsel who is not insisting that the Debtor and its employees and

contractors do their jobs and leave counsel to do the work of counsel. If the Debtor's daily affairs are so complex as to require so much legal counsel, then it may be that the best advice a \$150/hr. bankruptcy counsel might give might be for the Debtor to hire an in-house counsel for \$40,000 or so per year.

I cannot determine the reasonableness of those aspects of the application until I have other compensation applications before me, such as that of the duly employed business consultant.

Finally, although counsel ultimately did an excellent job, in the supplemental papers, of providing the information required to be contained in the application, it should have been done sooner and more willingly. This Court has often and unvaryingly held that even if counsel adequately responds to well-founded objections, there will not be a full award; there will be a fair reduction for having made parties in interest struggle to get the information they were entitled to in the first instance.

Bearing in mind that this is an "interim" fee request, it is

ORDERED, that of the \$34,637.50 request (plus \$1,029.11 expenses), 5% shall be disallowed for failure to timely provide sufficient information to assess the reasonableness of the fees: thus, \$1731.85 is so disallowed. \$1292.40 also is disallowed, as above, for non-attorney work billed as attorney time. Of the \$31,613.25 remaining, 75% will be allowed now, and the balance will be considered by the Court only in connection with a final

allowance, or a future interim allowance, when the firm's work may be considered along with that of any consultants or specialists hired by the Debtor and when the Court may also evaluate the results achieved.

\$23,709.94 is allowed, of which \$2500.00 was previously paid. The balance of this \$23,709.94 award may now be paid if the Debtor is current on all other administrative expenses and will not be left undercapitalized.

The request for \$1029.11 in expenses is approved on the assumption that the telephone charges, postage and copy charges are above and beyond normal office overhead: counsel is not permitted, for example, to pro-rate office expenses such as photocopier rent, and recoup them as "expenses" or "disbursements."

SO ORDERED.

Dated: Buffalo, New York
July , 1994

/s/Michael J. Kaplan

U.S.B.J.