

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

In re: Michael D. Vick,  
  
Debtor.

Case Number 08-50775  
Chapter 11

**SECOND INTERIM APPLICATION FOR COMPENSATION OF FEES AND  
REIMBURSEMENT OF EXPENSES FOR WILLCOX & SAVAGE, P.C.**

This Second Interim Application for Compensation of Fees and Reimbursement of Expenses (the "Second Interim Application") is submitted by Willcox & Savage, P.C. ("W&S"), as counsel for the Official Committee of Unsecured Creditors in the chapter 11 case of Michael D. Vick (the "Committee"). Through this Interim Application, W&S seeks the allowance of compensation for legal services rendered and reimbursement of expenses incurred by W&S during the fee period commencing February 1, 2009 and ending May 31, 2009 (the "Second Interim Fee Period"). And for its Second Interim Application, W&S respectfully states as follows:

**Background**

1. On July 7, 2008, Michael D. Vick (the "Debtor") filed, in the United States Bankruptcy Court for the Eastern District of Virginia, Newport News Division, a petition for relief under chapter 11 of title 11 of the United States Code. No trustee has been appointed and the Debtor remains in possession and control of his assets and affairs pursuant to 11 U.S.C.

§ 1107.

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I-884063.2

2. On July 15, 2008, the Norfolk, Virginia office of the United States Trustee convened a meeting for purposes of organizing a committee of unsecured creditors in this case. The United States Trustee officially formed the Committee at that meeting. *See Appointment of Unsecured Creditors Committee*, docket entry # 37.

3. Soon after its appointment, the Committee determined the need to engage counsel and selected W&S to serve as its counsel in this case. *See Application to Authorize Employment of Counsel*, docket entry # 38. By Order dated July 29, 2008, this Court approved the employment of W&S as counsel for the Committee. *See Order*, docket entry # 75.

#### **Representations and Disclosures**

4. On February 26, 2009, W&S filed a First Interim Application for Compensation of Fees and Reimbursement of Expenses (the "First Interim Fee Application"), seeking compensation of fees in the amount of \$367,455.25 and reimbursement of expenses in the amount of \$22,097.69 for services rendered and expenses incurred by the law firm during the period commencing July 15, 2008 and ending January 31, 2009. *See docket entry # 502*. By Order dated March 20, 2009 (the "First Interim Fee Order"), this Honorable Court approved the First Interim Fee Application and awarded W&S compensation of \$365,396.25 and reimbursement of expenses in the amount of \$20,794.99. *See docket entry # 555*. W&S has not received payment pursuant to the First Interim Fee Order.

5. W&S has not and will not share compensation with any other person or parties other than among members and regular associates of W&S to the extent and manner permitted by Rule 2016(a) of the Federal Rules of Bankruptcy Procedure.

6. W&S has no agreement, express or otherwise, with any other person for the sharing of compensation to be received for the services rendered in these cases.

7. W&S has not received a retainer, periodic payments, or security in connection with these chapter 11 proceedings from the Debtor's estate or from any person or entity.

8. In this Second Interim Application, W&S seeks approval of compensation for legal services rendered, and reimbursement for expenses incurred, during the Second Interim Fee Period. W&S's services are described in detail below, and broken down by specific task in the statement (the "W&S Statement") attached hereto and marked as **Exhibit A**. In the W&S Statement, detailed time entries are reported on a daily basis in tenths of an hour. The Committee has reviewed and approved the W&S Statement and the compensation sought under this Second Interim Fee Application.

9. All of the services for which W&S seeks compensation were performed as counsel for the Committee. The fees are not duplicative and compensate actual and necessary services rendered. Any time entries that reflect travel time for hearings or meetings have been reduced to the minimum amount of charges necessary (reduced by 50%) to insure compliance with the applicable Guidelines of the United States Trustee's office. (Local travel time within Hampton Roads was neither recorded nor charged.) A summary of the W&S Statement and the out-of-pocket costs incurred by W&S (the "W&S Summary") is attached hereto and marked as **Exhibit B**.

**Narrative Summary of Services and Expenses During the Interim Fee Period**

10. W&S has at all times in these chapter 11 proceedings endeavored to restrict its professional services rendered to matters suited to its role as counsel for the Committee. *C.f.* 11 U.S.C. § 1103(c) (listing the powers and duties of a committee of unsecured creditors). In that regard, W&S generated fees only on issues for which the Committee determined that W&S's efforts were likely to be beneficial to the Committee or were necessary to the representation of the Committee.

11. In particular, the W&S Summary and W&S Statement for the Second Interim Fee Period reflect that counsel for the Committee devoted the most time in the Second Interim Fee Period (approximately 43.7%) to issues relating to the Debtor's Plan of Reorganization and, in particular, relating to supporting the Plan (which had been carefully negotiated by the Committee) and Plan confirmation. Since the denial of the confirmation of the Debtor's Plan in April, the Committee has worked with the Debtor on modifications to his Plan and has monitored the Debtor's progress regarding feasibility issues. *See* Exhibit B; *see also* 11 U.S.C. § 1103(c)(3) ("A committee appointed under section 1102 of this title may ... participate in the formulation of a plan"). The W&S Summary and W&S Statement also reflect that counsel for the Committee devoted a substantial amount of time in the Second Interim Fee Period (approximately 19.4%) to issues relating to the Debtor's assets, including reviewing correspondence, pleadings, and offers for asset sales, participating in the resolution of disputes regarding various assets, and monitoring the Debtor's progress in recovering and selling assets. *See* Exhibit B; *see also* 11 U.S.C. § 1103(c)(2) ("A committee appointed under section 1102 of this title may ... investigate the acts, conduct, assets, liabilities, and financial condition of the debtor"). Committee counsel also participated (with the Court's approval) in the adversary proceeding to avoid the liens of Joel Enterprises, attended 2004 examinations, and counseled the Committee regarding issues unique to this case, such as the Debtor's future income, proposed discharge, and the problems with his Defined Benefit Pension Plan. *See* Exhibit B; *see also* § 1103(c)(5) ("A committee appointed under section 1102 of this title may ... perform such other services as are in the interest of those represented"). Many of the topics addressed by counsel required legal research, which is also reflected in the W&S Summary and W&S Statement.

Counsel also reviewed, drafted, and responded to pleadings in the case, as appropriate, to protect the rights and interests of the constituency of the Committee. *See generally* Exhibit B.

12. The three attorneys primarily responsible for representing the Committee in this case have each focused on particular topics and tasks to avoid duplicating efforts and to maximize W&S's resources. *See* Exhibit B (indicating, for example, that Mr. Reeves has focused on Plan issues and has provided regular written updates to the Committee; Mr. McIntyre has focused on issues related to the Debtor's assets, confirmation, and the JEI adversary proceeding; and Ms. Pyle has focused on matters relating to case administration and on conducting research and drafting pleadings). For efficiency, all counsel typically attend a regular weekly (or, when appropriate, bi-weekly) telephone conference with the Committee to provide updates, to answer questions, to ascertain the Committee's position on various issues, and to receive instruction from the Committee as to desired courses of action. *See* Exhibit B (indicating that all three attorneys usually attend all or part of the Committee meetings to report and receive instruction on their respective areas of focus). There are few instances of attorneys at W&S meeting as a group and, with the exception of the confirmation hearing, only one attorney generally attended any particular hearing or deposition on behalf of the Committee.

13. Based on the foregoing, W&S seeks allowance of fees in the amount of \$168,562.00 to compensate the attorneys and paraprofessionals who devoted a total of 579.5 hours to the representation of the Committee during the four months included in the Second Interim Fee Period. *See* Exhibits A and B. W&S also accrued \$12,839.10 in out-of-pocket expenses during the Second Interim Fee Period, including copy, transcript, legal research and telephone charges, and W&S seeks allowance of reimbursement for those expenses. *See* Exhibit B.

### **Professional Services Rendered During the Interim Fee Period**

14. W&S, consistent with the terms of its engagement and at the direction of the Committee, supported the Debtor's Plan, monitored the recovery of the Debtor's assets, and, in general, participated in this case to the extent necessary to protect the interests of the Committee. The nature of services provided is summarized generally in paragraphs 11 and 12, *supra*, and in more detail in the attached Exhibits A and B. In all matters, W&S has undertaken to render its services only where appropriate and only in a fashion not duplicative of the efforts and responsibilities of other professionals. In that regard, W&S has restricted its specific efforts to matters directed and approved by the Committee and performed tasks in what it believes to be an economical manner. The docket will underscore that most motions by the Debtor in this case were approved prior to filing and, in any event, resolved prior to the hearing thereon.

15. Section 331 of the Bankruptcy Code permits professionals employed pursuant to 11 U.S.C. § 327 to apply for interim compensation for services rendered if such compensation is consistent with the guidelines set forth in § 330. Section 330(a)(3) of the Bankruptcy Code and Johnson v. Georgia Highway Express, Inc., 548 F.2d 715 (5th Cir. 1974), set forth the factors the Court must consider in awarding compensation to professional persons, including attorneys. *See In re Robinson*, 368 B.R. 492, 498 (Bankr. E.D. Va. 2007); Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 (4th Cir. 1978). Pursuant to § 330(a)(3), W&S presents the following information in support of the reasonableness of the compensation requested:

- A. **Time and Labor Expended.** W&S is seeking compensation for 579.5 hours of legal services provided in connection with its representation of the Committee during the four months comprising the Second Interim Fee Period, as indicated in the attached W&S Statement and W&S Summary. *See Exhibits A and B.*

- B. **Rates Charged for Services Rendered.** The billable rates charged by W&S in connection with its representation of the Committee are standard billable rates charged by W&S on bankruptcy and non-bankruptcy matters. W&S strived to assign duties to the billing professionals with the lowest billing rate commensurate with the services being performed, resulting in considerable savings for the Debtor's estate.
- C. **Necessity of Services Rendered.** All services rendered by W&S were necessary and beneficial to the Committee, and were undertaken at the express direction of the Committee after appropriate consideration of the anticipated expenses and benefits. The compensation sought by W&S does not reflect: (i) time spent by paraprofessionals and staff in performing services of a firm-overhead nature rather than a professional nature; (ii) duplication of efforts among the professionals employed by W&S; (iii) services that were not necessary or beneficial to the Committee; or (iv) associate or paralegal training.
- D. **Timing of Services Rendered and Complexity of Issues.** W&S has attempted to perform all services within a reasonable amount of time, commensurate with the complexity, importance, and nature of the problem, issue, or task at hand. As noted in paragraphs 11 and 12, *supra*, counsel especially focused their attention in the Second Interim Fee Period to issues related to Plan confirmation, monitoring and facilitating asset sales, and disputing the liens obtained by Joel Enterprises. The special circumstances of this individual chapter 11 debtor (such as the Debtor's proposed discharge, issues of "phantom gain" and future income, and problems with the Debtor's Defined Benefit Pension Plan), presented difficult





