

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

In re Case No. 07-14113-A-7
DC No. KDG-7
LUIS ALBERTO PELAYO

_____ /

A hearing was held April 29, 2009, on the Second Application for Additional Attorney's Fees by Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP ("Klein DeNatale" or "Applicant") as attorneys for the debtor. Objections to the application were filed by Paccar Financial Corp. ("Paccar") and by The Golden 1 Credit Union ("Golden 1").

The application requests approval of additional fees of \$3,193.50 and reimbursement of expenses of \$92.23 for services rendered and costs advanced from July 22, 2008, to January 21, 2009. The application reflects that when Applicant was employed to represent the debtor in his chapter 13 case, Applicant agreed to an initial fee of \$5,000 pursuant to the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys (the "Rights and Responsibilities") filed December 7, 2007. On August 28, 2008, Klein DeNatale filed a first application for additional attorney's fees, seeking additional attorney's fees of \$5,983.50

1 and an expense reimbursement of \$204.88, for services rendered
2 and costs advanced from October 16, 2007, through July 21, 2008.
3 The first application was approved without opposition.

4 The plan was confirmed on April 21, 2008. The first
5 application for additional compensation was granted in September
6 2008. On December 15, 2008, the debtor filed a motion to suspend
7 payments under the plan. That motion was granted at a hearing
8 January 22, 2009. On February 26, 2009, the chapter 13 trustee
9 filed a motion to dismiss the case for failure to make plan
10 payments. On March 17, 2009, the debtor voluntarily converted
11 his case to chapter 7. Thus, when the hearing on this fee
12 application was held, the case had already been converted to
13 chapter 7.

14 Both Paccar and Golden 1 object to the application on the
15 grounds that the fees requested are excessive. Both creditors
16 state that the case does not appear to be anything more than a
17 routine chapter 13 case for which counsel would normally receive
18 a "no look" fee of \$5,000. Here, Klein DeNatale has already
19 received authorization for compensation in excess of \$11,000.

20 Klein DeNatale replies that of the "no look" fee of \$5,000,
21 \$1,954.46 has been paid. Of the compensation allowed in the
22 first fee application of \$5,983.50, \$4,812.13 has been paid.

23 Klein DeNatale also argues that the case is not simple or
24 routine. Debtor owned and operated a commercial trucking
25 business shipping cargo throughout the United States. "Debtor's
26 business grossed over \$1.4 million in 2005, over \$900,000 in
27 2006, and about \$600,000 in 2007." (Reply at paragraph 2). The
28 debtor had total debt of about \$600,000 at the time the

1 bankruptcy case was filed. The firm also argues that a motion to
2 suspend payments is not part of a routine chapter 13 case and
3 should not be considered part of the "no look" fee.

4 All parties recognize the standards that guide the court in
5 ruling on this application. Those standards are found at
6 Bankruptcy Code § 330(a)(3) and (4), which state:

7 (3) In determining the amount of reasonable compensation to
8 be awarded to an examiner, trustee under chapter 11, or
9 professional person, the court shall consider the nature,
10 the extent, and the value of such services, taking into
11 account all relevant factors, including--

12 1. (A) the time spent on such services;

13 (B) the rates charged for such services;

14 (C) whether the services were necessary to the
15 administration of, or beneficial at the time at which the
16 service was rendered toward the completion of, a case under
17 this title;

18 (D) whether the services were performed within a reasonable
19 amount of time commensurate with the complexity, importance,
20 and nature of the problem, issue, or task addressed;

21 (E) with respect to a professional person, whether the
22 person is board certified or otherwise has demonstrated
23 skill and experience in the bankruptcy field; and

24 (F) whether the compensation is reasonable based on the
25 customary compensation charged by comparably skilled
26 practitioners in cases other than cases under this title.

27 (4) (A) Except as provided in subparagraph (B), the court
28 shall not allow compensation for--

(i) unnecessary duplication of services; or

1
2 (ii) services that were not--

3
4 (I) reasonably likely to benefit the debtor's estate; or

5
6 (II) necessary to the administration of the case.

7 (B) In a chapter 12 or chapter 13 case in which the debtor
8 is an individual, the court may allow reasonable
9 compensation to the debtor's attorney for representing the
10 interests of the debtor in connection with the bankruptcy
11 case based on a consideration of the benefit and necessity
12 of such services to the debtor and the other factors set
13 forth in this section.

14 In chapter 13 cases in the Eastern District of California,
15 debtors and their attorneys execute and file a "Rights and
16 Responsibilities" statement that outlines the mutual obligations
17 of debtors and counsel. The Rights and Responsibilities is a
18 form statement. It provides that after the case is filed,
19 attorneys agree to provide certain legal services that are
20 outlined in the Rights and Responsibilities. These legal
21 services include "prepare, file, and serve necessary
22 modifications to the plan which may include suspending, lowering,
23 or increasing plan payments." Therefore, Klein DeNatale is
24 incorrect that a motion for suspension of payments is not
25 mentioned in the Rights and Responsibilities. Indeed, a motion
26 for suspension is clearly contemplated as a likely and routine
27 part of a chapter 13 case and thus is provided for in the Rights
28 and Responsibilities.

1 Also relevant is the court's "Guidelines for Payment of
2 Attorneys' Fees in Chapter 13 Cases" (the "Guidelines"). The
3 Guidelines provide at paragraph 4:

4
5 "4. If counsel has filed an executed copy of the 'Rights
6 and Responsibilities of Chapter 13 Debtors and Their
7 Attorneys,' but the initial fee is not sufficient to fully
8 compensate counsel for the legal services rendered in the
9 case, the attorney may apply for additional fees. The court
10 will not approve, however, additional compensation in cases
11 in which no plan is confirmed, or for work necessary to
12 confirm the initial plan. Further, counsel should not view
13 the fee permitted by these Guidelines as a retainer that,
14 once exhausted, automatically justifies a fee motion. This
15 fee is sufficient to fairly compensate counsel for all
16 preconfirmation services and most post-confirmation services
17 such as reviewing the notice of filed claims, objecting to
18 untimely claims, and modifying the plan to conform it to the
19 claims filed. Only in instances where substantial and
20 unanticipated post-confirmation work is necessary should
21 counsel request additional compensation. The form
22 application attached hereto may be used by the attorney when
23 seeking additional fees. The necessity for a hearing on the
24 application shall be governed by Bankruptcy Rule
25 2002(a)(6)."

17
18 Thus, only where "substantial and unanticipated case post-
19 confirmation work is necessary should counsel request additional
20 compensation."

21
22 It is with this guidance that the court reviews the
23 compensation requested in this application. From the total fees
24 requested of \$3,193.50, \$1,150 was billed for fee applications
25 and \$1,913.50 was billed for the motion to suspend payments. \$74
26 was for case administration (a preparation of change of address
27 for the debtor) and \$55 was for claims administration (an
28

1 exchange of e-mails with counsel for Golden 1).

2 The objecting creditors are correct that the compensation
3 requested is excessive and to some extent fails to comply with
4 the requirements of § 330 of the Bankruptcy Code.
5

6 Generally, there are a number of entries for services
7 rendered by an attorney that should have been rendered by a
8 competent paralegal or secretary. For instance, the entry by JLE
9 of .3 hours for preparing a notice of change of address is
10 excessive. Also in that category of work that was performed by
11 an attorney that could reasonably have been performed by a
12 paralegal are the preparation of notices of hearings for which
13 JLE billed .7 hours on August 1, 2008 and CMC billed .5 hours on
14 December 1, 2008.
15

16 More generally, the time spent in preparing the first
17 application for compensation is excessive. At \$1,150, it is more
18 than twenty percent of the initial "no look" fee. Additionally,
19 it is almost twenty percent of the amount awarded in the first
20 fee application. Further, the motion to suspend payments
21 resulted in a request for compensation of \$1,913.50. Yet, such a
22 motion is contemplated in the initial \$5,000 "no look" fee.
23
24

25 Further, 7.4 hours were incurred directly by JLE and CMC in
26 preparation of the actual motion to suspend payments, and this
27 does not include any of the various e-mails to and from counsel
28

1 and the client. JLE billed at between \$155 and \$185 per hour at
2 this time, and CMC billed at \$210 per hour. This is simply too
3 much money and too much time for a motion to suspend payments
4 that as stated above should have been included in the original
5 "no look" fee. The basic documents that counsel prepared for
6 this motion were in fact very straightforward. The motion to
7 suspend payments is two pages long, the declaration of the debtor
8 is two pages long, and the notice of hearing is two pages long.

10 The long and the short of it is that the requested fees are
11 simply not reasonable in light of the time spent on the services
12 and the rate charged for the services. As set forth above, to a
13 large extent the services were not performed within a reasonable
14 amount of time commensurate with the complexity, importance and
15 nature of the task at hand.

17 For all the foregoing reasons, the requested fees of
18 \$3,193.50 are reduced to \$1,000. Reimbursement of expenses is
19 allowed in the amount of \$92.23 as requested. A separate order
20 will issue.

22 DATED: June __, 2009.

24 _____/s/
25 WHITNEY RIMEL, Judge
26 United States Bankruptcy Court
27
28