

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
DUANE RIECK,)	CASE NO. BK81-2134
)	
DEBTOR)	

MEMORANDUM

This fee application, being the fee application of Paul F. Festeren for services rendered to this Chapter 11 estate as examiner appointed under the statute, presents two problems.

The first is whether it is necessary to take evidence in fee applications in every case. It seems to me it is not necessary to take evidence in every fee allowance case. The statute and the local rules require that any fee application be accompanied by an itemized statement of services which, in and of itself, if properly done, can be and is illuminating. That requirement exists so that any party in interest may ascertain the services for which the applicant wishes to be compensated and make appropriate objection on that basis. Therefore, the taking of evidence in every case is unwarranted and vastly overrated. I consider the matter properly before me upon the application and the statements of counsel only.

In the absence of any suggestion that counsel has evidence that the services listed in the application were not, in fact, performed then I will accept that itemization of services as true and make my allowance upon it.

The second point involves the allowance of fees to the examiner out of what appears, at this moment in time, to be an estate which is entirely claimed by the secured creditor. That is, if any allowance is paid, it will be paid, at this point, out of assets claimed by the secured creditor. In a Chapter 7, 11 U.S.C. Section 506(c) specifically contemplates that a trustee in bankruptcy may recover from a secured creditor's assets reasonable and necessary costs and expenses of preserving or disposing of property in a Chapter 7. That contemplates that to the extent a secured creditor can be said to benefit, that the trustee should recover expenses and costs.

Here, in a Chapter 11, an examiner benefits the estate by an examination of the debtor's world, as it were, and renders services on behalf of all creditors, whether they be secured, priority, or unsecured non-priority. I, therefore, hold by analogy that an

examiner, as in this case, may be compensated out of assets claimed by a secured creditor.

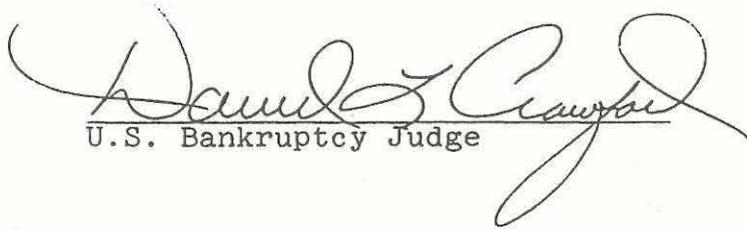
Since there is no objection by the bank to the allowance of the claim, it is allowed and approved as applied for.

I specifically hold and authorize the payment of the claim out of assets of this debtor, whether they be claimed by the secured creditor bank or not.

A separate journal entry dated November 19, 1982, is entered allowing the application.

DATED: 6-28-83

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

Charles O. Forrest, Attorney, 1716 No. 90th Street, Omaha, Ne. 68114

Timothy Haight, Attorney, 1500 Woodmen Tower, Omaha, Ne. 68102

C. Edward Eggleston, Trustee, 1105 So. 13th Street, Suite 100,
Norfolk, Ne. 68701

William Biggs, Attorney, 1800 First Nat'l. Center, Omaha, Ne. 68102

Eric Kruger, Attorney, 300 South 19th Street, Omaha, Ne. 68102

Paul F. Pestersen, Attorney, 510 Service Life Bldg., Omaha, Ne. 68102