

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)

) Chapter 11 RJ MANUFACTURING, INC.,)
) Bankruptcy No. 01-04214

Debtor.)

ORDER RE FINAL APPLICATION FOR COMPENSATION OF ATTORNEY FEES AND EXPENSES

This matter came before the undersigned on January 20, 2004 on the Final Application for Compensation of Attorney Fees and Expenses by Fiegen Law Firm, P.C. Thomas Fiegen appeared as attorney for Debtor. Janet Reasoner, Assistant U.S. Trustee, was also present. After hearing evidence and arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C.

§ 157(b)(2)(A).

STATEMENT OF FACTS

Debtor RJ Manufacturing, Inc. ceased operations in April 2000. Richard Rank is President and sole shareholder of Debtor. Debtor filed a Chapter 11 petition on December 17, 2001. Other than trade credits in a nominal amount, the only asset in this bankruptcy estate has been Debtor's interest in a cause of action against Poclain Hydraulics, Inc. Debtor valued the action at \$7,000,000 in its schedules. Allowed claims in this case total approximately \$2.5 million.

Early in the case, the Court appointed Attorney Patrick Roby as Debtor's litigation counsel for the Poclain action. On November 27, 2002, upon motion by Poclain, the Court approved appointment of a Chapter 11 Trustee to monitor the litigation, report on its progress and review offers of settlement based on the best interests of the creditors and the estate. At that time, the Court noted that:

[A]s a liquidating debtor-in-possession, RJ Manufacturing's focus should be on maximizing payment to creditors. As Debtor's principal, Richard Rank has an individual interest in the litigation which may clash with the duties and loyalties required of a Chapter 11 debtor-in-possession.

In re RJ Manufacturing, Inc., No. 01-04214, slip op. at 5 (Bankr. N.D. Iowa Nov. 27, 2002). Larry Eide was subsequently appointed as the Chapter 11 Trustee.

The Court approved the settlement of the Poclain action in April 2003 for \$1,000,000. The approved compromise included payment of \$333,333 attorney fees for Debtor's trial attorney Pat Roby and \$70,000 administrative compensation and expense reimbursement to Richard Rank for his assistance and expenses relating to the litigation. Trustee has made disbursements for U.S. Trustee's quarterly fees and 2003 corporate taxes. As of January 19, 2004, Trustee Eide reported total assets of \$591,350.79. The Court has recently approved payment of compensation to Trustee of \$15,420 plus expense reimbursement of \$1,222.79.

Fiegen Law Firm seeks approval of final fees of \$30,891.39 for representing Debtor from September 7, 2001 to December 5, 2003. Prepetition fees and some expenses have already been paid, resulting in a balance of \$25,590.87.

Fiegen has \$4,777.48 remaining of Debtor's \$10,000 retainer in its trust account and requests payment of \$20,813.39 from Trustee as an administrative expense.

U.S. Trustee asserts Fiegen must demonstrate that the requested fees and expenses were reasonable and necessary. Debtor objected to settlement of the Poclain litigation and may have caused other delays in the progress of the case, including delays in filing a Plan of Reorganization.

CONCLUSIONS OF LAW

Under 11 U.S.C. § 330(a)(1) of the Bankruptcy Code, a court can award debtor's attorney compensation only for actual and necessary services.

[A]n attorney fee application in bankruptcy will be denied to the extent the services rendered were for the benefit of the debtor and did not benefit the estate. This rule is based upon the legislative history of Bankruptcy Code section 330(a) and the unfairness of allowing the debtor to deplete the estate by pursuing its interests to the detriment of creditors.

In re Kohl, 95 F.3d 713, 714 (8th Cir. 1996) (citations omitted).

The bankruptcy court has broad power and discretion to award or deny attorney fees and a duty to examine them for reasonableness. In re Clark, 223 F.3d 859, 863 (8th Cir. 2000). The burden is on the attorney to prove that the proposed compensation is reasonable. Id. The Court applies the lodestar analysis, calculated by multiplying the reasonable hourly rate by the reasonable number of hours required to represent the debtor in the case. In re Peterson, 251 B.R. 359, 363 (B.A.P. 8th Cir. 2000); see also In re Apex Oil Co., 960 F.2d 728, 732 (8th Cir. 1992) (adopting lodestar approach). In making this determination, the court must take into consideration whether the professional exercised reasonable billing judgment. In re Nilges, 301 B.R. 321, 325 (Bankr. N.D. Iowa 2003). "Time spent 'handholding' or reassuring debtors, or on matters which do not require attorney services, are simply not compensable at an attorney's regular hourly rates." Id. Section 330 permits the court, on its own motion or on the motion of a party in interest, to award compensation that is less than the amount requested. In re Peterson, 251 B.R. 359, 363 (B.A.P. 8th Cir. 2000).

