SO ORDERED,

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: January 27, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:
COMMUNITY HOME FINANCIAL SERVICES, INC.

CHAPTER 11
CASE NO. 1201703EE

Hon. Roy H. Liddell
rliddell@wellsmarble.com
Hon. Jonathon Bissette
jbissette@wellsmarble.com
300 Concourse Boulevard, Suite 200
Ridgeland, MS 39157

Attorneys for Debtor (former)

Hon. Jim F. Spencer, Jr.
Hon. Stephanie M. Rippee
jspencer@watkinseager.com
srippee@watkinseager.com
Post Office Box 650
Jackson, MS 39205-0650

Attorneys for Edwards Family Partnership, LP and Beher Holdings Trust

Hon. Kristina M. Johnson
kjohnson@joneswalker.com
Post Office Box 427
Jackson, MS 39205-0427

Chapter 11 Trustee

Hon. Jeffrey R. Barber
jbarber@joneswalker.com
Post Office Box 427
Jackson, MS 39205-0427

Attorney for Chapter 11 Trustee

Edward Ellington, Judge

MEMORANDUM OPINION ON THE FOURTH AND FIFTH FEE APPLICATIONS OF ATTORNEYS FOR THE DEBTOR, WELLS MARBLE & HURST, PLLC

THIS MATTER came before the Court on the *Fourth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #317) filed by Roy H. Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC; *Edwards Family Partnership, L.P. and Beher Holdings Trust's Objection to Fee Applications* (Dkt. #349); *Response of Wells Marble & Hurst, PLLC to Objection to Fee Applications [Dkt. #349]* (Dkt. #356); *[Fifth] Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #398) filed by Roy H. Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC; *Edwards Family Partnership, L.P. and Beher Holdings Trust's Objection to Fifth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses (DK #398)* (Dkt. #420); *Wells Marble & Hurst, PLLC's Response to Objection [Dkt. #420] to Fifth Application for Allowance of Fees and Costs* (Dkt. #464); *Reply of Edwards Family Partnership, LP and Beher Holdings Trust in Support of Their Objections to Fourth and Fifth and Final Applications for Allowance of Fees and Expenses filed by Wells, Marble & Hurst PLLC* (Dkt. #465); *Trustee's Objection to: (1) Fourth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses [Dkt. #317]; and (2) Fifth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses [Dkt. #398]* (Dkt. #582). Having considered same, the testimony and evidence presented at trial, and the respective responses and briefs filed by the parties, the Court finds that for the reasons expressed more fully below, the applications are granted in part and denied in part.

TABLE OF CONTENTS

FINDINGS OF FACT[1]

Although not directly relevant to the matter pending before the Court, the Court will briefly describe the events leading up to the bankruptcy filing. Community Home Financial Services, Inc. (CHFS) is in the business of purchasing and servicing loan portfolios. The president of CHFS was William D. Dickson (Dickson). CHFS entered into various business transactions with several companies controlled by Dr. Charles C. Edwards (Dr. Edwards). This bankruptcy case evolved out of disputes between Dickson and CHFS on the one hand, and Dr. Edwards and his companies on the other.

CHFS and Edwards Family Partnership, LP and Beher Holdings Trust[2] (collectively, Edwards) entered into a series of agreements whereby Edwards invested money for the purchase of home improvement loans, typically second and third mortgages. In addition, CHFS and Edwards entered into seven (7) joint ventures for the purchase of mortgage portfolios. These mortgage portfolios consisted of a large number of individual promissory notes which were backed by first and second residential mortgages on homes located across the country. Edwards alleged the balance owed on the home improvement loans was $27,785,548.00, and the balance owed on the seven (7)

[1]These proposed findings of fact and conclusions of law constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to contested matters pursuant to Federal Rule of Bankruptcy Procedure 9014(c). To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

[2]CHFS had business dealings with The Rainbow Group, Ltd. and Beher Holdings, Ltd., two other entities controlled by Dr. Edwards, prior to entering into agreements with Edwards Family Partnership, LP and Beher Holdings Trust.

joint ventures was $12,018,591.89.[3] Edwards is by far the largest creditor of CHFS.

On February 15, 2012, CHFS (and Dickson individually) filed suit against Edwards and others in the Chancery Court of the First Judicial District of Hinds County, Mississippi. Roy Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC filed the complaint on behalf of CHFS and Dickson. A variety of relief was sought in the complaint, including: specific performance; an accounting; damages for breach of contract; and rescission or modification of the agreement.

On April 11, 2012, Edwards removed the suit to the United States District Court for the Southern District of Mississippi (District Court Litigation) [USDC Case No. 3:12-cv-252-CWR-LRA]. In the District Court Litigation, Edwards denied that CHFS and Dickson were entitled to any relief. Edwards also filed a counterclaim against CHFS and Dickson requesting various relief including: judgments against CHFS on the promissory notes; a judgment against Dickson on his guaranty agreements; and the appointment of a receiver for CHFS. Edwards filed a separate motion for the appointment of a receiver, and the district court set the receiver motion for trial.

Over the course of several days, the receiver motion was heard by United States District Court Judge Carlton W. Reeves (in Case No. 3:12-cv-252-CWR-LRA). The day prior to the final hearing before Judge Reeves, CHFS (Debtor) filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on May 23, 2012.[4] Jonathon Bissette filed the bankruptcy petition

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[3]*Edwards Family Partnership, LP and Beher Holdings Trust's Objection to Trustee's First Amended Disclosure Statement for the Chapter 11 Plan of Liquidation (Doc. No. 1080)*, Case No. 1201703EE, Dkt. #1124, p. 1-2, July 21, 2015.

[4]On March 29, 2013, Judge Reeves entered a *Memorandum Opinion and Order* (USDC Dkt. #100) in which he severed Edwards' counterclaims against Dickson. These counterclaims were assigned a new case number [USDC Case No. 13-cv-587-CWR-LRA]. Judge Reeves further held

for the Debtor.

On June 11, 2012, Derek A. Henderson (Henderson) filed his *Application of Debtor to Employ Counsel* (Dkt. #34). The *Order Authorizing Debtor to Employ Counsel* (Dkt. #52) was entered on July 5, 2012.

On June 21, 2012, Roy Liddell and Jonathon Bissette filed their *Application of Debtor to Employ Counsel* (Dkt. #45). The *Order Authorizing Debtor to Employ Counsel* (Dkt. #76) was entered on July 24, 2012, authorizing the Debtor to employ Roy Liddell (Liddell) and Jonathon Bissette (Bissette) of the law firm of Wells Marble & Hurst, PLLC (collectively, Wells Marble).

Except for the Internal Revenue Service, Edwards is, for the most part, the only creditor to actively participate in the Chapter 11 case. The relationship between Edwards and the Debtor appears to have been amicable at one point, but it deteriorated rapidly as the Chapter 11 case progressed. Any motion filed by the Debtor was hotly opposed by Edwards and vice versa. The Debtor filed adversary proceedings against Edwards that were also hotly contested. The Debtor proceeded as the debtor-in-possession (DIP) in the bankruptcy case for approximately a year and a half.

On December 20, 2013, Henderson filed *Disclosure of Transfer of Funds and Other Matters* (Dkt. #426) (Disclosure). In the Disclosure, Henderson stated that the Debtor had changed its principal place of business from Jackson, Mississippi, to the country of Panama, and had opened branch offices in Panama and in the country of Costa Rica. Further, Henderson disclosed that the Debtor transferred all of the funds from the Wells Fargo DIP bank accounts to banks located in the

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that "proceedings against CHFS remain subject to the bankruptcy stay." *Memorandum Opinion and Order*, USDC Case No. 12-cv-252-CWR-LRA, Dkt. #100, p. 6, March 29, 2013.

country of Panama. All of these actions were done by the president of the Debtor, Dickson, without the knowledge or the advice of Henderson or Dickson's personal bankruptcy attorney, Eileen N. Shaffer.[5]

On that same day, the United States Trustee (UST) filed the *United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee* (Dkt. #427). On December 23, 2013, the Court entered the *Order Granting United States Trustee's Emergency Motion for Order for the Appointment of a Chapter 11 Trustee* (Dkt. #429). The UST was directed to appoint a Chapter 11 trustee for the Debtor.

The *United States Trustee's Application for Approval of Chapter 11 Trustee* (Dkt. #455) was filed on January 8, 2014. On January 21, 2014, an *Order* (Dkt. #473) was entered appointing Kristina M. Johnson as the Chapter 11 trustee (Trustee) for the Debtor.

On September 4, 2013, Wells Marble filed its *Fourth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #317) (Fourth Application). In its Fourth Application, Wells Marble seeks compensation for services rendered to the Debtor from May 2, 2013, through August 30, 2013, in the amount of $68,305.00, and for expenses in the amount of $1,812.12.[6]

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[5]Dickson also relocated to Central America. Subsequently, he was arrested and returned to the United States by federal law enforcement personnel. He is currently facing criminal charges related to his transfer of assets of the bankruptcy estate out of the country. On September 10, 2015, Dickson entered a *Plea Agreement* in which Dickson pled guilty to two counts in the indictment. *United States v. Dickson*, No. 3:14-CR-78-TSL-FSB (S. D. Miss.). On December 10, 2015, Dickson was sentenced on his guilty plea.

[6]The Court previously approved fees and expenses for Wells Marble in the following amounts: First Application (Dkt. #109): $16,925.50 attorney's fees and $588.15 expenses (Dkt. #132). Second Application (Dkt. #155): $34,202.00 attorney's fees and $561.05 expenses (Dkt. #182). Third Application (Dkt. #229): $19,560.00 attorney's fees and $50.87 expenses (Dkt. #259).

On September 25, 2013, *Edwards Family Partnership, L.P. and Beher Holdings Trust's Objection to Fee Applications* (Dkt. #349) (Fourth Objection) was filed. In its Fourth Objection, Edwards alleges that because Wells Marble was representing Dickson in the District Court Litigation, Wells Marble should be denied compensation because it was not disinterested pursuant to 11 U.S.C. § 328(e)(E)[7] *(sic).*

On November 12, 2013, Wells Marble filed its *[Fifth] Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #398) (Fifth Application). In its Fifth Application, Wells Marble seeks compensation for services rendered to the Debtor from September 1, 2013, through October 31, 2013, in the amount of $56,562.00, and for expenses in the amount of $2,323.47.

On November 13, 2013, the Court entered an *Order Allowing Withdrawal of Counsel* (Dkt. #401) which allowed Liddell, Bissette and Wells Marble to withdraw as attorneys for the Debtor.

On December 2, 2013, *Edwards Family Partnership, L.P. and Beher Holdings Trust's Objection to Fifth Fee Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses (DK #398)* (Dkt. #420) (Fifth Objection) was filed. In its Fifth Objection, Edwards objects to the Fifth Application on the same grounds as it objected to the Fourth Application (disinterestedness).

The Trustee filed *Trustee's Objection to: (1) Fourth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses [Dkt. #317]; and (2) Fifth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses [Dkt. #398]*

[7]Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

(Dkt. #582) (Trustee Objection) on March 17, 2014.

A trial was held on the Fourth and Fifth Applications and the objections on January 30, 2015. At the trial, the Trustee stated that she "will abide by whatever the Court rules in this case relating to . . . [the] two fee applications." (Trial Tr. at 43). At the conclusion of the trial, Wells Marble and Edwards agreed upon a briefing schedule. The transcript of the trial was received on April 14, 2015 (Dkt. #1037).

On April 7, 2015, the Trustee filed *Urgent Motion to: (1) Withdraw the Reference to Bankruptcy Court of the Whole Chapter 11 Case or, Alternatively, of Certain Adversary Proceedings and Contested Matters, and (2) Consolidate Certain Adversary Proceedings and Contested Matters with Pending District Court Actions*[8] (Dkt. #1026) (Trustee Motion) in the Debtor's bankruptcy case. In addition, the Trustee filed a separate complaint[9] in the United States District Court for the Southern District of Mississippi against Edwards and other parties. Shortly thereafter, this Court put the entire bankruptcy case "on hold" pending a ruling by the United States District Court on whether it would grant the Trustee Motion to withdraw reference of the bankruptcy case.

On April 9, 2015, the Court of Appeals for the Fifth Circuit entered an opinion relating to the compensation of professionals in bankruptcy cases, *Barron & Newburger, PC v. Tex. Skyline,*

[8]These motions were also filed in the adversary proceedings. The motions were assigned USDC Case Numbers:15-cv-312; 15-cv-313; 15-cv-314; 15-cv-315; and 15-cv-316. Eventually, all of these cases were assigned to Judge Reeves.

[9]The complaint contains nine (9) counts [USDC Case No. 3:15-cv-260-CWR-LRA]. Since the first count is a claim that Edwards and others violated the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, this lawsuit has been labeled the RICO Action.

Ltd. (In re Woerner), 783 F.3d 266 (5th Cir. 2015). On August 6, 2015, and August 24, 2015,[10] Wells Marble and Edwards submitted supplemental briefs addressing the effect, if any, of the *Woerner* decision on the Fourth and Fifth Applications and Edwards' objections.

On June 29, 2015, Judge Reeves entered an *Order*[11] denying the Trustee Motion (to withdraw reference). On July 15, 2015, Judge Reeves entered an *Order*[12] in the RICO Action denying the Trustee's motion to consolidate; denying Edward's motion to dismiss; granting a motion to exceed the page limit; and after the parties had met with the Magistrate Judge, granting the Trustee leave to file an amended complaint.[13] Since Judge Reeves had denied all of the Trustee's motions to withdraw reference, the bankruptcy case was no longer "on hold," and the Court "reinstated" the Fourth Application, Fifth Applications and the objections on its matters under advisement list.

CONCLUSIONS OF LAW

I. Jurisdiction

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(1) and (2)(A).

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[10]Docket Numbers 1130 and 1145.

[11]3:15-cv-316-CWR-LRA, (S.D. Miss. June 29, 2015) (Dkt. #4).

[12]3:15-cv-260-CWR-LRA, (S.D. Miss. July 15, 2015) (Dkt. #27).

[13]The parties met with the Magistrate Judge Linda R. Anderson on July 29, 2015. On August 5, 2015, an *Agreed Order Dismissing Count I of Complaint* (*Id.* at Dt. Crt. Dkt. #28) was entered in which the Trustee dismissed without prejudice the RICO action. On August 6, 2015, the parties entered an *Agreed Order Directing the Parties to Mediation* (*Id.* at Dt. Crt. Dkt. #29). The parties agreed to participate in mediation before former bankruptcy judge David W. Houston, III, no later than August 28, 2015.

II. Employment and Compensation

A. Waiver of Right to Object

Wells Marble asserts that since Edwards did not raise the question of the disinterestedness until sixteen (16) months after the case had been filed and fifteen (15) months after it filed its application to be employed, Edwards has waived its right to object to the Fourth and Fifth Applications on the grounds of disinterestedness. As discussed more fully below, while it would have been easier on all parties involved if Edwards had raised its disinterestedness objections to Wells Marble's employment when the application to employ was filed, Edwards is not barred from raising it at this point.

Federal Rule of Bankruptcy Procedure 2016[14] provides that "[a]n entity seeking interim. . . compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." Only "[a]fter notice . . . and a hearing"[15] may the Court approve an application for compensation. "Any amounts that were awarded as interim compensation are subject to reconsideration at any time prior to the final award, for any reason." 3 *Collier on Bankruptcy* ¶ 331.04[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (footnote omitted). "Because of the speculative nature of interim fee awards, they are 'always subject to the court's reexamination and adjustment during the course of the case.' *In re Evangeline*,

[14]Hereinafter, all rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

[15]11 U.S.C. § 330(a)(1).

890 F.2d at 1321."[16] Until the final fee application is filed (which would be Wells Marble's Fifth Application), all awards of compensation are subject to reconsideration. Consequently, Edwards has not waived its right to object to the fee applications.

B. Statutory Framework

1. Hiring of Attorneys

When CHFS filed bankruptcy under Chapter 11 of the Bankruptcy Code, CHFS became the DIP pursuant to § 1101 and retained control of all of the property of the Debtor's[17] estate. *See* 11 U.S.C. § 541(a). As a DIP, the Code permits a DIP to hire professionals to represent and to assist it under § 327. "Congress has enacted a uniform scheme for retaining and compensating . . . attorneys under 11 U.S.C. §§ 327-330. First, under § 327[ ], the debtor must obtain the bankruptcy court's approval to employ the attorney."[18] Once the attorney's employment has been approved under § 327, "an attorney . . . may request 'reasonable compensation for actual, necessary services rendered.' The bankruptcy court may exercise its discretion, upon motion or sua sponte, to 'award compensation that is less than the amount . . . requested.' *Id.* § 330(a)(2)."[19]

a. § 327(a)

Section 327 provides for the employment of an attorney by a DIP via several different subsections. The first is found in subsection (a), and it provides for the employment of the "general counsel" to a bankruptcy estate who will "represent or assist the trustee in carrying out the trustee's

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[16]*In re Fernandez*, 441 B.R. 84, 98-99 (Bankr. S.D. Tex. 2010), *aff'd*, No. 07-35173, 2011 WL 1404891 (S.D. Tex. Apr. 13, 2011), *aff'd*, 478 F. App'x 138 (5th Cir. 2012) (unpublished).

[17]The terms debtor-in-possession and debtor are synonymous.

[18]*Woerner*, 783 F.3d at 271-72.

[19]*Id.* at 272.

duties under this title."[20] An attorney hired as a DIP's "general counsel" must "not hold or represent an interest adverse to the estate" and must be a "disinterested person[]."[21]

Further, § 328(c) provides that an attorney hired pursuant to § 327(a) may be denied compensation "if, at any time during such professional person's employment. . .such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed."

The definition of a "disinterested person" is found in § 101(14):

> (14) The term "disinterested person" means a person that--
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> > (A) is not a creditor, an equity security holder, or an insider;
> >
> > (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
> >
> > (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101.

"With its two requirements in the conjunctive, § 101(14)(C) in particular 'sets forth very stringent standards that must be met for approval as counsel' under § 327(a). This prescription for a 'cleaner,' 'unconnected' status is very much in line with the function of an attorney engaged under § 327(a). . . ." *In re Polaroid Corp.*, 424 B.R. 446, 450 (Bankr. D. Minn. 2010) (citations omitted). A DIP's "general counsel" will be involved in the DIP's general administrative duties, the review of claims, the drafting of a plan, etc., "hence the statutory requirement that such counsel be clear of

[20]11 U.S.C. § 327(a).

[21]*Id.*

parties with such claims, in all material ways, for the performance of their relevant duties to the estate." *Id.* at 451.

While *disinterested* is defined in the Bankruptcy Code, *adverse interest* is not defined. The Fifth Circuit defined the term *adverse interest* as:

> A party has an "adverse interest" to the estate if they: "(1) [ ] possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) [ ] possess a predisposition under circumstances that render such a bias against the estate." *West Delta Oil*, 432 F.3d at 356 (quotation marks omitted); *see also In re AroChem Corp.*, 176 F.3d 610, 623 (2d Cir.1999) (same); *In re Crivello*, 134 F.3d 831, 835 (7th Cir.1998) (same). The determination of an adverse interest must be made "with an eye to the specific facts of each case." *West Delta Oil*, 432 F.3d at 356. The standards for finding a conflict are "'strict'" and "attorneys engaged in the conduct of a bankruptcy case 'should be free of the slightest personal interest which might be reflected in their decisions concerning matters of the debtor's estate or which might impair the high degree of impartiality and detached judgment expected of them during the course of administration.' " *West Delta Oil*, 432 F.3d at 355 (quoting *In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1256 & n. 6 (5th Cir.1986)).

In re Am. Int'l Refinery, Inc., 676 F.3d 455, 461-62 (5th Cir. 2012)(footnote omitted).

b. § 327(c)

The second avenue by which an attorney may be hired is under § 327(c). Under § 327(c), an attorney who has represented or currently represents a creditor is not "automatically. . .deemed either adversely interested or not disinterested and, therefore, disqualified for employment. . . .If a professional person is considered for employment, it remains important to determine whether the person is disqualified on any other ground, e.g., an interest adverse to the estate." 3 *Collier on Bankruptcy* ¶ 327.04[7][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

c. § 327(e)

The final avenue by which an attorney may be hired is under § 327(e). "[T]he *only* way in which an attorney who has previously represented the debtor can be employed by the trustee is when such employment is authorized by the court [under § 327(e)] and is 'for a specified special purpose, other than to represent the trustee in conducting the case.'"[22] Subsection (e) of § 327 is commonly referred to as employment for a *special purpose* and applies specifically to attorneys who have represented the debtor. "This provision thus recognizes the long-standing general rule that the trustee should not ordinarily employ an attorney who represents or has represented the bankrupt debtor, because the trustee should have an advisor impartial as between creditors."[23]

While § 327(e) does not specifically mention a debtor in possession hiring special counsel, the authority to hire special counsel comes from the interplay between § 327(a) and § 1107(b). "[S]ection 1107(a) makes it possible for the debtor in possession to employ its own attorneys, accountants or other professionals to represent it in the chaper 11 case. Pursuant to section 1107(b), a professional is not disqualified from employment solely because of prepetition employment by or representation of the debtor."[24]

Section 327(e) provides:

> (e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C.A. § 327(e). The requirement that the debtor's attorney is hired for a *specified special*

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[22] *In re NRG Resources, Inc.*, 64 B.R. 643, 647 (W.D. La. 1986) (footnote omitted).

[23] *Id.* (citation omitted).

[24] 3 *Collier on Bankruptcy* ¶ 327.05[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). (footnotes omitted).

purpose "serves the important policy of avoiding an unnecessary duplication of services at the expense of the estate. *In re U.S. Golf Corp.*, 639 F.2d 1197, 1201-02 (5th Cir. 1981)."[25]

"As if to underline the distinction between the roles of 'special counsel' under this provision and 'general counsel' under § 327(a), § 327(e) excludes the function of 'represent[ing] the trustee in conducting the case' from the professional roles that may be performed under its ambit." *In re Polaroid Corp.*, 424 B.R. at 451. (footnoted omitted). For this reason, "[s]ection 327(e) has a narrower focus than § 327(a), and imposes fewer restrictions on the proposed attorney." *Id.* at 452. (citations omitted).

As opposed to § 327(a), when employment is sought under § 327(e), the disinterestedness requirement is eliminated and the conflict of interest issue is narrowed to a "factual evaluation of actual or potential conflicts only as related to the particular matters for which representation is sought."[26]

Section 327(e) identifies three (3) requirements for the approval of counsel for special purpose employment: the attorney has represented the debtor previously, the employment must be in the best interest of the estate, and the attorney must not hold an *adverse interest* "with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e). Subsection (e) of § 327 "will most likely be used when the debtor is involved in complex litigation, and changing attorneys in the middle of the case after the bankruptcy case has commenced would be detrimental to the progress of that other litigation."[27]

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[25]*NRG Resources,* 64 B.R. at 647.

[26]*In re Statewide Pools, Inc.,* 79 B.R. 312, 314 (Bankr. S.D. Ohio 1987).

[27]H.R. Rep. No. 595, 95th Cong., 1st Sess. 328; S. Rep. No. 989, 95th Cong., 2nd Sess. 38-39.

2. Compensation of Attorneys

Once an attorney has been hired under a subsection of § 327, the attorney may request compensation pursuant to § 330. As stated previously, the Debtor hired Wells Marble to represent it in the above-styled bankruptcy case. Subsequently, Wells Marble filed its Fourth Application and Fifth Application for compensation pursuant to § 330(a), and Edwards filed its objections. Section 330(a) provides in pertinent part:

> **11 U.S.C. § 330. Compensation of officers**.
>
> (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 professional person employed under section 327 or 1103–
>
> > (A) reasonable compensation for actual, necessary services rendered by . . . [an] 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 or . . . any other party in interest, award compensation that is less than the amount of compensation that is requested.
>
> (3) In determining the amount of reasonable compensation to be awarded to [a] . . . professional person, 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;
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> > (E) with respect to a professional person, whether the person is board

> certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
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> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a).

C. Legal Standard

In *Perdue v. Kenny*, 559 U.S. 542, 551 (2010), the Supreme Court of the United States adopted the method to calculate attorney's fees as established by the Court of Appeals for the Third Circuit.[28] In adopting the Third Circuit's lodestar approach, the Supreme Court noted "that because the method is readily administrable and objective, it 'cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results.' *Perdue v. Kenny,* 559 U.S. 542, 552, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010)." *In re Ritchey*, 512 B.R. 847, 864 (Bankr. S.D. Tex. 2014).

"The lodestar is calculated by multiplying the number of hours an attorney reasonably spent on the case by an appropriate hourly rate, which is the market rate in the community for this work. There is a strong presumption of the reasonableness of the lodestar amount." *Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013) (citations omitted). The party seeking an award of attorney's fees bears the burden of "establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *United States ex rel. Rigsby v. State Farm Fire & Cas. Co.*, No. 1:06cv433, 2014 WL 691500, at *9 (S.D. Miss. Feb. 21, 2014).

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[28]The lodestar approach was pioneered by the Third Circuit in *Lindy Bros. Builders, Inc. of Philadelphia v. Am. Radiator & Standard Sanitary Corp.,* 487 F.2d 161 (3d Cir. 1973), *appeal after remand*, 540 F.2d 102 (1976).

In the bankruptcy context, the method a court must follow in order to determine the amount of an award of attorney's fees was explained by the Fifth Circuit:

> Following the Bankruptcy Code's enactment, we made clear that the lodestar, *Johnson* factors, and § 330 coalesced to form the framework that regulates the compensation of professionals employed by the bankruptcy estate. *See Cahill*, 428 F.3d at 539–40. Under this framework, bankruptcy courts must first calculate the amount of the lodestar. *Id.* at 539. After doing so, bankruptcy courts "then may adjust the lodestar up or down based on the factors contained in § 330 and [their] consideration of the twelve factors listed in *Johnson.*" *Id.* at 540. We also have emphasized that bankruptcy courts have "considerable discretion" when determining whether an upward or downward adjustment of the lodestar is warranted.

CRG Partners Grp., LLC v. Neary (In re Pilgrim's Pride Corp.), 690 F.3d 650, 656 (5th Cir. 2012), *as revised* (Aug. 14, 2012) (citation omitted) (footnote omitted).

The *Johnson* factors are:

> (1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or other circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The "undesirability" of the case; (11) The nature and length of the professional relationship with the client; (12) Awards in similar cases. *In re First Colonial Corp. of Am.*, 544 F.2d 1291, 1298–99 (5th Cir.1977) (quoting *Johnson v. Ga. Highway Express, Inc.* 488 F.2d 714, 717–19 (5th Cir.1974)).

Pilgrim's Pride, 690 F.3d at 654.

It should be noted that the United States Supreme Court has stated that there is a strong presumption that the lodestar method provides a reasonable fee. *Perdue*, 559 U.S. at 552. The Supreme Court has further held that "'[t]he district court also may consider [the] factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (CA5 1974), though it should note that many of these factors usually are subsumed within the initial calculation of hours

reasonably expended at a reasonable hourly rate.'"[29]

In summary, the Court must first determine the lodestar fee "by multiplying the number of hours an attorney would reasonably spend for the same type of work by the prevailing hourly rate in the community. A court then may adjust the lodestar up or down based on the factors contained in § 330 and its consideration of the twelve factors listed in *Johnson." In re Cahill*, 428 F.3d 536, 540 (5th Cir. 2005) (citations omitted) (footnote omitted).

D. Calculation of Lodestar

At the trial, the following exchange took place between the Court and the attorney for Edwards, Jim Spencer (Spencer):

> THE COURT: One question, comment. As you know you have the Johnson factors and then 330 . . . but really your objection is that the benefit to the estate and the conflict those are really -- you have two issues.
>
> MR. SPENCER: Yes, sir.
>
> THE COURT: The other --
>
> MR. SPENCER: That's exactly right. We don't contest the [fact] that their rates were fine and we don't object to the -- we don't say that they didn't do the work that they said they did.

(Trial Tr. at 58). Since Edwards does not object to the rates or hours expended by Wells Marble, the Court will not go through each of the *Johnson* factors. Considering all factors, the Court finds that the hours billed by Wells Marble to be reasonable.

[29] *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564, (1986) supplemented, 483 U.S. 711 (1987) (citation omitted); *see also Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013) ("The lodestar may not be adjusted to a *Johnson* factor that was taken into account during the initial calculation of the lodestar.")

Fourth Application:

Paralegal: 1.00 hour

Liddell: 93.60 hours

Bissette 326.90 hours

Fifth Application:

Liddell: 90.60 hours

Bissette 248.70 hours

Further, since the Court recently held that a reasonable maximum hourly rate and the prevailing maximum market rate in this Court for attorneys to be $350.00 and for non-professionals to be $125.00,[30] the Court finds that the hourly rates in the Application of $240.00 for Liddell, $140.00 for Bissette, and $75.00 for the paralegal to be reasonable.

The Court finds the following to be the lodestar figure for the Fourth Application:[31]

LODESTAR CALCULATION FOURTH APPLICATION

TIMEKEEPER	HOURS	RATE	TOTAL
Paralegal	1.00	$75.00	$75.00
Liddell	93.60	$240.00	$22,464.00
Bissette	326.90	$140.00	$45,766.00
			$68,305.00

[30] *In re Cmty. Home Fin. Servs., Inc.*, No. 1201703EE, 2015 WL 6511183, at *23 (Bankr. S.D. Miss. Oct. 27, 2015).

[31] The Fourth Application requests $1,812.12 for expenses. Edwards did not object to the expenses requested by Wells Marble.

The Court finds the following to be the lodestar figure for the Fifth Application:[32]

LODESTAR CALCULATION FIFTH APPLICATION			
TIMEKEEPER	HOURS	RATE	TOTAL
Liddell	90.60	$240.00	$21,744.00
Bissette	248.70	$140.00	$34,818.00
			$56,562.00

The Court will now determine whether the lodestar amount should be adjusted because Wells Marble had a disqualifying conflict of interest.

E. Disinterestedness/Adverse Interest

The Court must first note that there are many things in this case that should have been done differently. To start, neither the *Application of Debtor to Employ Counsel* (Dkt. #45) nor the *Order Authorizing Debtor to Employ Counsel* (Dkt. #76) cites a specific code section under which Wells Marble was seeking to be employed. Wells Marble was approved as the attorney for the Debtor (in some capacity) and had three prior fee applications approved before Edwards raised the objection that Wells Marble should not be compensated because it had a conflict of interest in that it was representing both the Debtor and Dickson–a fact Edwards knew long before the bankruptcy case was filed because of the District Court Litigation.

Indeed, at a hearing before Judge Reeves on the day the bankruptcy petition was filed (May 23, 2012), Liddell informed the court and the parties that the Debtor would be filing bankruptcy and

[32]The Fifth Application requests $2,323.47 for expenses. Edwards did not object to the expenses requested by Wells Marble.

that Henderson would be representing the Debtor in the bankruptcy case.[33] Liddell stated: "I'm not going to be involved in this one except tangentially because I think someone – and if you really want to know who it is, Derek Henderson and I spoke this morning. Derek is one of the best in town."[34]

Wells Marble's and Edwards' responses and briefs submitted to the Court on Wells Marble's applications mainly cite cases which address attorneys hired under § 327(a). Except for one paragraph contained in *Edwards Family Partnership, L.P. and Beher Holdings Trust's Reply to Response of Wells Marble & Hurst, PLLC to Objection to Fee Application (Dk #356)* (Dkt. #380), Edwards does not address the issue of whether Wells Marble was hired for a specific purpose pursuant to § 327(e). To the contrary, Edwards states: "No specific purpose is identified in Wells Marble's application. Accordingly, it is counsel to the Debtor and its employment is governed by 327(a), not 327(e)."[35]

The problem with Edwards' argument is that Wells Marble represented the Debtor pre-petition. "[T]he *only* way in which an attorney who has previously represented the debtor can be employed by the [debtor] is when such employment is authorized by the court [under § 327(e)] and is 'for a specified purpose, other than to represent the trustee in conducting the case.'"[36]

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[33]The bankruptcy petition was filed on May 23, 2012, at 11:30 A.M. by Wells Marble. Henderson filed the first pleading on June 1, 2012, and after notice and a hearing, Henderson was approved as attorney for the debtor on July 5, 2012, (Dkt. #52).

[34]*Wells Marble & Hurst, PLLC's Response to Objection [Dkt #420] to Fifth Application for Allowance of Fees and Costs,* Case No. 1201703EE, Dkt. #464, Exhibit B, p. 273, January 14, 2012.

[35]*Edwards Family Partnership, L.P. and Beher Holdings Trust's Reply to Response of Wells Marble & Hurst, PLLC to Objection to Fee Application (Dk #356),* Case No. 1201703EE, Dkt. #380, p. 2, October 25, 2013.

[36]*NRG Resources,* 64 B.R. at 647.

Finally, at the trial[37] and in *Edwards Family Partnership, L.P. and Beher Holdings Trust's Brief in Opposition to Wells, Marble & Hurst, PLLC's Fourth and Fifth Applications for Allowance of Fees and Expenses (Doc. Nos. 317, 398)* (Dkt. #1145), Edwards states another ground for objecting to Wells Marbles' fee applications: that the services provided by Wells Marble did not benefit the estate as required by § 330.[38]

Because the Court is faced with the case in the current posture, the Court will plow through, as counsel for Edwards called it, the *mess*[39] in the best fashion that it can.

1. What is Wells Marble's Status?

In a review of the Wells Marble time sheets attached to each fee application, there is very little on the time sheets devoted to the administration of the bankruptcy case. Of course, the first fee application has entries related to the initial filing of the case, but after Henderson made his appearance, Wells Marble turned the conduct of the case over to Henderson. The five time sheets attached to each of the five fee applications show that the bulk of Wells Marble's time entries are related to the District Court Litigation, a failed mediation attempt in the bankruptcy case, and litigation of the adversary proceedings filed in this Court. In contrast, Henderson's time sheets reflect work on the administration of the bankruptcy case: the schedules and matrix, cash collateral issues, proofs of claims, and the plan and disclosure statement, to name a few.

Over the years, Wells Marble has appeared before this Court representing creditors, but

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[37]Tr. Trans. at 55.

[38]While Edwards does not specify which subsection under § 330 it asserts applies, the Court presumes Edwards is traveling under § 330(a)(4)(A)(ii)(I).

[39]At trial, counsel for Edwards stated to the Court: "[Y]ou made a statement that sums up this whole mess in about two sentences." Tr. Trans. at 52.

Wells Marble has never represented a debtor in this Court. On the day the petition was filed, Liddell informed Judge Reeves that since he did not have experience as a debtor's attorney, Henderson would be representing the Debtor.[40] In the numerous hearings before this Court, Henderson has taken the lead with regard to matters involving the administration of the bankruptcy estate.

The court in *In re D.L. Enterprises*, 89 B.R. 107 (Bankr. C.D. Cal. 1988), was also faced with a case where many things should have been done differently. In *D.L. Enterprises*, a law firm was hired as special counsel under § 327(e) to conduct the sale of the debtor's property. When the law firm filed its fee application post-sale, a creditor filed an objection, and at that point, the fact that the application to employ was deficient came to light. The application to employ failed to disclose the law firm's pre-petition and post-petition representation of the debtor's general partner and of pending lawsuits, and like the case at bar, the creditor had known about the law firm's dual representation. The court stated that had it known all of the facts at the time the application to employ was approved, it would not have entered the order granting the application to employ.[41]

> I see here mistake after mistake. If debtor and MJDP had made the proper disclosures, MJDP would not have been retained and it would not have performed substantial services without the prospect of being paid. If GLA had opposed the application on the basis of MJDP's prior representation of debtor, OHL and Dennehy (information which it knew), a full hearing would have occurred and all the facts would likely have surfaced leading to a denial of the Application. Because of these mistakes, I have a situation where MJDP has performed significant services benefitting the estate and an objection to payment of fees already earned.
>
> Under the circumstances, some penalty is warranted, but not denial of all the fees.

