

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11
:
WOODBIDGE GROUP OF : Case No. 17-12560 (BLS)
COMPANIES LLC, *et al.* :
:
Debtors :

**UNITED STATES TRUSTEE’S OBJECTION TO APPLICATION OF DRINKER
BIDDLE & REATH LLP AS COUNSEL AND ON BEHALF OF THE AD HOC
COMMITTEE OF HOLDERS OF PROMISSORY NOTES OF WOODBRIDGE
MORTGAGE INVESTMENT FUND ENTITIES AND AFFILIATES PURSUANT TO
11 U.S.C. § 503(b)(3)(D) and (b)(4) FOR ALLOWANCE OF ADMINISTRATIVE
EXPENSES INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION IN
THESE CASES(D.I. 3565) AND JOINDER TO OBJECTION OF WOODBRIDGE
LIQUIDATION TRUST TO APPLICATION OF DRINKER BIDDLE & REATH LLP
FOR FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF
EXPENSES (D.I. 3564)**

In support of his Objection to the Application of Drinker Biddle & Reath LLP as Counsel and on Behalf of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to 11 U.S.C. § 503(b)(3)(D) and (b)(4) for Allowance of Administrative Expenses Incurred in Making a Substantial Contribution in These Cases(D.I. 3565) and Joinder to Objection of Woodbridge Liquidation Trust to Application of Drinker Biddle & Reath LLP for Final Allowance of Compensation and Reimbursement of Expenses (D.I. 3564) (the “Objection and Joinder”), Andrew R. Vara, the Acting United States Trustee for Region 3, through his undersigned counsel, states as follows:

PRELIMINARY STATEMENT

1. Drinker Biddle & Reath LLP (the “Movant”) seeks allowance of an

administrative claim totaling \$201,417.29 for reimbursement of professional fees and expenses incurred prior to the settlement of the Chapter 11 Trustee Motions and the Committee Request Motions. The Movant seeks payment of professional fees that relate to the creation of the Ad Hoc Noteholder Group Committee, which at all times represented the narrow interests of Noteholders that intended to assert their status as secured creditors of the Debtors' estates. The request for reimbursement should not be approved for three reasons: (i) the benefit, if any, to the estate was incidental to the Movant's desire to protect the interests of Noteholders asserting a secured claim; (ii) the work performed by Movant was duplicative of other parties in interest's efforts in the case; and (iii) the Movant has failed to provide any evidentiary support for the substantial contribution claim.

2. The Movant's actions were directed at all times towards representing the interests of the ad hoc group of clients that engaged the Movant to represent them and their interests. Noteholders' interests were acknowledged to present a special challenge by the Debtors early in the case, and the Settlement of the Trustee Motions, built-in the benefits to the Movant's constituency which the Movant now asserts merits compensation for a substantial contribution. The Debtors, especially post-Settlement and governance changes, the Official Committee, and all the substantial parties in interest recognized the importance of resolving the various issues relating to investor claims in a fair and comprehensive manner, as that was one of the fundamental hurdles to formulating a plan. At all times each of the representative committees sought to protect the interests of their particular constituency, and therefore none of the committees can reasonably assert that they made a substantial contribution to resolving the cases.

3. The Movant's actions in these cases did not substantially contribute to better the position of all parties in the cases. The treatment of Noteholder claims were an issue of genuine concern to all major parties in interest in pursuing a viable plan of reorganization, and were handled in a manner consistent with maximizing value and minimizing costly and time consuming litigation. The Movant's actions vindicated the narrow interest of its constituency in the case without creating additional value for Noteholders or the estate at large. The issue was multifaceted one requiring the cooperation of several parties in interest, none of which was sufficient on its own to bring about the result memorialized in the confirmed and effective plan. The Movant creating a seat at the table for its class of constituents at the time of the Trustee Motions settlement was neither a substantial contribution to the estate, nor the proximate cause of the compromise that resulted in the treatment of investor claims under the settlement and plan. As a result, the Court should deny the request by the Movant for allowance and payment of an administrative claim.

4. The U.S. Trustee also joins the Liquidation Trust's objection to the Final Fee Application of the Movant. The settlement of the Trustee Motions provided a budgeted amount for the Movant to vindicate the interests of its specific constituency, and based on the facts and circumstances of the case, there is no need to vary the budgeted amount provided for the Movant and its other professionals that represented the Ad Hoc Noteholder Group.

JURISDICTION

5. This Court has jurisdiction to hear this Objection.

6. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to chapter 11 of title 11 of the United

States Code (the “Bankruptcy Code”). This duty is part of the U.S. Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

7. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard with regard to this Objection and Joinder.

