

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 99C-21130
)	
GENEVA STEEL COMPANY,)	Chapter 11
)	
Debtor.)	ORDER ALLOWING REDUCED FEES AND EXPENSES

The Final Fee Application of SSI (U.S.) Inc., doing business as "Spencer Stuart" came before the Court on April 5, 2001. Those appearing were Steven J. McCardell of LeBoeuf, Lamb, Greene & MacRae and Mark C. Ellenberg of Cadwalader, Wickersham & Taft for the debtor; Weston L. Harris of Parsons Davies Kinghorn & Peters and Stephen E. Garcia of Kaye Scholer LLP for the Official Committee of Bondholders; R. David Grant of Parsons, Behle & Latimer for the Official Committee of Unsecured Creditors; Chris L. Schmutz of Schmutz Mohlman & Rohbock for Watson Wyatt Worldwide; Joel R. Dangerfield for Ryder Integrated Logistics, Inc.; Jeffrey W. Shields of Jones, Waldo, Holbrook & McDonough for GATX Capital Corporation; Sean N. Egan of Bendinger Crockett Peterson & Casey; Steven T. Waterman of Ray, Quinney & Nebeker; Roger D. Henriksen of Parr Waddoups Brown Gee & Loveless; and Laurie A. Crandall for the United States Trustee.



FACTS

On February 1, 1999, Geneva filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

On June 24, 1999, Geneva filed an application (the "First Employment Application") seeking to employ Spencer Stuart as executive search consultant in connection with Geneva's search for an experienced steel-industry executive to fill the position of Senior Vice President-Operations. The First Employment Application was approved by order of this Court on August 3, 1999. Pursuant to its engagement Spencer Stuart recruited and Geneva hired Mr. Birchel Brown ("Brown") for the position of Senior Vice President-Operations. Brown's employment with Geneva was unsuccessful, and as a result, Brown and Geneva agreed to terminate his employment approximately six months after his hire. Upon termination, Geneva paid Brown a \$115,000 severance payment and a \$40,500 moving allowance. Spencer Stuart charged \$26,667 in fees (comprised of the final one-third of a \$80,000 prepetition contract) and \$8,779 in expenses for Brown's recruitment.

Spencer Stuart's first interim fee application seeking compensation of \$26,667 in fees and expenses of \$8,779 for a total of \$35,446 was approved by order of this Court and has been paid in full by Geneva.

On July 26, 2000, Geneva filed an application (the "Second Employment Application") seeking to employ Spencer Stuart as executive search consultant in connection with Geneva's search for an experienced executive to fill the position of Chief Technology Officer. The Second Employment Application was approved by order of this Court on September 5, 2000.

To date, Geneva has interviewed two candidates identified by Spencer Stuart for the position of Chief Technology Officer, but has not hired either of the candidates.¹ The position remains unfilled. Spencer Stuart seeks fees of \$60,000² and reimbursement of expenses of \$9,979 pursuant to its engagement to recruit a Chief Technology Officer for Geneva.

The Reorganized Debtor and the Bondholders Committee (collectively referred to as the "Reorganized Debtor") jointly filed an objection to Spencer Stuart's application arguing that Spencer Stuart's services provided no benefit to the estate and, in fact, have cost Geneva money. The Reorganized Debtor argues that Spencer Stuart should be awarded no more fees than those already paid (\$35,446) and that the Court should disallow \$69,979 of Spencer Stuart's request.

Spencer Stuart seeks payment in full and supports its fee request with copies of invoices and assignment billing work sheets that itemize expenses and billings by period.

ANALYSIS

Benefit to the Estate

The Reorganized Debtor argues that Spencer Stuart provided no benefit to the estate for two reasons: (1) the unsuccessful hire of a Senior Vice President-Operations and the resulting payment of a \$115,000 severance payment and a \$40,500 moving allowance all within six

¹Spencer Stuart does not allege that Geneva has acted in bad faith or wrongfully refused to hire either of the candidates.

²Spencer Stuart seeks an award of \$60,000 which most likely refers to a \$60,000 fixed fee retainer mentioned in Spencer Stuart's retention agreement. Nowhere in the retention letter is the \$60,000 fixed fee retainer described as irrevocable, non-refundable, or earned upon receipt. The term "fixed fee retainer" is ambiguous at best and, without more, will not be construed by the Court as "non-refundable" or "earned upon receipt." If there is an ambiguity in the Spencer Stuart's retention letter, it is appropriately resolved against Spencer Stuart. The \$60,000 is not refundable only because it was never paid.

months of the hire date; (2) the failure of Spencer Stuart to successfully recruit a Chief Technology Officer.

Senior Vice President-Operations - The Reorganized Debtor's first argument fails because the argument improperly applies the test for determining "benefit to the estate." The test is whether a professional was aware or should have been aware from the outset that his services would provide no benefit to the estate. In re Rocky Mountain Helicopters, Inc., 186 B.R. 270 (Bankr. D. Utah 1995). Geneva does not allege that Spencer Stuart knew from the outset that Brown's employment would result in an unsatisfactory outcome for Geneva and the Court has no reason to believe that Spencer Stuart had any way to predict that Brown's employment would terminate in such an unsatisfactory manner. Furthermore, the ultimate decision to hire Brown was made by Geneva's management, who must now accept responsibility for the results of that decision.³ Spencer Stuart successfully performed the task of locating and identifying a candidate acceptable to Geneva to fill the position of Senior Vice President-Operations⁴ and should be compensated for having completed the assigned task. Accordingly, the Court will approve the final award of \$26,677 in fees and \$8,779 in expenses incurred by Spencer Stuart in connection with the recruitment of the Senior Vice President-Operations for Geneva.

Chief Technology Officer - The Reorganized Debtor's second argument is more persuasive. Spencer Stuart failed to recruit a successful candidate for the position of Geneva's Chief Technology Officer. Spencer Stuart's engagement letter defines Spencer Stuart's fee as

³The fact that Geneva chose to utilize Spencer Stuart a second time, even after Brown's termination, tends to indicate that Geneva's management has accepted responsibility concerning the decision to hire Brown.

⁴Nowhere is it alleged that Spencer Stuart guaranteed the successful employment of Brown.

one-third of the projected first-year cash compensation of the successful candidate. Having failed to successfully recruit a candidate, there is no first-year compensation upon which to base a fee payable to Spencer Stuart. The Court interprets this fee agreement between Geneva and Spencer Stuart as a performance contract requiring Spencer Stuart to successfully perform in order to become entitled to the thirty-three percent fee.⁵ Here, Spencer Stuart failed to accomplish the agreed task and cannot be awarded the fees sought. Expenses reasonably incurred by Spencer Stuart pursuant to its efforts will be reimbursed in the amount of \$9,979.

Therefore, it is hereby

ORDERED that Spencer Stuart will be awarded total fees of \$26,667 and total expenses of \$18,758 for a final award of fees and expenses totaling \$45,425; and it is further

ORDERED that \$60,000 of Spencer Stuart's fee request is disallowed for the reasons stated above.

DATED this 11 day of October, 2001.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

⁵This type of fee arrangement is commonly used by professionals such as real estate brokers, auctioneers, and attorneys. In each case, the professional becomes entitled to an agreed percentage of the revenue generated upon successful completion of the assigned task.

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of October, 2001, I served a true and accurate copy of the foregoing ORDER on the following by depositing the same in the United States mail, postage prepaid, addressed as follows:

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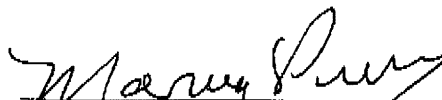
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