

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
PITT PENN HOLDING CO., INC., <i>et al.</i> ,)	Case No. 09-11475(BLS)
)	(Jointly Administered)
Debtors.)	
_____)	Re Dkt No. 2646

MEMORANDUM ORDER¹

The movant, Michael C. Esposito (“Movant”), has filed “Michael C. Esposito’s Emergency Motion Requesting that the Court Reject Potter Anderson & Corroon’s Request (D.I. 2646) to Approve Final Fee Application” (the “Motion”). Movant filed the Motion on February 19, 2015. As the title of the Motion suggests, Movant objects to the final fee application (the “Application”) of Potter Anderson & Corroon (“PA&C”) filed on August 13, 2013 (D.I. 1885)². The Movant filed the Motion almost 15 months after the noticed objection deadline on the Application, which was September 6, 2013. The Court is treating the motion as a motion for reconsideration pursuant to and in accordance with the Order Chief Judge Shannon entered on March 10, 2015 (D.I. 2667).

Movant argues that the Court should not grant the Application because Chief Judge Shannon had previously stated that it would review all professionals fee applications together, and the Application is therefore untimely. Movant also argues that PA&C is not entitled to a fee because it “created and prosecuted” an unconfirmable plan.

¹ Chief Judge Brendan L. Shannon is presiding over these jointly administered cases. The motion and fee application the Court is addressing in this Memorandum Order have been assigned to the Court. The case, however, remains in Judge Shannon’s care.

² Combined Third Monthly and Final Fee Application of Potter Anderson & Corroon LLP for Compensation and Reimbursement of Expenses as Co-Counsel for the Debtors for the period of February 13, 2013, through July 31, 2013. Chief Judge Shannon approved the Application based upon his review and a Certificate of No Objection, unaware that Movant had filed the Motion. Order at D.I. 2648.

It is not necessary or appropriate for the Court to review or opine upon matters which Chief Judge Shannon has already decided. The Court therefore will not recite the procedural background of the case or facts which do not relate directly to the Motion or the Application. The master facts applicable to the Motion are:

1. Movant is a shareholder of debtor Industrial Enterprises of America, Inc. (“IEAM”). He is not a creditor.

2. The deadline for objections to the Application was September 6, 2013. Movant filed the Motion almost 15 months after the objection deadline.

3. The Motion is duplicative of the arguments Movant made in an earlier objection. See Michael C. Esposito’s Standing Objection of All Interim and Final Applications for Compensation and Reimbursement of Expenses by . . .Potter Anderson & Corroon and All Professionals of the Debtors, filed on December 3, 2014 (the “Objection”) (D.I. 2573). Chief Judge Shannon held a hearing and overruled the Objection (and other objections) and approved the requested fees. It is therefore clear that the substance of the Motion has been addressed and the bases of the Motion already overruled. See Order at D.I. 2587.

4. Movant also filed an adversary proceeding raising a number of issues which appear in the Motion and which Chief Judge Shannon dismissed and he thereafter denied reargument. See Paragraph E, *infra*.

5. PA&C’s role in the case has ended and it is therefore unnecessary to withhold payment, particularly when PA&C has already waited almost two years for payment.

IT IS THEREFORE ORDERED as follows:

A. The Motion is denied. Movant's standing to bring the Motion as a shareholder rather than creditor of IEAM is highly suspect. Moreover, the Court, by Chief Judge Shannon, has already rejected Movant's arguments repeated in the Motion.

B. The Motion is untimely, having been filed 15 months after the objection deadline on the Application. The delay is prejudicial to PA&C because it negotiated a reduced fee with other parties. Further, it is prejudicial to IEAM because if PA&C reverts to seeking the fee it originally requested prior to the negotiations, IEAM could have to pay PA&C the larger amount. It is also possible, perhaps even likely that PA&C would request fees for defending the Application.

C. The Order, dated March 10, 2015 (D.I. 2667), assigning the Motion and Application to the Court, provides that it is to be treated as motion for reconsideration. The Motion does not satisfy any of the criteria for the Court to reconsider Chief Judge Shannon's Order granting the Application.

D. Motions for reconsideration are governed by Bankruptcy Rule 9023, which incorporates F.R. Civ. P. 59. To sustain a motion for reconsideration, a movant must prove that (1) there has been an intervening change in the law, (2) there is newly discovered evidence not available at the time of the judgment, or (3) there is a need to correct a legal or factual error which has resulted in manifest injustice. *Harsco Corp. v. Zlotnicki*, 779 F. 2d 906, 909 (3d Cir. 1985).

E. Movant does not meet any of the criteria for reconsideration. The Court has reviewed the docket of the case and finds that Chief Judge Shannon previously addressed all of the matters raised in the Motion. It is also clear that Chief Judge Shannon previously considered and rejected Movant's arguments when he entered - over Movant's objection - the Omnibus Order Granting

Interim Allowance of Compensation for Services Rendered and for Reimbursement of Expenses, dated December 15, 2014 (D.I. 2587). Chief Judge Shannon also rejected many of Movant's arguments when he dismissed the Third Amended Complaint in the adversary proceeding which Movant filed (the "Dismissal Order") (Adv. Case 14-50091, D.I. 72). Very recently, Chief Judge Shannon issued a Memorandum Order, dated April 17, 2015 (Adv. Case 14-50091, D.I. 78), denying reconsideration of the Dismissal Order.

F. For the foregoing reasons, the Motion is herewith denied. There being no other objection and the Court finding that the fees and expenses PA&C seeks in the Application are fair and reasonable and satisfy the requirements of the Bankruptcy Code, the Court will enter the Order awarding PA&C's fees and expenses.

Dated: April 29, 2015

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.

KEVIN GROSS, U.S.B.J.