STATEMENT OF FACTS

8. On December 4, 2017, the initial Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, an additional 27 Debtors would file voluntary petitions thereafter.

9. On December 14, 2017, the U.S. Trustee appointed the Official Committee of Unsecured Creditors (“OCUC”). The OCUC was composed of one trade creditor and two Noteholder investors that had agreed to waive any secured interest that they may have. On December 18, 2017, the Movant filed a motion seeking the appointment of an official committee of Noteholders on behalf of an Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates pursuant to Bankruptcy Code § 1102(a)(2). D.I. 85.

10. On December 28, 2017, the OCUC filed a motion seeking the appointment of a Chapter 11 Trustee, and the Securities and Exchange Commission (“SEC”) filed its own

Chapter 11 Trustee Motion on January 2, 2018 (the “Trustee Motions”). D.I. 150 & 157.

11. On January 23, 2018, after several days of hearings on the Trustee Motions, and after extensive negotiations the parties, including the Debtors, the OCUC, the SEC, the Ad Hoc Noteholder Group (represented by the Movant), and the Ad Hoc Unitholder Group, entered into the Settlement Agreement. D.I. 357-1. The Settlement Agreement resolved the Trustee Motions, and also provided for the appointment of additional committees to represent Noteholders and Unitholders. The Settlement Agreement limited the Scope of the Ad Hoc Noteholder Group’s responsibilities to those on whether the Noteholders were secured creditors. D.I. 357-1 at C.12.

12. On March 22, 2018 the parties reached agreement on a Plan Term Sheet. D.I. 828. The Plan Term Sheet provided for the treatment of Noteholders as having unsecured claims, and for Unitholders to receive a discounted treatment as unsecured claims to settle questions regarding the potential for Units to be treated as equity interests and therefore not entitled to a distribution until Noteholder claims and other general unsecured claims were satisfied in full.

13. The Movant filed the Application on April 2, 2019 seeking compensation for making a Substantial Contribution by: “represent[ing] the Movant Committee in successfully obtaining critical [sic], official representation of the unique interests of noteholder victims of the Woodbridge Ponzi fraud . . .” D.I. 3565 Application at ¶ 2. The Application seeks compensation for professional fees in the amount \$199,069.00 and reimbursement of expenses incurred in the amount of \$2,348.29. *Id.* at ¶ 5.

14. On April 29, 2019, the Liquidation Trust filed its objection to the Movant’s

Final Fee Application and Application for Substantial Contribution.

15. The Movant asserts:

But for the Applicant's concerted efforts to obtain formation of the Noteholder Group, an essential representative role would have been absent for the majority of the victims of the Woodbridge fraud, as it was abundantly clear that no other existing official body was structurally capable of pursuing the unique position noteholders held in these cases. D.I. 3565 Application at ¶ 4.

16. Movant's "contribution" is limited strictly to "noteholders," and more narrowly, those who sought to press secured claims, who the Movant sought to represent at the time of the Trustee Motions, and continued representing throughout the duration of these cases, even after that specific issue was settled. The Movant did not make any efforts to benefit parties beyond the clients and constituency that the Movant sought the mantle of officially representing.

ARGUMENT

A. The Legal Standard

17. Section 503(b)(3)(D) of the Bankruptcy Code provides for administrative expenses of the estate for the "actual, necessary expenses" incurred by a "creditor" or an "equity security holder... in making a substantial contribution in a case." Section 503(b)(4) provides for the allowance for the "reasonable compensation for professional services rendered by an attorney or an accountant if an entity who expense is allowable under" section 503(b)(3). These provisions are governed in this District by the Third Circuit's decision in *Lebron v. Mechem Financial, Inc.*, 27 F.3d 937 (3d Cir. 1994).

18. The Motion should be denied because the Movant has not demonstrated that it made a substantial contribution in this case. The Movant has not overcome the presumption

in the Third Circuit's *Lebron* decision that it acted only in the self-interest of its own clients and the Movant is unable to show that its actions were designed to benefit the estate as a whole. To the contrary, the Movant trumpets that it pursued the unique position noteholders.

19. Bankruptcy Code Section 503(b) provides in pertinent part:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

[. . .]