One court has held that a bankruptcy court cannot award compensation to debtor's counsel from estate assets for work performed after the appointment of a Chapter 11 trustee. In re Pro-Snax Distributors, Inc., 157 F.3d 414, 425 (5th Cir. 1998). The Supreme Court has recently approved the Fifth Circuit's interpretation of the current version of § 330(a)(1) in Lamie v. United States Trustee, S. Ct., 2004 WL 110846, at *4 (2004).

ANALYSIS

Based on the foregoing and the U.S. Trustee's comments, the Court concludes that Fiegen Law Firm is not entitled to the total fees requested. From the beginning of this case, there has been an inherent conflict between the estate's interests and those of Mr. Rank regarding the Poclain litigation. Mr. Rank valued the litigation at approximately \$7,000,000. Based on the claims existing to date, he would have personally recovered a substantial sum if Debtor

succeeded against Poclain to the full amount of this valuation. If the claim ultimately was found to be worth less than \$2.5 million, however, Mr. Rank personally would have had no recovery because of the amount of claims existing against Debtor. At the same time, all risk was borne by the bankruptcy estate and the creditors. Mr. Rank had no personal exposure.

Thus, when litigation counsel and the Chapter 11 Trustee recommended settling the action for \$1,000,000, it is not surprising Mr. Rank would object. At that point, Trustee was representing the interests of the creditors and the estate.

Debtor's objection that the settlement amount was not high enough appears to have been a manifestation of Mr. Rank's desire to personally realize value out of the Poclain action, over and above the amounts needed to satisfy Debtor's creditors.

In this case, the Chapter 11 Trustee was appointed for a limited purpose of reviewing offers of settlement in the litigation based on the best interests of the creditors and the estate. Thus, compensation for Fiegen's continued representation of Debtor after the appointment of the Trustee is not completely barred under the rationale of Lamie and Pro-Snax Distributors. The Court determines, however, that a portion of the fees and expenses sought by Fiegen Law Firm were not incurred to benefit the estate. If Fiegen was attempting to increase the value of the action for the benefit of unsecured creditors, it was duplicating Trustee's duties.

Fiegen's fees for asserting Debtor's objection to the settlement of the litigation were of necessity merely for the benefit of only Debtor or its sole officer and shareholder, Mr. Rank. Furthermore, the objection to the settlement impeded and delayed Trustee's attempts to finalize the litigation and proceed with administering the estate. The Court also finds that certain delays in filing a confirmable liquidation plan are attributable to Debtor and its attorney. As U.S. Trustee argues, a substantial amount of client "handholding" appears to have increased attorney fees beyond that which is reasonable or necessary.

Based on the foregoing and after perusing the itemization of fees requested, the Court concludes that Fiegen's compensation should be reduced by \$12,000. Of the total of \$30,891.39 requested, \$18,891.39 is approved. Of that amount, Fiegen Law Firm has already taken \$5,222.52 from Debtor's \$10,000 retainer. Fiegen Law Firm may now disburse the remainder of Debtor's retainer to itself in the amount of \$4,777.48. Trustee is directed to pay Fiegen \$8,891.39 as an administrative expense. The remainder of the compensation sought by Fiegen Law Firm as counsel for Debtor is not approved.

WHEREFORE, the Final Application for Compensation of Attorney's Fees and Expenses by Fiegen Law Firm, P.C. is GRANTED IN PART.

FURTHER, the Court approves total compensation of \$18,891.39, including total fees of \$12,110.91 and \$6,780.48 of expenses, including court costs and U.S. Trustee fees. Of this amount, Fiegen Law Firm has already received \$5,222.52 from Debtor's \$10,000 retainer.

FURTHER, Fiegen Law Firm may disburse to itself the remainder of Debtor's retainer of \$4,777.48.

FURTHER, Trustee is directed to pay the remainder of the approved fees and expenses in the amount of \$8,891.39 as an administrative expense.

SO ORDERED this 26th day of February, 2004.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE