

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
ESSENTIAL THERAPEUTICS, ) Case No. 03-11317 (MFW)  
INC., et al. )  
Debtors. )

MEMORANDUM OPINION<sup>1</sup>

Before the Court is the Motion of certain Preferred Stockholders<sup>2</sup> and their professionals (Latham & Watkins LLP and Young Conway Stargatt & Taylor, LLP) for compensation and reimbursement of administrative expenses pursuant to section 503(b)(4) of the Bankruptcy Code. The United States Trustee opposes the Motion. For the reasons set forth below, we grant the Motion in part and deny it in part.

I. FACTUAL BACKGROUND

Essential Therapeutics, Inc., and its affiliates ("the Debtors") are in the business of developing and commercializing compounds and products to combat certain diseases. In October 2001, the Debtors acquired Althexis, a privately-held

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<sup>1</sup> This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

<sup>2</sup> The Preferred Stockholders include New Enterprise Associates, Prospect Venture Partners, and Schroder Ventures. Collectively, the Preferred Stockholders represent approximately 90% of the Series B preferred stockholders.

biotechnology company. Concurrent with the acquisition, the Debtors issued and sold 60,000 shares of Series B convertible redeemable preferred stock. The Series B preferred stockholders had the right to force the Debtors to redeem their shares upon the occurrence of certain events, including the delisting of the Debtors' common stock.

On April 4, 2003, NASDAQ delisted the Debtors' common stock. Thereafter, the Series B preferred stockholders exercised their right to require the Debtors to redeem their Series B stock. The Debtors had insufficient funds to repurchase the shares, and on May 1, 2003, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

On May 19, 2003, the Debtors filed their Joint Plan of Reorganization ("the Plan"). On Motion of Narragansett Asset Management, LLC ("Narragansett") the Court ordered the United States Trustee ("the UST") to appoint an Official Committee of Equity Security Holders ("the Equity Committee"). Following its appointment, the Equity Committee objected to the Plan. The Debtors and the Preferred Stockholders filed separate responses to the Equity Committee's Objection. After a hearing, the Court confirmed the Plan on October 10, 2003.

Pursuant to the Plan, all secured and unsecured creditors of the Debtors were paid in full. The equity interests of the common shareholders were eliminated, and the Series B preferred

stockholders received new preferred stock in the Reorganized Debtor.

On December 12, 2003, the Preferred Stockholders filed the Motion seeking reimbursement of their professionals as an administrative expense pursuant to section 503(b)(4) of the Bankruptcy Code. The UST objected to the Motion on January 1, 2004. At the hearing on the Motion the Court directed the Preferred Stockholders to amend their earlier Motion and describe with greater specificity the tasks performed by their professionals in this case. The Preferred Stockholders supplemented their Motion with detailed descriptions on January 26, 2004.

## II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 & 157(b)(2)(A), (B), & (O).

## III. DISCUSSION

The Preferred Stockholders seek the allowance of an administrative claim in the amount of \$842,819.50 for fees and \$46,680.45 for expenses for the services rendered by their professionals, pursuant to section 503(b)(4) of the Bankruptcy Code. The UST objects to the Motion contending that the Preferred Stockholders have failed to satisfy the Third Circuit's

requirements for compensation under that section.

Section 503(b) (4) provides for the allowance of an administrative expense for:

reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement of actual necessary expenses incurred by such attorney or accountant.

11 U.S.C. §503 (b) (4) .

A. Eligible Party under Section 503(b) (3)

To determine whether the professionals representing the Preferred Stockholders may obtain compensation under section 503(b) (4), we must first determine whether the Preferred Stockholders are covered by section 503(b) (3). 11 U.S.C. §503 (b) (4); Lebron v. Mechem Fin., Inc., 27 F.3d 937, 943 (3d Cir. 1994). Subsection 503(b) (3) (D), the only portion of section 503(b) (3) arguably applicable in this case, provides that four categories of persons may apply for reimbursement: (1) creditors, (2) indenture trustees, (3) equity security holders, and (4) creditor and equity security holder committees other than official committees appointed under section 1102 of the Bankruptcy Code. See 11 U.S.C. §503 (b) (3) (D); Lebron, 27 F.3d at 944.

Here, the Preferred Stockholders can be classified as creditors (since they had the right to payment when the Debtors'

stock was delisted), equity security holders (since they held Series B stock), or a non-official committee of equity security holders (because they represented the holders of approximately 90% of the Series B stock). They are, therefore, an entity recognized by section 503(b)(3).

B. Substantial Contribution

A party identified in section 503(b)(3) is entitled to compensation or reimbursement of its expenses only for services rendered that made a "substantial contribution" to the debtor's estate. In Lebron, the Third Circuit held that a claimant's efforts provide a "substantial contribution" when they result in an actual and demonstrable benefit to the debtor's estate and its creditors. 27 F.3d at 944. Section 503(b)(3)(D) reconciles two conflicting objectives of encouraging participation in the reorganization process and preserving the value of the estate for creditors. Id. Inherent in substantial contribution, however, is the requirement that the benefit received by the estate be more than incidental to the applicant's self-interest. Id. Creditors are presumed to be self-interested unless they establish that their actions are designed to benefit others who would foreseeably be interested in the estate. Id. at 946. Reimbursement is improper where the activities of the interested parties are designed to serve primarily their own interests and would have been undertaken without an expectation of

reimbursement from the estate. Id.

