

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In Re:

CHAPTER 7

DEXON, INC.,

Bky. 3-90-1812

Debtor.

ORDER

At St. Paul, Minnesota.

This matter is before the Court on objection of the U.S. Trustee to the final fee application of the attorneys for the Debtor. Appearances are noted in the record of the hearing on the matter, held July 16, 1990. The Court, having considered the arguments of counsel, having reviewed the files and records pertinent to the issues raised, and being fully advised in the matter, now makes this order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

The Debtor filed for relief under Chapter 11 on April 24, 1990. The case was voluntarily converted to a case under Chapter 7 on June 29, 1990. In the meantime, counsel for the Debtor performed services for which it seeks compensation in the amount of \$26,562.00. The U.S. Trustee claims that the amount sought is excessive, and seeks a substantial reduction, arguing that the short-lived Chapter 11 case was neither unique nor especially complicated, and that there is no apparent justification for the fee. The Court agrees.

II.

According to documents filed early in the case in connection with cash collateral proceedings, the business of the Debtor was the design, production and marketing of customized capital equipment used in the semiconductor industry. Its present product was "new-line", the result of four years research and development. The Debtor's customer base for this new product was extremely narrow, and consisted of essentially two clients. Although the cash collateral documents represented an assurance from the main customer that pre- and post-petition orders would remain unaffected by the filing, it was known to the Debtor by at least May 22, 1990, that neither customer was willing to do business with Dexon. It was then apparent that there would be no reorganization and that the case would be converted to Chapter 7.

The only activity of record in the Chapter 11 case is: i) filing of petition and schedules, and first meeting; ii) cash collateral proceeding, stipulated in the ordinary course without evidentiary hearing; iii) proceedings involving the appointment and compensation of professionals; and, iv) relief from stay proceedings, largely unopposed. A review of counsel's time records reveals that most of the out of court services rendered by Debtor's counsel consisted of "conferencing" of one kind or another at a rate of between \$160.00 and \$210.00 per hour.

These are experienced counsel, who present themselves as experts in the field of business reorganization and financial restructuring, and who charge rates for services that range the

highest in the region. The legal analysis and follow-through legal work required, under the apparent circumstances of this case, fell far short of that necessary to support the amount of "conferencing" documented in the time records filed with the application. Attorneys with the collective experience of Debtor's counsel should have been able to furnish necessary services in a much more efficient manner. The value of necessary legal services rendered on behalf of the Debtor-in-Possession in the case, given the financial circumstances of the Debtor and its short and largely unremarkable history in Chapter 11, simply cannot exceed \$10,000.00.

Counsel for the Debtor received a post-petition retainer in the amount of \$25,000.00. Coincidentally, counsel held a pre-petition unsecured claim against the Debtor for the same amount. Under the strict and literal interpretation of 11 U.S.C Section 327(a), counsel did not qualify for employment by the Debtor post-petition. See *In re Leisure Dynamics, Inc.*, 32 B.R. 753, 754 (Bankr. D. Minn.) (supplemental opinion to 32 B.R. 751) *aff'd*, 33 B.R. 121 (D. Minn. 1983). However, employment was approved at hearing on motion, in keeping with this Court's policy of allowing debtors to retain prepetition counsel for convenience and familiarity where: the only otherwise disqualifying factor is the existence of pre-petition unsecured debt due to prior services rendered; and, appropriate safeguards can be fashioned to protect both counsel and others from real and perceived conflicts of interest.

Frankly, it appears that much of the fee requested here for post-petition services, is really sought in hidden partial recoupment of counsel's pre-petition debt. While that might not be true, the perception itself damages credibility, and is, perhaps, sufficient reason to strictly construe Section 327(a) regarding these situations in the future.

IT IS HEREBY ORDERED:

Debtor's counsel is awarded the sum of \$10,000.00 as and for compensation for services rendered the Debtor-in-Possession during pendency of its Chapter 11 case, and the sum of \$2582.17 in reimbursement of costs incurred. The balance of post-petition retainer shall be returned to the party entitled to receive it.

Dated: August 17, 1990

By The Court:

DENNIS D. O'BRIEN  
U.S. BANKRUPTCY JUDGE