

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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|---------------------------|---|-------------------------|
| IN RE: |) | Chapter 11 |
| |) | |
| STATIONS HOLDING COMPANY, |) | Case No. 02-10882 (MFW) |
| INC., |) | |
| |) | |
| Debtor |) | |

MEMORANDUM OPINION¹

Before the Court is the Supplement to the First and Final Fee Application of Greenhill & Co., LLC ("Greenhill") for Compensation and Reimbursement of Expenses as Financial Advisors to the Official Committee of Unsecured Creditors. The Shareholder Representative, on behalf of the Reorganized Debtor, and Gray objected to Greenhill's fee application. For the following reasons we sustain the objection, in part.

I. FACTUAL BACKGROUND

On March 22, 2002 ("the Petition Date"), Stations Holding Company, Inc. ("the Debtor") filed a voluntary petition under chapter 11 of the Bankruptcy Code.

On April 2, 2002, the United States Trustee ("the UST") formed the Official Committee of Unsecured Creditors ("the Committee"). On June 4, 2002, the Committee filed an application

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

to retain Greenhill as its financial advisor ("the Retention Application"). Pursuant to the Application, Greenhill sought the following: (i) an initial advisory fee of \$150,000; (ii) monthly advisory fees of \$150,000; (iii) a restructuring transaction fee in the amount of \$1,250,000 plus 3% of the face value of all cash and other securities in excess of \$100 million received by the 13.25% Senior Subordinated Discount Note holders; and (iv) reimbursement of the reasonable expenses incurred in connection with the services provided to the Committee.

The UST filed an objection to the Retention Application on June 13, 2002, raising issues with regard to the proposed compensation and indemnification provisions. At the same time, the Debtor and Greenhill negotiated a modified fee arrangement, whereby Greenhill would receive a \$1 million fee (including all out-of-pocket expenses) for all services Greenhill would provide to the Committee. This modified arrangement also deleted the indemnification provisions. The hearing on the Retention Application, originally scheduled for June 17, 2002, was continued to allow the Committee and Greenhill to attempt to resolve the UST's remaining objections.

On the same day that Greenhill filed the Retention Application, the Debtor executed an Agreement and Plan of Merger with Gray Televisions, Inc., and Gray MidAmerica Television, Inc. (collectively "Gray") for \$502,500,000 ("the Merger Agreement").

As a condition of the merger, Gray required that the Debtor's key creditors support the Merger Agreement and the Debtor's Plan. Accordingly, Gray requested that the Debtor enter into "lock-up" agreements by which the holders of unsecured claims and stocks would agree to support the Plan. The Committee obtained signed "lock-up" agreements from most of the Senior Note holders.

A hearing on confirmation of the Debtor's Plan was held on September 25, 2002. At that time, the UST objected to counting the votes obtained pursuant to the "lock-up" agreements. The Court granted the UST's motion to designate those votes, finding that the "lock-up" agreements were improper solicitations prohibited by section 1125 of the Bankruptcy Code. Notwithstanding this designation, the Debtor's Plan was confirmed on September 30, 2002, and became effective as of October 25, 2002.

Greenhill filed its First and Final Fee Application seeking \$1 million in compensation for the services provided to the Committee on November 14, 2002, four days before the continued hearing on its Retention Application. At the hearing, the Shareholder Representative objected to the Retention Application claiming that Greenhill should not be retained pursuant to section 328 of the Bankruptcy Code. Subsequently, the Shareholder Representative (and Gray) objected to the Fee Application, as well.

On January 28, 2004, a hearing was held on the Retention and Fee Applications. At the conclusion, the Court granted the Retention Application, subject to a determination of the reasonableness of the fees requested. The Court directed Greenhill to provide further detail of the actual services it performed to permit an evaluation of the reasonableness of the requested fees.

On April 13, 2004, Greenhill supplemented its Fee Application. On May 3, 2004, the Shareholder Representative filed an Objection to the Supplement. The matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b) (2) (A), (B), & (O).

III. DISCUSSION

Bankruptcy courts have a duty to review the fee requests of professionals in chapter 11 cases. See, e.g., In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 841 (3d Cir. 1994). This duty protects the public interest by monitoring the Debtor's estate and ensuring that all fees assessed are reasonable in light of the benefits received. Id. "[A] bankruptcy judge's experience with fee petitions and his or her expert judgment pertaining to

appropriate billing practices, founded on an understanding of the legal profession, will be the starting point for any analysis." Id. at 854. Under section 330, when determining the reasonableness of a fee request it is the responsibility of the court to consider: (i) the nature, extent, and value of the services provided; (ii) the time spent on the services provided; and (iii) the customary compensation for similar services provided. 11 U.S.C. § 330(a)(3). After hearing the testimony and reviewing the Greenhill summary, we find that the \$1 million fee requested is excessive in light of the services actually provided which are compensable.

