

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

J.T. Custom Coating, Inc.,

Debtor.

C/A No. 04-01671-JW

Chapter 7

**ORDER**

**FILED**  
at \_\_\_\_\_ O'clock & \_\_\_\_\_ min. \_\_\_\_\_ M  
**DEC 19 2005**  
United States Bankruptcy Court  
Columbia, South Carolina  
**ENTERED**  
**DEC 19 2005**

**D. H. R.**

This matter comes before the Court upon an Application for Contingency Fees ("Application") filed by Anderson & Associates, P.A. ("Anderson") on August 22, 2005. Anderson filed the Application after prosecuting a preference action on behalf of the Chapter 7 Trustee, W. Ryan Hovis. The Court's order authorizing the Chapter 7 Trustee to employ Anderson (the "Employment Order") on a contingency fee basis provided that the Court would set Anderson's compensation pursuant to 11 U.S.C. § 330(a)<sup>1</sup>. Anderson requests compensation in the amount of \$31,250.00 in attorney's fees and \$207.20 for expenses pursuant to the contingency fee agreement with the Chapter 7 Trustee.

**FINDINGS OF FACT**

1. On February 17, 2004, the Chapter 7 Trustee was appointed to this bankruptcy case.
2. On March 25, 2005, the Court entered the Employment Order in order to allow the Chapter 7 Trustee to employ Anderson to prosecute a preference claim against Centura Bank in the amount of \$167,196.71.
3. The Chapter 7 Trustee's Application for Employment indicated that Anderson agreed to be employed on a contingency fee basis whereby Anderson would be compensated 25% of any recovery plus costs if it obtained a recovery without filing an

<sup>1</sup> Hereinafter, references to the Bankruptcy Code shall be done by section number only.

adversary proceeding, 33 1/3% of any recovery plus costs if it obtained a recovery after filing an adversary proceeding, and 50% of any recovery plus costs if it was required to litigate an appeal.

4. The Employment Order entered by the Court specifically provided that it would set Anderson's compensation pursuant to § 330(a) rather than § 328(a).

5. Anderson obtained a recovery of \$125,000.00 without filing an adversary proceeding in this case. Therefore, under the contingency fee agreement with the Chapter 7 Trustee, Anderson seeks 25% of the \$125,000.00 recovery, or more specifically \$31,250.00, as a fee. Anderson also requests \$207.20 in costs incurred while prosecuting the preference claim.

6. On August 22, 2005, Anderson filed its Application. The Application included an hourly billing statement which indicated that Anderson generated \$5,771.00 in professional fees by working 26.20 hours on the Chapter 7 Trustee's preference action and charging attorney's fees at the hourly rate of approximately \$250.00.

7. Pursuant to the terms of the Employment Order, the Court held a hearing on the Application in order to determine a reasonable amount of compensation for Anderson pursuant to § 330(a).

8. Neither the Chapter 7 Trustee nor the United States Trustee ("UST") objected to the \$31,250.00 contingency fee, which is approximately five and a half (5 ½) times greater than the \$5,771.00 in total hourly billing.

### **CONCLUSIONS OF LAW**

Although no parties to this case objected to the contingency fee sought by Anderson under the employment order, the Court must examine the reasonableness of the fee pursuant to § 330(a). See In re Great Sweats, Inc., 113 B.R. 240, 242 (Bankr. E.D.

Va. 1990) ("Even in the absence of an objection, the Court has an independent duty of investigate the reasonableness of compensation."). Anderson, as the applicant seeking approval of the contingency fee, bears the burden of demonstrating the reasonableness of the compensation requested. Id. Accordingly, the Court shall examine the attendant circumstances of this case and existing law in order to determine whether the \$31,250.00 contingency fee is reasonable compensation for Anderson's 26.20 hours of work.

In the Fourth Circuit, courts evaluate the reasonableness of attorney fees by utilizing the lodestar method. See In re Olympic Marine Services, Inc., 186 B.R. 651, 653 (Bankr. E.D. Va. 1995) (citing EEOC v. Service News Co., 898 F.2d 958, 965 (4th Cir. 1990)). The lodestar method entails the application of various factors to calculate a reasonable rate and reasonable number of hours in order to produce a lodestar figure. Id. In the Fourth Circuit, the factors<sup>2</sup> listed in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974) are the appropriate factors to be considered when determining the reasonable rate and reasonable hours for purposes of calculating the lodestar figure. In re Daly v. Hill, 790 F.2d 1071, 1077 (4th Cir. 1986).

Where a contingency fee represents a significantly larger award than compensation at a customary hourly billing rate the Court must make a detailed examination.

---

<sup>2</sup> The twelve factors listed in Johnson are as follows:

- 1) the time and labor required;
- 2) the novelty and difficulty of the questions;
- 3) the skill requisite to properly perform the legal service;
- 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 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.

488 F.2d at 717-19.

Several factors weigh in favor of the Application in this case. According to the trustee there were no assets otherwise available in the case or reasonably expected to be generated with which professionals could be paid on an hourly fee basis. In such an event, Anderson bore a greater risk of nonpayment or payment in an amount less than his usual hourly rate if its efforts representing the Trustee were unsuccessful.

Anderson's recovery through settlement represents both a significant percentage of the total amount sought and a recovery in a quick timeframe which is of benefit to a single asset case.

Anderson demonstrated legal expertise and experience in advocating legal precedent to negotiate a settlement from a defendant represented by able local counsel.

Therefore, despite the contingency fee being many times larger than compensation based upon a comparable hourly fee, under the circumstances of the case, the court approves the Application.

The amounts requested are authorized by the Court on the representations made in the Application and attachments filed with this Court, and may be reduced or increased if such representations prove incorrect prior to the closing of this case or adjusted upon consideration of the further results obtained in remaining litigation.

The Trustee is authorized to issue payment in the total sum of \$31,457.20.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
12/19, 2005

  
UNITED STATES BANKRUPTCY JUDGE