

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In Re:

In Proceedings Under Chapter 7

Arter & Hadden, LLP,

Case No.: 03-23293

Debtor.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

The matters before the Court are the Final Fee Application of Goldman & Rosen, LTD., general counsel for the Chapter 7 Trustee for Allowance of Compensation and Reimbursement of Expenses and the Final Fee Application of the Bernstein Law Firm, P.C, Special Counsel to the Trustee for Allowance of Compensation and Reimbursement of Expenses, pursuant to 11 U.S.C. §330 of the Bankruptcy Code. The United States Trustee (the "UST") and two unsecured creditors, Richard Fruin and Donald Davies, filed Objections to the Applications. Core jurisdiction of this matter is acquired under provisions of 28 U.S.C. § 157(b)(2), 28 U.S.C. § 1334, and General Order No. 84 of this district. Upon consideration of the parties' respective pleadings, arguments of counsel and an examination of the record, generally, the following findings of fact and conclusions of law are hereby rendered:

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In January 2004, Goldman & Rosen was retained as general counsel to the Chapter 7 Trustee (the "Trustee"). Pre-petition, the Bernstein law firm was hired originally to represent the Debtor's unsecured creditors.¹ Bernstein's employment as special counsel to the Trustee was

¹Bernstein assisted the group of unsecured creditors who brought an involuntary petition for relief under Chapter 7 of the Bankruptcy Code against the Debtor. Based on his knowledge and experience with the Debtor and the secured creditors, the Trustee sought approval of

approved in May of 2004.

Both Applicants have previously filed applications for compensation and expense reimbursement. To date, Goldman & Rosen has received \$3.6 million in fees for professional services rendered. The Bernstein firm has received \$1.6 million in compensation and expense reimbursement. The current application for reimbursement of fees and expenses was approved by this Court on June 28, 2011, upon which the Applicants have submitted an order. The only remaining issue involves the Applicants' request for a fee enhancement award in the amount of \$200,000. (The original fee enhancement request was for \$528,441.26. The parties submitted a stipulation decreasing the requested fee enhancement to \$200,000).

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The Applicants assert that the fees requested are reasonable, necessary and were beneficial to the estate as required by 11 U.S.C. §330. They further assert that the bonus enhancement fee is warranted because of the special nature of the case and the complexity of the services rendered. The Applicants contend that the discovery process required the utilization of novel techniques to procure and reduce the number of documents. This technique reduced the volume of records and length of review, which saved the estate millions of dollars in fees and costs. As such, pertinent evidence was quickly obtained and presented to the partners for negotiations. The Applicants aver that this evidence helped to facilitate a settlement which brought in millions of dollars into the estate for distribution to unsecured creditors. Settlement agreements were reached resolving all of the claims against the estate, which netted \$9.5 million.

Bernstein's retention as special counsel. Bernstein certified that although he had represented the petitioning creditors, he had no connection with the other creditors or other parties in interest.

An estimated 58% dividend to unsecured creditors is anticipated.

The UST and two unsecured creditors filed objections to the Goldman and Bernstein Applications. Prior to the duly noticed hearing thereon, the UST and the Applicants filed a stipulation resolving all objections regarding the base fee applications of the Applicants. The remaining objection of the UST and said unsecured creditors is in regard to the fee enhancement request. They assert, separately, that the fee enhancement is not warranted. The objecting parties note that the Applicants were hired specifically for their expertise and specialized services. As such, the objecting parties argue that the Applicants' hourly fee fully and reasonably compensates them for the services rendered. Consequently, the objecting parties assert that the fee enhancement award should be denied.

The dispositive issue for the Court's consideration is whether the Applicants have met their burden to warrant the granting of a fee enhancement award.