The Preferred Stockholders contend that they provided significant and demonstrable benefit to the Debtors' estate and creditors by playing a critical role in the Debtors' reorganization. In particular, they assert that they made unique and essential contributions by assisting Debtors' counsel in designing and drafting the Plan, sharing insights regarding bankruptcy law and procedure, conducting extensive research, drafting corporate documents establishing the Reorganized Debtor, and working with the Debtors to obtain a fair and accurate valuation of the Debtors. Accordingly, they argue that their work should be compensated pursuant to section 503(b)(4).

The UST objects to the Motion by asserting that the Preferred Stockholders do not satisfy the Third Circuit's requirements for compensation pursuant to section 503(b). While their services may have provided an incidental benefit to the Debtors' estate, the UST contends that the Preferred Stockholders did not overcome the Lebron presumption that they were acting primarily in their own self-interest.

After reviewing the Preferred Stockholders' Motion, the fee applications and the various responses, we conclude that the Preferred Stockholders' Motion must be granted in part and denied in part.

1. Not Reimbursable

We conclude that many of the services provided by the professionals for the Preferred Stockholders did not provide a substantial contribution to the Debtors' estate. In fact, we conclude that significant portions of their fee application relate to tasks that can only be described as self-motivated. (Exhibit A.) For example, the fee application includes entries for services rendered in analyzing whether the Preferred Stockholders could force the Debtors into a nonconsensual bankruptcy filing, the impact NASDAQ's decision to delist the Debtors' common stock would have on the Preferred Stockholders' rights, and whether their equity interests were subject to subordination under section 510(b) of the Bankruptcy Code. The Preferred Stockholders also seek reimbursement for preparing and filing their own proofs of claim. These services provided no benefit to the estate or the Debtors' creditors and are not reimbursable pursuant to section 503(b)(4).

The Preferred Stockholders also seek compensation for pre-petition actions by their professionals to protect their interests in the Debtors. Although pre-petition expenses may be recoverable as an administrative expense under section 503(b), the applicant must establish that the pre-petition efforts resulted in a substantial contribution to the estate post-petition. Lebron, 27 F.3d at 945 (noting that the creditor's

pre-petition efforts were critical to the appointment of a trustee and the trustee's prompt investigation and report to the Bankruptcy Court). In this case, the pre-petition efforts included preparing an internal "bankruptcy memorandum," which addressed the Preferred Stockholders' strategy in redeeming their Series B stock, participating in the bankruptcy process, and evaluating the benefits of reorganizing versus liquidating the Debtors. While the Preferred Stockholders now contend that this memorandum assisted the reorganization process, they provided no evidence which overcomes the Lebron presumption that it was prepared for their own self-interest.

We also agree with the UST that many of the services rendered by the professionals for the Preferred Stockholders were duplicative of efforts of the Debtors' professionals. (Exhibit B.) For example, both sets of professionals spent considerable time addressing filings and correspondence from Narragansett. Even if the Preferred Stockholders' actions in response to Narragansett's filings were intended to benefit the estate, we conclude that they were not actual and necessary because the Debtors' professionals actively opposed Narragansett. Accordingly, we conclude that these services were either self-serving or duplicative and thus are not compensable pursuant to section 503(b)(4).

The Preferred Stockholders also seek compensation for time



spent opposing the appointment of an Equity Committee and responding to that Committee's pleadings. That opposition was certainly self-motivated. Any recovery by the common stockholders would necessarily detract from any recovery the Preferred Stockholders would receive under the Plan. Furthermore, throughout the case, the Debtors also opposed the appointment and actions of the Equity Committee. Thus, the efforts of the Preferred Stockholders in this area were duplicative of the Debtors' efforts and provided no substantial contribution to the estate.

## 2. Reimbursable

Despite concluding that a significant portion of the services of the Preferred Stockholders' professionals are not reimbursable, we cannot agree with the UST that the Motion should be denied in its entirety. Our review of the applications establishes that they did overcome the Lebron presumption with regard to other services. While the Debtors' professionals may have been able to provide these services, a comparison of the fee applications establishes that they did not.

We also conclude that these services made a substantial contribution to the estate. For example, by drafting key Plan provisions, participating in hearings, and providing assistance during the reorganization process the Preferred Stockholders lessened the burden on the Debtors' professionals and expedited a

smooth transition through the bankruptcy process. In addition, preparing the necessary corporate documents for the Reorganized Debtor provided a substantial benefit to the Debtors' estate and their creditors. Without this assistance, the Debtors' counsel would have had to devote significant time and resources to perform these services while they were busy with other matters. As a result, the Debtors were able to cut costs by focusing their efforts on their areas of expertise and allowing the Preferred Stockholders to assist where appropriate and beneficial to the estate. Since these efforts provided a substantial contribution, we conclude that these services are reimbursable pursuant to section 503(b)(4). Accordingly, we approve fees for the Preferred Shareholders' professionals in the amount of \$330,820.00, which represents the services rendered except those detailed on Exhibit A and B attached hereto.

C. Expenses

Next, we must determine whether the Preferred Stockholders can be reimbursed for the expenses incurred by their professionals. Similar to fees, there can be no award of expenses unless the applicant establishes that the expenses were incurred while providing a substantial benefit to the estate. Lebron, 27 F.3d at 946. Since the UST's objection and the Preferred Stockholders' supplemental motion were limited to an analysis of fees, there is little detail provided with respect to

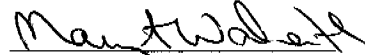
what services the expenses relate. We would be prepared to allow expenses in the same proportion as the approved fees, unless the parties can suggest a better alternative. Accordingly, we approve the reimbursement of the Preferred Stockholders' expenses in the amount of \$18,243.40 (39.25% of the requested expenses of \$46,480.)

IV. CONCLUSION

For the foregoing reasons, we grant in part the Motion of Certain Preferred Stockholders and their Professionals for reimbursement of fees and expenses pursuant to section 503(b)(3).

An appropriate Order is attached.

BY THE COURT:



Mary F. Walrath

United States Bankruptcy Judge

Dated: *April 21* 2004

IN THE UNITED STATES BANKRUPTCY COURT  
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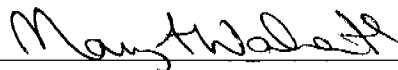
O R D E R

AND NOW, this 21<sup>st</sup> day of April, 2004, upon consideration of the Motion of certain Preferred Stockholders and their professionals for compensation and reimbursement of administrative expenses pursuant to section 503(b)(4) of the Bankruptcy Code, it is hereby

**ORDERED** that the Motion is **GRANTED** in part and **DENIED** in part; and it is further

**ORDERED** that the Preferred Stockholders are awarded an administrative expense pursuant to section 503(b)(4) of the Bankruptcy Code in the amount of \$330,820.00 in fees and \$18,243.40 in expenses for the services provided by their professionals.

BY THE COURT:



Mary F. Walrath  
United States Bankruptcy Judge

cc: See attached

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Essential Therapeutic Fees - Exhibit A

Not a Substantial Contribution

Category	Date	Attorney	Hours	Hourly Rate	Billed amount	Description
21		all	76.2	n/a	\$27,834.00	Analyzing and Coordinating the Redemption Claims
23		all	51.1	n/a	\$17,117.00	Drafting Proofs of Claims
6	23-Jun	Davis	5.2	\$260.00	\$1,352.00	Review documents produced by client
6	24-Jun	Davis	6.6	\$260.00	\$1,716.00	Review documents for a/c privilege... discuss privilege... for upcoming discovery
6	25-Jun	Davis	6.5	\$260.00	\$1,690.00	Meet with Ogloza regarding privileged documents
6	26-Jun	Davis	2.8	\$260.00	\$728.00	Further revise and draft rule 45 letter
6	28-Jun	Davis	1	\$260.00	\$260.00	Revise rule 45 letter
6	2-Jul	Davis	1.8	\$260.00	\$468.00	Review documents for privilege
6	7-Jul	Davis	2	\$260.00	\$520.00	Draft memo to Newhall...
6	12-Jul	Davis	2.6	\$260.00	\$676.00	Revise Newhall memo...
6	14-Jul	Davis	6.7	\$260.00	\$1,742.00	Conference... regarding bankruptcy court
5	21-Jan	Daves	0.1	\$650.00	\$65.00	Review memorandum regarding strategy regarding bankruptcy issues
5	4-Feb	Daves	0.1	\$650.00	\$65.00	Internal team call regarding section 510(b)
5	25-Apr	Daves	1	\$650.00	\$650.00	Review memoranda regarding call to prepare Schnell... regarding draft for client call
5	28-Apr	Daves	1.5	\$650.00	\$975.00	Discussions... regarding redemption/bankruptcy issues... drafting memo...
15	17-Jan	Diener	5.9	\$260.00	\$1,534.00	Review memos... regarding bankruptcy issues and preferred stock ownership
15	19-Jan	Diener	0.7	\$260.00	\$182.00	Redemption and Plan of Reorganization
2	12-Mar	Eberle	0.6	\$390.00	\$234.00	Review and comment on calendar and plan of bankruptcy issues
2	17-Mar	Eberle	1.1	\$390.00	\$429.00	Research regarding stock redemption laws...
2	17-Mar	Eberle	4.8	\$390.00	\$1,872.00	Review delisting time table
11	30-Sep	Friedman	2.4	\$300.00	\$720.00	Drafting memorandum to client group...
2	18-Mar	Gilhuly	0.2	\$550.00	\$110.00	Drafting memorandum to clients...
4	22-May	Gilhuly	0.6	\$550.00	\$330.00	Messages... regarding redemption/bankruptcy issues
4	3-Jun	Gilhuly	0.2	\$550.00	\$110.00	Review... memo regarding timing and strategy...
15	17-Jan	Gilhuly	1.2	\$550.00	\$660.00	Review strategy memo...
15	19-Jan	Gilhuly	1.2	\$550.00	\$660.00	Review of... memo regarding Delaware redemption issue
15	20-Jan	Gilhuly	3.8	\$550.00	\$2,090.00	Review... regarding nonconsensual strategy
15	21-Jan	Gilhuly	2.9	\$550.00	\$1,595.00	Review... regarding bar date
15	24-Jan	Gilhuly	0.2	\$550.00	\$110.00	Message... regarding press release...
15	2-Feb	Gilhuly	0.5	\$550.00	\$275.00	Review of draft press release
15	4-Feb	Gilhuly	0.8	\$550.00	\$440.00	Attend to document production
15	26-Feb	Gilhuly	0.4	\$550.00	\$220.00	Attention to board severance, NASDAQ delisting...
15	3-Mar	Gilhuly	1.1	\$550.00	\$605.00	Telephone conference... regarding bankruptcy timetable and potential claims against company
17	22-Apr	Gilhuly	0.2	\$550.00	\$110.00	Telephone conference... regarding exercise of redemption rights
17	23-Apr	Gilhuly	0.2	\$550.00	\$110.00	Telephone conference... regarding production, delisting, and proof of claim
17	4-May	Gilhuly	0.6	\$550.00	\$330.00	
17	5-May	Gilhuly	0.3	\$550.00	\$165.00	
22	10-Apr	Gilhuly	0.3	\$550.00	\$165.00	
5	1-Jul	Ogloza	5.5	\$450.00	\$2,475.00	
6	30-Jun	Ogloza	2.2	\$450.00	\$990.00	
2	20-Mar	Pohlen	0.6	\$550.00	\$330.00	
2	14-Apr	Pohlen	0.2	\$550.00	\$110.00	
2	14-Apr	Pohlen	0.2	\$550.00	\$110.00	
2	15-Apr	Pohlen	0.3	\$550.00	\$165.00	
5	16-Jun	Pohlen	0.9	\$550.00	\$495.00	

