

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

IN RE: §
§
BASS ENERGY, INC., § CASE NO. 00-10052-11
§
DEBTOR §

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Debtor, Bass Energy, Inc., filed its motion seeking authority to pay fees and expenses charged by Akins, Davis & Nowlin, P.C. (AD&N), which was employed as special counsel to represent Bass Energy, Inc. in the lawsuit styled *Daesung Energy Resources, Inc. v. James H. Bass, et al, v. Dr. Joong Chun and S. K. Lee, a/k/a Peter Lee*, Civil Action No. 1:99-CV-079-C in the United States District Court for the Northern District of Texas, Abilene Division (the “Civil Action”). AD&N filed its certification in support of the motion. Daesung Energy Resources, Inc. (Daesung), as a creditor in the bankruptcy case, filed its objection to the motion. The court makes the following findings of fact and conclusions of law.

Findings of Fact

1. Bass Energy, Inc. filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on January 24, 2000.
2. Prior to filing of the voluntary petition, Bass Energy, Inc. was joined as a defendant in the Civil Action. Bass Energy, Inc. retained AD&N to represent it in the lawsuit. AD&N also represented Corrine Bass as Independent Executrix of the Estate of John Howard Bass (the “John Howard Bass Estate”), another defendant in the Civil Action.

3. On March 1, 2000, the bankruptcy court entered its order approving Bass Energy, Inc.'s employment of AD&N as special counsel, stating that the "fees and expenses of said counsel will be determined upon appropriate application filed pursuant to § 330 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure."

4. Paragraph 12 of the Motion to Approve Employment of Special Counsel provides that:

The total costs of the Civil Action will be divided with the other defendants in that litigation, and the Debtor will only be responsible for its portion. Akins, Davis & Nowlin, P.C. understands that all compensation and expense reimbursement for Debtor is expressly subject to the court's approval.

Furthermore, the Employment Agreement and Hourly Fee Contract, attached as Exhibit "A" to the Motion to Approve Employment, states in ¶ I. "Purpose of Representation" that:

This agreement does not cover the representation of Corrine Bass as Independent Executrix of the Estate of John Howard Bass. Fees for services rendered on behalf of the Estate of John Howard Bass shall be billed separately and are covered by the written agreement between Corrine Bass and attorney dated November 24, 1999.

5. The motion disclosed that AD&N was also representing the John Howard Bass Estate; and that Clara Corrine Bass is the President and 50% shareholder of Bass Energy, Inc.

6. The court has previously approved interim fees and expenses to AD&N in the amount of \$31,037.31 by order dated May 3, 2000.¹

7. The Civil Action proceeded to trial before a jury on April 10, 2000. The jury returned a verdict against Bass Energy, Inc., and final judgment was entered on May 9, 2000, awarding compensatory damages totaling \$1,750,000.00, attorney's fees of \$401,783.00, exemplary damages of \$1,042,182.43, interest at the rate of 10% per annum from December 3, 1999, until the

¹The Debtor's motion seeks final approval of the interim fees and expenses awarded AD&N. Daesung raised no issue concerning the interim fees and expenses, and the court, after reviewing such fees and expenses, finds them to be reasonable.

date of judgment, post-judgment interest at the rate of 6.197% per annum from the date of judgment until satisfaction, and all costs.

8. The interim fees and expenses granted under the May 3, 2000, order covered fees and expenses incurred through March 24, 2000. The motion for final allowance specifically covers the time period from March 27, 2000, through May 15, 2000 (the “Applicable Period”), and has attached thereto billing statements issued by AD&N, reflecting the date of services, the identity of the attorney performing services, a narrative of the services performed, the time expended in providing the services, and an itemization of costs.

9. For the Applicable Period, Mike P. Davis², a partner with AD&N, expended 83.70 hours at the rate of \$200.00 an hour. Wes P. Pruitt, an associate with AD&N, expended 62.30 hours at a rate of \$130.00 an hour.

10. The services performed by AD&N during the Applicable Period relate to handling of the trial of the Civil Action, as well as pre-trial preparation and post-trial matters. The trial of the Civil Action took place from April 10, 2000, through April 13, 2000. Davis alone handled trial of the case. Of the total hours expended by Davis in representation of Bass Energy, Inc. (83.70 hours), 31 hours were expended during trial of the case. Accordingly, 52.70 hours were expended by Davis in pre-trial preparation and post-trial matters. During trial of the case, Davis expended 9 hours in representation of the John Howard Bass Estate.

11. Of the total of 40 hours expended by Davis during trial of the case, approximately 75% (actually 31 hours) was expended in representation of Bass Energy, Inc., and 25% in

²Mr. Davis has since left AD&N.

representation of the John Howard Bass Estate.

12. All of Pruitt's time was expended for pre-trial and post-trial matters. While Pruitt expended a total of 62.30 hours, his fees were reduced by \$3,718.00 (or 28.60 hours).

13. Expenses charged by AD&N to Bass Energy, Inc. during the Applicable Period are \$3,423.82. The total expenses charged to the John Howard Bass Estate during the Applicable Period are \$138.88.