A. Retention Application Expenses

Greenhill seeks compensation for 38 hours of time spent on preparing its Retention Application, responding to objections, and subsequent negotiations resolving those objections. A professional is entitled to compensation only for services that are necessary to the administration of the case. 11 U.S.C. §330(a)(3)(C). It was necessary for Greenhill to file an application to serve as financial advisor to the Committee.

It would be unreasonable and inequitable, however, to charge the Debtor's estate for time that a professional spent negotiating its salary. Additional efforts beyond the filing of the application, such as the professional's negotiations for its fees and compensation, are not beneficial to the estate. The

purpose of such work is to improve the position of the applicant, not the Debtor or creditor body in general. In fact, the delay caused by such negotiations hinders one of the goals of a chapter 11 case, namely, the timely reintroduction of the Reorganized Debtor into the stream of commerce.

Giving consideration to the hours and brief descriptions of the Greenhill services provided to the Court, we will allow Greenhill compensation only for 6 hours spent preparing the Retention and Fee Applications. 11 U.S.C. §330(a)(6). The remaining 32 hours of time billed for the litigation and negotiations surrounding its retention will be disallowed.

B. Expenses Incurred Prior to Formation of the Committee

Greenhill requests compensation for 55.5 hours of work performed before the creation of the Committee. Time spent in preparation for or anticipation of advising the Committee is not compensable. The time spent before the Committee was formed cannot be beneficial to the Committee. Therefore, the Court will disallow all compensation for the time spent on work before the formation of the Committee.

C. Multiple Professionals Performing the Same Task

Greenhill requests compensation for 111 hours of time spent on Committee communication after the formation of the Committee. Of these 111 hours, 103 hours were performed by no less than 3 professionals performing the same task.

The fewest number of professionals should be assigned to perform each task; if it is more efficient and economical to use one professional instead of two, then one should be used. In re Jefsaba, Inc., 172 B.R. 786, 800 (Bankr. E.D. Pa. 1994). Greenhill has the burden of proving that the number of professionals employed and fees charged for Committee communication was necessary. See Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253, 261 (3d Cir. 1995). Greenhill has not met this burden. Based on the Court's experience and judgment with regard to professional billing practices, the amount of time spent on Committee communication was duplicative and excessive. We will disallow half of the 103 hours billed for Committee communication tasks where more than one professional participated.

D. Flat Fee

To allow a \$1 million flat fee for the allowable 149 hours of work would amount to an hourly fee of \$6,711.49.² While Greenhill and the Committee agreed to a flat fee for services provided, this arrangement does not prevent the Court from using an hourly rate to determine the reasonableness of that fee. See, e.g., In re Commercial Fin. Servs., Inc., 298 B.R. 733, 749 (B.A.P. 10th Cir. 2003). The Court finds this fee to be

² Even before the Court's reduction, the \$1 million flat fee resulted in an effective hourly rate of \$3,436.43.

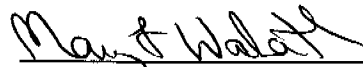
excessive for the services performed. It is the opinion of the Court, based on its experience and judgment with regard to billing practices, that a reasonable fee for the services provided by Greenhill would not exceed \$700/hour. Therefore, we will allow Greenhill's fee application in the amount of \$104,300.

IV. CONCLUSION

For the foregoing reasons, the Fee Application of Greenhill & Co., LLC, will be granted in part.

An appropriate Order is attached.

BY THE COURT:



Mary F. Walrath

United States Bankruptcy Judge

Dated: August 18, 2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
STATIONS HOLDING COMPANY,) Case No. 02-10882 (MFW)
INC.,)
)
Debtor)


O R D E R

AND NOW, this 18th day of August, 2004, upon consideration of the Supplement to the First and Final Fee Application of Greenhill & Co., LLC for Compensation and Reimbursement of Expenses as Financial Advisors to the Official Committee of Unsecured Creditors and the objection of the Shareholder and Gray thereto, and for the reasons set forth in the accompanying Memorandum Opinion; it is hereby

ORDERED that the Fee Application is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED that Greenhill & Co., LLC shall be allowed compensation in the amount of \$104,300.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: Laura Davis Jones, Esquire¹

¹ Counsel shall distribute a copy of this Order to all interested parties and file a Certificate of Service with the Court.

SERVICE LIST

Laura Davis Jones, Esquire
PACHULSKI, STANG, ZIEHL, YOUNG & JONES, PC
919 North market Street, 16th Floor
P.O. Box 8705
Wilmington, DE, 19899-8705

Geoffrey A. Richards, Esquire
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, IL 60601

Mark D. Collins, Esquire
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
P.O. Box 551
Wilmington, DE, 19899

Adam L. Shiff, Esquire
KASOWITZ, BENSON, TORRES & FREIDMAN
1633 Broadway
New York, NY 10019

Frank Perch, Esquire
THE UNITED STATES TRUSTEE FOR DISTRICT OF DELAWARE
844 King Street, Suite 2313
Wilmington, DE 19801