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[40]Response (Dkt. #464), *supra* note 31, at 20.

[41]*D.L. Enterprises*, 89 B.R. at 111.

D.L. Enterprises, 89 B.R. at 112.

Unlike the situation faced by the court in *D.L. Enterprises*, if Wells Marble had correctly filed its application to employ pursuant to § 327(e), this Court would most likely have approved Wells Marble's employment. But, like *D.L. Enterprises*, if Wells Marble had simply listed § 327(e) in its application to employ, the situation before the Court would be less of a *mess.*

Similar to *D.L. Enterprises*, the Court believes some penalty is warranted, but the Court will exercise its discretion and will not deny all of Wells Marble's fees. "A court may look at the totality of the circumstances, including the role of counsel prior to the filing and the actual services performed by counsel during the case, to determine whether the scope of its work will be (or has been) limited to a specified purpose under section 327(e)."[42] From a review of the time sheets, it is apparent from the actual services rendered by Wells Marble that Wells Marble was intended to be hired as special counsel for the Debtor pursuant to § 327(e) and not as general bankruptcy counsel pursuant to § 327(a). Wells Marble had been representing the Debtor in the complex litigation which was pending in District Court pre-petition. Wells Marble continued to represent the Debtor in District Court and to bring adversary proceedings against Edwards here. This is the type of situation contemplated by Congress. The legislative history of § 327(e) provides: Section 327(e) "'will most likely be used when the debtor is involved in complex litigation, and changing attorneys in the middle of the case after the bankruptcy case has commenced would be detrimental to the progress of the litigation.'"[43]

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[42]3 *Collier on Bankruptcy* ¶ 327.04[9][d] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

[43]3 *Collier on Bankruptcy* ¶ 327.04[9][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (footnote omitted).

Like the creditor in *D.L. Enterprises,* Edwards raises the issue that Wells Marble failed to disclose that it was representing Dickson in the District Court Litigation. And like the situation in *D.L. Enterprises*, Wells Marble's application to employ does not disclose that it was representing Dickson in the District Court Litigation, however, Edwards was very well aware of the fact that Wells Marble was representing the Debtor and Dickson in the District Court Litigation. At the first hearing held in this case, only fifteen (15) days after the case was filed, Edwards made the Court aware of the ongoing litigation in District Court and of the fact that Wells Marble was representing the Debtor and Dickson in the District Court Litigation.[44]

Edwards has repeatedly stated that Edwards holds "99.9% of all outstanding claims in this bankruptcy."[45] Edwards, the Internal Revenue Service (IRS), the Mississippi Department of Revenue (MDOR), and, recently, The Debt Exchange, Inc., are the only creditors who routinely appear for hearings in this case, however, the appearances of the IRS, MDOR and The Debt Exchange, Inc. are very limited and are related to specific hearings which affect their claims.

Like the situation faced by the court in *D.L. Enterprises*, the Court is not pleased with the

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[44]The hearing was on *Edwards Family Partnership, LP and Beher Holdings Trust's Emergency Motion to (I) Prohibit Use of Cash Collateral (II) Require the Debtor to Segregate Funds Belonging to Joint Ventures and (III) Prohibit the Debtor from Using Such Joint Venture Funds and Requiring Payment of Funds to Edwards Family Partnership, LP and Beher Holdings Trust* (Dkt. #23). In this motion, Edwards describes the events which occurred in District Court prior to the filing of the bankruptcy petition.

[45]*Edwards Family Partnership, L.P. and Beher Holdings Trust's Objection to Fee Applications*, Case No. 1201703EE, Dkt. #349, p. 1, September 25, 2013. *See also Edwards Family Partnership, L.P. and Beher Holdings Trust's Reply to Response of Wells Marble & Hurst, PLLC to Objection to Fee Application (Dk #356),* Case No. 1201703EE, Dkt. #380, p. 3, October 25, 2013; *Edwards Family Partnership, L.P. and Beher Holdings Trust's Brief in Opposition to Wells Marble & Hurst, PLLC's Fourth and Fifth Applications for Allowance of Fees and Expenses (Doc. Nos. 317, 398),* Case No. 1201703EE, Dkt. #1145, p. 10-11, August 24, 2015.

lack of disclosure, but under the circumstances of this particular case, the Court does not find the fact that Wells Marble's application to employ fails to state that it was representing Dickson and the Debtor in the District Court Litigation to be a fatal flaw which would justify the denial of all compensation to Wells Marble.

> The bankruptcy court is in the best position to judge the credibility of any witness who testifies under oath before it, including an attorney-at-law. Moreover, the bankruptcy court is more familiar with the proceedings and is thus better equipped to determine deficiencies in the attorney's application for fees than either the district court or this court.
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> . . . .
>
> It is well established law that, absent compliance with the Bankruptcy Code and Rules, an attorney has no absolute right to an award of compensation. *E.g., Matter of Evangeline Refining Co.*, 890 F.2d 1312, 1323 (5th Cir.1989); *In Re Chambers*, 76 B.R. 194 (Bankr.M.D.Fla.1987); *In Re Lavender*, 48 B.R. 393, 397 (Bankr.W.D.Ark.1984), *aff'd* in *Lavender v. Wood Law Firm*, 785 F.2d 247 (8th Cir.1986).
>
> . . . .
>
> However, the bankruptcy court is one of equity and thus has broad equitable-and hence discretionary-powers to award attorney's fees. *Matter of Lawler,* 807 F.2d 1207, 1211 (5th Cir.1987).

In re Anderson, 936 F.2d 199, 204 (5th Cir. 1991).

Considering the totality of the circumstances of this case and exercising its "broad equitable-and hence discretionary-powers to award attorney fees," *id.*, the Court finds that Wells Marble acted as special counsel for the Debtor under § 327(e) for the purpose of continuing the District Court Litigation and to litigate the related adversary proceedings filed in the bankruptcy case. The Court will now determine what compensation, if any, Wells Marble is entitled to receive.

2. Does Wells Marble have an adverse interest?

Since the Court has determined that Wells Marble was acting as special counsel under §

327(e), the disinterestedness requirement of § 327(a) is eliminated and the conflict of interest issue is narrowed to a "factual evaluation of actual or potential conflicts only as related to the particular matters for which representation is sought."[46] "As we have noted, special counsel employed under § 327(e) need only avoid possessing interests 'adverse to the debtor or to the estate *with respect to the matter on which such attorney is to be employed.*'" *I.G. Petroleum, L.L.C. v. Fenasci (In re West Delta Oil Co., Inc.),* 432 F.3d 347, 357 (5th Cir. 2005) (footnote omitted).

Edwards asserts that the following acts show that Wells Marble was representing the interests of Dickson, not the bankruptcy estate, and, therefore, Wells Marble had "a conflict or potential conflict between the interests of Dickson and those of the bankruptcy estate":[47] (1) the provisions in the plan which provided for a release of Dickson's guarantees; (2) attempting to have the automatic stay applied to Dickson personally; and (3) allegations that pre-petition, Dickson diverted $3.2 million of the Debtor's funds to himself and companies controlled by him.[48]

Edwards uses the term *conflict of interest*, however, as stated above, the test is did Wells Marble "[possess] interests 'adverse to the debtor or to the estate *with respect to the matter on which such attorney is to be employed*?'" *West Delta Oil Co.*, 452 F.3d at 357. Consequently, the Court will use the term adverse interest.

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[46]*Statewide Pools,* 79 B.R. at 314.

[47]*Reply of Edwards Family Partnership, LP and Beher Holdings Trust in Support of Their Objections to Fourth and Fifth and Final Applications for Allowance of Fees and Expenses filed by Wells, Marble & Hurst PLLC,* Case No. 1201703EE, Dkt. #465, p. 4, January 15, 2014.

[48]*See Reply of Edwards Family Partnership, LP and Beher Holdings Trust in Support of Their Objections to Fourth and Fifth and Final Applications for Allowance of Fees and Expenses filed by Wells, Marble & Hurst PLLC,* Case No. 1201703EE, Dkt. #465, p. 4-5, January 15, 2014, and *Edwards Family Partnership, L.P. and Beher Holdings Trust's Brief in Opposition to Wells Marble & Hurst, PLLC's Fourth and Fifth Applications for Allowance of Fees and Expenses (Doc. Nos. 317, 398),* Case No. 1201703EE, Dkt. #1145, p. 4-5, August 24, 2015.

a. Release of Guaranties

Edwards contends that because the plan provided for a release of Dickson's personal guaranties, the Debtor's plan was not confirmable, and, therefore, Wells Marble should not be compensated because it was following Dickson's commands. The Court notes that Edwards has produced no proof that Dickson directed this provision to be put in the plan. Further, Edwards has not produced any proof that Wells Marble prepared the plan on behalf of the Debtor.

The Court finds, however, that there is no prohibition against the Debtor including such a provision in its plan–indeed, over the years, this Court has seen many similar provisions in Chapter 11 plans. The inclusion in the plan of the release of Dickson's guaranties was a *gamble*, which ultimately proved to be unsuccessful because Edwards objected to the provision. The Fifth Circuit has held that a provision to release a non-debtor is not permitted by the Code *when* the affected creditor timely objects to the release. *Feld v. Zale Corp. (In re Zale),* 62 F.3d 746, 780 (5th Cir. 1995). Edwards objected to the release, and, therefore, before the plan could be confirmed, that provision would be removed from the Debtor's plan.

Further, Edwards has not brought to the Court's attention any evidence to show that Wells Marble, acting on Dickson's direction, was involved in putting that specific provision in the Debtor's plan. Wells Marble did not sign the plan–the plan (Dkt. #168) is signed by Henderson, as attorney for the Debtor, and Dickson, as president.

In addition, Dickson had his own separate bankruptcy counsel. Eileen N. Shaffer entered her appearance as attorney for Dickson, William D. Dickson Enterprises, Inc., Victory Consulting Group, Inc., Double S Construction, Inc., and Discount Mortgage, Inc. on August 2, 2012. (Dkt. #s: 81, 82, 83, 84, and 85). Consequently, the Court finds that this action does not prove that Wells

Marble had an adverse interest with respect to the matter for which it was hired.

b. Extension of the Automatic Stay

Edwards asserts that the fact that Wells Marble attempted to have the automatic stay applied to Dickson shows an adverse interest. As discussed below, the Court will not permit Wells Marble to be compensated for work on the motion to extend the stay,[49] however, the Court does not believe that an attempt to have the stay extended to Dickson shows Wells Marble had an adverse interest with respect to the matter for which it was hired.

At the June 20, 2013, trial on the motion to extend the stay to Dickson, the attorneys for both the Debtor and Edwards presented their arguments as to why the stay should be extended to Dickson. While the Court eventually denied the motion, at the trial, the Debtor presented Fifth Circuit precedent which permits the imposition of the stay on non-debtors:

> This Court has also noted that "[s]ection 362 is rarely, however, a valid basis on which to stay actions against non-debtors." *Arnold v. Garlock, Inc.*[,] 278 F.3d 426, 436 (5th Cir. 2001). However, an exception to this general rule does exist, and a bankruptcy court may invoke § 362 to stay proceedings against nonbankrupt co-defendants where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." *A.H. Robins Co.*, 788 F.2d at 999.

Reliant Energy Servs., Inc. v. Enron Canada Corp., 349 F.3d 816, 825 (5th Cir. 2003).

Further, in his *Memorandum Opinion and Order*, Judge Reeves addresses the issue of whether the District Court Litigation was stayed as to Dickson. Judge Reeves concludes that "[i]n the absence of evidence that the Bankruptcy Court has entered an order extending section 362 protections to Dickson, the Court must find that proceedings against Dickson have not been stayed

[49]Likewise, the Court did not allow Henderson to be compensated for the work he performed on the motion to extend the stay.

and are therefore subject to severance."[50] Wells Marble sought such a stay from this Court, however, the attempt was unsuccessful. The Court does not find that pursuing the stay for Dickson amounts to an adverse interest with respect to the matter for which it was hired.

c. Diversion of Funds

Edwards alleges that pre-petition, Dickson diverted to himself and his companies over $3 million dollars from the Debtor. Other than Edwards' statements, the Court is unaware of any proof which has been submitted to support this allegation–certainly, no proof was submitted at the trial.

Regardless, the Court has previously found that Wells Marble was not hired to be the Debtor's bankruptcy attorney. Wells Marble was hired to continue representing the Debtor in the District Court Litigation and to file the related adversary proceedings. An action to recover pre-petition transfers would be filed by Henderson, the Debtor's bankruptcy attorney. Consequently, Wells Marble's failure to file any pleadings in order to recover these alleged transfers does not result in an adverse interest with respect to the matter for which it was hired.

d. Summary

Most of the cases cited by Wells Marble and Edwards deal with an attorney hired pursuant to § 327(a), which require an attorney to be both disinterested and to not hold an interest adverse to the debtor or the estate. Section 327(e), however, simply requires an attorney to not hold an interest adverse to the debtor or the estate with respect to the matter on which such attorney is to be employed.

In *In re Johnson*, the court denied the application to employ special counsel because it was

[50] *Plaintiffs' Motion for Order Extending Automatic Stay to Enjoin Proceedings Against Dickson,* Adv. Case No. 1200091EE, Adv. Dkt. #32, Exhibit C, *Memorandum Opinion and Order,* USDC Case No. 12-cv-252-CWR-LRA, Dkt. #100, p. 4, March 29, 2013.

not in the best interest of the bankruptcy estate.[51] The *Johnson* court cited examples of cases where special counsel was approved:

> Examples of an acceptable purpose of counsel appointed under § 327(e) include: litigating a products liability claim that arose pre-petition, *In re Gelsinger*, 2000 U.S. Dist. Lexis 1026, 2000 WL 136812 (E.D. Pa. Feb. 7, 2000); representing the debtor in an appeal of a criminal conviction, *United States v. Miller, Cassidy, Larroca & Lewin (In re Warner),* 141 B.R. 762 (M.D. Fla. 1992); and collecting certain accounts receivable and representing the debtor in ongoing non-bankruptcy litigation after four years of pre-petition discovery. *In re Statewide Pools, Inc.*, 79 B.R. 312 (Bankr. E.D. Ohio 1987).

In re Johnson, 433 B.R. 626, 636 (Bankr S.D. Tex. 2010).

In *West Delta Oil Co.*, the Fifth Circuit reversed an award of attorney fees to special counsel. The attorneys were hired as special counsel to defend a motion to dismiss. The attorneys failed to disclose their involvement with a group of investors who were interested in acquiring the assets of the debtor. The Fifth Circuit found that their failure to disclose their involvement with the investors "constituted a potential conflict with their client's best interests"[52] because it created incentives to lessen the value of the bankruptcy estate. The Fifth Circuit held:

> We have observed that these standards are "strict" and that attorneys engaged in the conduct of a bankruptcy case "should be free of the slightest personal interest which might be reflected in their decisions concerning matters of the debtor's estate or which might impair the high degree of impartiality and detached judgment expected of them during the course of administration." Accordingly, we are "sensitive to preventing conflicts of interest" and require a "'painstaking analysis of the facts and precise application of precedent'" when inquiring into alleged conflicts. If an actual conflict of interest is present, "no more need be shown . . . to support a denial of compensation."

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[51]The debtor was seeking to modify his divorce decree and filed an application to hire his divorce attorney as special counsel. The court denied the application because it found that because the divorce decree was final, the action would be more akin to conducting the Chapter 11 case and would not benefit the estate.

[52]*West Delta Oil Co.,* 432 F.3d at 356.

West Delta Oil Co., 432 F.3d at 355 (footnotes omitted).

The Court finds that Edwards has not met its burden of showing Wells Marble held an interest adverse to the Debtor or the bankruptcy estate with respect to the adversary proceedings. None of the grounds listed above which Edwards claims show Wells Marble's adverse interests rise to the level of showing a personal interest which might reflect on or impair Wells Marble's impartiality or judgment. Edwards has not produced any communications between Dickson and Wells Marble which indicate that Wells Marble was following Dickson's instructions and taking actions which would benefit Dickson to the detriment of the bankruptcy estate.

Edwards seems to want to impute Dickson's conduct of absconding to Central America with the Debtor's assets to Wells Marble–in an effort to show that Wells Marble held an adverse interest to the bankruptcy estate. While the Court agrees with Edwards that it is now clear that "Dickson's interests are not aligned with the interest of the bankruptcy estate,"[53] the Court does not see where that proves that Wells Marble held an interest adverse to the bankruptcy estate.

Exercising its discretionary powers under the Bankruptcy Code and specifically those under § 327, the Court finds that when taking into account the particular facts and circumstances of this case, Edwards has failed to prove that Wells Marble held an interest adverse to the bankruptcy estate. "As we have noted, special counsel employed under § 327(e) need only avoid possessing interests 'adverse to the debtor or to the estate *with respect to the matter on which such attorney is to be employed.*'" *West Delta Oil Co.*, 452 F.3d at 357 (footnote omitted).

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[53]*Reply of Edwards Family Partnership, LP and Beher Holdings Trust in Support of Their Objections to Fourth and Fifth and Final Applications for Allowance of Fees and Expenses filed by Wells, Marble & Hurst PLLC*, Case No. 1201703EE, Dkt. #465, p. 6, January 15, 2014.

F. § 330(a)(4)(A)(ii)(I)

As noted previously, at the trial and in its *Edwards Family Partnership, L.P. and Beher Holdings Trust's Brief in Opposition to Wells, Marble & Hurst, PLLC's Fourth and Fifth Applications for Allowance of Fees and Expenses (Doc. Nos. 317, 398)* (Dkt. #1145), Edwards raises another ground for objecting to Wells Marbles' fee applications: that the services provided by Wells Marble did not benefit the estate as required by § 330, and therefore, compensation should be denied. Edwards does not specify which subsections of § 330 it is proceeding, however, the Court will presume Edwards is proceeding under § 330(a)(4)(A)(ii)(I).

First the Court will note that "a . . . [m]emorandum is not a pleading from which the Court grants relief." *In re Gilmore, Jr.*, 198 B.R. 686, 692 n. 4 (Bankr. E.D. Tex. 1996), *amended in part on reh'g*, 1996 WL 1056889 (Bankr. E.D. Tex. 1996), *aff'd, United States v. Gilmore*, 226 B.R. 567 (E.D. Tex. 1998). Since Edwards raised § 330 as a ground at the trial and Wells Marble did not object, however, the Court will address the issue of whether Wells Marble's actions were of benefit to the bankruptcy estate pursuant to § 330(a)(4)(A)(ii)(I).

Specifically, at trial Edwards stated that it objects to Wells Marble being compensated for four areas it claims did not result in a benefit to the estate:

> One is pursing the stay of the guarantee action against Dixon. *[sic]* Number 2 is litigation with EFP and BHT in the adversary proceedings. Number 3 is litigating with EFP and BHT over the appointment of a trustee, including consulting with an expert and Number 4 is working on the conflict issues. We submit that in none of those, any of that benefit the estate and was not reasonably anticipated to benefit the estate at the time it was done.

Tr. Trans. at 55. As recently addressed by this Court in its *Memorandum Opinion on the Fifth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #1227) in this same bankruptcy case, the *Woerner* decision is directly on point.

In *Woerner,* the Fifth Circuit revisited its prior decision in *Family Snacks, Inc. v. Andrews & Kurth, L.L.P. (In re Pro-Snax Distibs., Inc.),* 157 F.3d 414 (5th Cir. 1998). In *Pro-Snax*, one of the issues addressed by the Fifth Circuit was whether the services were beneficial *at the time they were performed* or whether in hindsight the services *resulted* in a material benefit to the estate. *Woerner,* 783 F.3d at 273. In *Pro-Snax,* the Fifth Circuit "adopted the stricter 'hindsight' or 'material benefit' measure." *Id.* Upon reconsideration of *Pro-Snax* in *Woerner,* the Fifth Circuit overturned *Pro-Snax* and adopted "the prospective, 'reasonably likely to benefit the estate' standard endorsed by our sister circuits." *Id.* at 268.

The facts of *Woerner* are similar to the facts of the case before the Court. Woerner and Texas Skyline, Ltd. entered into a partnership for the purpose of undertaking a real estate venture. Similar to Edwards, Texas Skyline was the sole investor. During the three year relationship, Woerner misappropriated funds. After Texas Skyline discovered the misappropriated funds, Texas Skyline sued Woerner in state court. At the completion of the bench trial, the state court orally ruled in favor of Texas Skyline. The court set a remedies hearing a few weeks off. The night before the remedies hearing, Woerner filed a Chapter 11 bankruptcy case and hired bankruptcy counsel to represent him. Over the next eleven (11) months, the debtor and Texas Skyline clashed over adversary proceedings and numerous motions and also attempted mediation. When it was discovered that the debtor had concealed assets, another creditor moved to have the case converted to a Chapter 7. The debtor opposed the conversion, however, the court ultimately converted the case to a Chapter 7. *Id.* at 268-70.

After the case was converted, the debtor's attorneys, the law firm of Barron & Newburger, P.C. (B & N), filed its fee application. The bankruptcy court allowed B & N to be compensated in

full for its expenses, but following *Pro-Snax,* cut the amount of attorney's fees requested by 85%. *Id.* at 270. "Most of the disallowed fees were denied due to B & N's lack of success. Specifically, the bankruptcy court found much of B & N's billed time was not of identifiable benefit to the estate." *Id.* The district court affirmed the bankruptcy court. On appeal to the Fifth Circuit, a panel of the court affirmed the district court's decision, but all three members called for an en banc reconsideration of *Pro-Snax. Id.* at 268. The Fifth Circuit granted a rehearing en banc to reconsider *Pro-Snax.*

Upon reconsideration, the Fifth Circuit held:

> We now recognize that the retrospective, "material benefit" standard enunciated in *Pro-Snax* conflicts with the language and legislative histroy of § 330, diverges from the decisions of other circuits, and has sown confusion in our circuit. Correspondingly, we overturn *Pro-Snax's* attorney's-fee rule and adopt the prospective, "reasonable likely to benefit the estate" standard endorsed by our sister circuits.

Id. at 268 (footnote omitted).

The importance and effect of *Woerner* on fee applications was addressed in *In re Digerati Technologies, Inc.*, 537 B.R. 317 (Bankr. S.D. Tex. 2015):

> The leading Fifth Circuit decision regarding § 330 is *Woerner*. In *Woerner,* the Fifth Circuit joined the majority of circuits in adopting a prospective test for determining whether professional services are compensable, as suggested by the third factor that courts must consider under § 330: "whether the services were necessary . . . or beneficial *at the time at which the service was rendered. "* *Id.* at 268, 273–74 (emphasis added). Additionally, the Fifth Circuit provided the following list of factors that bankruptcy courts "ordinarily consider" when weighing this factor:
>
> > the probability of success at the time the services were rendered, the reasonable costs of pursuing the action, what services a reasonable lawyer or legal firm would have performed in the same circumstances, whether the attorney's services could have been rendered by the Trustee and his or her staff, and any potential benefits to the estate (rather than to the individual debtor).

Id. at 276.

> *Woerner* reversed the Fifth Circuit's prior retrospective test, under which professionals could only be compensated for services that *actually* resulted in a tangible, identifiable, and material benefit to the estate. *See Pro–Snax,* 157 F.3d at 426. Instead, under the new, prospective test, "[w]hether the services were ultimately successful is relevant to, *but not dispositive of,* attorney compensation." *Woerner,* 783 F.3d at 276 (emphasis added). In sum, the Fifth Circuit held that when read in its entirety, § 330 "permits a court to compensate an attorney not only for activities that were 'necessary,' but also for good gambles—that is, services that were objectively reasonable at the time they were made—even when those gambles do not subsequently (or eventually) produce an 'identifiable, tangible, and material benefit.'" *Id.* at 273–74. If professional services were *either* "'necessary to the administration' of a bankruptcy case or 'reasonably likely to benefit' the bankruptcy estate 'at the time at which [they were] rendered,' *see* 11 U.S.C. § 330(a)(3)(C), (4)(A), then the services are compensable." *Id.* at 276. However, the Fifth Circuit emphasized that its *Woerner* ruling "is not intended to limit courts' broad discretion to award or curtail attorney's fees under § 330, 'taking into account *all* relevant factors.' " *Id.* at 277 (quoting § 330) (emphasis added).

Digerati, 537 B.R. at 331. (footnote omitted).

In summary, under the new standard of *reasonable at the time* established in *Woerner*, "if a fee applicant establishes that its services were 'necessary to the administration' of a bankruptcy case or 'reasonably likely to benefit' the bankruptcy estate 'at the time at which [they were] rendered,' *see* 11 U.S.C. § 330(a)(3)(C), (4)(A), then the services are compensable." *Woerner,* 783 F.3d at 276.

The Court acknowledges that when reviewing the Fourth Application and the Fifth Application with the knowledge that Dickson depleted the estate of its cash and set up the Debtor's operations outside of the United States, it would be perceivable for someone to believe that Wells Marble's services did not provide a material benefit to the estate. The Court finds, however, that at the time Wells Marble was performing services for the Debtor, it was totally unaware of what Dickson was planning. Consequently, the actions of Dickson will not be held against Wells Marble.

1. Adversary Proceedings

Without getting into the details of the complex adversaries, the Court finds that the adversary proceedings filed by the Debtor were for the benefit of the bankruptcy estate and necessary for the administration of the bankruptcy estate. Edwards status as a creditor, whether it is secured or unsecured, will impact the Debtor's estate and will impact the provisions of the Debtor's plan. It appears that Edwards holds the belief that because Edwards believes that the Debtor's claims in the adversary proceedings are baseless and that Edwards will prevail, then Wells Marble's litigation of the adversary proceedings should not be compensated because the litigation of the adversary proceedings cannot benefit the estate.

It is the ultimate decision of this Court, or another court on appeal, to determine whether the Debtor's claims in the adversary proceedings are valid. At this point, the Court is of no opinion as to the validity of the Debtor's claims in the adversary proceedings. Consequently, the Court cannot find that Wells Marble's actions in litigating the adversary proceedings were not "'reasonably likely to benefit' the bankruptcy estate 'at the time at which [they were] rendered.'" *Digerati*, 537 B.R. at 331 (citation omitted).

Further, the Court notes that the Trustee apparently agrees with the Debtor that there is a question as to whether Edwards is a secured creditor–the Trustee has elected to proceed with the adversary proceedings filed by the Debtor against Edwards. On November 19, 2015, the Court held a trial on Edwards' motion to dismiss one of the adversary proceedings. At the trial, the Trustee argued against the motion to dismiss, or alternatively, the Trustee requested time to file an amended

complaint if the Court granted the motion to dismiss.[54]

2. Motion to Appoint a Trustee

Since the Court has found that Wells Marble was hired as special counsel to continue representing the Debtor in the District Court Litigation and in the adversaries, Wells Marble should not be compensated for any work done on Edward's motion to appoint a trustee. The motion to appoint a trustee would fall under conducting the business of the case and would be Henderson's responsibility.

Other than Edwards' statement at trial, Edwards does not give the Court a listing of specific time entries it claims are non-compensable work on the motion to appoint a trustee. Consequently, the Court undertook the task of attempting to find the entries to which Edwards is objecting. In the Court's review of Wells Marble's fee application, the Court finds the following entries to be non-compensable:

See Next Page

[54]The Court granted the motion to dismiss, but gave the Trustee until January 15, 2016, to file an amended complaint.

FIRST FEE APPLICATION (DKT. #109)

Page #[55]	Date	Initials	Description	Hours	Fees
14	08/15/2012	JGB	Study twelve (12) page motion to appoint trustee of CHFS operations filed by creditors EFP and BHT	.40	56.00
14	08/16/2012	RHL	Review portion of motion to appoint trustee	.30	72.00
15	08/16/2012	RHL	Telephone conference with J. Allen re response to motion to appoint trustee	.20	48.00
16	08/17/2012	JGB	Study notice of hearing on creditor's motion to appoint trustee on September 18, 2012	.10	14.00
17	08/24/2012	JGB	Study motion for Expedited Hearing to appoint trustee of CHFS operations filed by creditors EFP and BHT	.30	42.00
TOTAL:					$232.00

See Next Page

[55]The page numbers listed are the page numbers typed on the top, right side of each page of the time sheets attached to the applications and not the ECF page numbers at the top of each page.

FOURTH FEE APPLICATION (DKT. #317)

Page #	Date	Initials	Description	Hours	Fees
7	05/21/2013	JGB	Study status correspondence to opposing counsel re outstanding issues regarding creditor's motion to appoint trustee	.20	28.00
21	07/10/2013	JGB	Write Debtors 18 page response to BHT motion for protective order to include supporting facts and law that Defendants failed to comply with local rules in an effort to delay discovery before motion to appoint trustee	3.10	434.00
23	07/17/2013	JGB	Incorporate additional areas of inquiry and document requests in August 22 deposition of creditors EFP and BHT to include aspects of creditors Motion to Appoint Trustee and Debtors Motion to Appoint Examiner in underlying bankruptcy case 12-1703	1.10	154.00
31	08/14/2013	JGB	Study pertinent pleadings and research federal bankruptcy law for legal authority supporting Debtor's defenses to Defendant EFP and BHT motion to appoint trustee and scope of permissible discovery of creditors in preparation for telephone conference with opposing counsel as to extent of objections to 30(b)(6) areas of inquiry	2.10	294.00
35	08/26/2013	RHL	Telephone conference with D. Henderson re trustee motion issues and deficiencies and defenses arising from Edwards' motives and illicit activities	.40	96.00
37	08/28/2013	RHL	Messages from D. Henderson with attachments re trustee motion, discovery responses of Edwards and related issues	.40	96.00
37	08/28/2013	JGB	Read good faith correspondence from co-counsel to counsel for EFP and BHT regarding discover responses in motion to appoint trustee	.20	28.00
TOTAL:					$1130.00

FIFTH FEE APPLICATION (DKT. #398)

Page #	Date	Initials	Description	Hours	Fees
2	09/03/2013	RHL	Extended telephone conference with J. Allen re trustee hearing and related strategy issues	.30	72.00
5	09/05/2013	JGB	Exchange and read several communications between opposing counsel re issues of depositions and hearing dates on motion to appoint trustee	.50	70.00
6	09/10/2013	RHL	Receive and review summary of trustee motion testimony from EFP	.50	120.00
6	09/10/2013	RHL	Message to and from L. Lanoux re trustee evidence and expert reports	.20	48.00
6-7	09/10/2013	RHL	Subpoenas served by EFP on various persons re trustee hearing	.20	48.00
10	09/18/2013	RHL	Extended telephone conference with J. Allen re various strategic issues, expert testimony for trustee hearing and other matters	.40	96.00
11	09/19/2013	RHL	Messages from and to D. Henderson re issues re trustee hearing and preparation for same and expert witness disclosures	.30	72.00
TOTAL:					$526.00

Consequently, the Court finds that Wells Marble's should not be compensated for a total of $1,888.00 for work it performed on the motion to appoint a trustee.

3. Motion to Extend the Stay

In reviewing the applications, the Court agrees with Edwards that the services provided by Wells Marble in connection with the motion to have the § 362 stay applied to Dickson personally should not be compensable as an "identifiable tangible, and material benefit"[56] to the estate. As the Court held when it denied the motion to impose the stay, Dickson would be the only person to benefit if the stay was applied to him. Consequently, the Court finds that Wells Marble may not be compensated for work it performed which relates to the request to apply § 362 to Dickson

[56] *Woerner*, 783 F.3d at 274.

personally.

Other than Edwards' statement at trial, Edwards does not give the Court a listing of specific time entries it claims are non-compensable work on the motion to impose the stay for Dickson. Consequently, the Court undertook the task of attempting to find the entries to which Edwards is objecting. In the Court's review of the fee applications, the Court finds that Wells Marble will not be compensated for the following entries:[57]

See Next Page

[57]In reviewing the Application, the Court finds that some of the time entries which mention the stay for Dickson are *block entries.* "The term 'block billing' refers to the 'time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing the time expended on specific tasks.' *Glass v. United States*, 335 F.Supp.2d 736, 739 (N.D. Tex. 2004) (citation omitted). Since the Court cannot determine how much of the block of time was spent on the matters involving the stay for Dickson, Wells Marble may not be compensated for the entire time entry.

THIRD FEE APPLICATION (DKT. #229-1)

Page #	Date	Initials	Description	Hours	Fees
14	04/19/2013	JGB	Work on motion to extend automatic stay under section 362 of Bankruptcy Code to enjoin creditors EFP and BHT from prosecuting personal guaranty claims against Dickson in district court litigation	2.20	308.00
14	04/19/2013	JGB	Work on motion to enjoin creditors EFP and BHT from prosecuting personal guaranty claims in federal court to include request for preliminary injunction under section 105	1.80	252.00
14	04/22/2013	JGB	Study and write backgrounds section of Motion to Extend Automatic Stay, to include summary of prior pleadings in District Court action, claims asserted in 2 adversary pleadings, and other pertinent information to include in background section explaining overlapping facts justifying extending stay due to unusual circumstances under 11 USC 362 and granting preliminary injunction under 11 USC 105	2.10	294.00
14	04/22/2013	JGB	Work on 17 page supporting memo of authorities for Order enjoining prosecution of guarantor claims in District Court, to include additional arguments warranting extension of stay in District Court action re lack of any prejudice to EFP or BHT, jurisdictional basis for granting requested relief under 362 or 105 of Bankruptcy Code, and introduction sumamrizing *(sic)* arguments and basis for motion	2.60	364.00
14	04/23/2013	RHL	Work on motion to stay proceeding against Dickson	.30	72.00
14-15	04/23/2013	JGB	Write seventeen (17) page memo of authorities in support of motion to extend automatic stay to include argument and authorities stating that "unusual circumstances" exception applies to non-debtor gaurantor of debts due to contractual and common law indemnification obligations owed to guarantor that is actively participating and involved in reorganization efforts	2.20	308.00

15	04/23/2013	JGB	Research and write argument in 17 page motion to extend automatic stay to Dickson in District Court action because it undermines jurisdictional authority to decide critical issues in adversary proceedng and also adversely affects ability of CHFS to reorganize for several reasons including collateral estoppel and issue preclusion, and is also antithetical to numerous underlying bankruptcy principles	2.60	364.00
15	04/23/2013	JGB	Research and write argument and analysis in 17 page legal memo supporting extending stay to Dickson is proper for preliminary injunction under 11 USC 105(a) because overlapping claims and allegations in bankruptcy and District Court cause the District Court action to impair exclusive jurisdiction of bankruptcy court and also adversley *(sic)* affects ability of CHFS to reorganize	3.10	434.00
15	04/23/2013	JGB	Research and write additional argument in 17 page supporting memo of authorities that all pre-requisites necessary for issuing preliminary injunction are satisfied where creditor seeks to enforce guarantor's obligation of debtor's underlying debt where debtor has challenged validity and extent of claim filed by creditor, in order to enjoin EFP and BHT from pursuing judgment claims asserted against Dickson in District Court	1.90	266.00
15-16	04/24/2013	JGB	Work on formal five (5) page Motion for Protective Order Extending Automatic Stay, summarizing basis and arguments contained in supporting legal brief, and background facts establishing overlapping nature of Bankruptcy case and District Court action, and incorporate revisions and suggestions of co-counsel and client	2.70	378.00
TOTAL:					$3040.00

See Next Page

FOURTH FEE APPLICATION (DKT. #317-1)

Page #	Date	Initials	Description	Hours	Fees
1	05/03/2013	JGB	Read seven (7) page creditor EFP and BHT response opposing Debtor and Dickson's motion to hold discovery in abeyance pending determination of extension of the automatic stay in bankruptcy court	.60	84.00
1	05/03/2013	JGB	Analyze and contemplate counterarguments to contentions by creditors EFP and BHT in response to Debtor's motion, including incorrect factual allegations and untenable legal arguments that Debtor's bankruptcy is not affected by personal guaranty claims, in preparation for Debtor's Rebuttal in support of underlying motion	1.40	196.00
1-2	05/06/2013	JGB	Read and analyze legal authority cited by creditors EFP and BHT in response to Debtor's motion to stay personal guaranty claims, including identifying relevant distinguishing facts and legal conclusions to emphasize in Debtor's supporting rebuttal	2.00	280.00
2	05/06/2013	JGB	Write Debtor's ten (10) page reply in support of motion to hold discovery of personal guaranty claims in abeyance, to explain recent factual developments in related bankruptcy action and to summarize and incorporate arguments in Debtor's motion to extend stay	1.80	252.00
2	05/08/2013	JGB	Study Debtor's articles of incorporation and bylaws for contractual obligations to indemnify officers and directors for payments of Debtor's liabilities, in support of Debtor's motion to extend the automatic stay	.40	56.00
4	05/14/2013	RHL	Telephone conference with J. Allen re stay	.20	48.00
5	05/15/2013	JGB	Analyze order and subsequent attorney client communications regarding Motion by Debtor and Dickson to hold discovery in abeyance pending ruling on motion to extend automatic stay to Dickson by Bankruptcy Court	.30	42.00
5	05/15/2013	JGB	Study various orders entered by court re hearings on outstanding 2004 Debtor examinations, motion to amend complaint, and motion to extend automatic stay to controlling principal of CHFS	.30	42.00

6	05/20/2013	JGB	To prepare for preliminary hearing set by Court, read and analyze 17 page response filed by creditors EFP and BHT opposing Debtor's motion to extend automatic stay	1.00	140.00
6	05/21/2013	RHL	Reviw and comment on opposition to stay motion of CHFS	.30	72.00
6	05/21/2013	JGB	Prepare for Hearing with Judge re status of several issues and pending motions, including motion to extend automatic stay and Creditor's response	.80	112.00
7	05/22/2015	JGB	Review notices of trial setting re Debtor's motion to extend automatic stay to to *(sic)* controlling principal and notices re status hearings on July 9	.30	42.00
9	05/30/2013	JGB	Attorney work product conference with co-counsel D. Henderson regarding CHFS written discovery to EFP and BHT in HI and JV adversary proceeding, availability to schedule meetings, and pending issues regarding upcoming hearing on motion to appoint a trustee and motion to extend the automatic stay	.60	84.00
15	06/17/2013	JGB	Review response by BHT and EFP opposing Debtors motion to extend the automatic stay, including reading of all cases cited therein to note distinguishing facts and prepare legal arguments for hearing	3.20	448.00
15	06/17/2013	JGB	Review all authorities cited by Debtor in motion to extend automatic stay and outline all arguments supporting extension of automatic stay in preparation for hearing on Thursday	3.00	420.00
15	06/19/2013	JGB	Work on demonstrative exhibit for hearing on Debtors motion to extend automatic stay in HI adversary comparing claims asserted in various proceedings and lack of any harm to EFP or BHT by extending stay	1.20	168.00
15	06/19/2013	JGB	Strategy conference with co-counsel to prepare for hearing on Debtors motion to extend automatic stay and enjoin parallel proceeding in MS District Court action	2.30	322.00
16	06/20/2013	JGB	Prepare for and attend hearing in Adversary Proceeding 12-091 on Debtors motion to extend automatic stay to enjoin parallel proceeding seeking to separately litigate personal guaranty documents against Dickson	3.80	532.00
TOTAL:					$3340.00

FIFTH FEE APPLICATION (DKT. #398-1)

Page #	Date	Initials	Description	Hours	Fees
7	09/11/2013	RHL	Preparation for hearing on stay motion.	2.00	480.00
7	09/11/2013	JGB	Plan and prepare for discovery conference with Court and hearing to issue opinion on CHFS motion to extend automatic stay to enjoin prosecution of district court claims	1.60	224.00
7	09/11/2013	JGB	Attend status conference on discovery issues pending in adversary proceedings and hearing to announce order of the court denying in part Debtors motion to extend automatic stay	1.30	182.00
7	09/11/2013	JGB	Post-hearing analysis and confidential strategy conference with client and co-counsel re decision by court on CHFS motion to extend automatic stay	2.00	280.00
7	09/11/2013	JGB	Review pleadings and documents an write prepare confidential memo to co-counsel re effect of decision announced by court on Sept 11 re CHFS motion to extend automatic stay to enjoin personal guaranty claims against Dickson	1.80	252.00
12	09/21/2013	JGB	Research local rules and Court website for proper forms to use when filing a notice of appeal of interlocutory order denying extension of automatic stay under 11 USC 158	1.80	252.00
12	09/21/2013	JGB	Analyze availability of additional 14 days to file notice of appeal, including whether extension is automatic on timely motion or whether judge has discretion to deny	1.00	140.00
12	09/22/2013	JGB	Analyze oral order by bankruptcy court on September 11 regarding denial of extension of automatic stay, in order to prepare CHFS motion for leave to appeal order	1.30	182.00
12-13	09/22/2013	JGB	Research 5th Circuit bankruptcy law re automatic stay and unusual circumstances exception for extending stay when formal or contractual right of indemnification exists, to prepare Debtors motion for leave to appeal	2.40	336.00
13	09/22/2013	JGB	Write confidential memorandum on procedure to appeal interlocutory bankruptcy court order denying extension of automatic stay	1.80	252.00
13	09/23/2015	RHL	Work on appeal of order re stay of Dickson claims.	.50	120.00

13	09/23/2013	JGB	Work on CHFS Notice of Appeal, including modifying internet form for facts of this case, inserting all necessary information, and locating contact info for counsel of all other interested parties in the adversary	1.30	182.00
13	09/24/2013	RHL	Review/comment on motion for leave to file notice of appeal	.50	120.00
13	09/24/2013	JGB	Research Federal rules and Bankruptcy code to ascertain procedural requirements to appeal interlocutory order by bankruptcy court to district court in SD Mississippi	1.40	196.00
13-14	09/24/2013	JGB	Write underlying statement of background facts in Debtors motion for leave from bankruptcy court to appeal final judgment denying extension of automatic stay to personal guaranty claims asserted against Dickson in District Court	2.30	322.00
14	09/24/2013	JGB	Work on CHFS motion for leave to appeal bankruptcy ruling re automatic stay to include questions presented on appeal, basis for appeal, and reasons to grant appeal	2.50	350.00
14	09/24/2013	JGB	Review evidence offered at June 20 hearing on CHFS motion to extend automatic stay to enjoin district court proceedings against Dickson, including terms of CHFS articles of incorporation, for purposes of appeal and preparing motion for leave to appeal September 11 order	1.30	182.00
14	09/24/2013	JGB	Revise and finalize Debtors 10 page motion for leave to appeal and related Notice of Appeal to be filed in Home Improvement adversary proceeding	2.00	280.00
21	10/08/2013	JGB	Read and research federal bankruptcy rules and rules of appellate procedure to identify time period required to designate appellate materials when motion for leave to file appeal is pending or granted; and other procedural issues related to preserving CHFS appellate rights to appeal bankruptcy ruling on extension of automatic stay to pre-petition claims against executive office with complete right of indemnification from Debtor	2.30	322.00

21-22	10/09/2013	JGB	Read several e-mail notices from court re Notice of Appeal filed by Debtor to appeal ruling denying Debtor and Dickson's motion to extend the automatic stay to the counterclaims in the District Court seeking to hold Dickson personally liable for the proofs of claims filed by EFP and BHT against the Debtor's estate	.30	42.00
22	10/09/2013	JGB	Review local and federal bankruptcy rules and draft confidential communication to co-counsel R. Liddell and D. Henderson re accuracy of court-generated e-mails setting deadlines for Appellant CHFS to file brief in support of appeal despite Motion for Leave to Appeal still pending in the Bankruptcy Court that was filed in conjunction with the Notice of Appeal	1.00	140.00
22	10/09/2013	JGB	Review numerous e-mail notices generated by court and clerk regarding various hearings, orders entered, and issues pertaining to leave to appeal ruling denying motion to extend the automatic stay	.40	56.00
23	10/14/2013	JGB	Research Bankruptcy Rule 8005 and Fifth Circuit authority to determine proper procedure and appropriate standard to apply in preparing CHFS motion for stay pending appeal to district court in light of motion for summary judgment against Dickson in District Court on CHFS debt	1.90	266.00
23	10/14/2013	JGB	Work on CHFS and Dickson motion for stay pending appeal to bankruptcy order denying in part motion to enjoin prepetition claims against Dickson to satisfy applicable 5th Circuit standard, including discussion of facts and pleadings demonstrating that CHFS has made a showing of likelihood of success on merits by discussion of undisputed facts and controlling law and why arguments should be accepted on appeal	4.60	644.00
23	10/15/2013	RHL	Review and comment on reply in support of motion for leave to appeal stay ruling.	.50	120.00

23	10/15/2013	JGB	Work on CHFS motion for stay under Rule 8005 to include all additional supporting arguments argument and facts establishing that CHFS and Dickson have shown irreparable injury is stay not entered; that granting of stay in favor of CHFS and Dickson would not harm any other party and that granting of stay in favor of CHFS and Dickson would serve the public interest by preserving jurisdiction of bankruptcy court	2.60	364.00
23	10/15/2013	JGB	Revise analysis and argument, incorporate final arguments, and add references to additional legal authority and support cited in several other pleadings to support relief requested in CHFS and Dickson motion for stay pending appeal under Rule 8005	1.70	238.00
23-24	10/15/2013	JGB	Write, revise, and finalize all arguments in supporting of CHFS reply to appeal order as to whether automatic stay should also extend to pre-petition guaranty claims against Dickson and incorporate additional reasons that District Court must deny response filed by EFP in its entirety	2.30	322.00
25	10/30/2013	JGB	Read and analyze Motion for Leave to File Sur-Reply by creditors BHT and EFP in appeal to district court re extension of automatic stay to pre-petition claims against officer of debtor having right of indemnity from Debtor for claims asserted	.80	112.00
26	10/31/2013	JGB	Work on and revise orders granting unopposed motions allowing WMH to withdraw as counsel for Debtor CHFS in bankruptcy case (12-1703); home improvement adversary (12-091); joint venture adversary (12-109); and appeal pending extension of automatic stay in district court	1.50	210.00
TOTAL:					$7168.00

Consequently, the Court finds that Wells Marble should not be compensated for a total of $13,548 for work it performed on the motion to extend the stay to Dickson.

4. Conflict of Interest/Defense of Fee Applications

The final category of time entries Edwards contends Wells Marble should not be

compensated for is related to the conflict of interest Edwards raised for the first time in its Fourth Objection (to the Fourth Application). Edwards does not cite authority to support this position.

In *Baker Botts L.L.P. v. ASARCO LLC*, — U.S. —, 135 S.Ct. 2158 (2015), the United States Supreme Court recently addressed the issue of whether a law firm may be compensated for defending its fee application. The Supreme Court held that the Bankruptcy Code does not permit compensation for work performed in defense of a fee application. *Id.* at 2169. Consequently, Wells Marble may not be compensated for work it performed on the conflict of interest raised by Edwards.

