

SIGNED.



Dated: March 08, 2004

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	Chapter 11
DEXTER DISTRIBUTING CORPORATION, et al.,)	CASE NO. 2-03-03546-PHX-RJH
)	(Jointly Administered Cases Nos.
Debtor.)	03-03548-PHX-RJH and 03-04695-
)	PHX-RJH through 03-04710-PHX-RJH)

THIS FILING APPLIES TO ALL DEBTORS

MEMORANDUM DECISION ON ALLOWANCE OF COMMITTEE PROFESSIONALS' ADMINISTRATIVE CLAIMS

The Debtors have objected to the applications for fees and expenses submitted by the counsel and the financial advisor to the Official Unsecured Creditors' Committee, and other parties have joined in that objection. At the hearing on March 3, the Debtors suggested that the Court should take evidence before allowing the fees as requested, but the Committees' counsel argued that the fees should be allowed, on an interim basis, without evidence.

Without evidence, the Court is not in a position to determine that there was any benefit to the estate, or was likely to be any benefit to the estate, from the work done by Committee counsel in terminating exclusivity, in opposing the Debtors' engagement of Mr. Franks, and in appealing the approval of the ANMP stipulation. This is because the Committee never filed a substantive objection to the ANMP settlement, withdrew its opposition to the engagement of Mr. Franks, and never proposed or supported a plan of reorganization alternative to the Debtors'.

The Court will therefore not allow at this time the amount sought for those categories, which the Committee has identified as \$15,500, \$30,000, and \$32,000. It was proper, however, for the

1 Committee to analyze whether the employment of Mr. Franks would be appropriate, and therefore the
2 Court will allow the portion of the \$30,000 in professional fees incurred with respect to Mr. Franks in
3 connection with taking his deposition and otherwise investigating the propriety of his employment and
4 salary. The Court will approve whatever portion of the \$30,000 the Debtors and the Committee can
5 agree falls into that category; if they cannot agree, they may submit their positions to the Court and the
6 Court will decide the amount.

7 The situation is reversed with respect to the Committee's work on the Plan. The
8 Committee attributes \$118,000 as falling in this category. The facts may ultimately show that some of this
9 work may have been unnecessary because the Debtors had previously agreed to the changes the
10 Committee ultimately obtained. On its face, however, it appears that the Plan's treatment of unsecured
11 creditors was improved as a result of the Committee involvement. The Court will therefore approve, on
12 an interim basis, the fees sought for the Committee's Plan work, but the amount and reasonableness of
13 such fees may be revisited at a final hearing.

14 The fees and expenses sought on behalf of Committee counsel are therefore approved
15 in the amounts requested, minus \$77,500, plus the amount that the Debtors and the Committee agree was
16 attributable to the Committee's investigation of Mr. Franks' suitability for employment.

17 As to the Committee's financial adviser, Navigant, the preparation of financial projections
18 appears at least superficially to be an appropriate task. Since there never was an issue regarding the
19 Debtors' disbursements, however, the Court is not convinced of the reasonableness or necessity of the
20 \$3,612 Navigant spent reviewing Debtors' disbursements and \$4,712 spent reviewing the Debtors'
21 check registers. The Court understands Navigant's justification contained in Exhibit 9 to the Committee's
22 response is essentially that Navigant found the Debtors' financial statements to be meaningless and
23 therefore effectively recreated them on its own. There has been no showing, however, that these
24 recreated financial statements were ever shared with the Committee or with the Debtors or provided any
25 benefit to the estate. No such report was ever made to the Court, there does not appear to have been
26 any effort by Navigant or the Committee to get the Debtors to improve its accounting practices, and the
27 Committee ultimately abandoned its feasibility objection to the Debtors' Plan. On an interim basis,
28 therefore, Navigant's fees will be allowed as requested less the amount of \$8,324.

1 None of these allowances or disallowances is final; all are on an interim basis only.
2 Consequently at a later time the Debtors may renew an objection to amounts that have been allowed on
3 an interim basis, and the Committee's professionals may renew its claims for amounts that have been
4 disallowed on an interim basis.

5 Counsel for the Committee is requested to lodge an appropriate form of order consistent
6 with this decision.

7 DATED AND SIGNED ABOVE

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9 Copy of the foregoing faxed this
10 8th day of March, 2004, to:

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/s/ Pat Denk
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