

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re  
BAMA WOOD, INC.,  
  
Debtor.

Case No. 02-30132-WRS  
Chapter 7

**MEMORANDUM DECISION**

On January 14, 2004, the Court denied applications for professional fees made by Janie S. Gilliland (“Gilliland”) and John N. Pappanastos (“Pappanastos”) as counsel for the Trustee. (Doc. 102). The Trustee and Gilliland moved the Court to alter and amend its order. (Docs. 105, 106). The Court heard the motions on March 2, 2004. Gilliland and Trustee Susan S. DePaola (“DePaola”) were both present. Pappanastos was not present for the hearing.

The Court denied the original application for compensation because the applicants failed to show “whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem.” See 11 U.S.C. § 330(a)(3)(D). (Doc. 102). At the March 2, 2004 hearing, DePaola and Gilliland made a good faith effort to respond to the Court’s question about the interplay of the estate’s claim on the bond for employee dishonesty and the claim made by the United States Department of Labor against the former principals of the Debtor corporation, viz. Benjamin Francis Nolen, Marion Daniel Nolen, Jr. and Glennis Jerome Harris (former principals), for breach of their fiduciary duty to the Bama Wood Pension and Profit Sharing Plan. The Secretary of Labor brought suit against the former principals in a civil action styled Elaine L. Chao v. Benjamin Francis Nolen, et. al., Civil Action No. 02-D-544-N, in the United States District Court for

the Middle District of Alabama. That civil action recently was settled. While the settlement is somewhat involved, its most significant provision calls for a \$2.3 million reduction in the retirement account balances of the three principals' accounts. It was alleged that this amount was transferred improperly from the pension plan to the corporation. If the Debtor corporation was the recipient of an improper transfer in the amount of \$2.3 million, it is difficult to see how it was harmed even if the conduct of the three principals was not entirely above board. Indeed, bearing in mind that the corporation was the recipient of a transfer in the amount of \$2.3 from the pension plan, and further noting that the three alleged wrongdoers have agreed to rectify the matter by way of a reduction in their own pension plan accounts, it would appear that the estate received a windfall. The matter was discussed at the March 2, 2004 hearing and the Trustee satisfied the Court that some inquiry into the matter was warranted. The Court will consider the application for professional fees on its merits.

Awards of professional fees are governed by the provisions of 11 U.S.C. § 330, which provides, in part, as follows:

- (a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—
  - (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
  - (B) reimbursement for actual, necessary expenses.
- (2) The court may, on its own motion . . . award compensation that is less than the amount of compensation that is requested.
- (3)(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such 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;
  - (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.
- (4)(A) Except as provided in subparagraph (b), the court shall not allow compensation for –
- (i) unnecessary duplication of services; or
  - (ii) services that were not–
    - (I) reasonable likely to benefit the debtor’s estate; or
    - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(1)-(4).

The applications of Pappanastos and Gilliland detail a total of more than 50 hours of professional time spent on this matter. (Doc. 88). The Court has reviewed carefully the detailed time entries and finds that the time spent is excessive. See 11 U.S.C. Section 330(a)(3)(D). It should be noted that counsel for the Trustee did nothing more than file a claim with an insurance company and settle it for 50% of its value, after only minimal negotiations.

This Chapter 7 case has been pending before the Court for more than two years. A number of contested matters and adversary proceedings have been filed and the Court is familiar with the underlying factual setting. This matter was first heard on December 9, 2003. At that time the Court inquired of counsel as to why it was necessary to spend so much time on this matter. The Trustee filed a claim on a fidelity bond and then settled with the insurance company for 50 cents on the dollar. The

fidelity bond was \$50,000.00 and the claim was settled for \$25,000.00. The Court was struck by the incongruity of this claim in juxtaposition to the harm apparently suffered by the Pension and Profit Sharing Plan. Approximately \$2.3 million was transferred from the plan to the Debtor corporation. Clearly the Plan was hurt by the transfer. It was less obvious how the corporation was harmed by a transfer which resulted in it receiving \$2.3 million. Counsel for the Trustee stonewalled the Court at the December 9, 2003 hearing, refusing to provide any pertinent information. As a result, the Court denied all compensation. (Doc. 102).

This matter was heard a second time on March 2, 2004, where counsel made a more serious effort to address the Court's questions. While the Trustee and her counsel have satisfied the Court that some inquiry into the matter was appropriate, the Court is of the view that an excessive amount of time has been charged. First, the Court would note that Gilliland has charged a total of 38.2 hours and Pappanastos has charged 12.7 hours. Pappanastos has not moved the Court to reconsider its January 14, 2004 Order. (Doc. 102). Furthermore, it appears that the services for which Pappanastos has charged duplicate the services performed by Gilliland. Therefore, the 12.7 hours charged by Pappanastos is disallowed as unnecessarily duplicative. 11 U.S.C. § 330(a)(4)(A)(i).