15	19-Jan	Pohlen	2.1	\$550.00	\$1,155.00	Review bankruptcy strategy memo . . .
15	3-Feb	Pohlen	3.9	\$550.00	\$2,145.00	Attention to nonconsensual bankruptcy
15	4-Feb	Pohlen	2.7	\$550.00	\$1,485.00	Review memo regarding bankruptcy issues
15	6-Feb	Pohlen	2.6	\$550.00	\$1,430.00	Attention to board issues . . . redemption
15	17-Feb	Pohlen	1	\$550.00	\$550.00	NASDAQ and other correspondence
15	19-Feb	Pohlen	1	\$550.00	\$550.00	NASDAQ and other correspondence
15	24-Feb	Pohlen	2.8	\$550.00	\$1,540.00	Attention to DGCL issues including redemption . . .
15	4-Mar	Pohlen	0.2	\$550.00	\$110.00	Attention to memo regarding plan v. liquidation
17	4-May	Pohlen	1.3	\$550.00	\$715.00	Telephone conference . . . regarding press release . . .
17	5-May	Pohlen	1.5	\$550.00	\$825.00	Telephone conference . . . regarding press release . . .
22	27-Feb	Pohlen	0.4	\$550.00	\$220.00	Attention to 13D obligations for Preferred Stockholders
22	2-Apr	Pohlen	0.4	\$550.00	\$220.00	Attention to schedule 13D and requirements to file by Preferred Stockholders
22	4-Apr	Pohlen	0.7	\$550.00	\$385.00	Attention to redemption timeline
22	10-Apr	Pohlen	0.8	\$550.00	\$440.00	Review of draft press release
22	14-Apr	Pohlen	0.2	\$550.00	\$110.00	Attention to schedule 13D filing requirements . . .
22	16-Apr	Pohlen	0.6	\$550.00	\$330.00	Attention to press release . . .
2	16-Mar	Snow	0.3	\$260.00	\$78.00	Review trigger of redemption right . . .
2	24-Mar	Snow	2.2	\$260.00	\$572.00	Revise summary time table of events in light of NASDAQ hearing
2	2-May	Snow	0.2	\$260.00	\$52.00	Telephone conference . . . regarding . . . proof of claim
17	8-May	Snow	1	\$260.00	\$260.00	Review and analyze references to redemption price
22	4-Apr	Snow	1.8	\$260.00	\$468.00	Research and review filing obligations under schedule 13D . . . regarding precedent and investors' prior filings
22	16-Apr	Snow	0.2	\$260.00	\$52.00	Review and analyze press release regarding exercise of repurchase rights
6	25-Jun	Tate	1	\$195.00	\$195.00	Meet . . . regarding FRCP 45 letter
6	25-Jun	Tate	1.2	\$195.00	\$234.00	Meet . . . regarding FRCP 45 letter
6	27-Jun	Tate	3.9	\$195.00	\$760.50	Meet . . . regarding FRCP 45 letter
6	2-Jul	Tate	0.5	\$195.00	\$97.50	Meet . . . regarding FRCP 45 letter
2	11-Apr	Wang	0.9	\$320.00	\$288.00	Attention to NASDAQ delisting . . .
5	25-Jun	Wang	1.5	\$320.00	\$480.00	Attention . . . regarding stockholders' equity and delisting
5	25-Jun	Wang	1.2	\$320.00	\$384.00	Attention to stock price and research NASDAQ . . .
15	11-Jan	Wang	1.2	\$320.00	\$384.00	Draft memo regarding options available after stockholder meeting
15	14-Jan	Wang	1.1	\$320.00	\$352.00	Draft and research memo regarding options after stockholder meeting
15	28-Jan	Wang	1.8	\$320.00	\$576.00	Attention to teleconference regarding options after special meeting; attention to bankruptcy memo
17	10-Mar	Wang	3.5	\$320.00	\$1,120.00	Research Delaware code regarding capital surplus
22	4-Mar	Wang	0.3	\$320.00	\$96.00	Complete research on contingent claims of preferred stockholders . . .
22	11-Apr	Wang	0.9	\$320.00	\$288.00	Attention to press release
22	14-Apr	Wang	0.4	\$320.00	\$128.00	Attention to schedule 13D filing requirements . . .
22	16-Apr	Wang	2.1	\$320.00	\$672.00	Attention to press release . . .
22	17-Apr	Wang	1.2	\$320.00	\$384.00	attention to press release
22	3-Jul	Wang	0.7	\$320.00	\$224.00	Attention to approval of plan by client entities
24	30-Sep	Wang	1.2	\$320.00	\$384.00	Attention to inquiries regarding market capitalization and redemption
24	1-Oct	Wang	0.6	\$320.00	\$192.00	Attention to redemption of shares and capital surplus
YGST	15-Sep	Lukey	0.2	\$35.00	\$7.00	File affidavit . . . Objection of Preferred Shareholder to applications for orders approving retention of . . .
YGST	18-Apr	Nestor	0.3	\$375.00	\$112.50	Teleconference . . . re: timing and case strategy issues
YGST	22-Apr	Nestor	0.3	\$375.00	\$112.50	Teleconference . . . re: filing and bar date issues
YGST	23-Apr	Nestor	0.1	\$375.00	\$37.50	Correspondence . . . re: bar date and filing issues
YGST	30-Apr	Nestor	0.4	\$375.00	\$150.00	Correspondence . . . re: filing issues and local/federal rule re: same
YGST	6-May	Nestor	0.2	\$375.00	\$75.00	Correspondence . . . re: date of formation meeting

