

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
TELLIGENIX CORPORATION,) Case No. 6:09-bk-15238-KSJ
) Chapter 7
Debtor.)
_____)

ORDER DEFERRING CONSIDERATION OF BROAD AND CASSEL'S FOURTH INTERIM APPLICATION SEEKING ATTORNEY'S FEES

Roy S. Kobert, P.A. and its firm, Broad and Cassel (the "Firm"), seeks interim fees for representing Carla P. Musselman, the Chapter 7 Trustee, administering this case.¹ At this point, the Court cannot award any additional interim fees for the reasons explained below and will defer consideration of any fees or costs allowed in this case until the Chapter 7 Trustee files her Final Report.

On October 8, 2009, the Debtor, Telligenix Corporation, filed this case to reorganize its financial affairs under Chapter 11 of the Bankruptcy Code.² A year later, the Court converted the case to a liquidating Chapter 7 case administered by Ms. Musselman, as Trustee. She, in turn, employed the Firm as counsel. Since then, the Firm has filed twenty-one adversary proceedings seeking to avoid alleged preferential and fraudulent transfers naming numerous defendants. They seek fees of over \$715,000 for their work.

Under the Firm's first,³ second,⁴ and third⁵ interim applications for compensation, the Court awarded the Firm \$653,589.54 in fees and expenses, subject to final review. Of this amount, the Trustee actually paid the Firm \$273,144.21, leaving the remaining amount of

¹ The fee application was styled as a "final" application; however, at the hearing held on November 21, 2013, the Firm asked the Court to consider allowance of fees on an interim basis. Doc. No. 782. The Firm further has supplemented the application with additional requests and information. Doc. Nos. 796 and 806.

² All references to the Bankruptcy Code refer to 11 U.S.C. § 101 *et seq.*

³ Doc. No. 524.

⁴ Doc. No. 660.

⁵ Doc. No. 728.

\$380,445.83 unpaid. The Firm now seeks disbursement of all holdback amounts in addition to \$61,741.60 in new fees and expenses incurred during the fourth interim period, bringing the total requested to \$442,187.43.

Section 330(a)(1) of the Bankruptcy Code allows the Court to award “reasonable compensation for actual, necessary services” rendered by attorneys and paraprofessionals employed by a trustee.⁶ Section 331 provides that the Court “may allow” disbursement of fees and expenses under § 330 on an interim basis,⁷ but § 330(a)(5) provides that any fees previously awarded on an interim basis are subject to review at the final application stage. Moreover, the Court included the following language in its fee orders: “This award of fees and costs is subject to final review by this Court and subject to possible disgorgement.”⁸

Bankruptcy courts determine reasonableness of compensation under § 330 upon considering the “nature, the extent, and the value of such services, taking into account all relevant factors, including” those listed in § 330(a)(3).⁹ These factors weigh into the court’s lodestar analysis, which calculates the reasonable fee by multiplying the attorney’s reasonable hourly rate by the number of hours reasonably expended.¹⁰ A bankruptcy court can then make adjustments to the lodestar calculation, upward or downward, after considering the 12 factors laid out in *Johnson v. Georgia Highway Express, Inc.*¹¹ and explaining how they affect the award.¹²

⁶ 11 U.S.C. § 330(a)(1)(A).

⁷ 11 U.S.C. § 331.

⁸ Order Approving First Interim Application, Doc. No. 544; Order Approving Second Interim Application, Doc. No. 699; Order Approving Third Interim Application, Doc. No. 736.

⁹ 11 U.S.C. § 330(a)(3)(A)-(F).

¹⁰ *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990).

¹¹ 488 F.2d 714 (5th Cir. 1974). The *Johnson* factors are: (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) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the 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. *Johnson*, 488 F.2d at 717-19. Some of the *Johnson* factors overlap with the factors promulgated by § 330(a)(3).

¹² *Grant*, 908 F.2d at 878-79.

Although courts do not determine reasonableness of fees in hindsight,¹³ the most important consideration to a fee increase or decrease is the results obtained.¹⁴ After considering the results obtained and examining other *Johnson* factors, such as complexity of the litigation, the large amount of fees requested in this case raises some initial concern as to reasonableness.

The Firm incurred the majority of the requested fees on relatively routine preference and fraudulent transfer litigation. Based on the Time Detail Summaries submitted with the Firm's fee applications, \$346,502 of the total fees were incurred in adversary proceedings for avoidance actions.¹⁵ Another \$122,145 was incurred for general "litigation." A brief review of only a few pages of the Firm's time records for its second interim application shows that much of the time billed under the general "litigation" code was work more properly included in connection with the avoidance adversary proceedings.¹⁶

Because the Firm provided little or no information on the results obtained through the litigation, the Court reviewed the relevant dockets and preliminarily concludes that the Firm has collected *about* \$670,000 for the estate.¹⁷ Yet, the Firm seeks more than \$715,000 for its work. Without further explanation, this request appears unreasonable.

A professional seeking compensation from the bankruptcy estate bears the burden to establish the value of his or her services.¹⁸ As such, the Court expects the Firm to present a much more persuasive case as to the reasonableness of fees at the final hearing on any fee application, which will be considered in conjunction with the Trustee's Final Report. The Court especially invites more detailed information on the results obtained and how the fees of over \$700,000 were

¹³ *In re Blue Stone Real Estate*, 487 B.R. 573, 577 (Bankr. M.D. Fla. 2013).

¹⁴ *In re Gencor Indus., Inc.*, 286 B.R. 170, 178 (Bankr. M.D. Fla. 2002).

¹⁵ Doc. No. 524, Ex. 2; Doc. No. 660, Ex. 2; Doc. No. 728, Ex. 2; Doc. No. 782, Ex. 2.

¹⁶ *See* Doc. No. 660, Ex. 3. Here are a few examples of the time descriptions under this code (710) that clearly relate to the avoidance actions: "Review and analysis of responses from creditors and defenses"; "Review of documents to assist with identification of transfers and preparation of transfer complaints"; "Multiple communications and telephone conferences with creditors regarding defenses to preference actions and supporting documentation"; "Draft complaint against Saris"; "Revise complaint against American Express." *Id.*

¹⁷ Most of this sum, \$400,000, was garnered by a single settlement with American Express defendants. *See* Doc. No. 744. The Court acknowledges that her review necessarily is incomplete, but that is precisely the reason why an assessment of results achieved is impossible at this juncture.

¹⁸ *E.g., Matter of U.S. Golf Corp.*, 639 F.2d 1197, 1201 (5th Cir. 1981).

actual and necessary to obtain these results. Perhaps the Firm could consider some voluntary reduction in the amount of fees it requests.

In addition, the Court requests the United States Trustee to review the Firm's fee applications and provide its input as to the reasonableness of the Firm's fee requests at the final hearing, when scheduled. The Court also asks the United States Trustee to provide input as to the reasonable compensation due to the Trustee in this case.

The Court makes no final ruling on reasonableness of fees today. In deferring consideration of the Firm's fourth interim fee application under § 331, the Court reserves its ruling on all fee issues for the final hearing on the Firm's final application for allowance of attorney's fees and reimbursement of expenses. When appropriate and only after the Trustee files her Final Report, the Court will set a hearing to allow the Firm to present any evidence it deems appropriate.

DONE AND ORDERED in Orlando, Florida, December 19, 2013.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with a small "R.O." written above the end of the signature.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge