

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
GERALD E. HUELSMANN and ) Bankruptcy Case No. 97-30909  
JOYCE A. HUELSMANN, )  
d/b/a J. FARMS, )  
 )  
Debtors. )

OPINION

This matter having come before the Court on a First Application of William L. Needler and Associates, Ltd., Attorneys for Debtors, for Interim Fee Allowance and Reimbursement of Costs, Supplement thereto, and Objection to the Application for Attorney Fees and Expenses filed by the United States Trustee; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Pursuant to 11 U.S.C. § 330:

(a) (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 -

(A) reasonable compensation for actual necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services taking into account all relevant factors, including -

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4) (A) Except as provided in subparagraph (B), the court shall not allow compensation for -

(i) unnecessary duplication of services; or

(ii) services that were not -

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

The criteria for determining the reasonableness of attorney's fees and expenses are set forth in the case of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). These criteria have been applied in bankruptcy proceedings in numerous cases, including In re Smith, 48 B.R. 375 (Bankr. C.D. Ill. 1984) and the more recent decision of In re Chellino, et al., 209 B.R. 106 (Bankr. C.D. Ill. 1997), aff'd. at 208 B.R. 907 (D.C. C.D. Ill. 1997), reaff'd. at 138 F.3d 314 (7th Cir. 1998). The main criteria for determining reasonableness of attorney's fees and expenses as set forth in Johnson, Smith, and Chellino are as follows:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) customary fee;
- (6) whether the fee is fixed or contingent;
- (7) the time limitations imposed by the client or circumstances;
- (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 the instant case, Debtors' attorney, William L. Needler, seeks total fees and expenses, as of June 19, 1998, in the sum of \$42,599.34. Deducting the retainer previously paid by Debtors and other third parties in the amount of \$6,650, Mr. Needler seeks a total net amount of fees and expenses in the amount of \$35,949.34. The United States Trustee's Office has objected to Mr. Needler's Application for Attorneys' Fees and Expenses, stating that the fees claimed are excessive and that Mr. Needler has failed to discharge his burden of proof on the issue of reasonableness in that he has not shown that the work performed was worth the amount requested. The United States Trustee has further argued that the time spent by Mr. Needler on certain tasks was excessive; his hourly rate, as requested, is excessive; and certain expenses claims, including fax charges and charges for packages sent via United Parcel Service and Federal Express, are also unnecessary as that term is defined in 11 U.S.C. § 330. A hearing was held on Mr. Needler's Application and the Objection of the United States Trustee on July 24, 1998, and the matter was taken under advisement.

In analyzing the fee itemization presented by Debtors' attorney in this case under the twelve criteria stated above, the Court would first note that, although this case required a considerable amount of time and labor on the part of Debtors' attorney, the time and labor required was not unusual or extraordinary in

comparison to other Chapter 12 bankruptcies of similar complexity that the Court has heard over the past eleven years. In examining similar Chapter 12 bankruptcies that have been filed since 1987, before this Court, it is apparent that the highest fee ever requested and approved for a Chapter 12 bankruptcy proceeding, including expenses, was slightly in excess of \$20,000. The Court further notes that an average fee charged in Chapter 12 bankruptcies over the same period of time was within the range of \$12,000 to \$15,000. This average includes both cases where a Chapter 12 plan was confirmed and cases where a plan was not confirmed and the case was eventually dismissed or converted to a Chapter 7.

As for the novelty and difficulty of the questions raised in the instant Chapter 12 proceeding, the Court must conclude that the questions raised were neither novel nor difficult, but were rather typical of the questions and issues that arise in most Chapter 12 bankruptcy proceedings. The Court can find nothing in the record of this proceeding to justify the allowance of fees for Debtors' attorney that are nearly three times more than the normal average. Additionally, the Court would note that the questions and issues raised in this proceeding did not require extraordinary skill, but rather the skills of a competent practitioner familiar with the problems presented in farm bankruptcy cases. There is nothing in the record to indicate that the fee for Debtors' attorney should be enhanced based upon the necessity of extraordinary skills.

As stated above, there is no question that the instant Chapter 12 bankruptcy required a considerable amount of time and labor on the part of Debtors' attorney. However, there is nothing in the record, nor any evidence to indicate that Debtors' attorney was precluded from other employment as a result of his acceptance of this case. It is clear that a considerable amount of travel time was required on the part of Debtors' attorney; however, Debtors' attorney was or should have been aware of this at the onset of the case. It is apparent, from the fact that Debtors' attorney maintains offices both in Illinois and Nebraska, that he is accustomed to travel and accepts it as a part of his business. Thus, on this basis, the Court finds no support for the fee amount requested.

Of the twelve criteria mentioned above, perhaps the most important and most relied upon is a comparison of a fee request in a given case to the customary fee charged in like cases in the District. As the Court noted above, its review of the Chapter 12 bankruptcy proceedings filed before it in the last eleven

years shows that the average fee lies between \$12,000 and \$15,000, with a high of slightly over \$20,000. When comparing the normal and customary fees for Chapter 12 bankruptcies before this Court in the last eleven years with the instant fee request, it is obvious that the fees requested in this case are nowhere in the range of the customary fee for representing debtors in Chapter 12 cases before this Court. As such, the Court finds that a reduction in the instant fee application is not only appropriate, but mandated.

Finally, the Court would note in examining the fee itemization presented to the Court in support of the fee request that many of the entries request an excessive amount of time with very little explanation. This Court has consistently held that, in order to be compensable, an attorney fee application must list each activity, its date, the attorney who performed the work, a full description of the nature and substance of the work performed, and the time spent on the work. See: In re Wiedau, 78 B.R. 904 (Bankr. S.D. Ill. 1987). Services for telephone calls, conferences, and letters must state the purpose or nature of the service and the persons involved. Id. at 908. Each type of service must be listed separately with the corresponding specific time allotment; services may not be lumped together. An attorney fee application must comply with the standards set forth in In re Wiedau, and, in addition, the Court looks to the cases of In re Smith, 48 B.R. 375 (Bankr. C.D. Ill. 1984) and In re Wildman, 72 B.R. 700 (Bankr. N.D. Ill. 1987). Furthermore, time expended must be reasonable in light of the results obtained. See: In re Midstate Fertilizer Company, 83 B.R. 555 (Bankr. S.D. Ill. 1988) and In re Prairie Central Railway Company, 87 B.R. 952, at 958 (D.C. N.D. Ill. E.D. 1988). Attorneys may not recover fees unless their services produced benefits to the estate. In re Prairie Central Railway Company, citing Matter of Ryan, 82 B.R. 929 (D.C. N.D. Ill. 1987). In the instant case, the Court finds that there was never a Chapter 12 plan of reorganization confirmed. The record reflects that there were a total of three Chapter 12 plans filed, none of which went to confirmation, and a third amended Chapter 12 plan, which was proposed, never was filed. In the end, the only result obtained was dismissal of the instant case and the continuation of a failing dairy operation for a little more than a year longer than it would have otherwise survived. The benefit to the bankruptcy estate as a result of these Chapter 12 proceedings has been minimal, and it is clear that many of the Debtors' creditors are left in no better position than they

were when this case was originally filed. The same can be said for the Debtors themselves. As such, the Court finds that, having examined the fee application of Mr. Needler under the twelve criteria and based upon a "Lodestar analysis" approach, an appropriate fee in this case, including expenses, should not exceed the sum of \$15,000. While the Court recognizes that this is a serious reduction from the amount of fees and expenses actually requested, it is a generous allowance in light of the usual and customary fees for Chapter 12 proceedings before this Court and in light of the minimal results obtained.

ENTERED: August 14, 1998.

/s/ GERALD D. FINES  
United States Bankruptcy Judge