



SO ORDERED,

Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: July 6, 2018

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

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

OPUS MANAGEMENT GROUP  
JACKSON LLC,

CASE NO. 16-00297-NPO

DEBTOR.

CHAPTER 7

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IN RE:

RX PRO OF MISSISSIPPI, INC.,

CASE NO. 16-00288-NPO

DEBTOR.

CHAPTER 7

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IN RE:

OPUSRX, LLC,

CASE NO. 16-00291-NPO

DEBTOR.

CHAPTER 7

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IN RE:

ESTONNA MANAGEMENT LLC,

CASE NO. 16-00292-NPO

DEBTOR.

CHAPTER 7

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**IN RE:**

**RX PRO PHARMACY &  
COMPOUNDING INC.,**

**CASE NO. 16-00294-NPO**

**DEBTOR.**

**CHAPTER 7**

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**IN RE:**

**CARE RX PHARMACY GROUP L.L.C.,**

**CASE NO. 16-00295-NPO**

**DEBTOR.**

**CHAPTER 7**

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**ORDER OVERRULING OBJECTION OF M. CHAD  
BARRETT AND FARM007 HOLDINGS, LLC TO: SEVENTH  
INTERIM AND FINAL APPLICATION OF BUTLER SNOW LLP FOR  
ALLOWANCE OF ADMINISTRATIVE CLAIM FOR COMPENSATION  
AND REIMBURSEMENT OF NECESSARY EXPENSES [DKT NO. 1046]**

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This matter came before the Court for hearing on June 29, 2018 (the “Hearing”), on the Seventh Interim and Final Application of Butler Snow LLP for Allowance of Administrative Claim for Compensation and Reimbursement of Necessary Expenses (the “Final Fee Application”) (Dkt. 1046)<sup>1</sup> filed by Butler Snow LLP (“Butler Snow”); the Objection of M. Chad Barrett and Farm007 Holdings, LLC to: Seventh Interim and Final Application of Butler Snow LLP for Allowance of Administrative Claim for Compensation and Reimbursement of Necessary Expenses [Dkt. No. 1046] (the “Barrett Objection”) (Dkt. 1053) filed by M. Chad Barrett (“Barrett”) and Farm007 Holdings, LLC (“Farm007”); the United States Trustee’s Objection to Seventh Interim and Final Application of Butler Snow LLP for Allowance of Administrative Claim for Compensation and

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<sup>1</sup> All docket entries are to *In re Opus Management Group Jackson LLC*, Case No. 16-00297-NPO.

Reimbursement of Necessary Expenses (the “UST Objection”) (Dkt. 1055); and the Limited Objection to Butler Snow LLP’s Seventh Interim and Final Application for Interim Allowance of Administrative Claim for Compensation and Reimbursement of Necessary Expenses Incurred as Counsel for the Debtors in Possession (Dk #1046) (the “Disbursing Agent Objection”) (Dkt. 1057) filed by Opus Management Group Jackson LLC in its capacity as Disbursing Agent for Opus Management Group Jackson LLC, Care Rx Pharmacy Group L.L.C., Rx Pro Pharmacy & Compounding Inc., Estonna Management LLC, OpusRx, LLC, and Rx Pro of Mississippi, Inc. Pursuant to the Agreed Order Granting Motion for Continuance and Setting Deadlines (Dkt. 1071), Barrett and Farm007 filed the Memorandum Regarding Billing Procedures of Debtors’ Counsel and in Support of: Objection of M. Chad Barrett and Farm007 Holdings, LLC to: Seventh Interim and Final Application of Butler Snow LLP for Allowance of Administrative Claim for Compensation and Reimbursement of Necessary Expenses [Dkt. No. 1046] [Dkt. No. 1053] (the “Barrett Brief”) (Dkt. 1068) and Butler Snow filed the Memorandum in Support of Billing Protocols and Procedures of Interim and Final Fee Applications of Butler Snow LLP [Dkt. ## 1046; 1068; 1071] (Dkt. 1075).

