

STATE OF NORTH CAROLINA
RANDOLPH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1786

BANK OF AMERICA, N.A.,

Plaintiff,

v.

KLAUSSNER FURNITURE INDUSTRIES, INC.; CANDOR CREEK INVESTMENTS, LLC; KLAUSSNER INTERNATIONAL, LLC; KLAUSSNER CORPORATE SERVICES, INC.; COMMUNITY DENTAL NETWORK, LLC; PRESTIGE FABRICATORS, INC.; KLAUSSNER FURNITURE OF CALIFORNIA, INC.; and EAGLE INTERMEDIATE HOLDINGS, INC.,

Defendants.

ORDER ON FIRST MONTHLY APPLICATION FOR INTERIM PAYMENT TO K&L GATES LLP, AS COUNSEL FOR RECEIVER

1. **THIS MATTER** is before the Court following the 30 November 2023 filing by counsel for Focus Management Group USA, Inc. and Michael Grau (the “Receiver”) of the First Monthly Application for Interim Payment to K&L Gates LLP, as Counsel for Receiver, for Compensation and Reimbursement of Expenses (the “Application”). (ECF No. 104 [“Appl.”].) The Application seeks compensation in the amount of \$181,052.50 for legal services performed by counsel for the Receiver from 24 August 2023 to 30 September 2023 (the “Fee Period”), and expense reimbursement in the amount of \$6,963.64 for the Fee Period. (Appl. i–ii, 6.) The total request is for \$188,016.14. (Appl. 7.)

2. The Court, in its Order Appointing General Receiver, provided that “[i]n accordance with N.C.G.S. § 1-507.31, and subject to any procedural safeguards and reporting the Court may order, [the Receiver] and any other professionals retained to

provide services to the receivership are to be paid from the receivership.” (Order Appointing Gen. Recv’r ¶ 47, ECF No. 23 [“Recv’r Order”].) Following appointment of the Receiver, on 21 September 2023, the Court entered its Order on Receiver’s Notice of Retention of General Legal Counsel, requiring counsel for the Receiver to submit requests for payment to the Court. (ECF No. 40.)

3. It appears to the Court that the Receiver’s counsel complied with such procedures and the Court therefore **ORDERS** that any future applications for payment should be presented in the same or similar manner as the Application presently before the Court.

A. Hourly Rate of K&L Gates LLP as Counsel for the Receiver

4. North Carolina General Statutes § 1-507.31(a) provides that the Receiver may employ attorneys or other professionals and does not require “prior court approval of the receiver’s retention of professionals; provided, however, promptly after the receiver’s engagement of any professional, the receiver shall file with the court and give notice to all parties in interest of a notice of the retention and of the proposed compensation.” N.C.G.S. § 1-507.31(a). When such professionals are compensated, the Court may require procedures, safeguards, and reporting, in its discretion. *Id.* § 1-507.31(b).

5. In this case, the Receiver appropriately gave notice of the retention of counsel at K&L Gates LLP (“KLG”). (ECF Nos. 39, 70.) As a safeguard, permitted by § 1-507.31(b), the Court required any interim payments to counsel at KLG to be subject to the Court’s approval. (ECF No. 40.)

6. Section 1-507.31 also provides that, “[i]n determining reasonable compensation to be paid to the receiver under this subsection, the court shall not be limited to considering any fixed percentage of the receiver’s receipts or disbursements, but may consider all relevant facts and circumstances[.]” N.C.G.S. § 1-507.31(b). The Court interprets the statute to encourage the Court to consider the following nine non-exclusive factors in determining whether the compensation to the Receiver’s retained professionals is reasonable. These factors include:

- (1) The amount or basis of compensation to which the receiver or the receiver’s professional agree, as set forth in the order appointing the receiver or the receiver’s professional.
- (2) The value of the debtor’s assets.
- (3) The number and amount of the debtor’s creditors.
- (4) The time and labor expended, and the billing rates charged, by the receiver or the receiver’s professional.
- (5) The novelty and complexity of the receivership.
- (6) The skill and time required to perform properly the duties and responsibilities of the receiver or the receiver’s professionals.
- (7) The amount of the receiver’s receipts and disbursements.
- (8) The amount of any distributions made to creditors on unsecured claims.
- (9) The compensation awarded to the receivers and receivers’ professionals in other receiverships.

Id.

7. Here, counsel at KLG request payment in the Application for the services provided by KLG attorneys and paralegals in amounts ranging from \$320.00 to \$850.00 per hour. (*See Appl. iii–iv.*) Together, the Court collectively refers to these professionals as “Counsel”.

8. In the Application, Counsel represent that these rates are “KLG’s customary hourly rates for work of this character [and] the rates are reasonable for a

case of this magnitude and complexity.” (Appl. 6.) Counsel do not provide the Court any law, persuasive or otherwise, in the Application to support the argument that the rates are reasonable under the circumstances. (Appl. 6.) However, the Court turns to the Receiver’s Supplemental Notice of Retention of General Legal Counsel (“Supplemental Notice”), (ECF No. 70 [“Suppl. Notice”]), and exhibits thereto, in considering whether Counsel’s hourly rates are reasonable under the circumstances.

9. In the Supplemental Notice, the Receiver represents that this receivership estate is “strikingly similar to that of another North Carolina Company, Mitchell Gold, Co, LLC, located in Taylorsville, North Carolina.” (Suppl. Notice 4.) Mitchell Gold sought relief under Chapter 11 of the U.S. Bankruptcy Code in Federal Bankruptcy Court in Delaware. (Suppl. Notice 4.) The professionals retained there “charge rates of approximately \$350 to \$1,595 for partners and \$295 to \$915 for associates, including partners in North Carolina who charge up to \$795.00 per hour.” (Suppl. Notice 5.) It is not clear whether those rates were approved by the Bankruptcy Court in that action. Here, “KLG’s partner rates are all less than or substantially similar to the top rates allowed in Mitchell Gold for the partners representing Mitchell Gold located in North Carolina, and significantly less than the most expensive Delaware rates.” (Suppl. Notice 7.)

10. The Supplemental Notice represents that it is the Receiver’s belief that “KLG is capable of providing almost all of the legal services the Receiver requires without seeking outside counsel due to its range of expertise across different industries and experience representing receivers in similar cases across North

Carolina.” (Suppl. Notice 6.) The Receiver may rely on professionals within one firm rather than many firms and does not risk inconsistent advice or confusion. This promotes the Receiver’s efficiency, which in turn may decrease the time required to perform necessary duties—both by Counsel and the Receiver.

11. The Receiver also points the Court to *In re Radiator Specialty Company, Inc.*, which is presently pending before the Court. (Suppl. Notice 7.) In that case, the receiver retained attorneys at hourly rates ranging from \$395.00 to \$650.00 for the receiver’s general legal counsel and \$1,035.00 for its special legal counsel. (Suppl. Notice 7–8.) To the Court’s knowledge, there has not been an approval process for those fees, meaning the Court has not approved or disapproved of those rates in that case. See *In re Radiator Specialty Company*, 23-CVS-1286 (Union Cty.) (J. Conrad).

12. As a result, the Court turns to its recent decision in *McManus v. Gerald O. Dry, P.A.*, a case which did not involve a receivership but rather a motion for attorneys’ fees and expenses at the conclusion of class action litigation, and whether the fees at issue were “fair and reasonable.” 2023 NCBC LEXIS 69, at *2 (N.C. Super. Ct. May 5, 2023). In that case, the Court considered the eight factors provided in Rule 1.5 of the Revised Rules of Professional Conduct of the North Carolina State Bar, some of which involve considerations that overlap with the factors provided in N.C.G.S. § 1-507.31(b). *Id.* at *3–4. The Court in *McManus* found the following hourly rates of attorneys to be reasonable:

- a. \$700.00 for a partner with 32 years of experience;
- b. \$575.00 for partners with 13–17 years of experience;

- c. \$350.00 for an associate with six years of experience; and
- d. \$225.00 for paralegals.

Id. at *8–9, *12.

13. Here, the Court must similarly consider whether Counsel's fees are reasonable, and unlike in *McManus*, the Court must bear in mind both the value of the debtors' assets and the number and amount of the debtors' creditors. N.C.G.S. § 1-507.31(b)(2)–(3). On the one hand, this appears to support a frugal approach to attorneys' fees because any amount the Court awards to Counsel, the less remains to be awarded to Bank of America, N.A. ("Plaintiff") and Defendants' other creditors. However, the Court received no objections to the fees at issue in the Application. Thus, the Court determines that factors two and three weigh slightly in favor of a lower hourly rate or some rate closer to what was found reasonable in *McManus*.

14. The Court is also directed to consider the time and labor expended and the billing rates charged by Counsel at KLG. This action has proven to be time-intensive, as the Application demonstrates. Counsel represent that they have performed between 297 to 310 hours of legal services for the Receiver during the Fee Period. (Appl. v–vi, 4.) This is a substantial volume of work at fairly high billable rates across the KLG attorneys and paraprofessionals. The Court determines that factor four also weighs in favor of a lower hourly rate.

15. Finally, the Court must consider the novelty and complexity of the receivership, and the skill and time required to properly perform Counsel's duties for the Receiver, as provided in factors five and six, which the Court determines also

permits considering Counsel's years of legal experience and position at KLG. The Court has been impressed with Counsel's work and skill in performing necessary tasks for the Receivership. The services the Receiver requires are broad-ranging and the KLG attorneys have expertise across different industries and with representing receivers, which is a skill the Receiver requires in order to perform its duties in a complex receivership such as this one.

16. However, the Court must balance KLG's high level performance with attention to the reasonableness of compensation sought for Counsel who have varied experience levels. For example, KLG seeks fees for first- or second-year associates that have hourly rates that are nearly \$100.00 per hour more than what the Court found reasonable in *McManus* for associates with six to seven years of experience. (See ECF No. 70.4.) Additionally, one associate at KLG with ten years of experience has an hourly rate of \$850.00, which is \$150.00 per hour more than what the *McManus* Court found reasonable for a partner with twenty-two more years of experience. (See ECF No. 70.4.)

17. In light of the considerations set forth above, the rates the Court has previously found reasonable in similar circumstances, and the experience and skill of Counsel and the KLG professionals, among other things, the Court determines, in its discretion, that the below-provided hourly rates are reasonable under the circumstances and the factors set forth at § 1-507.31(b). Counsel may charge for legal services reasonably and necessarily provided to the Receiver at the following hourly rates:

| Name | Title | Approved Hourly Rate |
|----------------------------------|-----------|----------------------|
| Gardner, John R. | Partner | \$655.00 |
| Houston, Matthew T. | Partner | \$600.00 |
| Idol, Tucker A. | Partner | \$600.00 |
| Thomsen, Elizabeth A. | Partner | \$665.00 |
| Walsh, Leann M. | Partner | \$600.00 |
| Westbrook, Margaret R. | Partner | \$700.00 |
| Buckheit, Zachary S. | Associate | \$380.00 |
| Cantley, Bryan L. | Associate | \$425.00 |
| Clark, Randy J. | Associate | \$500.00 |
| Etheridge, Zechariah C. | Associate | \$365.00 |
| Everhart, Carly S. | Associate | \$410.00 |
| Goeller, Matthew B. ¹ | Associate | \$410.00 |
| Ruppel, Riley N. | Associate | \$350.00 |
| Steele, Emily | Associate | \$425.00 |
| Beaty, Jolene | Paralegal | \$265.00 |
| Wallo, Stephanie M. | Paralegal | \$265.00 |

B. The Application

18. It appears to the Court, having reviewed the Application and the details provided therein on KLG's activities, as stated in the Invoices to the Receiver, that the legal work for which payment is sought is otherwise authorized by this Court. The Court additionally determines that the work provided by KLG was reasonable and necessary for the performance of the Receiver's duties and is otherwise fair and reasonable. Further, the entries included were appropriately task-billed.

¹ The Receiver did not provide the Court with information about Matthew B. Goeller ("Mr. Goeller"). (See ECF No. 70.4 (providing bios for the other KLG professionals working with the Receiver in this action).) However, it appears from Mr. Goeller's publicly available profile on KLG's website that he is an attorney not licensed to practice in the State of North Carolina but works in the firm's Wilmington, North Carolina office. It appears that Mr. Goeller graduated from law school in 2016 and is licensed to practice law in the State of Delaware, and the Court will therefore treat his hourly rate as similar to other associates with six to seven years of experience.