Under the Bankruptcy Code compensation awards are authorized by 11 U.S.C. § 330, which provides, in part, for "reasonable compensation for actual, necessary services rendered ... based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title..." *11 U.S.C. § 330(a)(1)*. The Supreme Court has recognized the lodestar method as the method by which federal courts should determine the reasonableness of attorney's fees. *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 483 U.S. 711, 107 S.Ct. 3078, 97 L.Ed.2d 585 (1987) (lodestar method used to calculate fees under Clear Air Act). There is a strong presumption that the

lodestar method represents “reasonable compensation”(*Delaware Valley Citizens*, 483 U.S. at 564-565), however, the Supreme Court has noted that the lodestar method is not the end of the fee inquiry. *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933 (1983). The Court has the discretion to consider other factors such as the novelty and difficulty of the issues of the case presented and the expertise of counsel. *In re Boddy*, 950 F.2d 334, 338 (6th Cir 1991). It is the Applicant’s burden to rebut this presumption and show that the fee enhancement is warranted by presenting specific evidence that the services rendered were exceptional or extraordinary.

Chamberlain v. Kula (In re Kula), 213 B.R. 729, 739 (8th Cir. BAP 1997); see also *Novelly v. Palans (In re Apex)*, 960 F.2d 728, 732 (8th Cir.1992) (service and results must be exceptional in light of hourly rate and number of hours); *In re Manoa Finance Co.*, 853 F.2d 687, 692 (9th Cir. 1988)(fee applicant must show why results obtained not reflected in lodestar amount). The Supreme Court later acknowledged that the exceptional cases where fee enhancements are justified, the additional amount should not exceed one-third of the lodestar amount.

Pennsylvania v. Delaware Valley Citizens Council, 483 U.S. 711, 730, 107 S.Ct. 3078, 3089 (1987).

In determining whether to approve fee enhancements, the court may also consider the following factors: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee was fixed or contingent; (7) time limitations imposed; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *In re*

Wright Airlines, 147 B.R. 20, 21-22 (Bankr.N.D. Ohio 1992) (quoting, *Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 944-45, 103 L.Ed.2d 67 (1989)); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974).

Herein, the Applicants seek approval of a fee enhancement award, which constitutes bonus compensation above and beyond their base compensation of fees and reimbursement of expenses. The Applicants assert that the services rendered and the results obtained were exceptional in light of the complexity and length of the case. No evidence was submitted by the Applicant, the Court has examined the record, generally. After review of the pleadings and attached exhibits, the Court has determined that the Applicants have not demonstrated a persuasive basis to warrant a fee enhancement herein.


Both Applicants are well-reputed firms. Their respective abilities to perform the professional tasks for which they were retained was duly considered upon their ordered retention. The aforementioned compensation received by the Applicants reflects fair and reasonable compensation for professional services rendered herein. Any enhancement for such compensation requires the adducement of evidence to show that the lodestar method utilized in the Court's consideration of the previously awarded base compensation warrants enhanced fees. *Purdue v. Kenny*, 130 S.Ct. 1662, 1672-1673 (2010); *Blum v. Stenson*, 465 U.S. 886, 899 (1984); *Hensley v. Eckerhart*, 461 U.S. 424 (1983). The burden of proof is upon the Applicants which must be carried by a preponderance of the evidence. *Chamberlain v. Kula (In re Kula)*, 213 B.R. 729, 739 (8th Cir. BAP 1997). Herein, no evidence was presented by either Applicant for the Court's consideration of their request for fee enhancement. Without evidence to rebut the presumption that the lodestar method is sufficient, the Court is inclined to favorably consider the

arguments set forth by the UST in his briefs. The UST asserts, and the Applicants concede (Docket No. 2171, Joint Brief, p. 18), that the professional fees requested and approved reflect reasonable compensation. Therefore, the lack of specific evidence to show that the quality of service rendered was exceptional despite the hourly rate charged justifies the denial of the requested fee enhancement.

Accordingly, the subject fee enhancement request is hereby denied. The objections thereto are hereby sustained. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated, this 4th day of
August, 2011.


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT