



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

**Signed July 30, 2004.**

**United States Bankruptcy Judge**

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

IN RE: §  
§  
AUSTIN GLENN GUEST and DEIDRA § CASE NO. 01-33209-SAF-13  
MICHELLE GUEST, §  
§  
D E B T O R S. §

**MEMORANDUM OPINION AND ORDER**

Cavazos, Hendricks & Poirot, P.C., filed a final application, pursuant to 11 U.S.C. § 330(a)(4)(B), for compensation for attorneys for the Chapter 13 debtors, Austin and Deidra Guest. Cavazos requests compensation of \$4,698.50 and reimbursement of expenses of \$289.15. Thomas D. Powers, the Standing Chapter 13 Trustee, filed a response to the application questioning the basis for fees in excess of the standard Chapter 13 fee applicable at the time of the filing of the case. The court conducted a hearing on the application on July 8, 2004.

The determination of compensation and reimbursement of expenses under 11 U.S.C. § 330(a) for an attorney representing

Chapter 13 debtors constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and (O) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law required by Bankruptcy Rules 7052 and 9014.

To determine reasonable compensation under § 330(a) for the services rendered, the court must determine the "nature and extent of the services supplied by" the attorneys. In re First Colonial Corp. of Am., 544 F.2d 1291, 1299 (5th Cir. 1977), cert. denied, 431 U.S. 904 (1977). The court must also assess the value of the services. These two factors comprise the components for the lodestar calculation. See Cobb v. Miller, 818 F.2d 1227, 1231 (5th Cir. 1987). Generally, the lodestar is calculated by multiplying the number of hours reasonably expended by reasonable hourly rates. Hensley v. Eckerhart, 461 U.S. 424 (1983). To determine the hours reasonably expended, the court must assess the tangible benefit provided to the bankruptcy estate by the services rendered. In re Pro-Snax Distribs., Inc., 157 F.3d 414, 426 (5th Cir. 1998). In a Chapter 13 case, the court must also determine reasonable compensation for representing the interests of the debtor in connection with the case based on a consideration of the benefit and necessity of the services to the debtor, as well as the other factors provided in § 330(a). 11 U.S.C. § 330(a)(4)(B).

The court may then adjust the compensation based on the Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), factors. Blanchard v. Bergeron, 489 U.S. 87, 91-92 (1989). The Johnson factors may be relevant for adjusting the lodestar calculation but no one factor can substitute for the lodestar. Id. Rather, the lodestar shall be presumed to establish a reasonable fee with adjustments made when required by specific evidence. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 554-55 (1986).

Cavazos has the burden to show that the requested compensation is reasonable and was necessary for the proper administration of the estate. In re Beverly Mfg. Corp., 841 F.2d 365, 371 (11th Cir. 1988). To assist the court in determining the reasonableness of the requested fees, the attorney is ethically obligated to exercise reasonable billing judgment. The law firm must make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise not necessary. Hensley, 461 U.S. at 434.

At the commencement of this case, the court had prescribed a standard Chapter 13 attorney's fee of \$1,750. General Order 98-4, entered August 17, 1998. Effective December 2, 2002, the court has prescribed a standard fee of \$2,000; \$2,500 if the case involves a business. General Order 2002-03, entered October 28, 2002. The court has consistently provided, however, that in lieu

of the standard fee, debtors' counsel may file a fee application requesting compensation using the lodestar calculation. The Cavazos application covers work from February 21, 2001, to May 17, 2004. Consequently, the Cavazos work on this case spans the increase in the standard fee. The court considers the reasonable amount of services within the context of the range of standard fees.

Based on exhibit A attached to the application, the court finds that Cavazos performed services valued at \$2,237.50 that cover matters generally included in the standard fee. In addition, Cavazos performed \$100 worth of services addressing the debtors' business matters and a related \$268 assessing a second or presumably revised Chapter 13 plan. As those services would be typically included in a business-related Chapter 13 case, Cavazos performed a total of \$2,605.50 worth of services, which compares favorably to the current standard business Chapter 13 fee of \$2,500. The court finds that Cavazos spent a reasonable amount of time performing those services for this case. The court also notes that, although included in the application, Cavazos is effectively waiving \$228 of fees for the preparation of this application.

At the hearing, Michael Sebesta of the Cavazos firm explained that the case presented several additional matters requiring attorney services. The firm performed \$150 worth of

services addressing property tax issues, which the court finds reasonable. The firm performed \$190 worth of services addressing Internal Revenue Services issues, which the court finds reasonable. The firm performed \$430 worth of services addressing a potential motion to incur debt, which the court limits to the \$350 standard fee for that type of motion. General Order 2002-03.

Sebesta also explained that the debtors faced several substantial claims disputes, including creditor actions with automatic stay violation ramifications. The creditor action involved a collection agency, which necessitated the intervention of counsel. Cavazos performed \$592.50 worth of services addressing those matters. A typical Chapter 13 case does not have claims disputes with that magnitude of dispute. The court finds that those services benefitted the debtors and were necessary to properly represent the debtors' interests in this case.

Lastly, Sebesta described the debtors' efforts to sell their house, or refinance their house, or obtain a home equity loan, all alternatives being considered to facilitate a resolution of this case by completing plan payments. Cavazos performed \$732.50 worth of services addressing those matters. The court understands from Sebesta that the debtors requested those legal services. The services may yet benefit the bankruptcy estate as

the debtors pursue a home equity loan that would include the plan payoff. Cavazos has agreed to accept payments from the debtors for these services at a loan closing or after completion of the plan. As discussed below, Cavazos has appropriately agreed to defer those fees until completion of the case.

No Johnson factor warrants further adjustments.

With regard to the hourly rate charged by Cavazos, the court finds that Cavazos has charged a blended hourly rate of \$123. That rate is within the prevailing range of hourly rates in the community for similar services by attorneys of reasonably comparable skill, experience and reputation. See Missouri v. Jenkins, 491 U.S. 274, 286 (1989).

Accordingly, the court finds the reasonable fee on a lodestar calculation to be \$4,620.50. Cavazos seeks reimbursement of expenses of \$289.15. The court finds total fees and expenses to be \$4,909.65. Cavazos has been paid \$1,900.59.

Cavazos requests that the court direct the manner of payment. Cavazos agrees to be paid through a modified Chapter 13 plan or even directly by the debtors after the case has been fully administered and closed. Cavazos would also accept, if authorized by the court, payment from any home equity loan obtained by the debtors. The \$732.50 should be paid by the debtors as an obligation outside the Chapter 13 plan. Those services may ultimately aid the debtors but the record does not

support a finding that the services had to be performed for the debtors to complete their plan. Consequently, while the services were reasonable and support an award under the lodestar calculation, the services should be paid after completion of the plan or from the proceeds of any home equity loan that would result in the completion of the plan.

Deducting \$732.50 from the awarded fees leaves \$3,888. The court directs that Cavazos be paid fees of \$3,888 and expenses of \$289.50 through the Chapter 13 plan process. That totals \$4,177.50. Applying the \$1,900.59 already paid to counsel, the debtors must pay Cavazos \$2,276.91 through the Chapter 13 plan process. If necessary, the court will consider a plan modification request by the debtors to accomplish that requirement. The court further directs that the debtors pay Cavazos the remaining approved fees of \$732.50 after completion of their plan or from the proceeds of a court-approved home equity loan that would complete the funding of their plan.

Based on the foregoing,

**IT IS ORDERED** that Cavazos, Hendricks & Poirot, P.C., is awarded final compensation of \$4,620.50 and reimbursement of expenses of \$289.15.

**IT IS FURTHER ORDERED** that after crediting the \$1,900.59 already paid to counsel, Cavazos, Hendricks & Poirot, P.C., shall recover \$2,276.91 as an administrative expense in this bankruptcy

case to be paid through the Chapter 13 plan process, and shall recover \$732.50 directly from the debtors after completion of the case or from the proceeds of a court-approved home equity loan that results in the completion of the case.

###End of Order###