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—

(A) a creditor that files a petition under section 303 of this title;

(B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or

(E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

23. Section 503(b)(3)(D) thus provides administrative expense status for the actual, necessary expenses of a creditor that makes a substantial contribution in a chapter 9 or 11 case. Section 503(b)(4) provides administrative-expense status for the reasonable fees and actual, necessary expenses of such entity's attorneys and accountants. Section 503(b)(3)(D) must be narrowly construed so that administrative expenses will be held to a minimum. *See In re Worldwide Direct, Inc.*, 334 B.R. 112, 122 (Bankr. D. Del. 2005) (quoting *In re Granite Partners*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997)).

24. Section 503(b)(3)(D) has two purposes: (1) to encourage creditors to participate meaningfully in the reorganization process; and (2) to minimize fees and administrative expenses and thereby maximize creditor recoveries. *Lebron v. Mechem Financial Inc.*, 27 F.3d 937, 944 (3d Cir. 1994). A creditor makes a substantial contribution if its efforts provide an "actual and demonstrable benefit to the debtor's estate and the creditors." *Lebron v. Mechem Financial Inc.*, 927 F.3d at 943-44 (citation omitted) (quoting *In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988)). *See also In re Worldwide Direct, Inc.*, 334 B.R. at 121.

25. A benefit that the estate receives as an incident to a creditor's protecting its own interests is not a substantial contribution. *See Lebron*, 27 F.3d at 944. The *Lebron* Court concluded its analysis of §503(b)(3)(D) by stating that activities which primarily further the interest of the applicant are not reimbursable:

Most activities of an interested party that contribute to the estate will also, of course, benefit that party to some degree, and the existence of self-interest cannot in and of itself preclude reimbursement. Nevertheless, the purpose of Section 503(b)(3)(D) is **to encourage activities that will benefit the estate as a whole**, and in line with the twin objectives of § 503(b)(3)(D), “substantial contribution” should be applied in a manner that excludes reimbursement in connection with activities of creditors and other interested parties which were designed primarily to serve their own interests and which, accordingly, would have been undertaken absent an expectation of reimbursement from the estate.

Id. (emphasis added). *See also In re Essential Therapeutics, Inc.*, 308 B.R. 170, 174 (Bankr. D. Del. 2004) (“Inherent in substantial contribution, however, is the requirement that the benefit received by the estate be more than incidental to the applicant’s self-interest.”)

26. Creditors are presumed to act in their own interest “until they satisfy the court that their efforts have transcended self-protection.” *Lebron*, 27 F.3d at 944 (citations omitted). The activities that a Section 503(b)(3)(D) applicant has engaged in are “presumed to be incurred for the benefit of the engaging party and are reimbursable if, but only if, the services ‘directly and materially contributed’ to the reorganization.” *Lebron v. Mechem Financial Inc.*, 27 F.3d at 943-44 (citation omitted). “[E]fforts undertaken by a creditor that are predominantly aimed at furthering its own position in a case does not satisfy section 503(b)(3)(D).” *In re RS Legacy Corp.*, Case No. 15-10197 (BLS), 2016 WL 1084400, at *4 (Bankr. D. Del. March 17, 2016) (citing *Lebron v. Mechem Financial Inc.*, 27 F.3d at 943; *In re Geriatrics Nursing Home, Inc.*, 195 B.R. 34, 39 (Bankr.D.N.J.1996) (“[W]here creditor self-interest appears to dominate a creditor’s actions courts have not allowed substantial contribution claims.”)).

27. When determining if a claimant has met its burden, courts consider whether the services provided (a) were only for the benefit of the claimant or were for the benefit of all parties in the case; (b) directly, significantly and demonstrably benefited the estate; and (c) were duplicative of the services provided by professionals for the creditors' committee, the committee itself, debtor and its attorneys, or other fiduciaries and their professionals. *See In re Worldwide Direct, Inc.*, 334 B.R. at 122 (citing *In re Buckhead America Corp.*, 161 B.R. at 15).

28. The Movant must prove by a preponderance of the evidence that he made a substantial contribution. *See In re Buckhead America Corp.*, 161 B.R. 11, 15 (Bankr. D. Del. 1993). In attempting to meet its burden, the applicant must introduce more than self serving statements about its involvement in the case. *In re Worldwide Direct, Inc.*, 334 B.R. at 123 (citing *In re Buckhead America Corp.*, 161 B.R. at 15). “Corroborating testimony by a disinterested party attesting to a claimant’s instrumental acts has proven to be a decisive factor in awarding compensation for activities which otherwise might not constitute a ‘substantial contribution.’” *In re Worldwide Direct, Inc.*, 334 B.R. at 123 (citing *In re Buckhead America Corp.*, 161 B.R. at 15)(emphasis in original). Extensive participation in a case is not enough to justify a substantial contribution award. *In re Worldwide Direct, Inc.*, 334 B.R. at 123 (citing *In re Granite Partners*, 213 B.R. at 445); *see also In re Summit Metals, Inc.*, 379 B.R. 40, 53 (Bankr. D. Del. 2007).