YCST	6-May	Nestor	0.7	\$375.00	\$262.50	Teleconference . . . re: bar date, plan and Committee formation issues
YCST	8-May	Nestor	0.4	\$375.00	\$150.00	Teleconference . . . re: formation meeting and issues re: same
YCST	9-May	Nestor	0.3	\$375.00	\$172.50	Additional revisions and correspondence to clients re: same
YCST	13-May	Nestor	0.1	\$375.00	\$37.50	Telephone conference . . . re: 5/14 formation meeting
YCST	13-May	Nestor	0.2	\$375.00	\$75.00	Correspondence to clients re: ownership interests . . .
YCST	14-May	Nestor	0.2	\$375.00	\$75.00	Teleconference . . . in advance of formation meeting
YCST	14-May	Nestor	0.2	\$375.00	\$75.00	Telephone conference . . . re: formation meeting
YCST	14-May	Nestor	0.9	\$375.00	\$337.50	Appear and represent clients at formation meeting
YCST	20-May	Nestor	1.5	\$375.00	\$662.50	Represent clients at hearing
YCST	26-Jun	Nestor	0.2	\$375.00	\$75.00	Review correspondence with UST regarding refusal to appoint committee . . .
YCST	9-Jul	Nestor	0.2	\$375.00	\$75.00	Review Debtor objection to Narregansett motion . . .
YCST	15-Sep	Nestor	1.5	\$375.00	\$562.50	Represent clients at hearing re: Equity Committee retention applications and preferred shareholder objections to same
YCST	6-Oct	Nestor	1.1	\$375.00	\$412.50	Review memo filed by Debtor and Equity Committee objection re: same
YCST	8-Oct	Nestor	1.2	\$375.00	\$450.00	Revise . . . memorandum in support of confirmation . . .
YCST	8-Oct	Nestor	5.8	\$375.00	\$2,175.00	Represent Preferred Shareholders and confirmation hearing . . .
YCST	10-Oct	Nestor	5.1	\$375.00	\$1,912.50	Represent Preferred Shareholders at confirmation hearing
YCST	16-Jul	Petlock	0.3	\$35.00	\$10.50	Coordinate docking and filing of pleadings and correspondence
YCST	7-May	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	13-May	Powell	0.3	\$110.00	\$33.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	21-May	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	12-Jun	Powell	0.5	\$110.00	\$55.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	19-Jun	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	20-Jun	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	25-Jun	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	17-Jul	Powell	0.3	\$110.00	\$33.00	Prepare documents . . . re: 7/18/03 hearing
YCST	2-Sep	Powell	0.2	\$110.00	\$22.00	Review and evaluate incoming pleadings and correspondence for distributing to co-counsel and client
YCST	6-Oct	Powell	0.8	\$110.00	\$88.00	Finalize . . . memorandum in support of confirmation of plan
YCST	8-Oct	Powell	0.7	\$110.00	\$77.00	Prepare hearing documents . . .
YCST	6-Oct	Talley	0.1	\$35.00	\$3.50	Coordinate services for memorandum of certain Series B holders . . .
YCST	9-Jun	Villoch	1.3	\$205.00	\$266.50	Attend 341 meeting of creditors
YCST	11-Jun	Villoch	0.3	\$205.00	\$61.50	Draft memo . . . re: 341 meeting of creditors
<b>Totals</b>			<b>285.6</b>		<b>\$103,243.50</b>	



Essential Therapeutic Fees - Exhibit B  
 Not actual and necessary (duplicative)

Category	Date	Attorney/Hours	Hourly Rate	Billed amount	Description
9	all	146.9	n/a	\$74,437.50	Defense Strategy in Support of Confirmation
10	all	181.9	n/a	\$72,183.50	Opposing the Motions of the Equity Committee
12	All	116.4	n/a	\$44,985.00	Deposing Expert Witnesses, Debtors' Management, and Former Directors
13	All	98.1	n/a	\$31,910.00	Preparing Responses to the Equity Committee's Objection to the Plan
14	All	238.8	n/a	\$97,150.00	Preparing for and participating in the Confirmation Hearing
6	9-Jul Burton	0.5	\$130.00	\$65.00	Meet... regarding future document production...
6	15-Jul Burton	1.8	\$130.00	\$234.00	Review Debtor's produced documents
5	20-Jun Davis	2.9	\$260.00	\$754.00	Review subpoena...
6	28-Jun Davis	3.3	\$260.00	\$858.00	Review documents produced to Narr
6	30-Jun Davis	4.9	\$260.00	\$1,274.00	Review documents produced by Debtor; draft rule 45 letter
6	1-Jul Davis	6.3	\$260.00	\$1,638.00	Telephone conference... regarding...
6	2-Jul Davis	2.9	\$260.00	\$754.00	Meet... to review letters and plan document production strategy...
6	3-Jul Davis	4.8	\$260.00	\$1,248.00	Review documents produced by Debtor
6	4-Jul Davis	2.9	\$260.00	\$754.00	Review documents produced by Debtor
6	5-Jul Davis	6	\$260.00	\$1,560.00	Review documents produced by Debtor; Review documents for privilege
6	7-Jul Davis	2.1	\$260.00	\$546.00	Review documents produced by Debtor
6	8-Jul Davis	2.5	\$260.00	\$650.00	Meet... regarding response to discovery subpoena
6	8-Jul Davis	1.1	\$260.00	\$286.00	Review documents produced by Debtor
6	9-Jul Davis	8.8	\$260.00	\$2,288.00	Review documents produced by Debtor
6	10-Jul Davis	7.3	\$260.00	\$1,898.00	Review documents produced by Debtor
6	11-Jul Davis	4.9	\$260.00	\$1,274.00	Review Debtor document production...
11	21-Jul Davis	2.7	\$260.00	\$702.00	Research bankruptcy court proceeding involving equity committee
11	29-Jul Davis	0.5	\$260.00	\$130.00	Confer... regarding research on challenges to equity committee
11	5-Aug Davis	0.6	\$260.00	\$156.00	Review order appointing equity committee...
11	6-Aug Davis	1.4	\$260.00	\$364.00	Call... regarding recent developments in equity comm... review Narr expert report
11	7-Aug Davis	0.2	\$260.00	\$52.00	Call... regarding equity committee challenge to the Plan
11	15-Aug Davis	0.3	\$260.00	\$78.00	Review court records related to litigation involving members of the equity committee
11	6-Sep Davis	1.5	\$260.00	\$390.00	Review documents produced by Debtor
5	19-Jun Dawes	1	\$650.00	\$650.00	Conference regarding depositions...
5	20-Jun Dawes	3	\$650.00	\$1,950.00	Conference call with team regarding Schnell...
5	26-Jun Dawes	0.2	\$650.00	\$130.00	Review memo regarding equity committee order
5	30-Jun Dawes	0.5	\$650.00	\$325.00	Review subpoena
5	2-Jul Dawes	0.2	\$650.00	\$130.00	Review decision in First; review memos regarding Narr settlement
5	15-Jul Dawes	0.5	\$650.00	\$325.00	Review memos regarding deposition status
5	16-Jun Gilhuly	0.2	\$550.00	\$110.00	Message... regarding Narr strategy
5	17-Jun Gilhuly	0.7	\$550.00	\$385.00	Calls and messages... regarding Narr
5	18-Jun Gilhuly	0.2	\$550.00	\$110.00	Calls and messages... regarding litigation matters
5	19-Jun Gilhuly	2.1	\$550.00	\$1,155.00	Review of deposition notices...
5	20-Jun Gilhuly	2.3	\$550.00	\$1,265.00	Conference... regarding litigation strategy
5	23-Jun Gilhuly	1	\$550.00	\$550.00	Analysis and drafting memos... regarding equity committee response
5	24-Jun Gilhuly	1.9	\$550.00	\$1,045.00	Review and comments... regarding equity committee
5	25-Jun Gilhuly	0.8	\$550.00	\$440.00	Calls and messages... regarding deposition and subpoena...
5	26-Jun Gilhuly	0.6	\$550.00	\$330.00	Review of J. McMann letter to Narr regarding equity committee
5	30-Jun Gilhuly	1	\$550.00	\$550.00	Review... regarding Narr discovery... litigation strategy
5	4-Jul Gilhuly	2.1	\$550.00	\$1,155.00	Conference calls... regarding litigation and bankruptcy strategy
5	8-Jul Gilhuly	0.5	\$550.00	\$275.00	Call... regarding equity committee strategy
15	4-Mar Gilhuly	0.2	\$550.00	\$110.00	Review of Essential claims spreadsheet
17	6-Mar Gilhuly	0.2	\$550.00	\$110.00	Meet... regarding contingent claim allowance

