

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

JAN 10 '00

U.S. Bankruptcy Court
Greensboro, NC

YHP

IN RE:)
)
Maxton Meat Processors) Case No. 99-12143C-11G
Corporation,)
)
Debtor.)
)

ORDER

This case came before the court on December 14, 1999, for hearing upon an application by the attorneys for Debtor for approval of a billing procedure pursuant to which the attorneys would submit monthly bills to Debtor, 90% of which would be paid by the Debtor without notice or hearing until the attorneys subsequently filed a quarterly application incorporating the monthly statements, which would be noticed to creditors and submitted to the court for approval. The Bankruptcy Administrator objected to the application on the grounds that such monthly billings are contrary to § 331 of the Bankruptcy Code, which provides that a professional may apply to the court for interim compensation not more than once every 120 days, and § 330 of the Bankruptcy Code, which provides for the allowance of compensation for professionals after notice to the parties in interest and a hearing.

There is authority for permitting the type of arrangement

requested in the present case in rare cases involving extraordinary circumstances. However, strict criteria must be met: (1) the case must be an unusually large one in which an exceptionally large amount of fees accrue each month; (2) the court must be convinced that waiting an extended period for payment would place an undue hardship on counsel; (3) the court must be satisfied that counsel can respond to any disgorgement which may become necessary; and (4) the fee retainer procedure, itself, must be the subject of a noticed hearing prior to payment thereunder. See In re Knudsen Corp., 84 B.R. 668 (9th Cir. BAP 1988).

The circumstances of the present case are such that interim compensation for Debtor's counsel more often than every 120 days is appropriate. However, the circumstances of the present case do not justify the payment of such compensation without notice and an opportunity for hearing with respect to each interim application before compensation is paid pursuant to such applications. Accordingly, the motion will be granted to the extent of authorizing interim compensation for Debtor's counsel on a monthly basis, with such monthly applications to be noticed and processed in the manner that quarterly applications are noticed and processed, except that such noticing and processing shall be done on a monthly rather than a quarterly basis.

IT IS SO ORDERED.

This 7th day of January, 2000.

William L. Stocks

WILLIAM L. STOCKS

United States Bankruptcy Judge