Attorney Fee's in Chapter 13

A look into the Crystal Ball

Advanced Consumer Bankruptcy Seminar
Sponsored by the
State Bar of Texas

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What can be expected - Introduction

Fair and equitable compensation is near and dear to each attorney's heart. As counsel for parties in bankruptcy, Congress has imposed upon us more difficult burdens than Counsel has in other areas of law. Whether we represent debtors, creditors or are hired to pursue as special interest for a specific purpose in connection with the bankruptcy estate, our compensation is reviewable through judicial hindsight.

This purpose of this paper is to discuss in the chapter 13 context 1) What are the sources and standards of judicial review for applications for compensation, 2) What is reasonable compensation for debtor's counsel and 3) what is reasonable compensation standards for non-debtor counsel.

Sources and standards for Judicial Review

The Rules of the Game

Looking through the Crystal Ball

11 U.S.C. §330 sets the foundation for review of all fees sought or to be paid in bankruptcy. Additionally 11 U.S.C.§ 330 and empowers the court to reduce fees that are out of line.[1]


the courts shall consider the nature, extent and value of services provided subject to time expended;
1 rates charged;
2 necessity and benefit of services toward completion of the case,
3 an evaluation of time spent on the case based upon the complexity/simplicity of the case; and
4 whether the compensation sought is in line with compensation awards for issues outside of title 11.[2]

Although each factor enumerated by 11 U.S.C. §330 retains independent significance in determining fees for professionals, the cost of comparable services factor has an overarching role to act as an aide to value of services rendered, given the services nature and extent. In re Busy Beaver Bldg. Centers, Inc., 19 F.3d 833, C.A.3 (Pa.) (1994).
Be advised however §330(A)(4) establishes additional consideration for Chapter 13
debtor's counsel.

A) Additional factors Considered for Debtor Attorneys

In 1994 Congress amended 11 U.S.C. §330 to include additional factors to be consider for
attorneys representing debtors in Chapters 12 and 13. Compensation for debtor's attorneys in
Chapter 13 is established based upon two additional criteria set forth in 11 U.S.C.
§330(a)(4)(B).[3] Debtor's counsel should be reasonably compensated based upon 1) the benefit
of the services to the debtor and 2) the necessity of the services to the debtor.

11 U.S.C. §330 (a)(4)(A) limits compensation by providing that the court shall not allow
compensation for (1) unnecessary duplication of services, 2) services that were not reasonably
likely to benefit the debtor's estate, or 3) services that were not necessary to the administration of
the case.[4] It is well established that the Bankruptcy Court has a tremendous amount of
discretion in the review of fee/compensation sought. "In the absences of any evidence of billing
discretion in chapter 13 cases, bankruptcy court would exercise its own judgment and write off
those charges by debtors' counsel that it deemed excessive redundant, unjustifiable, or otherwise

11 U.S.C. §330(a)(4)(B) addresses the complexity and potential conflict of interest
confronting debtor's counsel. Without the analysis and payment of compensation under
§330(a)(4)(B) debtor counsel's compensation would be based entirely upon factors that benefit an
entity other than the attorney's clients. As mentioned above, §330(a)(4)(B) remedies this situation
by expressly directing that compensation awards contemplate the benefit of the bankruptcy
proceeding to the individual seeking the relief.

B) Duty to Report

Bankruptcy Rule 2016 (B.R. 2016) expressly provides that ALL entities seeking
compensation of any kind for services or necessary expenses shall file a detailed statement with
the court.

If special counsel seeks reimbursement by or through assets of the bankruptcy estate, the
Special Counsel must file an application with the Court seeking the approval of compensation
sought. [5]

C) Duty to Report- Debtor's Counsel

11 U.S.C. 329(a) requires debtor's counsel to disclose to the fee arrangement and fees
received in contemplation of filing bankruptcy within one year of the date the petition was
filed.[6]

Bankruptcy Rule 2016(b) requires the disclosure statement be transmitted to the United
States Trustee within 15 days of the date the bankruptcy petition was filed. Further B.R. 2016(b)
requires a complete disclosure of any fee sharing arrangement.[7] However, the attorney's duty to report is with a time frame limitation. In other words, without a specific provision of the code limiting the parameters of Debtors counsel's duty to report, the duty extends through the time frame the bankruptcy court retains jurisdiction of the matter. Conclusively, the if the debtor is in bankruptcy, the attorney must report.

However, judicial review does not attach to the extent of all services provided to a debtor. 11 U.S.C. §329 does not apply to legal services unrelated to the bankruptcy. Palmer & Palmer, P.C. v. U.S. Trustee (In re Hargis) 895 F.2d 1025 (5th Cir. 1990).

D What Compensation did Congress Intend?


The enactment of the Bankruptcy Code rejected the previously established compensation policy of Bankruptcy Act based upon economy of administration and conservation of the estate. Notions of economy of the estate in fixing fee are outdated and have no place in the review of fee applications. 124 Cong.Rec. H 110912 (Sept. 28 1978).

