United States District Court
Southern District of Texas
ENTERED

SEP 4 2002

Michael N. Milby, Clerk
By Deputy Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
DERRICK & REVARDA ROBINSON,	§	CASE NO. 98-41812-H2-13
MARVIN & ANDREA CROCKETT	§	CASE NO. 99-34260-H4-13
ANDREA CELESTINE	§	CASE NO. 01-31145-H5-13
CLIFFORD & DEBBIE SMITH,	§	CASE NO. 01-37723-H5-13
MARK WEST	§	CASE NO. 01-41126-H4-13
RODNEY & MARILYN PUNCH	§	CASE NO. 01-41192-H2-13
SUNNY LYNN CUNNINGHAM	§	CASE NO. 01-41675-H5-13
TROY & SHARON THIBODEAUX	§	CASE NO. 01-43082-H5-13
EFRAIN & ELIZABETH RODRIGUEZ, JR.	§	CASE NO. 01-43168-H5-13
DEBTOR(S)	§	

ORDER REGARDING CHAPTER 13 ATTORNEY'S FEES

The Court, sitting en banc, reviewed the fees of debtors' counsel in several chapter 13 cases. This Court has jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding.

The Court is once again struggling to balance compliance with the Bankruptcy Code's requirements concerning attorney fee disclosure and approval, which apply equally to counsel representing a million dollar corporation and counsel representing a wage earner trying to make ends meet, with the reality that the wage earner, his counsel, and creditors bear an economic cost for this compliance disproportionately high compared to the fees sought and the value of the estate. In the past, this Court analogized the provision of legal services in chapter 13 cases with the production of a standardized commodity with a fixed cost. Under that view, the Court streamlined the process for chapter 13 attorneys to meet the Bankruptcy Code's requirements for fee disclosure and approval by establishing a "benchmark" for fees, below which the Court did not routinely hold a hearing. Unfortunately, this method has as its unintended consequence the effect of disguising as efficient and

productive, debtor representation which is in fact poor or simply unresponsive to the needs of the client and the creditors. Moreover, testimony at the en banc hearing made plain that reasonable minds differ over what services should be included in a "standard" chapter 13 case entitling counsel to the "benchmark" fee.

Testimony at the hearing came from attorneys practicing primarily or exclusively consumer bankruptcy law. Counsel varied in experience from 4 years in practice to more than 20 years, with chapter 13 case filings per month of 10 to 40 or more and hourly rates of $200 and up. The testimony generally agreed that 25% to 30% of services rendered in chapter 13 cases are not ultimately paid due to debtor's inability to pay or because counsel did not seek payment believing that the Court would not compensate the services rendered under the benchmark fee set for chapter 13 cases. Some attorneys deal with the benchmark by avoiding client phone calls, avoiding preparing written responses to motions or objectionable claims, or by screening out potential clients who have problems that cannot be resolved for $1,500.

Adhering to the benchmark causes burnout, a frantic pace and mistakes, and pressures counsel to complete each case within a certain amount of time at a certain cost regardless of whether a particular client wants more responsiveness and is willing to pay more for it. Courts in other districts alleviate the pressure on counsel under a benchmark fee by ending counsel's case responsibilities at confirmation or by limiting the ability of creditors to object to confirmation. Evidence was proffered concerning the rise of the consumer price index and the employment cost index since this Court last evaluated the benchmark fee. Testimony indicated that potential chapter 13 clients seek the lowest possible fee before hiring an attorney. This market demand combined with the competition of experienced reliable consumer counsel should help maintain the availability of

low cost competent counsel for debtors of limited means. With these factors in mind and with the goal that competent reliable counsel be available to serve the ever-increasing numbers of consumer debtors, the Court adopts a market approach to chapter 13 attorney fees and sets aside the benchmark adopted previously. The benefit and necessity of counsel services to the debtor in connection with the case will be evaluated without regard to the benchmark and solely in accordance with the factors set forth in 11 U.S.C. § 330. The Standing Order for Fee Applications for Debtors' Counsel in Chapter 13 Cases entered in 1998, along with its format for Chapter 13 Fee Notice and Chapter 13 Fee Application (together General Order 1998-4) are superseded by this order.[1]

