

DOCKET NUMBER: 93-11527, 94-12329, 95-12836

ADV. NUMBER: None

JUDGE: M. A. Mahoney, W. S. Shulman

PARTIES: Bayou Marine Products Services, Inc., Sally Gloria Sirmon, George G. Brewer

CHAPTER: 7

ATTORNEYS: B. A. Friedman

DATE: 4/11/97

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

BAYOU MARINE PRODUCTS SERVICES, INC.
SALLY GLORIA SIRMON
GEORGE G. BREWER

Case No. 93-11527-MAM-7
Case No. 94-12329-MAM-7
Case No. 95-12836-MAM-7

**EN BANC ORDER APPROVING FINAL ACCOUNTS AND
REDUCING FEES FOR ATTORNEY FOR THE TRUSTEE**

Barry A. Friedman, Trustee and Attorney for Trustee
Mark S. Zimlich, Bankruptcy Administrator Attorney

These cases are before the Court for approval of the Trustee's final reports and for award of compensation to Trustee's counsel. Barry A. Friedman is the trustee in each case and he is also the attorney for the trustee in each case. A hearing was held. Appearances are as noted in the record. The Court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. These matters are core proceedings pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is approving the final reports with a reduction in the attorneys fees awarded as to each case as indicated below.

The judges of this Court also determined that review of this issue en banc would be appropriate. The applications for compensation of the attorney for the trustee before the Court are similar to those filed in numerous other cases before both judges. The judges both hold the views expressed below.

FACTS

Barry A. Friedman seeks the following attorneys fees in each case:

Bayou Marine Products Services, Inc.	-	\$2,835.00
Sally Gloria Sirmon	-	\$1,170.00
George G. Brewer	-	\$ 330.75

In each case, the Bankruptcy Administrator objected to allowance of a portion of the fees requested. The objection is that some work in each file which the trustee alleges is attorney work is actually trustee work. Trustee work is compensated by the formula established in 11 U.S.C. § 326.

Bayou Marine Products Services, Inc.

Mr. Friedman claimed the following amounts relevant to the Bankruptcy Administrator's objection:

6/28/95	Received and calendared Claims Bar Date	.1 hr.
9/26/95	Requested Claims Register from Clerk	.25
9/27/95	Received and reviewed Claims Register	.75
3/25/96	Preparation and filing of Claim Objection re City of Mobile Claim (alleging duplication)	.25
5/20/96	Received and reviewed the Claim Order	.1

He sought compensation at \$150 per hour.

Sally Gloria Sirmon

Mr. Friedman claimed the following amounts relevant to the Bankruptcy Administrator's objection:

7/9/96	Preparation and filing of Claim Objection (alleging duplication)	.25
7/26/96	Received and reviewed Claimant's attorney's letter	.1
7/31/96	Received and reviewed Claimant's attorney's letter	.1
8/14/96	Received and reviewed Claim Order	.1

Mr. Friedman charged \$150 per hour as attorney for the trustee.

George G. Brewer

Mr. Friedman claimed the following amounts relevant to the Bankruptcy Administrator's objection:

4/10/96	Requested Claims Register from Clerk	.25
5/2/96	Received and reviewed Claims Register	.25

Mr. Friedman charged \$135 per hour as attorney for the trustee.

LAW

Section 704 of title 11 of the United States Code states what the duties of a trustee in a chapter 7 bankruptcy case are. The duties include: “if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper.” 11 U.S.C. § 704(5). The time listed above was spent in reviewing and objecting to claims in furtherance of this duty.

Mr. Friedman argues that the duties of a trustee at times require the services of an attorney. Evaluation of the merits of claims such as these was done by him in his attorney capacity. The Bankruptcy Administrator contends that every trustee must request the claims register in his or her cases and determine if there are claims which are objectionable pursuant to the duty imposed under Section 704. The Bankruptcy Administrator also states that only if the trustee has issues which raise legal concerns does a need for an attorney arise. If an objection is based upon “duplication,” there is no real legal issue involved and no attorney is needed.

When a trustee acts as his own attorney, it is sometimes difficult to determine when one quits acting as trustee and commences acting as attorney. The roles blur. Certainly, there are many activities of a trustee which the attorney for the trustee is also able to perform. The Court’s role is to balance the creditors’ desire for the largest distribution with the need of the trustee and court system for the expertise and safety offered by appropriate attorney involvement in cases. Both asset preservation and protection are necessary.

The Court concludes that requesting and initially reviewing Claims Registers is a trustee duty which cannot be compensated as an attorney’s duty. Until a trustee determines there are any questionable or objectionable claims, there is no need for attorney involvement. The Court also concludes that claim objections for duplication, failure to itemize, timeliness, lack of completeness, and similar grounds are trustee work. These objections do not require the

expertise of an attorney to prepare in most instances. Finally, the Court concludes that reviewing claim orders is also a trustee function since review is necessary for the trustee to make the final report and file a final account pursuant to 11 U.S.C. § 704(9).

As stated in an earlier opinion, for routine legal work in chapter 7 cases, the Court concludes that \$135 per hour is an appropriate attorneys fee.

THEREFORE IT IS ORDERED that:

1. The final report in the Bayou Marine Products Services, Inc. case is approved except that the fees of the attorney for the trustee are reduced to \$2,355.75; and
2. The final report in the Sally Gloria Sirmon case is approved except that the fees of the attorney for the trustee are reduced to \$978.75; and
3. The final report in the George G. Brewer case is approved except that the fees of the attorney for the trustee are reduced to \$263.25.

Dated: April 11, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE