

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

NICKEL CITY AUTO TRANSPORT, INC.
Successor to Double B Auto Sales,
Inc. a/k/a Double B Auto Transport
Debtor

Case No. 91-13203 K

The request for an upward adjustment under Lodestar analysis must be denied. Although Damon & Morey capably performed reasonable and necessary services for the Debtor prior to their appointment, compensation for that time cannot be allowed because it lacked prior approval and lacks a "Piecuil showing." See *In re Piecuil*, 145 B.R. 777 (Bankr. W.D.N.Y. 1992). This Court's recognition that the labors thus "volunteered" may warrant an upward adjustment of the allowable portion of the fees, had its roots in cases in which substantial benefits were conferred upon creditors by those labors. Thus, for example, when the "volunteered" legal services preserved a significant asset that would otherwise have been lost, an upward adjustment has been made.

In the case at Bar, not only will creditors receive nothing, but the total of assets realized will not even pay more than a fraction of the new claims that accrued during the D-I-P period. It is nearly impossible to support an upward adjustment under such circumstances, and it is not supportable here, despite the capable efforts of counsel.

As to compensation and reimbursement from April 1, 1992 to October 14, 1992, the application is allowed in full, as a D-I-P expense.

As to October 14, 1992 to February 3, 1993 (the post-conversion period), the U.S. Trustee observes that some of Damon and Morey's time entries are problematic. Only time that is spent assisting the debtor in performing its duties under the Code (including its duty to cooperate with the Trustee) are compensable at the estate's expense. Even time spent assisting the Trustee in performing his duties is not compensable unless the time was spent at the Trustee's request and involved necessary legal services for which the Trustee or his own counsel is not also being compensated.

It is possible that the various reviews of letters or orders were of a compensable nature, and it is possible that they were not. One simply cannot tell. Of approximately 20.5 of such hours (excluding time spent preparing the fee application) 10 will be allowed at a \$120 per hour rate, plus the 7.5 hours of application preparation at \$50 per hour. Thus, \$1575 will be allowed as a Chapter 7 expense for post-conversion legal services. Because of the difficulty in assessing the compensability of the post-conversion work, no post-conversion expenses will be allowed.

In sum, then, of the \$19,446.50 in fees and \$1426.08 in expenses sought, \$1575 in fees will be paid as a Chapter 7

expense, and also a total of \$7003.42 will be allowed to receive its pro-rata share as a Chapter 11 expense. The remainder of the Application must be denied.

SO ORDERED.

Dated: Buffalo, New York
May 13, 1996

/s/Michael J. Kaplan

U.S.B.J.