

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
LOUIS J. PEARLMAN, et. al.,) Case No. 6:07-bk-00761-KSJ
) Chapter 11
Debtors.)
)
_____)

**ORDER PARTIALLY APPROVING
GENOVESE JOBLOVE & BATTISTA, P.A.'S FINAL FEE APPLICATIONS**

The law firm Genovese Joblove & Battista, P.A. (“GJB”) seeks payment of attorney’s fees incurred representing the Chapter 11 Trustee, Soneet R. Kapila, in the bankruptcy case of Lous J. Pearlman and other substantively consolidated debtors.¹ Bank of America, N.A. objected to GJB’s final fee applications on multiple grounds, mainly arguing GJB misallocated billable hours to its hourly fee arrangement with the Trustee that it should have allocated to their contingency fee arrangement and that GJB’s blended hourly rate is excessive.² After considering the parties’ arguments and GJB’s concessions, the Court partially approves GJB’s final fee applications under 11 U.S.C. § 330.

Most of Bank of America’s objections were resolved in this Court’s order partially approving Akerman LLP’s, primary counsel to the Trustee, final fee applications.³ There, the Court approved the 35% contingency fee percentage based on its own independent judgment as

¹ Doc. Nos. 4182 & 4185.

² Doc. No. 4282. The Trustee has since reached a compromise in its adversary proceeding against Bank of America, which the Court approved (Doc. No. 4691). As part of the settlement agreement, Bank of America withdrew all of its claims against the estate. Doc. No. 4754.

³ See Doc. No. 4680.

in line with similar non-bankruptcy contingency fee rates.⁴ The Court also approved a method for calculating the appropriate contingency fee for the “claim waivers” Akerman and GJB secured for the estate’s benefit.⁵ Last, the Court decided that fees incurred defending the creditors’ substantive consolidation efforts should have been allocated to the contingency cases, not the hourly fee arrangement.⁶

GJB requests payment of \$178,521.00 in hourly fees plus \$12,966.86 in costs incurred between September 1, 2012 through August 31, 2013.⁷ GJB also seeks supplemental hourly fees in the amount of \$14,423.50 and costs of \$215.55 for fees incurred from September 1, 2013 through September 17, 2013.⁸ Additionally, GJB requests holdback fees of \$134,925.05—fees requested in prior applications but neither approved nor denied.⁹

In light of the Court’s ruling on Akerman’s fee application, GJB represents it has examined its hourly billing records to identify those hourly time entries billed for work defending substantive consolidation.¹⁰ GJB states it billed a total of \$28,770.50 of fees for substantive consolidation work as hourly and offers to voluntarily reduce its fee request by this amount.¹¹ Accordingly, the Court will reduce the amount requested in GJB’s final fee application by \$28,770.50.

GJB previously offered to reduce its final fee application by \$32,370.00 to shore up services billed under the hourly fee arrangement that should have been allocated to the

⁴ See *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994) (“A court, however, is itself an expert on the question [of reasonable rates] and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of witnesses.” (quoting *Norman*, 836 F.2d at 1303)).

⁵ Doc. No. 4680 at 6-7.

⁶ Doc. No. 4680 at 9-10.

⁷ Doc. No. 4182.

⁸ Doc. No. 4262.

⁹ Doc. No. 4182.

¹⁰ Doc. No. 4742.

¹¹ *Id.*

contingency fee agreement.¹² The Court accepts this voluntary reduction and further reduces GJB's final fee application by \$32,370.00.

Bank of America also objected to GJB's blended hourly rate of \$366.45. Although GJB's blended hourly rate is higher than Akerman's at \$266.91, Akerman performed a larger variety of services for the Trustee in its role as main counsel in the bankruptcy case. Put differently, GJB's range of services provided was limited to more complex matters, which would be more difficult to delegate to paraprofessionals. In comparison, counsel for the unsecured creditor's committee was awarded over \$500,000 in attorney fees at a blended hourly rate of \$510.31.¹³ Moreover, an independent expert, Patricia Redmond, also affirmed that GJB's fees were reasonable for the Florida market upon consideration of the type of work GJB performed.¹⁴ Taking all of the above into consideration, and finding that the factors listed in 11 U.S.C. § 330(a)(3) and *Johnson v. Highway Express Inc.*¹⁵ weigh in favor of approving GJB's application, the Court partially grants GJB's final fee application, consistent with its concessions.

GJB requests payment of \$151,125 in contingency fees.¹⁶ Regarding the \$76,125 requested as fees for standard monetary recoveries in adversary proceedings, the Court is satisfied with the 35% contingency fee rate.¹⁷ GJB's also requests \$75,000 as compensation for claim waivers it secured in adversary proceedings. The sum of \$75,000 was reached after negotiations with the unsecured creditor's committee and represents 16% of the "financial

¹² Doc. No. 4518.

¹³ Doc. No. 4601.

¹⁴ See Doc. No. 4757.

¹⁵ 488 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).

¹⁶ Doc. No. 4185.

¹⁷ See Doc. No. 4680 at 5-6.

benefit” realized by the estate as a result of the claim waiver.¹⁸ This amount is reasonable, as more fully explained in the Akerman fee order.¹⁹

Accordingly, it is

ORDERED:

1. GJB’s Final Fee Application for Allowance and Payment of Compensation and Reimbursement of Expenses (Doc. No. 4182) and Supplement (Doc. No. 4262) are partially approved, allowing payment of attorney fees in the amount of \$266,729.05, which takes into accounts GJB’s voluntary reductions, and expenses in the amount of \$13,182.41.

2. GJB’s Third Motion for Award and Authorization of Payment of Contingency Fees (Doc. No. 4185) is granted, allowing payment of attorney fees in the amount of \$151,125.

DONE AND ORDERED in Orlando, Florida, June 16, 2014.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with the initials "K.O." written to the right of the signature.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

Attorney Gregory Garno is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

¹⁸ The “financial benefit” of the claim waiver is the amount of the waived claim multiplied by the expected distribution to unsecured creditors. This represents the funds the estate will not have to pay to the creditor and will be free to distribute to other unsecured creditors. The “financial benefit” is then multiplied by a contingency fee percentage. In Akerman’s case, the contingency fee percentage amounted to 16% of the financial benefit, after negotiations with the unsecured creditor’s committee. The Court found this percentage reasonable.

¹⁹ See generally Doc. No. 4680 at 6-7.