

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
) CASE NO. 02-30574(LMW)
)
AHEAD COMMUNICATIONS) CHAPTER 11
SYSTEMS, INC.,)
) DOC. I.D. NOS. 659, 664
DEBTOR.)

APPEARANCES

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**BRIEF MEMORANDUM OF PARTIAL DECISION
AND ORDER REQUIRING SUPPLEMENTATION OF FEE APPLICATION**

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, counsel (“Z&Z”) for the above-referenced debtor has filed a certain Supplemental Application for Allowance of Compensation and Reimbursement of Expenses by Counsel to Debtor-in-Possession (Doc. I.D. No. 659, the “Application”);

WHEREAS, General DataComm, Inc. (“GDC”) has filed a certain Objection of General DataComm, Inc. to the Supplemental Application for Allowance of Compensation and Expenses by Zeisler & Zeisler, P.C. (Doc. I.D. No. 664, the “Objection”);

WHEREAS, the Application seeks payment/reimbursement of fees and expenses incurred by Z&Z (a) in defending a prior fee application (the “Prior Application”) against an objection (the “Prior Objection”) by GDC and (b) with respect to certain services (the “Other Services”) rendered by Z&Z in this case not covered by prior fee applications;

WHEREAS, after a hearing held on October 11, 2005 this court entered orders approving the Prior Application and overruling the Prior Objection. *See* Doc. I.D. Nos. 621, 623, 624 and 626, collectively, the “Orders”);

WHEREAS, GDC appealed the Orders to the District Court for this district (the “Appeal”);

WHEREAS, GDC did not seek a stay of the Orders pending its appeal;

WHEREAS, as of the date hereof the Appeal is *sub judice* and it is uncertain when the Appeal will be decided;

WHEREAS, this court agrees that, under appropriate circumstances, an estate professional may be compensated (and reimbursed) for fees and expenses incurred by such professional in the course of successfully defending its fee application. *See, e.g., In re Worldwide Direct, Inc.*, 334 B.R. 108 (D. Del. 2005);

WHEREAS, in the Objection GDC argues that the Application is in primary part premature because of the pending Appeal and Z&Z may yet not prevail with respect to the Prior Application;

WHEREAS, this court disagrees with GDC’s position. Z&Z did successfully defend the Prior Application as evidenced by the Orders. Because GDC did not seek to stay the Orders pending decision of the Appeal, the Orders remain in full force and effect. *See* 9E Am. Jur. 2d *Bankruptcy*

§ 3539 (2005) (“The mere filing of a notice of appeal to review an order of the bankruptcy judge, without more, does not stay the effect or operation of the order.”). Moreover, GDC may be appropriately protected pending resolution of the Appeal by, *e.g.*, requiring Z&Z to deposit any fees collected (directly or indirectly) from GDC into the fee escrow maintained pursuant to the chapter 11 plan (Doc. I.D. No. 545, the “Plan”) confirmed in this case;¹

WHEREAS, in the Objection and/or at the hearing on the Application and the Objection GDC objected to the Application as it relates to the Other Services because the Application lacks a “narrative description” of the Other Services as required by D. Conn. LBR 2016-1(a)(2);

WHEREAS, the court agrees that the requirement for a “narrative description” is not satisfied by inclusion of mere time records as was done in the Application;

NOW, THEREFORE, it is hereby **ORDERED** that the Objection is overruled to the extent that the court has determined that the Application is not premature; and it is further

ORDERED that the Objection is sustained to the extent that the court hereby directs Z&Z to supplement (the “Further Supplementation”) the Application by supplying a “narrative description” of the Other Services and by marking entries relating to the Other Services on copies of the relevant Z&Z time records annexed to the Application; and it is further

ORDERED that: the Further Supplementation shall be filed and served upon GDC on or before May 22, 2006; GDC may file and serve upon Z&Z a written objection to the Further Supplementation on or before June 5, 2006; and Z&Z may file and serve upon GDC a response thereto on or before June 12, 2006; and it is further

¹ Pursuant to the Plan, GDC is liable (directly, or indirectly through an affiliate) for payment in respect of the fees and expenses sought by Z&Z pursuant to the Application.

ORDERED that the remaining contested issues in respect of the Application and the Objection remain *sub judice* pending the foregoing.

Dated: May 11, 2006

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge