

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
PIKE NURSERY HOLDING LLC,)	CASE NUMBER: 07-79129-mgd
)	
Debtor.)	
_____)	

FIRST INTERIM APPLICATION OF SCHREEDER, WHEELER & FLINT, LLP
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR CHAPTER 7 CASE

This first interim application of Schreeder, Wheeler & Flint, LLP (“Applicant”) for compensation and reimbursement of expenses incurred in the Chapter 7 case respectfully shows this Court as follows:

1.

Schreeder, Wheeler & Flint, LLP as counsel for Marcus A. Watson, the Chapter 7 Trustee, makes this first interim application for allowance of compensation for professional services rendered in the amount of \$120,788.50 and for reimbursement of actual and necessary costs and expenses incurred as counsel for the Chapter 7 Trustee in the amount of \$6,251.85 for a total of \$127,040.35 for the time period of March 24, 2008 through and including October 31, 2008.

2.

On March 25, 2008, this Court approved Schreeder, Wheeler & Flint, LLP as counsel to represent Marcus A. Watson both as the Chapter 11 Trustee and

Chapter 7 Trustee in this case. This is Schreeder, Wheeler & Flint, LLP's first application for compensation for services during the Chapter 7 case. Schreeder, Wheeler & Flint, LLP previously filed an application for compensation for service performed during the Chapter 11 case.

3.

All services for which compensation is requested by Schreeder, Wheeler & Flint, LLP were performed for and on behalf of the Chapter 7 Trustee and not on behalf of any creditor, committee or other person.

4.

A copy of this Application has been submitted for approval by the Trustee prior to submission to the Court.

5.

Schreeder, Wheeler & Flint, LLP shows this Court that the billing rates for the services that are sought are reasonable and in keeping with similar awards to similar attorneys in similar cases.

A. Background and Services

This case was filed on November 14, 2007. The Debtor operated retail and wholesale nurseries in Alabama, Georgia and North Carolina. The Debtor sold the majority of its assets and assigned the majority of its commercial leases in early March, 2008. On March 6, 2008, the Unsecured Creditors' Committee filed a

Motion to Appoint a Chapter 11 Trustee. On March 17, 2008, the Court entered an Order directing the United States Trustee to appoint a Chapter 11 Trustee. On March 18, 2008, Marcus A. Watson was appointed as the Chapter 11 Trustee. The case was converted on the Trustee's motion to Chapter 7 on March 24, 2008. Marcus A. Watson was appointed as the Chapter 7 Trustee and retained Applicant as counsel in connection with the case.

1. General Case Administration

Applicant has assisted the Trustee in all facets of the general case administration as follows:

- Prepared a motion to employ BMC Group as the claims and noticing agent;
- Prepared the Motion for Approval of Notice Procedures limiting the notice required in the case;
- Maintains and submits the master service list in accordance with the Order Establishing Notice Procedures;
- Responds to general inquiries from creditors and their counsel regarding the case;
- Prepared the notice of proposed abandonment of office furniture located within the Debtor's former headquarters and
- Provided for the cancellation of the insurance as the Trustee winds up the affairs of the Debtor's Estate and monitored the remaining claims on the insurance policies.

2. Claims Administration

Applicant has assisted the Trustee in administering claims against the Debtor's Estate as follows:

- Prepared the Motion for Order Fixing Bar Date for Filing Proofs for Chapter 11 Administrative Expenses and coordinated the service of the Bar Order;
- Fielded numerous calls from creditors with respect to the Bar Order;
- Coordinated with BMC Group with respect to the claims database and receipt of the proofs of claim;
- Conducted a preliminary review of the administrative claims submitted and made an initial assessment of the administrative claims for the Trustee;
- Reviewed Gas South's motion for payment of administrative expense and attended the hearing with respect to this request;
- Handled inquiries from other creditors regarding payment of Chapter 11 administrative claims and
- Prepared the Motion for Use of Cash Collateral and Allowance and Reimbursement of Third-Party Expenses seeing authority to use cash collateral to pay Chapter 11 administrative expenses and attended the hearing with respect to the motion.

3. Leases and Executory Contracts

Applicant reviewed the existing leases and executory contracts and took the following actions with respect to them:

- Prepared three omnibus motions to rejected executory contracts and leases, including the co-operative advertising agreements;

- Prepared a Motion to Assume and Assign Real Property Lease to assume the lease for Retail Store Number 4 in Tucker, Georgia and to assign the Lease to GEO Schofield Company, Inc. in exchange for it paying all amounts necessary to cure any and all defaults under the lease pursuant to 11 U.S.C. § 365(b)(1) and paying \$10,000 to the Estate;
- Prepared motions to reject the remaining real property leases that had not previously been assumed;
- Finalized the assignment and release of escrow proceeds for the lease for store number 46 to Skinner Nurseries, Inc.;
- Prepared five motions to reject various equipment leases and attended the hearings with respect to each motion;
- Worked extensively with the Trustee and the lessors to identify and locate all the equipment which was the subject matter of the rejected leases;
- Communicated with the lessors with respect to previously assigned equipment leases prior to the conversion of the case;
- Prepared four motions to reject leases and executory contracts with respect to computer software, hardware and support services;
- Negotiated with California First Leasing Corporation with respect to its claim for administrative expense and objection to the rejection of its lease agreement;
- Prepared two motion to reject credit card processing agreements with American Express and Bank of America and
- Prepared an Order granting the previously filed Motion for an Order Authorizing Rejection of Executory Contract with Dana Pike-Van Vlakte.

4. Claims Held by the Estate

Applicant preformed research with respect to potential claims against Roark Capital Group and reviewed documents produced by Roark Capital Group. Applicant also investigated potential claims against PNC Bank, National Association and entered into two stipulations extending the time to bring such claims. Applicant participated in negotiations with PNC Bank, National Association, including a meeting in Charlotte, North Carolina, which ultimately resulted the resolution of the Estate's claims for payment of \$150,000.

5. Sale of Assets

Applicant also assisted the Trustee in connection with the sale of assets as follows:

- Prepared a Motion for Order Approving Procedures for Sale of Miscellaneous Personal Property and Equipment and attended the hearing with respect to the motion;
- Prepared the Order granting the Motion for Order Approving Procedures for Sale of Miscellaneous Personal Property and Equipment and consulted with the Trustee to ensure that he complied with the procedures and reporting requirements with respect to the different sales by the Trustee and
- Prepared the Motion to Employ Accuval Associates as the appraiser to provide values for the equipment in connection with the liquidation of the same.

6. Recovery and Liquidation of Assets

Applicant assisted the Trustee is seeking to recover assets and liquidate them as follows:

- Sent demand letters seeking to collect the outstanding accounts receivable owed to the Estate;
- Handled inquiries received as a result of the demand letters;
- Prepared a motion seeking the Court's approval of a settlement of an account receivable by Attorney Recovery Systems ("ARS") and attended the hearing with respect to the settlement;
- Attempted to obtain an complete accounting of the services provided by ARS and compensation received and
- After not receiving a complete response, prepared and filed an adversary proceeding against ARS.

The foregoing has been a general overview of the background of this case and the services provided by the Applicant. Attached hereto as **Exhibit "A"** is a more detailed breakdown of the daily services provided by the Applicant, its attorneys and paraprofessionals. The following is a summary detail of the time, hourly rates and amounts for which compensation is sought:

<u>Name of Attorney</u>	<u>Hourly Rate</u>	<u>Time Expended</u>	<u>Compensation Sought</u>
<u>Partners</u>			
John A. Christy	\$385.00	25.4	\$9,779.00
John A. Christy	\$395.00	85.3	\$33,693.50
Lynn C. Stewart	\$300.00	4.7	\$1,410.00
Debra A. Wilson	\$290.00	21.5	\$6,235.00
Debra A. Wilson	\$300.00	27.3	\$8,190.00

J. Carole T. Hord	\$275.00	144.4	\$39,710.00
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Associate

Paul E. Vranicar	\$185.00	36.8	\$6,808.00
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Law Clerk/Paralegals

C. Blake Hogan	\$175.00	27.6	\$4,830.00
Amanda Brooks	\$165.00	48.5	\$8,002.50
Andrew Lavoie	\$165.00	2.6	\$429.00
Benjamin R. Carlsen	\$165.00	0.3	\$49.50
Awilda Aponte	\$140.00	11.8	\$1,652.00

In addition, Applicant has advanced certain expenses on behalf of the Chapter 7 Trustee for which it is entitled to reimbursement. All of the expenses described in **Exhibit "A"** were necessary and reasonable to the administration of the estate.

The professional services required in this case were performed by attorneys who have broad expertise and skills in the areas in which they rendered services. Attached hereto as **Exhibit "B"** is a brief summary of the qualifications of each of the attorneys who contributed services to this case for which compensation is sought.

EVALUATION OF SERVICES

This application for fees and expenses as counsel to the Chapter 7 Trustee is submitted under the standards set forth in Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11th Circuit. 1988). The criteria for evaluation

this application were set forth in that case and include, inter alia, the time and labor required; the novelty and difficulty and of the questions presented; the skills requisite to performing the legal services properly; the preclusion of other employment by the attorney due to acceptance of this case; the customary fee charged by such attorney; whether the fee is fixed or contingent; time limitations imposed by the client or other circumstances; the amount involved and the results obtained; the experience, reputation, and the ability of the attorneys; the nature and length of the professional relationship with the client; and the awards in similar cases.

Applicant seeks compensation for services rendered at its standard hourly rates. No premium or bonuses are being sought. Counsel shows that the Applicant was not paid a retainer and no prior requests for reimbursement of expenses and payment of fees in connection with the Chapter 7 case have been made or approved.

Applicant shows this Court that its fee application is reasonable in light of the awards in similar cases. A maximum award of \$395.00 per hour for 373 hours results in an average rate of approximately \$296.66 per hour for bankruptcy counsel. In a case such as this, such an average rate is competitive and comparable to rates charges by other attorneys for similar services. Applicant has experience in numerous bankruptcy cases. This experience has contributed to the ability to

perform the services which have been provided herein in a more efficient fashion such that the number of the total number of hours expended in this case has been less than what otherwise would have been expended.

Under these standards, the reasonable value of the services rendered by Schreeder, Wheeler & Flint, LLP as attorneys for the Chapter 7 Trustee in this case for the period of March 24, 2008 through and including October 31, 2008 of \$120,788.50 and expenses of \$6,251.85 for inter alia, postage, travel and copying charges are reasonable.

WHEREFORE, Schreeder, Wheeler & Flint, LLP prays that an allowance be made to it in the sum of \$120,778.50 for professional services rendered in this proceeding and for reimbursement of expenses in the amount of \$6,251.85 for the time period of March 24, 2008 through and including October 31, 2008.

This 17th day of November, 2008.

/s/ John A. Christy

John A. Christy

Georgia Bar No. 125518

J. Carole Thompson Hord

Georgia Bar No. 291473

Attorneys for Marcus A. Watson,
Chapter 7 Trustee

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AFFIDAVIT OF JOHN A. CHRISTY

STATE OF GEORGIA

COUNTY OF FULTON

Before me, the undersigned attesting office duly authorized to administer oaths, personally appeared John A. Christy, who, after being duly sworn, deposed and said:

1.

I am a partner in the law firm of Schreeder, Wheeler & Flint, LLP ("SWF") and the attorney responsible for SWF's representation of Marcus A. Watson, Chapter 7 Trustee, in the above-styled bankruptcy case.

2.

The facts set forth in the First Interim Application of Schreeder, Wheeler & Flint for Compensation and Reimbursement of Expenses for Chapter 7 Case and

the Exhibits thereto, are true and correct based on my knowledge and the business records of SWF maintained in the ordinary course of business, including time and disbursement records made by lawyers and paralegals of SWF at or near the time of each service or expense indicated by the records.

/s/ John A. Christy

JOHN A. CHRISTY

Georgia Bar No. 125518

Sworn to and subscribed before me
this 17th day of November, 2008.

/s/ Amy Crockett

Notary