

Lou Jones Breakfast Club

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Attorney Fees and related issues of interest

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1. § 329 – what does “in contemplation of or in connection with the case” mean?
 - a. Two different concepts – *In re Laferriere*, 286 B.R. 520 (D. Vermont 2002)
 - i. “In contemplation of”
 1. Subjective test with a broad interpretation
 - a. Retainer letter refers to Bankruptcy
 - b. Invoices refer to Bankruptcy
 - c. Until fees earned, funds in retainer are property of the debtor
 - ii. “In connection with”
 1. More objective standard but still with broad scope
 - a. Do services have an impact on the bankruptcy case?
 - b. *n re Pantazelos*, 2016 WL 2342905 (N.D. IL, Eastern Division April 29, 2016)
 - i. Attorney from prior bankruptcy case and defendant in adversary action, sought review of fees of debtor’s current attorney, believing them excessive. Adversary issue related to return of attorney fees from prior cases. Court determined no standing as party in interest had to have direct legal interest in bankruptcy estate to invoke § 329.
 - c. Chapter 7 – can you unbundle legal services? Where is the line and how does this factor in to taking chapter 7 fees after post filing.
 - i. Ethical consideration - SCR 20:1.2(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives **informed consent**.
2. Flat fee vs. no look fee
 - a. *In re Long*, 2016WL3582753
 - i. Flat fee – presumptive reasonable fee for “all covered legal services rendered through confirmation unless services exceed normal and customary services in a Chapter 13 case”
 - ii. No look fee – like a retainer against which time is billed.
 1. In Matter of Geraci, 138 F.3d 314, 321 (7 Cir.), cert. denied, 525 U.S. 821 (1998) The Geraci decision involved an attorney who represented debtors in no-asset chapter 7 matters, not Chapter 13 matters. But numerous courts, use presumptively reasonable fees in Chapter 13 matters for the same reasons they are used in Chapter7 matters.
 2. Collier on Bankruptcy ¶ 329.04[1][a], at 329-16& 239-17 “[b]y setting A standard maximum fee, courts seek to save time both for themselves and for debtors’ attorneys in cases that are routine and quite similar to each other.” “an attorney always has the right to demonstrate that additional fees [above the presumptively reasonable fee limit] should be

awarded if the standard fee does not compensate the attorney fully for the time expended in the case on an hourly basis.”

3. Recent fee application cases in the 7th Circuit
 - a. *In re Fee*, 2016 WL 1055067 (N.D. IL, Eastern Division March 16, 2016)
 - i. Cannot circumvent minimum time requirement by “lumping” a bunch of activities together in a single entry.
 - ii. Time needs to be reasonable for the task being performed.
 - iii. Amount spent on preparing application was 9.94% of total application. Court reduced to 5%. (total award of fees allowed \$33,067.89)
 - b. *In re Budd Company, Inc.*, 2016 WL 2996897 and 2016 WL 4045050 (N.D. IL, Eastern Division May 20, 2016 and July 22, 2016)
 - i. Good bet if the court tells you once that your fees should be reduced because you are drafting useless disclosure statements, a second attempt at re-litigating the same thing will probably be frowned upon.
 - c. *In re Pearson Brothers Construction, Inc.*, 62 Bankr. Ct. Dec. 173 (C.D. IL May 17, 2016)
 - i. Chapter 7 Trustee fees
 1. Commission – statutory formula - 11 U.S.C. § 326(a)
 - a. Can be adjusted when extraordinary circumstances exist – examples:
 - i. Conversion to Chapter 7 after liquidating plan in Chapter 11 was confirmed (*In re Luedtke*, 2011 WL 806003 (Bankr. C.D. IL February 28, 2011))
 - ii. Trustee errors or wrongdoings
 - d. *In re Pantazelos*, 2016 WL 2342905 (N.D. IL, Eastern Division April 29, 2016)
 - i. Local rules required signed retention agreement be attached to 2016(b). It was not, but that was corrected. Motion denied – premature as case still pending and work ongoing. Attorney directed to supplement with post-petition retention agreement (adversary) and file application for additional fees, if any, after litigation is over.
 1. Pre-petition review - On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.
 2. Post-petition review - On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.
 - e. *In re World Marketing Chicago, LLC, et al.*, 2016 WL 1009196 (N.D. IL, Eastern Division March 3, 2016) – not the only case on this in the last 6 months

- i. “A proper fee application must list each activity, its date, the attorney who performed the work, a description of the nature and substance of the work performed, and the time spent on the work. [Citation omitted]”
 - ii. Charge in one-tenth of an hour increments – otherwise risk 10% penalty for “lumping.”
 - f. Possible form fee application coming?
 - i. Wording - \$3,500 already approved – asking that \$4,500 be approved or asking that \$1,000 be approved?
 - ii. Time records
 - iii. Other issues?
- 4. Opinion poll - Do we need to raise the no look fee?
 - i. Wide range of fees and fee structures across the country
- 5. Fee only chapter 13
 - a. *In re Wark*, 542 B.R. 522 (Kan. 2015)
 - i. “The U.S. Trustee does not get a vote, he does not get to substitute his judgment for that of debtors, and the Code simply does not require the “special circumstances,” or “heavy burden” standard he seeks when debtors eligible to file under either Chapter 7 or Chapter 13 elect to proceed under Chapter 13”