17	16-Apr	Gilhuly	0.2	\$550.00	\$110.00	Review of Narr settlement
17	26-Apr	Gilhuly	0.3	\$550.00	\$165.00	Draft litigation claims summary
17	28-Apr	Gilhuly	0.8	\$550.00	\$440.00	Drafting possible litigation claim analysis . . .
11	14-Jul	Lee	1.1	\$190.00	\$209.00	Research Narr
5	19-Jun	Ogloza	3.4	\$450.00	\$1,530.00	Review subpoena and deposition notice . . .
5	20-Jun	Ogloza	7.2	\$450.00	\$3,240.00	Review and analyze subpoena . . .
5	24-Jun	Ogloza	6.4	\$450.00	\$2,880.00	Review documents . . . develop/refine subpoena response plan
5	11-Jul	Ogloza	3.8	\$450.00	\$1,710.00	Research potential causes of action
6	11-Jul	Ogloza	1.2	\$450.00	\$540.00	Document production issues
8	26-Jun	Ogloza	12.2	\$450.00	\$5,490.00	Review documents, deposition preparation
8	27-Jun	Ogloza	7.6	\$450.00	\$3,420.00	Review documents, deposition preparation
8	2-Jul	Ogloza	10.9	\$450.00	\$4,905.00	Deposition preparation
8	9-Jul	Ogloza	2.8	\$450.00	\$1,260.00	Review documents, deposition preparation
8	10-Jul	Ogloza	5.3	\$450.00	\$2,385.00	Review documents, deposition preparation
5	9-Jun	Pohlen	2.3	\$550.00	\$1,285.00	Attention to Narr matters . . .
5	9-Jun	Pohlen	0.5	\$550.00	\$275.00	Review of Narr 2004 request . . .
5	10-Jun	Pohlen	0.5	\$550.00	\$275.00	Telephone conference . . . Narr request
5	16-Jun	Pohlen	0.5	\$550.00	\$275.00	Telephone conference . . . regarding Narr
5	19-Jun	Pohlen	1.4	\$550.00	\$770.00	Review of various bankruptcy filings . . . depositions . . .
5	20-Jun	Pohlen	1.8	\$550.00	\$990.00	Telephone conference . . . regarding litigation strategy
5	22-Jun	Pohlen	1	\$550.00	\$550.00	Telephone conference . . . regarding litigation strategy
5	24-Jun	Pohlen	1.3	\$550.00	\$715.00	Telephone conference . . . regarding litigation strategy . . .
5	25-Jun	Pohlen	1	\$550.00	\$550.00	Telephone conference . . . regarding litigation strategy . . .
5	30-Jun	Pohlen	1.5	\$550.00	\$825.00	Telephone conference . . . regarding litigation strategy . . .
5	1-Jul	Pohlen	1.3	\$550.00	\$715.00	Telephone conference . . . regarding Narr settlement inquiry
6	3-Jul	Pohlen	1.8	\$550.00	\$990.00	Attention to disclosure statement and Narr claim
6	10-Jul	Pohlen	0.8	\$550.00	\$440.00	Attention to document production . . .
6	9-Jul	Snow	1	\$260.00	\$260.00	Conference . . . regarding . . . Narr objection
6	1-Jul	Tate	1.1	\$195.00	\$214.50	Review and edit FRCP 45 letter
6	8-Jul	Tate	2.5	\$195.00	\$487.50	Attend meeting regarding document production
7	8-Jul	Tate	2.2	\$195.00	\$429.00	Research possible claims against Narr
7	10-Jul	Tate	5.2	\$195.00	\$1,014.00	Research possible claims against Narr
7	11-Jul	Tate	4.9	\$195.00	\$965.50	Research possible abuse of bankruptcy process claims against Narr
7	13-Jul	Tate	1.1	\$195.00	\$214.50	Research possible abuse of bankruptcy process claims against Narr
7	14-Jul	Tate	5.1	\$195.00	\$984.50	Research elements of abuse of process tort and possible immunity for interested parties who object to a bankruptcy plan
7	15-Jul	Tate	3.8	\$195.00	\$741.00	Research possible claims and sanctions against parties whose actions intentionally delayed the bankruptcy confirmation process
7	21-Jul	Tate	3.9	\$195.00	\$760.50	Meet . . . regarding appointment of equity committee . . . scope of equity committee
7	22-Jul	Tate	5.1	\$195.00	\$984.50	Meet . . . regarding appointment of equity committee . . . scope of equity committee
7	24-Jul	Tate	4.4	\$195.00	\$858.00	Meet . . . regarding appointment of equity committee . . . scope of equity committee
11	25-Jul	Tate	3.8	\$195.00	\$741.00	Research scope of duties and powers of equity committee
11	28-Jul	Tate	6.7	\$195.00	\$1,306.50	Research and draft memo regarding
11	29-Jul	Tate	5.1	\$195.00	\$984.50	Research draft and edit position of letter regarding
11	30-Jul	Tate	0.5	\$195.00	\$97.50	Transfer and edit email challenging committee appointments
5	20-Jun	Wang	4.5	\$320.00	\$1,440.00	Attention to conference call regarding subpoena and deposition . . .
5	23-Jun	Wang	0.6	\$320.00	\$192.00	Attention to board resignations
5	23-Jun	Wang	0.6	\$320.00	\$192.00	Attention to NASDAQ correspondence
5	24-Jun	Wang	0.4	\$320.00	\$128.00	Attention to subpoena and deposition
5	30-Jun	Wang	0.6	\$320.00	\$192.00	Attention to litigation background matters
17	6-Mar	Wang	6.9	\$320.00	\$2,208.00	Research two issues: (1) whether contingent claims will be allowed . . .
17	7-Mar	Wang	5.2	\$320.00	\$1,664.00	Research whether common shareholders can get an unsubordinated claim . . .
YCST	19-Jun	Nestor	0.8	\$375.00	\$300.00	Review pleadings and Narransett letter . . .

