There is not enough money to pay more than a small percentage of Debtor-in-Possession expenses. Therefore, the monetary effect of addressing objections to those portions of the fee applications by Christy and by Miles & Stockbridge is far less than on a dollar-for-dollar basis. As a result, the two applications in question will be examined first as to post-conversion activities entitled to Chapter 7 administrative expense, and then as to pre-conversion D-I-P expenses.

APPLICATION OF CHRISTY

As to the numbered objections of the United States Trustee:

- ¶ 3 is sustained - 7.2 hours will be disallowed.

- ¶ 4 is sustained - 1.2 hours will be disallowed.

- ¶'s 5 and 6 are sustained in part - 10 hours will be disallowed.

Thus, as to 35.2 hours of post-conversion time, 19 are disallowed. 16.2 hours are allowed as a Chapter 7 expenses,

totalling $1,620.

As to 261.7 hours of Chapter 11 expense compensation claimed, the United States Trustee has made other objections, and the Court rules as follows:

- ¶'s 7, 8, and 16 are sustained. Five percent of the total Chapter 11 allowance will be disallowed for lack of detail, in general.

- ¶ 9 is sustained in part - Half (2.8 hours) will be disallowed.

- ¶ 10 is overruled - At this point, five and one-half years after the filing of the application, the benefit of a doubt on these items ought to go to the applicant.

- ¶ 11 is sustained - One-half hour will be disallowed.

- ¶'s 12-15, and 18 are sustained in part - another five percent reduction will be applied to the total D-I-P expense allowance, for what appears to be a lack of effective management of the time of the estate's legal counsel.

- ¶'s 19, 20, and 21 are overruled - Though the applicant's "response" to the United States Trustee's objections seems otherwise overwrought, the United States Trustee's suggestion that the Court summarily pay the late-appointed counsel at the applicant's expense is so totally unprecedented as to perhaps fuel the applicant's zeal. Provision will be made below for this matter.

As to D-I-P expense allowances, then, Christy's 261.7 hours will be reduced by 3.3 hours and then by 10%, for a total allowance

of 232.6 hours at $100 per hour; $23,260, plus $215.46 in expenses.

APPLICATION OF MILES & STOCKBRIDGE

As noted above, the United States Trustee's suggestion that Christy should pay for the pre-appointment services of Miles & Stockbridge is unprecedented, in the experience of this Judge. Although Miles & Stockbridge does not seem to be aware of this Court's decision in *Piecuil*, 145 B.R. 777 (Bankr. W.D.N.Y. 1992), (the firm's March 19, 1996 letter is silent as to that case), the firm certainly offers an appropriate *Piecuil* showing - it didn't know that V.S.I. was in bankruptcy. However, it is also evident to the Court, both from Miles & Stockbridge's application and from Christy's reply to the United States Trustee objections, that the Miles & Stockbridge firm was not working for V.S.I. prior to December 3, 1990, rather it was working for the principals. By December 3, 1990, that firm had been duly employed by the Debtor with approval of the Court.

The time prior to that date must be disallowed, not for failure to make *Piecuil* showing, but for failure to demonstrate that the work was rendered for the benefit of V.S.I. rather than for its principals.

In light of the above, the Court need not dwell on the unusual position taken by the United States Trustee, but will explain the Court's understanding of that office's usual practice in such matters. The usual position of the United States Trustee is to oppose

the pre-appointment compensation in the absence of a *Piecuil* showing. Here, it is the United States Trustee's position that $8,516.50 of pre-appointment time of Miles and Stockbridge ought to be "eaten" by Christy because Christy should have gotten Miles & Stockbridge appointed sooner. That position seems to presume that (1) the estate need not pay that amount, but that (2) someone should make Miles & Stockbridge whole. Even in *Piecuil* itself, the United States Trustee did not suggest that whatever the accountant (coincidentally it was Mr. Weld) would otherwise lose as a "volunteer" should be paid by the Debtor's attorney.

If Miles & Stockbridge's *Piecuil* showing blamed the delayed appointment on Christy, then the Court would determine how to provide due process on that matter. But the United States Trustee's position assumes that the Court may summarily pay Miles & Stockbridge at Christy's expense.

Again, be that all as it may, all time prior to December 3, 1990 must be disallowed as having been performed for clients other than V.S.I.

In another part - ¶ 19 - of the United States Trustee's objections, it is said that the work of Miles & Stockbridge "provided" significant funds to the estate for pro rata payment of administrative claims. As noted by Christy, with only $15,664.22 to pay a bit more than $100,000 in Chapter 11 administrative claims, the United States Trustee's representation is puzzling.

Equally puzzling is the fact that no attention is paid

by anyone currently before the Court, to the fact that Miles & Stockbridge does not seem to have been duly employed by the Chapter 7 Trustee, after the case was converted.

Nonetheless, there being no objection, it appears that Miles & Stockbridge's third, fourth, fifth and sixth invoices must be allowed in full as a Chapter 7 expense.

SO ORDERED.
Dated:Buffalo, New York
April , 1996

/s/Michael J. Kaplan
_____
U.S.B.J.