29. A substantial contribution applicant has the burden of establishing that a “causal connection” exists between services provided and contribution to the estate. *See In re Worldwide Direct, Inc.*, 334 B.R. at 121-22. For an applicant’s reasonable professional

fees to be allowable under Section 503(b)(4), the court must find that the applicant has a claim under Section 503(b)(3). *See In re Worldwide Direct, Inc.*, 334 B.R. at 120-21.

B. The Movant's Activities Were Primarily For Its Own Benefit.

30. The Movant has failed to overcome the presumption that it acted primarily in its own self-interest. The Movant, as a representative for an Ad Hoc Group of Noteholders, pressing secured claims, had an obligation to vigorously represent the members of the group in the case. Therefore to make a substantial contribution to the estate, the Movant's activities need to benefit parties beyond those, who were or would be represented by the Movant, to merit reimbursement of reasonable professional fees and expenses. Merely acting on behalf of the same group the Movant already represented and seeking official recognition does not on its own benefit the estate as a whole, but rather is the equivalent of an individual creditor seeking payment of its own claim and requesting that others pay for it to engage bankruptcy counsel in the case.

31. The activities undertaken in the case by the Movant were self-motivated and any benefit to the estate was incidental. In particular, the activities undertaken do not rise to the level of substantial contribution that would justify the award of an administrative claim pursuant to 11 U.S.C. §503(b). The Movant's primary activities in monitoring pleadings and hearings, engaging in light discovery, and performing research are routine activities typically undertaken by individual creditors even in the presence of an official committee of unsecured creditors. *See In re American Plumbing & Mechanical, Inc.*, 327 B.R. 273, 283 (Bankr. W.D. Tex. 2005) (stating that "expected or routine activities in a Chapter 11 case do not constitute substantial contribution.").

32. The Application is devoid of any assertions that the Movant's actions benefitted the estate as a whole, and in fact states only affirmatively that the actions were designed to "pursu[e] the unique position noteholders held in these cases." Application at ¶ 4.

33. Likewise, extensive participation in a case, without more, does not justify a substantial contribution award. *See Summit Metals*, 379 B.R. 40, (Bankr. D. Del. 2007). Continued actions, even successful ones, to seek a seat at the negotiating table do not on their own add value to the estate as a whole. Instead, the Movant's actions created additional costs to the estate, especially after the issue of secured status of Noteholders had been resolved under the Plan Term Sheet.

C. The Movant's Actions were Duplicative of the Actions Taken by Other Parties.

34. As detailed by the Liquidating Trust, following the Plan Term Sheet settlement in March 2018, the need for the Movant to continue performing services on behalf of its constituency shrank dramatically. The OCUC was already in place to ensure that Noteholders received fair treatment on behalf of their claims, and could press back against the Debtors, as well as the Ad Hoc Unitholder Group, if either sought to overreach. The central issue the Movant existed to press was resolved.

35. The Movant did not perform any services that were otherwise not already supplied by other parties in interest following the secured status settlement. The Movant on the other hand, apparently sought only to improve its own positions by incurring fees and expenses, and by later seeking the instant Application for having received an official seat at the table in the first place.

38. Accordingly, the U.S. Trustee reserves any and all rights, remedies, and obligations found at law, equity, or otherwise.

WHEREFORE, the U.S. Trustee requests that this Court issue an order denying the Application, and sustain the Liquidation Trust's objection to the Final Fee Application, and/or granting such other relief as this Court deems appropriate, fair and just.

Respectfully submitted,

ANDREW R. VARA
ACTING UNITED STATES TRUSTEE
REGION 3

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Dated: May 3, 2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Woodbridge Group of Companies, LLC, et al.,
Debtors.

Chapter 11

Case No. 17-12560 (KJC)

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on May 3, 2019, the United States Trustee's Objection to the Application of Drinker Biddle & Reath LLP as Counsel and on Behalf of the Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates Pursuant to 11 U.S.C. § 503(b)(3)(D) and (b)(4) for Allowance of Administrative Expenses Incurred in Making a Substantial Contribution in These Cases(D.I. 3565) and Joinder to Objection of Woodbridge Liquidation Trust to Application of Drinker Biddle & Reath LLP for Final Allowance of Compensation and Reimbursement of Expenses (D.I. 3564) was served in the manner indicated to the following persons:

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