The Court will require fee applications for all fees sought by debtor's counsel for services rendered pre-confirmation. The fee application should be filed and a copy delivered to chambers no later than 5 days prior to confirmation. An order will be entered at confirmation approving the application or setting it for further hearing. To facilitate fee application review and to reduce the costs associated with producing a fee application in the format utilized in chapter 11 cases, counsel may use the truncated format attached to this order as Exhibit 1 in describing the legal services rendered and the actual time expended in the case. Counsel will, nevertheless, need to maintain contemporaneous time records detailing the time expended and hourly rates charged on each case in the event the Court requires a hearing or further submission of information in order to determine the reasonableness or necessity of work performed in a particular case. Counsel will file the fee application with the Court and serve the fee application on debtor, the trustee, the U.S. Trustee and the 5 largest creditors in the case and file a certificate of service with the Court. Pre-confirmation

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[1]Similarly, all prior formats for presentation of chapter 13 attorneys fees, such as the Fact Form and Fee App are superseded by this order.

counsel fees will be approved at confirmation of the debtor's plan or set for hearing at that time. Post-confirmation services rendered in the case where debtor's confirmed chapter13 plan provides for vesting of the property of the estate in the debtor upon confirmation, may be paid directly by debtor, otherwise counsel may file an additional fee application and be paid through debtor's plan.

Counsel shall also file a timely Rule 2016(b) statement detailing the compensation paid or agreed to be paid within one year before date of filing petition, the source of the compensation, and any agreement to share the compensation and shall update such information with amended Rule 2016(b) statements throughout the case as further fees are incurred until the case is closed.

Honorable William Greendyke, Chief Judge

Honorable Karen K. Brown

Honorable Letitia Z. Clark

Honorable Manuel D. Leal

Honorable Richard Schmidt

Honorable Wesley W. Steen

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: * CASE NO.
*
*

CHAPTER 13 FEE APPLICATION

Counsel of Debtor in this case requests allowance of compensation and reimbursement of expenses for the time expended, hourly rates, and expenses incurred shown below. Counsel received no property from the debtor or in connection with this case except $_____ pre-petition which was expended in the manner set out below. Counsel seeks payment under the plan of $_____.

Type of Case: Business Case_____ or Consumer Case_____ (check one)

Activity	Attorney Time (approximate)	Paralegal Time (approximate)
Prepetition Client Consultations		
Postpetition Client Consultations		
Schedules, Plan		
Amendments		
341 (Preparation and Attendance)		
Creditor Contact		
Proof of Claim Review		
Motion(s) To Dismiss: # of Motions to Dismiss: 1 2 3 4 5 (circle one)		
Contested Motions: # of Contested Motions: 1 2 3 4 5 (circle one) Specify Type: _____ _____		
Objections to Confirmation: # of Objections to Confirmation: 1 2 3 4 5 (circle one)		
Adversary Proceeding(s): # of Adversary Proceedings: 1 2 3 4 5 (circle one) Specify Type: _____ _____		
Claims Objections/Valuation: # of Claims Object./Valuations: 1 2 3 4 5 (circle one) Specify Type: _____ _____		
Confirmation Hearings: # of Confirmation Hearings: 1 2 3 4 5 (circle one)		
Operating Reports		

Name of Attorney/Paralegal	Hourly Rate	Est. Hours	Rate x Hours
1.			
2.			

Expenses
1.
2.

Date: _____

_____
Counsel Name
Counsel Address

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
	§	
DEBTOR(S)	§	CASE NO.
	§	

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of _____, 2002, a true and correct copy of the foregoing Chapter 13 Fee Application has been mailed to the following parties by first class mail:

Debtors

Trustee

U.S. Trustee

Five Largest Creditors

Date: _____ _____

Counsel Name
Counsel Address

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	*	**CASE NO.**
	*	
DEBTOR and	*	XX-XXXXX-HX-13
JOINT DEBTOR	*	
	*	
DEBTOR(S)	*	**CHAPTER 13**
	*	

ORDER FOR COMPENSATION

The Court, having considered the Chapter 13 Fee Application of Debtor's attorney, _____*(name of debtor's attorney)*_____, has concluded that the Application sets forth a sufficient factual basis in accordance with the criteria set forth in the matter of In Re First Colonial Corporation of America, 544 F.2d 1291 (5th Cir. 1977), to warrant granting the relief sought. It is therefore

ORDERED that, _____*(name of debtor's attorney)*_____, be awarded an allowance of attorney's fees in the amount of **$**_____, and expenses of **$**_____ as an administrative expense.

SIGNED this _____ day of _____, 2002

_____
UNITED STATES BANKRUPTCY JUDGE