YCST	22-Jun	Nestor	0.2	\$375.00	\$75.00	Review correspondence re: request for equity committee
YCST	23-Jun	Nestor	0.4	\$375.00	\$150.00	Research and review precedent re: opposition to formation of equity committee
YCST	2-Jul	Nestor	0.4	\$375.00	\$150.00	Review correspondence re: Narragansett . . .
YCST	6-Jul	Nestor	0.6	\$375.00	\$225.00	Review correspondence to and from parties-in-interest re: equity holder discovery
YCST	8-Jul	Nestor	1.4	\$375.00	\$525.00	Research precedent re: appointment of equity committee and correspondence to and from Latham & Watkins
YCST	9-Jul	Nestor	0.7	\$375.00	\$150.00	Correspondence . . . re: Narragansett motion
YCST	14-Jul	Nestor	0.4	\$375.00	\$262.50	Review and revise objection to motion to appoint equity committee
YCST	16-Jul	Nestor	0.4	\$375.00	\$150.00	Review and finalize objection to motion to appoint Committee . . .
YCST	16-Jul	Nestor	0.4	\$375.00	\$150.00	Teleconference . . . re: objection to motion to appoint Committee
YCST	18-Jul	Nestor	2.6	\$375.00	\$975.00	Meeting . . . re: motion to appoint equity committee
YCST	24-Jul	Nestor	0.4	\$375.00	\$150.00	Review issues . . . re: same
YCST	2-Sep	Nestor	0.2	\$375.00	\$75.00	Correspondence . . . re: . . . Committee motion to adjourn
YCST	3-Sep	Nestor	0.6	\$375.00	\$225.00	Review and revise objection to Committee motion to adjourn . . .
YCST	3-Sep	Nestor	0.3	\$375.00	\$112.50	Teleconference . . . re: Committee motion to adjourn
YCST	4-Sep	Nestor	0.5	\$375.00	\$187.50	Research and circulate precedent re: opposition to Equity Committee counsel retention applications
YCST	5-Sep	Nestor	0.6	\$375.00	\$225.00	Teleconference . . . re: objections to Equity Committee retention applications . . .
YCST	8-Sep	Nestor	0.5	\$375.00	\$187.50	Revise . . . objection to Golden retention . . .
YCST	9-Sep	Nestor	0.3	\$375.00	\$187.50	Teleconference . . . re: objections to Golden retention . . .
YCST	10-Sep	Nestor	0.3	\$375.00	\$112.50	Review and revise objection to Golden retention . . .
YCST	24-Jul	Patton	0.3	\$510.00	\$153.00	Meeting . . . re: strategy with respect to Equity Committee
YCST	25-Jul	Patton	0.2	\$510.00	\$102.00	Calls re: strategy with respect to Equity Committee
YCST	16-Jul	Powell	0.2	\$110.00	\$22.00	Telephones . . . regarding Objection to Appoint Equity Security Holders Committee
YCST	16-Jul	Powell	0.1	\$110.00	\$11.00	Telephone . . . regarding Objection to Appoint Equity Security Holders Committee
YCST	3-Sep	Powell	0.5	\$110.00	\$55.00	Finalize for filing . . . objection to motion to adjourn confirmation date
YCST	8-Sep	Powell	0.5	\$110.00	\$55.00	Finalize for filing . . . objection to retention of Kane Kessler . . .
YCST	11-Sep	Powell	0.5	\$110.00	\$55.00	Finalize for filing . . . Objection to Golden . . .
YCST	11-Sep	Powell	0.1	\$110.00	\$11.00	Prepare affidavit of service regarding service of objection
<b>Totals</b>				<b>1,040.20</b>	<b>\$408,756.00</b>	