

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re

Case No. 8:02-bk-24224-CPM
Chapter 13

SCOTT J. BITMAN,

Debtor.

ORDER ALLOWING, IN PART,
CLAIM NO. 8 OF SHAWN BITMAN

THIS MATTER came on for an evidentiary hearing on June 1, June 2, and July 11, 2005, on the debtor's objection to Amended Claim No. 8, filed in the amount of \$135,007.22, by the debtor's nephew, Shawn Bitman ("claimant").

After considering the evidence, including the testimony of the claimant and the debtor, and post-trial memoranda of the parties, the Court finds that:

(1) The claimant has failed to prove either causation or the amounts of the components of his claim denominated "Increase Interest/Finance Charges," \$25,431.56; "Value of Benefit/Value of Business," \$50,000; and "Mental Distress," \$20,000.

(2) The claimant's defense of the lawsuit filed by Performance Motor Sports, Inc., debtor-in-possession, arose in connection with the debtor's operation of that company and his earlier use of the claimant's identity in doing so.

(3) The terms of that certain Indemnification Agreement, dated April 17, 2003, are broad enough to encompass the attorneys' fees incurred by claimant in defending the prior lawsuit; but the terms of the Indemnity Agreement do not include attorneys' fees for the prosecution of the claims set forth in Claim No. 8.1

¹ The Court also finds that the previous lawsuit arose from the same dispute and

Accordingly, it is hereby

ORDERED:

1. Claim No. 8 is allowed only to the extent of the amount of attorneys' fees stated in the claim, \$39,575.66; the balance of the claim is disallowed.

2. Claimant shall not be entitled to any attorneys fees for the prosecution of his claim.

DONE and ORDERED in
Tampa, Florida, this _29th day of September, 2005

/s/ K. Rodney May
K. RODNEY MAY
United States Bankruptcy Judge

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transactions that led to the execution of the Indemnification Agreement and the Final Release and Settlement of Claim, dated April 17, 2003. The Court does not reach the issue of the alleged breach of the Release by the debtor because the claimant has failed to prove the identity theft damages that the debtor asserts were released by the claimant. Of course, the debtor's future obligations under the Indemnification Agreement are outside the scope of the Release.