The Final Fee Application, the Barrett Objection, the UST Objection, and the Disbursing Agent Objection were filed in the then-designated lead bankruptcy case (Case No. 16-00297-NPO) of the jointly-administered chapter 11 bankruptcy cases (the “Chapter 11 Bankruptcy Cases”) before their conversion to the above-referenced chapter 7 proceedings. (Dkt. 1120). After the conversion, Derek A. Henderson (“Henderson”) was appointed the chapter 7 trustee of Opus Management Group Jackson LLC, Rx Pro of Mississippi, Inc., and OpusRx, LLC; Eileen N. Shaffer (“Shaffer”) was appointed the chapter 7 trustee of Estonna Management LLC and Care

Rx Pharmacy Group L.L.C.; and Stephen Smith (“Smith”) was appointed the chapter 7 trustee of Rx Pro Pharmacy & Compounding Inc.

At the Hearing, Christopher R. Maddux represented Butler Snow; John D. Moore represented Barrett and Farm007; Ronald H. McAlpin represented David W. Asbach, Acting U.S. Trustee for Region 5 (the “UST”); Henderson represented himself; Shaffer represented herself; and Jim F. Spencer, Jr. represented Smith. During the Hearing, the chapter 7 trustees, Henderson, Shaffer, and Smith, acting as successors to the above-referenced debtors (the “Debtors”), withdrew the Disbursing Agent Objection. Also during the Hearing, Butler Snow and UST resolved the UST Objection, with Butler Snow agreeing to adjust and deduct certain amounts sought in the Final Fee Application. Butler Snow introduced into evidence a chart showing the agreed upon adjustments and deductions in detail. (BS Ex. 1). Simultaneously with this Order, the Court is entering the Agreed Order for Allowance of Administrative Claim for Compensation and Reimbursement of Necessary Expenses (the “Agreed Orders”) in each of the above-referenced chapter 7 bankruptcy cases. The entry of these Agreed Orders resolves the UST Objection and the Disbursing Agent Objection. Only the Barrett Objection remains unresolved. The issues addressed in this Order are those raised in the Barrett Objection: (1) whether Butler Snow was required to itemize and allocate each of its time entries and expenses to each of the Chapter 11 Bankruptcy Cases in its Final Fee Application and (2) if not, whether Butler Snow’s estimated allocations are reasonable under the circumstances.

### **Facts**

Before the Final Fee Application, Butler Snow filed six (6) interim fee applications. (Dkt. 465, 571, 665, 828, 898, 990). Except for the First Application of Butler Snow LLP for Interim Allowance of Administration Claim for Compensation and Reimbursement of Expenses (the “First

Fee Application”) (Dkt. 465), each interim fee application stated that the fees and expenses sought to be awarded on an interim basis would be allocated among the Chapter 11 Bankruptcy Cases on a percentage basis. (Dkt. 571, 665, 828, 898, 990). Each interim fee application provided for a different allocation among the Debtors. Although the First Fee Application did not include a proposed allocation of fees and expenses, Butler Snow, acting at the request of the UST, allocated its fees and expenses based on a general review of its time entries for the first fee period, and that allocation was reflected in the Agreed Order Granting, in Part, First Application of Butler Snow LLP for Interim Allowance of Administration Claim for Compensation and Reimbursement of Expenses (Dkt. 518). In each subsequent interim fee application, Butler Snow made a proposed allocation of attorneys’ fees among the Chapter 11 Bankruptcy Case “based on what it believed was a fair allocation of the workload of the work related to each of the [seven/six] Debtors . . . [that was] reasonable, rational, and appropriate under the circumstances.” (Dkt. 608, 751, 840, 937, 1043). Neither Barrett nor Farm007 previously objected to any proposed allocation in these interim fee applications.

The Final Fee Application seeks an order: (a) authorizing and directing the payment of (i) compensation in the amount of \$57,604.00 for reasonable and necessary legal services rendered to the Debtors from November 1, 2017, to December 6, 2017; and (ii) reimbursement for actual and necessary expenses incurred in the amount of \$1,256.22; and (b) granting final approval of all fees and expenses previously allowed on an interim basis with respect to the six (6) previous interim fee applications approved by the Court. Barrett and Farm007 object to the Final Fee Application for two (2) reasons. First, they contend that Butler Snow failed to allocate its time and expenses to each of the separate Debtors contemporaneously with the performance of the services. (Barrett Br. at 2 & 7). Second, they assert that without any proper allocation there is no way to know

whether the proposed allocation meets the applicable billing standards under 11 U.S.C. § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure. (*Id.*).

In support of its billing protocols and procedures, Butler Snow offered the testimony of Stephen W. Rosenblatt (“Rosenblatt”), lead counsel for the Debtors in the Chapter 11 Bankruptcy Cases. Rosenblatt testified that the United States Department of Justice (“DOJ”) seized the corporate documents, some computer hard drives, ledgers, and other records of the Debtors. As a result of the adverse publicity resulting from the DOJ seizure, many of the Debtors’ suppliers and counterparties to contracts sought to terminate their business relationships with the Debtors because they feared further government action. The DOJ seizure and the reactions of others forced the Debtors into a “hard landing” in chapter 11. Thereafter, the Chapter 11 Bankruptcy Cases moved quickly.

Rosenblatt explained that in each interim fee application, he estimated a percentage amount of time spent providing services for each Debtor. These estimates are reflected in a chart introduced into evidence at the Hearing. (BS Ex. 1). Rosenblatt further testified that it would be just as difficult, if not more so, to allocate time contemporaneously, as suggested by Barrett and Farm007, as it was to allocate time later with the benefit of hindsight. Some legal matters could be easily allocated to one or more Debtors, but others could not because it was impossible to know at the outset the extent to which the services reasonably benefitted more than one Debtor, particularly without the benefit of books and records.

### **Discussion**

Neither 11 U.S.C. § 330 nor Rule 2016 of the Federal Rules of Bankruptcy Procedure requires an entry-by-entry allocation among debtors in a jointly-administered bankruptcy case. At least one other bankruptcy court has allowed the allocation of fees and expenses among jointly-

administered cases when the allocation otherwise is reasonable and had been used throughout the bankruptcy cases without objection. *In re Burival*, No. BK07-42271-TLS, BK07-42273-TLS, 2009 WL 2501118 (Bankr. D. Neb. July 21, 2009). In *Burival*, the bankruptcy court overruled the objection to the allocation of attorney's fees and costs between two jointly-administered cases, noting: "Throughout this case, Debtors have proposed an 80/20 allocation and no party has objected until now. However, the objections do not propose a different allocation. This Court is not inclined to change at this late date what has been an accepted practice in this case." *Id.*, at \*4.

In the Barrett Brief, Barrett and Farm007 cite *In re Las Torres Development, L.L.C.*, 413 B.R. 687 (Bankr. S.D. Tex. 2009), for the proposition that services rendered to one debtor in a jointly-administered chapter 11 case may not be paid using the assets of another joint debtor's estate "because when cases are jointly administered, as opposed to substantively consolidated, the assets of each joint debtor are property of separate bankruptcy estates and each estate also has different liabilities." *Id.* at 698-99. Butler Snow, however, does not seek to have one or more of the bankruptcy estates pay the administrative fees of other bankruptcy estates. With each interim fee application, Butler Snow proposed an allocation to each of the Chapter 11 Bankruptcy Cases of the fees and expenses that it believed were properly attributable to that Chapter 11 Bankruptcy Case. The issue, therefore, is whether the allocation of fees and expenses among the Debtors is fair and reasonable. The Court finds that it is.

As demonstrated by Rosenblatt's testimony, Butler Snow's allocation of attorneys' fees and expenses among the Debtors was not on an arbitrary basis, but with each interim fee application, its allocation was reasonable, rational, and appropriate under the circumstances. *See Cont'l Ill. Nat'l Bank & Tr. Co. v. Charles N. Wooten, Ltd. (In re Evangeline Refining Co.)*, 890 F.2d 1312, 1327 (5th Cir. 1989) ("While time records need not be contemporaneously maintained,

we have emphasized that they should be ‘accurate.’”) (citation omitted). The allocation was based on a review of the work performed during the applicable fee period and an estimate of the percentage that the services benefitted each of the Debtors.

This ruling should not be interpreted as a blanket approval of this allocation method in all jointly-administered bankruptcy cases. The Court acknowledges a preference by the Fifth Circuit Court of Appeals for a procedure where time records are contemporaneously maintained. *See In re Evangeline Refining Co.*, 890 F.2d at 1327. Under these unique facts and circumstances, however, where the Chapter 11 Bankruptcy Cases sustained a “hard landing” into chapter 11 and where the attorneys initially provided services without the benefit of even the most basic corporate records, the allocation of the fees and expenses was fair and appropriate.

IT IS, THEREFORE, ORDERED that the Barrett Objection is hereby overruled.

##END OF ORDER##