19. However, the Court asks that, in future applications if the total hours Counsel is seeking compensation for differs from the total hours worked as reflected on attached Invoices, Counsel note that difference.² Counsel need not explain why they seek compensation for less than the total hours worked.

20. Therefore, the Court **GRANTS** in part the Application to award some, but not all, of the attorneys' fees requested in the Application. The Receiver is hereby permitted to remit to KLG \$161,861.50 for 286.2 hours of legal work at the above-approved rates, as partially reflected in the Application in the "Summary of Total Fees and Hours by Attorneys and Paraprofessionals." (*See Appl. iii–iv.*) A chart of the Court's calculations of fees properly payable appears herein at Exhibit A.

21. Next, as to the expenses in Exhibit B to the Application, KLG claimed expenses listed as "out-of-pocket expenses incurred during the Fee Period, totaling \$6,963.64." (Appl. 6, Ex B.) The Application does not provide any specific information or itemization for the Court's review regarding how this amount was arrived at or why the costs were incurred. (Appl. 6, Ex B.) Therefore, the request for reimbursement of expenses in the amount of \$6,963.64 is **DENIED**. As the Court has similarly required of the Receiver, in future applications KLG shall provide the Court with adequately specific, itemized, and categorized information regarding how

² It appears to the Court that the total hours worked on the Invoices at Exhibit A to the Application is 297 hours. However, Counsel request compensation for only 286.2 hours. Specifically, it appears that Counsel seek compensation for only 64.2 hours of work by Z. Etheridge rather than for the 75.0 total hours he worked based on the Invoices submitted to the Receiver. This created a 10.8-hour discrepancy on the Court's review of the Application.

and why such sums are incurred in order for the Court to properly review and consider the reasonableness of such claimed expenses.

22. **THEREFORE**, the Court, in its discretion and pursuant to the authority afforded the Court by N.C.G.S. § 1-507.20 *et seq.*, **GRANTS** in part and **DENIES** in part the Application as follows:

- a. The Application is **GRANTED** in part and the Receiver is permitted to remit \$161,861.50 to KLG for Counsel's work during the Fee Period; and
- b. Except to that extent, the Application is otherwise **DENIED**.

SO ORDERED, this the 15th day of December, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases

Exhibit A

| Name | Hourly Rate | Number of Hours | Amount to be Paid |
|-------------------------|--------------------|------------------------|--------------------------|
| Beaty, Jolene | \$ 265.00 | 3.3 | \$ 874.50 |
| Buckheit, Zachary S. | \$ 380.00 | 1.8 | \$ 684.00 |
| Cantley, Bryan L. | \$ 425.00 | 6.1 | \$ 2,592.50 |
| Clark, Randy J. | \$ 500.00 | 0.5 | \$ 250.00 |
| Etheridge, Zechariah C. | \$ 365.00 | 64.2 | \$ 23,433.00 |
| Everhart, Carly S. | \$ 410.00 | 1.2 | \$ 492.00 |
| Gardner, John R. | \$ 655.00 | 134.1 | \$ 87,835.50 |
| Goeller, Matthew | \$ 410.00 | 3.6 | \$ 1,476.00 |
| Houston, Matthew T. | \$ 600.00 | 4.6 | \$ 2,760.00 |
| Idol, Tucker A. | \$ 600.00 | 10.4 | \$ 6,240.00 |
| Ruppel, Riley N. | \$ 350.00 | 10 | \$ 3,500.00 |
| Steele, Emily | \$ 425.00 | 1.2 | \$ 510.00 |
| Thomsen, Elizabeth A. | \$ 665.00 | 3.4 | \$ 2,261.00 |
| Wallo, Stephanie M. | \$ 265.00 | 0.2 | \$ 53.00 |
| Walsh, Leann M. | \$ 600.00 | 2.2 | \$ 1,320.00 |
| Westbrook, Margaret R. | \$ 700.00 | 39.4 | \$ 27,580.00 |
| | | 286.2 | \$ 161,861.50 |