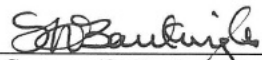




SO ORDERED.
SIGNED this 16th day of October, 2017

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

PURE FOODS, INC.

Case No. 3:17-bk-30236-SHB
Chapter 11

Debtor

**MEMORANDUM AND ORDER ON BLAKELEY LLP'S
FIRST INTERIM APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

Debtor filed this Chapter 11 case on January 30, 2017, and Blakeley LLP was employed by the Official Committee of Unsecured Creditors (“Committee”) pursuant to the Order Granting Ex Parte Application for Authorization to Employ Blakeley LLP as Counsel to the Official Committee of Unsecured Creditors entered on February 22, 2017, *nunc pro tunc* to February 15, 2017, which expressly reserved the appropriate and reasonable hourly rates for later determination. [Doc. 106.] On June 3, 2017, Blakeley LLP filed its First Interim Application for Compensation and Reimbursement of Expenses (“Application”) [Doc. 192], seeking total compensation in the amount of \$81,967.49, representing fees of \$80,587.25 and expenses of \$1,389.24, for the period of February 15, 2017, through May 19, 2017. Notice and the

opportunity for hearing were provided pursuant to Rule 2002(a) of the Federal Rules of Bankruptcy Procedure and E.D. Tenn. LBR 9013-1(h). Objections to the Application were filed on June 20, 2017, by CoBank, ACB (“CoBank”) [Doc. 205] and on June 23, 2017, by Belkorp Industries Inc. (“Belkorp”) [Doc. 210], to which Blakeley LLP filed a reply on July 10, 2017. A hearing on the Application was held July 13, 2017, at which the Court advised that, in addition to the pending objections, the Court had serious questions concerning the reasonableness of the fees requested. The Court subsequently set a briefing schedule, and briefs were filed by Blakeley LLP and Belkorp.

On August 14, 2017, Blakeley LLP filed its Surreply to Objection by Belkorp Industries, Inc. to Blakeley LLP’s First Interim Application for Compensation and Reimbursement of Expenses (“Surreply”) [Doc. 234], through which it addressed, *inter alia*, the reasonableness of its fees and agreed-to voluntary reductions totaling \$6,718.25 (representing 17.55 hours) after consultations with the Office of the United States Trustee.

Before the Court made a final determination concerning the Application, on September 6, 2017, Debtor filed a Motion to Compromise all contested matters and adversary proceedings pending between Debtor, the Committee, CoBank, and Belkorp. [Doc. 244]. Following a hearing held September 21, 2017, the Court entered an Agreed Order Approving Compromise [Doc. 260], through which CoBank and Belkorp withdrew their objections to Blakeley LLP’s Application.

Blakeley LLP was employed under authority of 11 U.S.C. §§ 328(a) and 1103. Section 328 authorizes such employment on reasonable terms and conditions, “including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” The Court, however, “may allow compensation different from the compensation provided under such terms

and conditions after the conclusion of such employment if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a). Such fees are further governed by § 330, which authorizes the Court to award “reasonable compensation for actual, necessary services rendered by the . . . attorney and by any paraprofessional person employed by any such person.” 11 U.S.C. § 330(a)(1)(A). Thus, the Court, either on its own motion or by motion of a party in interest, may award fees “less than the amount of compensation that is requested.” 11 U.S.C. § 330(a)(2). To determine what constitutes “reasonable compensation to be awarded,” the Court looks first to the following statutory factors:

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3). Compensation is not allowed for “(i) unnecessary duplication of services; or (ii) services that were not (I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the estate.” 11 U.S.C. § 330(a)(4).

Notwithstanding that no objections to the Application remain pending, as made clear by § 330(a), the Court has a fundamental, independent duty to review compensation paid to attorneys,

see Henley v. Malouf (In re Roberts), 556 B.R. 266, 280 (Bankr. S.D. Miss. 2016); *In re Schold*, 554 B.R. 287, 298 (Bankr. D. Mass. 2016); *In re Cripps*, 549 B.R. 836, 848-49 (Bankr. W.D. Mich. 2016), a duty that this Court takes very seriously and exercises routinely, and it matters not whether any party in interest has objected or raised the issue. The burden of proving that fees are reasonable falls on the party requesting such fees. *See In re Cripps*, 549 B.R. at 848; *In re Christenberry*, No. 04-36484, 2007 WL 433247, at *2 (Bankr. E.D. Tenn. Feb. 5, 2007).