The Court does not allow the entire amount billed by Gilliland. Gilliland's time sheets indicate that 21.0 hours are charged for document review.<sup>1</sup> The Court, having considered the application, and having considered the factual setting in which the services were rendered, finds that no more than 3.0

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<sup>1</sup> The entries are as follows: 5/9/02–2.0 hours; 5/10/02–0.5 hours; 6/24/02–1.5 hours; 6/27/02–0.5 hours; 6/28/02–2.0 hours; 7/26/02–2.0 hours; 7/27/02–6.0 hours; 7/29/02–5.0 hours; 5/10/03–1.0 hours; 6/5/03–0.5 hours. (Doc. 88–Exhibit B).

hours should have been charged for document review. The remaining time charged for document review is disallowed as excessive. Gilliland's time records indicate that 8.1 hours was spent "conferencing."<sup>2</sup> The application does not explain why so much time was spent conferencing and the Court is of the view that no more than 1.5 hours should have been spent conferencing. The remainder of the time charged for conferencing is disallowed as excessive. See 11 U.S.C. § 330(a)(3)(D).

Gilliland's time records indicate two entries which relate to the preparation of the proof of loss form: 1.5 hours on July 31, 2002 and 3.0 hours on August 3, 2002. In addition, 0.2 hours were charged on June 4, 2003 and an additional 0.2 hours were charged on June 18, 2003 to negotiate a compromise of the estate's claim. This should have been the bulk of the time charged for this matter. This time, in the amount of 4.9 hours, is allowed as requested.

Gilliland's time records make a series of charges, totaling 3.5 hours, relating to obtaining the Court's approval of the compromise of the claim.<sup>3</sup> For example, 0.3 hours was charged on August 28, 2003, to review the motion to compromise which was prepared by the Trustee. (Doc. 81). Why Gilliland is reviewing the Trustee's work is a question which is not answered in the application. Even more puzzling is a second charge of 0.3 hours on September 5, 2003, for Gilliland to review the Trustee's motion again. Why the motion was reviewed a second time is another question which is not

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<sup>2</sup> These entries are as follows: 7/24/02–0.3 hours; 7/25/02–0.7 hours; 1/28/03–0.3 hours; 2/14/03–0.4 hours; 2/18/03–0.2 hours; 3/5/02–0.5 hours; 5/12/03–0.2 hours; 5/13/03–0.6 hours; 5/16/03–0.2 hours; 5/19/03–0.2 hours; 5/20/03–0.7 hours; 6/2/03–0.8 hours; 6/4/03–0.2 hours; 6/17/03–0.3 hours; 6/18/03–0.5 hours; 6/20/03–0.5 hours; 6/23/03–0.2 hours; 7/23/03–0.2 hours; 10/1/03–0.2 hours; 10/2/03–0.3 hours; 10/15/03–0.8 hours. (Doc. 88–Exhibit B).

<sup>3</sup> These charges are as follows: 8/28/03–0.3 hours; 9/5/03–0.3 hours; 9/26/03–0.2 hours; 10/7/03–0.5 hours; 10/16/03–0.3 hours; 10/20/03–0.4 hours; 10/27/03–0.5 hours; 10/28/03–1.0 hours.

answered. On September 28, 2003, Gilliland charges 0.2 hours to discuss an objection to the motion to compromise. The Court finds this strange because no objection to the motion was filed.

Furthermore, Gilliland's time records indicate charges of 0.5 hours on October 7, 2003; 0.3 hours on October 16, 2003; 0.4 hours on October 20, 2003; 0.5 hours on October 27, 2003; and 1.0 hours on October 28, 2003, for a total of 2.7 hours to settle what was already a done deal. Because it appears that this 3.5 hours was either unnecessary or duplicative of work done by the Trustee, all of this time charged is disallowed. As a final matter, miscellaneous time charged in the amount of 0.5 hours on June 25, 2002, and 0.2 hours charged on June 4, 2003, are allowed as filed.

To summarize: (a) 21.0 hours are charged for document review, of which 3.0 hours are allowed and the remainder disallowed; (b) 8.1 hours are charged for conferencing, of which 1.5 hours are allowed; (c) 4.9 hours are charged for the preparation of the proof of claim form and the negotiation of its settlement, all of which is allowed; (d) 3.5 hours are charged for work relating to the motion to compromise, all of which is disallowed; (e) miscellaneous time in the amount of 0.7 hours is charged, all of which is allowed. Therefore, total time in the amount of 10.1 hours is allowed. The Court will compensate counsel at the requested rate of \$150.00 per hour, which the Court finds is reasonable, for a total fee allowed of \$1,515.00.

Done this 9<sup>th</sup> day of April, 2004.

/s/ William R. Sawyer  
United States Bankruptcy Judge

c: Janie S. Gilliland, Esq.  
John N. Pappanastos, Esq.  
Susan S. DePaola, Trustee  
Teresa R. Jacobs, Bankruptcy Administrator