Other than Edwards' statement at trial, Edwards does not give the Court a listing of specific time entries it claims are non-compensable work on the defense of the fee applications. Consequently, the Court undertook the task of attempting to find the entries to which Edwards is objecting. In the Court's review of the fee applications, the Court finds that Wells Marble will not be compensated for the following entries:

FIFTH FEE APPLICATION (DKT. # 398-1)

Page #	Date	Initials	Description	Hours	Fees
15	09/26/2013	RHL	Review objection to fee application and outline response	.80	192.00
15	09/27/2013	JGB	Read and analyze arguments in objection filed to compensation of Debtors counsel by creditor EFP and BHT	.60	84.00
15	09/27/2013	JGB	Research basis of creditors EFP and BHT and BHTs objections to fee applications by Debtor counsel, including alleged conflict of interest against Debtor estate and pendency of motion to appoint trustee, in order to respond	1.20	168.00
15	09/27/2013	JGB	Confidential strategy communications with co-counsel and client re Debtors options to proceed in light of objection by EFP and BHT to compensation of attorneys for CHFS	1.00	140.00

15	09/27/2013	JGB	Work on 8-page response to EFP and BHT objection to fee applications, including identifying additional facts and formulating counter-arguments re whether Debtors counsel is a disinterested person under 11 USC 327	2.80	392.00
15	09/27/2013	RHL	Work on response to objection of Edwards to fee applications and motion to stay.	.60	144.00
16	09/28/2013	JGB	Research Bankruptcy Code section 327 and section 101(14) regarding what constitutes disinterested person to prepare response to EFP motion to disqualify WMH due to alleged conflict of interest	2.20	308.00
16	09/28/2013	JGB	Analyze legal authority cited in EFP objection to deny employment and compensation of Wells Marble, in order to prepare urgent response in light of Debtor's upcoming deposition of EFP and BHT in Home Improvement and Joint Venture adversary proceedings	2.00	280.00
16	09/30/2013	JGB	Work on, finalize and file expedited 10 page response to EFP objection to fee application seeking to disqualify Debtor's attorneys from any further representation of the Debtor in bankruptcy	3.80	532.00
16	09/30/2013	RHL	Work on response to motion to disqualify WM&H and related communications with D. Henderson re same.	2.20	528.00
16	10/01/2013	RHL	To court for hearing on objections to fee application and related issues.	2.00	480.00
16	10/01/2013	JGB	Read and write several detailed confidential memos to co-counsel and client re objections to fee applications and other pleadings filed by creditors EFP and BHT	1.20	168.00
17	10/01/2015	JGB	Research and analyze legal authority relied on by EFP and BHT in response to motion to extend stay, identify numerous critical distinguishing factors to present to court if necessary at status conference, and research additional 5th Circuit precedent with more analogous facts demonstrating that CHFS duty to indemnify Dickson precludes possibility of potential conflict ever arising	2.70	378.00
17	10/02/2013	RHL	Messages from and to D. Henderson re objections to fee applications	.40	96.00

17	10/02/2013	RHL	Review additional case confirming no conflict upon application of identical facts	.30	72.00
17	10/02/2013	RHL	Further work on fee application/alleged conflict issues.	.50	120.00
17-18	10/02/2013	JGB	Continue research on case law under 11 USC 327 re situations where dual representation is permissible due to the absence of an actual conflict of interest and where there is no potential for divergence of interests because of a right to indemnify Dickson for payment for corporate debt, in light creditor EFP and BHT objection to 4th Fee application by WMH	2.20	308.00
18	10/02/2013	JGB	Document confidential memo to co-counsel re research and case law demonstrating the absence of any conflict of interest under 327, in the event US Trustee or EFP and BHT continue to assert a disqualifying conflict of interest and request disgorgement of fees	1.00	140.00
18	10/03/2013	JGB	Detailed attorney work product research and confidential communication to co-counsel re research on non-existent conflict of interest, material factors distinguishing all cases relied on by EFP and BHT, and analysis on why actual conflict of interest does not exist	2.10	294.00
18-19	10/03/2013	JGB	Initial research on different legal standards governing disqualifying conflicts of interest under 11 USC 327 to prepare Debtor reply to EFP response re objection to payment of compensation for attorneys performing work in adversary proceedings 12-091 and 12-109	2.00	280.00
19	10/04/2013	RHL	Research related to objection of EFP to WMH representation and questions of "disinterestedness".	1.30	312.00
19	10/04/2013	JGB	To prepare Debtors 15 page reply in support of motion for expedited stay, read and analyze every case cited in pleadings and correspondences by EFP and BHT as support for underlying motion seeking disqualify of special counsel, Wells Marble, for the Debtor and inaccurately claiming that such cases are almost identical to the facts of this case	2.80	392.00

19	10/04/2013	JGB	Research different standards employed when courts determine whether a disqualifying conflict of interest is present under 327(a) and 327(c) and 327(e), and significance of retention of Wells Marble as special counsel rather than general counsel for the Debtor	2.10	294.00
19	10/05/2013	JGB	Write first argument in CHFS reply to response by EFP and BHT opposing Debtors expedited motion to stay all bankruptcy and adversary proceedings, including detailed explanation of analysis and citing of overwhelming number of authorities holding that a disqualifying conflict of interest does not exist where the interests represented by special counsel are parallel and identical to the Debtor	2.70	378.00
19-20	10/05/2013	JGB	Study numerous additional bankruptcy court, district court, and opinions of other courts beyond Fifth Circuit jurisdiction and addressing case law that under 11 USC 327(e), a special counsel like WMH can represent a related party to a Debtor whenever the debtors interests are parallel with the attorney and the other parties that he or she represents even if that related party is also a creditor of the debtor's estate, in preparation of CHFS reply in support of expedited motion to stay proceedings and that a disqualifying conflict of interest does not exist	3.10	434.00
20	10/07/2013	RHL	Work on brief in opposition to disqualification motion.	1.60	384.00
20	10/07/2013	RHL	Messages from and to D. Henderson re alleged conflict issue.	.20	48.00
20	10/07/2013	RHL	Message to J. Spencer re alleged conflict issue.	.20	48.00

21	10/07/2013	JGB	Continue work on 15 page reply by CHFS in support of expedited motion to stay all proceedings until resolution of EFP and BHT motion to disqualify Wells Marble are resolved, including presentation of key facts not present in any cases cited by EFP and BHT, such as Dicksons full right of indemnification against Debtor for claims in District Court, knowledge of representation by EFP and BHT for past 16 months, fact that interests are parallel and never adverse, and other relevant facts including timing of objection to fee application in light of upcoming deposition of EFP and BHT and Charles Edwards	3.20	448.00
21	10/08/2013	RHL	Work on brief in opposition to motion to disqualify WMH.	1.40	336.00
21	10/09/2013	RHL	Work on response to motion for disqualification/objection.	.40	96.00
22	10/11/2013	RHL	Final review of brief in opposition to objection to fee application of WMH.	.50	120.00
24	10/22/2013	RHL	Response from J. Spencer re motion to disqualify	.30	72.00
24	10/22/2013	RHL	Study *Humble* case and prepare communication to J. Spencer explaining the absence of any conflict.	1.50	360.00
24	10/23/2013	RHL	Revisions to letter to J. Spencer re alleged conflict.	.50	120.00
24	10/23/2013	RHL	Work on response to motion for disqualification.	.30	72.00
24	10/23/2013	RHL	Message from D. Henderson re motion for disqualification.	.20	48.00
24	10/29/2013	RHL	Message from and to D. Henderson re hearing on fee application.	.20	48.00
24-25	10/29/2013	RHL	Preparation for hearing on fee application of WMH (review numerous authorities demonstrating absence of conflict and outline key argument points in event argument permitted (4.0).	4.00	960.00

25	10/29/2013	JGB	Research additional legal authority to present to Court at status conference, if requested, regarding propriety of dual representation of Debtor and officer having full right of indemnification from Debtor under 11 USC 327	2.00	280.00
25-26	10/30/2013	JGB	Supplemental research for additional legal authority establishing absence of any conflict of interest between Debtor CHFS and bankruptcy counsel under 11 USC 327(a) or (e), due to parallel interests created by Debtor CHFS obligation to indemnify officer Dickson for payments made on personal guaranty of corporate debt, in response to statements by creditors EFP and BHT at 10/29 status conference	3.80	532.00
26	10/30/2013	JGB	Work on confidential legal memo containing arguments and authority demonstrating absence of conflict of interest where bankruptcy counsel also represented an officer with full right of indemnification from Debtor for any judgment entered on claims being defended, to preserve the rights of Debtor CHFS dispute creditor claims in bankruptcy	2.80	392.00
26	10/30.2013	RHL	Messages from and to J. Bissette and D. Henderson re fee application	.20	48.00
TOTAL:					$11,326.00

Consequently, the Court finds that Wells Marble should not be compensated for a total of $11,326.00 for work it did on defending its fee application.

CONCLUSION

"A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee. Where settlement is not possible, the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Since the parties were unable to settle the amount of Wells Marble's fee, Wells Marble "bears the burden of establishing entitlement to an award." *Id.*

At the time the petition was filed, Edwards was aware that Wells Marble was representing the Debtor pre-petition. Since the only way an attorney who has represented a debtor pre-petition can be hired by a debtor is pursuant to § 327(e),[58] the Court finds that under the totality of the circumstances of this case and exercising what the Fifth Circuit described as a bankruptcy court's "broad equitable-and hence discretionary-powers,"[59] Wells Marble was hired as special counsel pursuant to § 327(e). The Court further finds that Wells Marble is not disqualified to represent the Debtor because it did not have an interest adverse to either the Debtor or the Debtor's estate.

Under the new standard of *reasonable at the time* established in *Woerner*, "if a fee applicant establishes that its services were 'necessary to the administration' of a bankruptcy case or 'reasonably likely to benefit' the bankruptcy estate 'at the time at which [they were] rendered,' *see* 11 U.S.C. § 330(a)(3)(C), (4)(A), then the services are compensable." *Woerner,* 783 F.3d at 276. The Court finds that, except for amounts listed below, Wells Marble has established that its services were reasonably likely to benefit the bankruptcy estate at the time it performed the services. The Court finds, however, that the time Wells Marble spent on the following were not for the benefit of the estate and not compensable:

Motion to Appoint a Trustee:	$1,888.00
Motion to Extend the Stay to Dickson:	$13,548.00
Conflict of Interest/Defense of Fee Apps:	$11,326.00
TOTAL:	$26,062.00

[58] *NRG Resources,* 64 B.R. at 647.

[59] *Anderson,* 936 F.2d at 204.

LODESTAR CALCULATION FOURTH & FIFTH APPLICATIONS			
TIMEKEEPER	HOURS	RATE	TOTAL
Paralegal	1.0	$75.00	$75.00
Liddell	184.20	$240.00	$44,208.00
Bissette	575.60	$140.00	$80,584.00
Subtotal			$124,792.00
Deductions for Trustee, Extend Stay & Defense			-$26,062.00
FINAL LODESTAR TOTAL:			**$98,730.00**

Edwards did not object to any of the expenses claimed by Wells Marble, therefore, Wells Marble is entitled to the expenses requested in the Fourth Application ($1,812.12) and the Fifth Application ($2,323.47). Consequently, Wells Marble is entitled to be reimbursed for a total of $4,135.59 in expenses.

A separate judgment consistent with this Opinion will be entered in accordance with Rules 9014 of the Federal Rules of Bankruptcy Procedure.

##END OF OPINION##

SO ORDERED,

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: January 27, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:
COMMUNITY HOME FINANCIAL SERVICES, INC.

CHAPTER 11
CASE NO. 1201703EE

FINAL JUDGMENT ON THE FOURTH AND FIFTH FEE APPLICATIONS OF ATTORNEYS FOR THE DEBTOR, WELLS MARBLE & HURST, PLLC

Consistent with the Court's opinion dated contemporaneously herewith,

IT IS THEREFORE ORDERED that the *Fourth Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #317) filed by Roy H. Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC and the *[Fifth]Application of Attorney for the Debtor for Allowance of Fees and Allowance of Costs and Expenses* (Dkt. #398) filed by Roy H. Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC are hereby granted in part and denied in part.

IT IS FURTHER ORDERED that Roy H. Liddell and Jonathon Bissette of the law

firm of Wells Marble & Hurst, PLLC are hereby awarded compensation pursuant to 11 U.S.C. § 330 in the total amount of $98,730.00.[1]

IT IS FURTHER ORDERED that Roy H. Liddell and Jonathon Bissette of the law firm of Wells Marble & Hurst, PLLC are hereby awarded expenses pursuant to 11 U.S.C. §§ 330 in the total amount of $4,135.59.

IT IS FURTHER ORDERED that the Chapter 11 Trustee is authorized to pay said compensation and expenses from the bankruptcy estate as a priority claim pursuant to 11 U.S.C. § 330, 11 U.S.C. § 503(b), and 11 U.S.C. § 507(a)(2).

##END OF ORDER##

[1]$124,792.00 minus the $26,062.00 the Court determined was not compensable under 11 U.S.C. § 330(a)(4)(A)(ii)(I).