Notwithstanding that it accepts and agrees with the voluntary reductions proposed by Blakeley LLP in its Surreply (totaling \$6,718.25¹), the Court finds that further reductions are necessary to reach a reasonable fee in this case and, for the reasons set forth herein, directs that the First Interim Application for Compensation and Reimbursement of Expenses filed by Blakeley LLP on June 3, 2017, is GRANTED, and fees are awarded to the extent allowed in accordance with the following determinations.

I. Reasonable Hourly Rates

The Declaration of Ronald A. Clifford filed in support of the application to employ Blakeley LLP filed on February 21, 2017, reflects the following requested hourly rates:

Scott E. Blakeley	\$495.00
Ronald A. Clifford	\$395.00
Other Associates	\$295.00
Law Clerk(s)	\$145.00
Paralegal(s)	\$145.00

[Doc. 99-1].

¹ The total reduction consists of: \$1,738.00 representing 4.40 hours billed by Mr. Clifford at \$395.00/hour; \$40.00 representing 0.20 hours billed by Crispin Collins at \$200.00/hour; \$101.50 representing 0.70 hours billed by Nickta Hoss at \$145.00/hour; and \$4,838.75 representing reductions for travel time and lumped entries.

As recently articulated by this District's Magistrate Judge Guyton, the Sixth Circuit is clear concerning the subject of reasonable hourly rates as determined by the prevailing market rate for that jurisdiction:

In determining the appropriate hourly rate to apply, the district court must consider the prevailing market rate in the relevant community, which for fee purposes, is the legal community within the court's territorial jurisdiction or venue. *Brooks v. Invista*, No. 1:05-cv-328, 2008 WL 304893, *3 (E.D. Tenn. Jan. 30, 2008) (citing *Adcock-Ladd v. Sec'y of the Treasury*, 227 F.3d 343, 349 (6th Cir. 2000)). The appropriate or reasonable hourly rate "may not, however, exceed the amount necessary to cause competent legal counsel to perform the work required." *Id.* (citing *Coulter v. Tenn.*, 805 F.2d 146, 148 (6th Cir. 1986)).

The Court of Appeals has explained this distinction well:

The statutes use the words "reasonable" fees, not "liberal" fees. Such fees are different from the prices charged to well-to-do clients by the most noted lawyers and renowned firms in a region. Under these statutes a renowned lawyer who customarily receives \$250 an hour in a field in which competent and experienced lawyers in the region normally receive \$85 an hour should be compensated at the lower rate.

Coulter, 805 F.2d at 149; *see also Lamar Adver. Co. v. Charter Township of Van Buren*, 178 Fed. App'x 498 (6th Cir. 2006) ("Even if it would be reasonable to award [plaintiff] \$370 per hour, the record supports the district court's conclusion that \$200 per hour is sufficient to encourage competent lawyers in the relevant community to undertake legal representation.").

Jones v. Babcock & Wilcox Tech. Servs. Y-12, LLC, No. 3:11-CV-00531-PLR-HBG, 2016 WL 4691294, at *4 (E.D. Tenn. Aug. 8, 2016), *report and recommendation adopted*, No. 3:11-CV-531-PLR-HBG, 2016 WL 4690398 (E.D. Tenn. Sept. 7, 2016).

As an initial matter, this Court does not allow rates in excess of \$95.00 for paraprofessionals, which is also in line with the United States District Court for the Eastern District of Tennessee, Northern Division. *See, e.g., Flack v. Knox County, Tenn.*, No. 3:15-CV-522-PLR-HBG, 2017 WL 627460, at *5 (E.D. Tenn. Jan. 24, 2017) (finding "that \$95.00 per hour is a more reasonable rate [than \$140.00, notwithstanding that the court had awarded \$75.00

per hour for paralegals and law students], given [his] experience, legal degree, and the work he performed in the case such as drafting the pleadings.”). Accordingly, all paralegal or law clerk billable time will be reduced from \$145.00 to \$95.00 per hour. Concerning associate attorneys, although the application to employ Blakeley LLP requested a \$295.00 hourly rate for associates, the invoice for professional services attached to the Application reflects that the only associate attorney who billed time, Mr. Collins, was billed at an acceptable \$200.00 hourly rate.

Regarding partner rates, the United States District Court recently held that “\$300.00 per hour is reasonable compensation for work performed by top-tier attorneys in the Eastern District of Tennessee.” *Davis v. Northpoint Sr. Servs.*, No. 3:14-CV-106-PLR-HBG, 2015 WL 8752068, at *4 n.1 (E.D. Tenn. Dec. 14, 2015). This determination notwithstanding, the Court finds that the \$395.00 hourly rate billed by Mr. Clifford – while at the highest end of the spectrum for attorneys practicing in this Court and in the Eastern District of Tennessee – is reasonable and was sufficiently earned, as evidenced by the favorable results obtained on behalf of the Committee. Specifically, Mr. Clifford’s efforts on behalf of the Committee culminated not only in a sale of Debtor’s assets at a higher price than initially anticipated but also in compromise of all disputes with CoBank and Belcorp, resulting in an administratively solvent estate. Thus, the Court finds reasonable the \$395.00 hourly rate for services rendered by Mr. Clifford. The Court does not agree, however, that the requested \$495.00 hourly rate for Mr. Blakeley is reasonable based on the services performed by him. Instead, the Court finds that \$395.00 is likewise a reasonable rate for Mr. Blakeley, who did not participate in this case to the same extent as Mr. Clifford.

After accepting the voluntary deductions but before making any other determinations as to reasonableness of services themselves, the requested fees will be reduced and allowed as follows to reflect the reasonable hourly rates:

Scott E. Blakeley	38.80 hours (\$395.00/hr)	\$15,326.00 (reduction of \$3,880.00)
Nickta Hoss	2.30 hours (\$95.00/hr)	\$218.50 (reduction of \$115.00 ²)

II. Nature of Services Rendered

In addition to those fees that were voluntarily reduced by Blakeley LLP, the Court finds that the following entries³ seek fees for services that were clerical or administrative in nature and/or duplicative and, thus, not compensable as reasonable and necessary under § 330(a)(1):

4/20/2017	RAC	Review application to employ RBO (.1), and draft email to S. Milligan regarding the same (.1) Review order denying the employment application of RBO (.1) Review message from B. Norton (.1)	0.40
2/23/2017	SEB	Discuss cash collateral objection and cash needs for operations through sale of assets; review budget (duplicative)	0.90
2/24/2017	RAC	Review notice of continued hearing on the use of cash collateral	0.10
3/9/2017	RAC	Review entered sale order	0.10
2/21/2017	RAC	Review email from S. Milligan and chambers regarding telephonic appearances	0.10
2/22/2017	RAC	Attention to appearance at hearings	0.20
3/8/2017	RAC	Review request for telephonic hearing	0.10
3/10/2017	RAC	Review notice of appearance	0.10
4/14/2017	RAC	Review message from B. Norton	0.10
2/22/2017	RAC	Review order shortening time on the Clextral lift stay motion	0.10

² The invoice attached to the Application reflects 3.0 total hours billed by the paralegal; however, as previously discussed, Blakeley LLP voluntarily reduced this time by 0.70 hours in the Surreply.

³ The entries listed here are in the order in which they appear in the exhibit to the Application.

3/2/2017	RAC	Review the entered order on the Clextral lift stay motion	0.30
4/5/2017	RAC	Review agreed order on the lift stay motion	0.20
3/27/2017	RAC	Draft civil case cover sheets, finalize and file	0.60
3/29/2017	RAC	Attention to service issues	3.90
3/31/2017	RAC	Attention to service issues with the complaints (2.4)	2.40
4/24/2017	RAC	Review message from M. Gartland regarding the scheduling of a call	0.10
3/24/2017	SEB	Consider complaints against insiders, causes of action and litigation strategy (duplicative)	1.10
3/21/2017	SEB	Discuss standing issues concerning claims against insiders, secured claims and stipulation to assign claims, review same (duplicative)	1.30
3/23/2017	SEB	Discuss standing for litigation claims and parties (duplicative)	0.40

Accordingly, an additional \$4,937.50, representing 8.80 hours billed by Mr. Clifford and 3.70 hours billed by Mr. Blakeley, each at a \$395.00 hourly rate, is disallowed.

In summary, after deducting \$15,650.75 for the voluntarily reductions, adjustment of the hourly rates, and disallowance of clerical, administrative, and/or duplicative services, the Court awards fees to Blakeley LLP in the amount of \$71,654.75 and reimbursement of expenses in the amount of \$1,389.24 for total interim compensation in the amount of \$73,043.99.

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