14. The total amount sought for the Applicable Period is \$24,544.82.

15. The amount sought against Bass Energy, Inc. in the Civil Action was in excess of \$10,000,000.00.

16. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

1. Section 327(e) of the Bankruptcy Code (11 U.S.C.) allows the bankruptcy court to approve appointment of special counsel by the debtor-in-possession. The appointment cannot be approved unless it is "in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

2. The order approving employment of AD&N provides that the award of fees and expenses will be determined in accordance with § 330 of the Bankruptcy Code.

3. Section 330(a)(1)(A) and (B) provides for "reasonable compensation for actual, necessary services rendered by the . . . attorney . . .; and reimbursement for actual, necessary expenses." Subsection (a)(3)(A) assists the court by enumerating factors that should be taken into account when determining the nature, extent, and value of services performed including:

(A) the time spent on services;

- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

The court shall not allow compensation for services that were not “reasonably likely to benefit the debtor’s estate” 11 U.S.C. § 330(a)(4).

4. In a fee application case, the burden of proof falls upon the applicant. *Continental Ill. Nat’l Bank & Trust Co. v. Charles N. Wooten, Ltd.*, 890 F.2d 1312, 1326 (5th Cir. 1989)(citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-34, 103 S.Ct. 1933, 1939 (1983) for the same proposition). However, a party objecting to the amount of time spent on services has the burden of proving that too much time was spent. *In re Blackwood Associates, L.P.*, 165 B.R. 108 (Bankr. E.D.N.Y. 1994). The party opposing the fee application must carry the burden of explaining specifically what part of the bill is unreasonable. *Id.* at 112.

5. While AD&N’s records are deficient in some respects (e.g. by lumping or grouping entries; failing to divide charges between Bass Energy, Inc. and the John Howard Bass Estate), they are sufficiently adequate to allow the court to determine the reasonableness of the fees and expenses sought.

6. The evidence adduced at trial by Daesung relates to Daesung’s objection to AD&N’s failure to allocate a sufficient portion of the fees and expenses to the John Howard Bass Estate.

7. When representing multiple parties, special counsel is not entitled to payment from the

bankruptcy estate where it is impossible to determine what portion, if any, of fees and expenses are properly attributable to the debtor as opposed to other parties represented by special counsel. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228 (Bankr. E.D. Cal. 1988).

8. Davis testified that the primary focus of the defense was on Bass Energy, Inc., and that he apportioned approximately 90% of the fees to Bass Energy, Inc. Davis further justified the asserted 90%-10% allocation on the basis that the John Howard Bass Estate had nothing to protect, and that the work for the most part benefitted Bass Energy, Inc.

9. AD&N charged virtually all services for pre-trial and post-trial matters to Bass Energy, Inc. There are virtually no corresponding charges to the John Howard Bass Estate. The court finds that the allocation of 75%-25% reflected during trial of the case is an appropriate allocation of charges between Bass Energy, Inc. and the John Howard Bass Estate.

10. Pruitt's total of 62.30 hours was reduced by 28.60 hours or \$3,718.00. All of Pruitt's time was for pre-trial and post-trial matters. This leaves 33.70 hours charged on account of Pruitt's services for pre-trial and post-trial matters. The court finds that 25% or 8.43 hours (.25 X 33.70) of Pruitt's time should be reduced, resulting in a reduction for Pruitt's services of \$1,095.25.

11. The court finds that the allocation of services performed by Davis during trial of the Civil Action is appropriate. The court considers only Davis's charges for pre-trial and post-trial matters. Davis expended 52.70 hours at \$200.00 an hour, or \$10,540.00, for pre-trial and post-trial matters. The court finds that 25% of this sum (\$2,635.00), should be reduced from the charges asserted by AD&N against Bass Energy, Inc.

12. The court further finds an allocation of 75%-25% is also appropriate for expenses. Total expenses charged by AD&N for the Applicable Period to the Debtor and the John Howard

Bass Estate are \$3,562.70. Accordingly, this yields expenses appropriately charged to Bass Energy, Inc. of \$2,672.03. Therefore, the expenses will be reduced by \$751.79 (\$3,423.82 - \$2,672.03).

13. After applying the reductions set forth above, it results in total fees of \$17,390.75 and expenses of \$2,672.03.

14. Upon consideration of the appropriate factors, the courts finds that \$17,390.75 is a reasonable compensation for actual, necessary services rendered by AD&N, and \$2,672.03 should be reimbursed for actual, necessary expenses.

15. If appropriate, these conclusions of law shall be findings of fact.

DATED: August 22, 2000.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall furnish copies to:

Attorneys for Bass Energy, Inc.: Joseph F. Postnikoff, Goodrich, Postnikoff & Albertson, 801 Cherry Street, Suite 2420, Fort Worth, TX 76102;

Attorneys for Akins, Davis & Nowlin, P.C.: Michael P. Davis, Law Offices of Mike Davis, 109 South Sheppard, Round Rock, TX 78664;

Attorneys for Daesung Energy Resources, Inc.: Gary L. Hacker, Whitten & Young, P.O. Box 208, Abilene, TX 79604; and

U.S. Trustee: William S. Parkinson, U.S. Trustee's Office, 1100 Commerce Street, Room 9C60, Dallas, TX 75242.