

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 91-10983-MWV
Chapter 7

R & R Associates of Hampton,
Debtor

William S. Gannon, Esq.
WILLIAM S. GANNON PLLC
Special Counsel for the Trustee

David W. Carr, Esq.
Attorney for Birch Street Recovery Corporation

Geraldine Karonis, Esq.
OFFICE OF THE UNITED STATES TRUSTEE
Assistant United States Trustee

MEMORANDUM OPINION

The Court has before it the application of Dennis G. Bezanson for the allowance and payment of fees in the amount of \$58,196.26 and expenses of \$450 as counsel to the trustee, Dennis G. Bezanson.

The original application was objected to by Birch Street Recovery Corporation (“Birch Street”), and a limited objection was filed by the United States Trustee. The Court held a hearing on the application on September 5, 2006, and awarded, on an interim basis, the sum of \$20,000 in fees and \$450 in expenses. The Court ordered that Attorney Bezanson file an additional narrative in support of his fee request, which was done on December 5, 2006, and objected to by Birch Street on December 27, 2006. The Court held a second hearing on the application on January 9, 2007, and took it under advisement.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

In the applicant's original response to Birch Street's objection, the standing of Birch Street to object was questioned. Since the Court has an independent obligation to approve the fees and expenses of counsel to the trustee, the standing objection will be disregarded.

The matter for which the fees are sought concern the applicant's participation in litigation concerning Choate and the Law Firm Defendants, in which the trustee was represented by Attorney William Gannon. That litigation resulted in a \$412,000 verdict against the Law Firm Defendants after two appearances before the First Circuit Court of Appeals.

The main issues raised in the objection are the duplication of effort by the applicant and Attorney Gannon, and the inclusion of time entries which are probably duties of the trustee as a trustee and not as counsel to the trustee.

The Court has reviewed the narratives and time entries of the applicant as well as the objections thereto. The Court realizes that it is difficult at times to separate duties as attorney to the trustee from those of the trustee himself. The Court does find that a significant amount of the entries are for the purpose of reviewing pleadings or suggestions of special counsel Gannon. While this Court cannot put an exact amount on how much this review was necessary by the applicant as counsel to the trustee, as opposed to being the obligation of the trustee, the Court will reduce the fee request by the sum of \$7,500 as being unnecessary as counsel to the trustee. Second, the Court finds that the applicant seeks compensation for fifty hours for attendance at the seven-day trial as well as 8.4 hours for attendance at his own deposition as trustee. At the requested rate of \$225, this amounts to the sum of \$13,140. The Court finds that both the attendance at trial and the attendance at the trustee's deposition were functions of the trustee and not as counsel to the trustee and, for that reason, will deduct the amount of \$13,140 from the fee request.

The Court is mindful that this litigation was complex with allegations against the applicant, as trustee, which obviously concerned the trustee and most likely made him more attentive to the issues at hand. However, the Court does not find that these circumstances justify the approval of the fees which the Court has now deducted. For all of the above reasons, the applicant is allowed total fees of \$37,555.26 and expenses of \$450, to which the previous interim award shall be credited.

CONCLUSION

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 25th day of January, 2007, at Manchester, New Hampshire.

/s/ Mark W. Vaughn
Mark W. Vaughn
Chief Judge