In 1978 the members of Congress, the House of Representatives in particular were particularly concerned with the prospect of discouraging competent legal counsel from representing parties in Bankruptcy. The legislative report pointedly discusses the prospect of competent counsel choosing to practice in other fields of law due to disparaging fees. [8]

The discussion in the legislative history with compensation in general and §330(a)(3)(E) in particular specifically details the governmental disdain for price fixing and inequitable treatment of counsel in field of bankruptcy practice. [9]

E) Sources of Judicial Review

Bankruptcy Rule 2017 unequivocally establishes the court's authority to review, determine and/or approve compensation for entities seeking compensation from the debtor or the bankruptcy estate.[10] 11 U.S.C. §330(a)(2) codifies the intent of Rule 2017.[11] Also make note, should the court determine bankruptcy related compensation received by debtor's counsel is outside reasonable bounds, the attorney may be required to return the funds or property to the entity that gave it to the attorney or return the asset to the bankruptcy estate. Further any excessive contract may be canceled by the court.[12] Disgorgement order of prepetition installment retainer was affirmed based on nondisclosure, excessiveness, and unsatisfactory services, and the one year period provided by statute may be tolled by inequitable conduct. Arens v. Boughton In re Prudhomme), 43 F.3d 1000 (5th Cir. 1995).

Court's broad discretion in awarding and denying fees paid in connection with bankruptcy

Use of bankruptcy judge's 'subjective' judgment in setting attorney fees was not abuse of discretion where it was clear that judge did not mean that he had been partial or biased, but rather that, in applying proper criteria, he was drawing on his experience in present case and other cases to determine reasonable fee." In re Farwell, 77 B.R. 198 N.D.Ill. (1987). Court's exercise of independent review over bankruptcy fee applications and sua sponte reduction of request for fees is not per se error in bankruptcy case. In re Rheam of Indiana, Inc. 133 B.R. 325, E.D. Pa. (1991). To be compensated as officer in bankruptcy case there must be an application that shows reasonable compensation based upon nature, extent, and value of such services, and cost of comparable services other than in case under Bankruptcy Code. In re Drexel Burnham Lambert Group, Inc. 133 B.R. 13, Bkrtcy S.D. NY. (1991).

F) Trustee Review

Effective May 1995 and in compliance with the 1994 amendments to 28 USC § 586 (a)(3)(A), the Executive Offices for the United States Trustees adopted procedural guidelines for use by all United States Trustees in review of all fee applications. The apparent intent of these standards are to provide a nationwide standard format for fee applications. A copy of the Guideline for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 is attached as Appendix "A".

Briefly, some highlights of required information subject to the Trustees guidelines are:

5 Date the petition was filed;
6 Date order employing counsel was entered;
7 Terms and conditions of the employment
8 Names and hourly rates of all of applicants professionals and paraprofessionals who billed time,
9 Whether client has had the opportunity to review the application.
10 Time period of services or expenses provided.
11 A summary sheet setting forth the total compensation and expenses requested, name and billing rate of each individual who billed time during the billing period, and a computation of blended hourly rate for attorneys who billed time.

G) Judicial Interpretation

Bankruptcy Judges are given tremendous discretion in the determination of reasonable compensation for fees awarded in bankruptcy matters. There are two methods predominantly used by courts to evaluate requests for compensation. The Lodestar approach and the Johnson Factors (First Colonial Standard).

The Third Circuit developed the Lodestar approach requiring the court to simply multiply
the hours spent on a case by a reasonable hourly rate of compensation for each attorney involved. Lindy Bros. Builders, Inc. of Philadelphia v American Radiator & Standard Sanitary Corp., 540 F.2d 102, 114 (3rd Cir. 1976).

With respect to compensation in bankruptcy, in 1977 the Fifth Circuit responded to the Lodestar approach in American Benefit Life Ins. Co. v Baddock (In re First Colonial Corp. of America), 544 F.2d 1291 (5th Cir. 1977). The Court adopted their position with respect to adequacy of attorney fees in their 1974 decision of Johnson v. Georgia Highway Express, Inc. 488 F.2d 714. Briefly the Fifth circuit determined the adequacy of attorney fees should be based upon the following twelve factors:

1) The time and labor involved;
2) The novelty and difficulty of the questions;
3) The skill requisite to perform the legal service properly;
4) The preclusion of other employment by the attorney due to acceptance of the case;
5) The customer fee;
6) Whether the fee is fixed or contingent;
7) Time limitations imposed by the client or other circumstances;
8) The amount of time involved and the results obtained;
9) The experience, reputation, and ability of attorney;
10) The "undesirability" of the case;
11) The nature and length of the professional relationship with the client; and
12) Awards in similar cases.

The Fifth Circuit further defined the method of determining the nature and extent of services provided by implementing the Johnson factors in Neville v Eufaula Bank & Trust, Co. (In. Re U.S. Golf Corp.), 639 F.2d 1197, 1201 (5th Cir. 1981). A judge should 1) determine the nature and extent of services provided by the attorney, 2) assess the value of those services; and 3) explain the basis of the award.

H) Judicial Duty to Review

Under the criteria set forth by the code and interpreted by the precedent, the bankruptcy court retains the duty to review fee requests. In enacting title 11, Congress did not significantly change the tasks of the bankruptcy judge in fixing professional fees, except that the court need no longer feel restrained for reasons of economy; the court must still determine what is reasonable and necessary and one of the factors it may use is the cost of comparable services. In re City Planners & Developers, Inc. 5 B.R. 217, Bkrtcy. D. Puerto Rico (1980). The "bankruptcy court has an obligation to review request for counsel fees, even absent any objection". In re Inslaw, Inc., 106 B.R. 331, Bkrtcy D. Dist. Col. (1989). Regardless of absence of objection to a fee request by party in interest, it is still incumbent upon bankruptcy court to conduct its own independent analysis of all applications for compensation. In re Cuisine Magazine, Inc.,61 B.R. 210, Bkrtcy. S.D. N.Y. (1986). Certain fees and expenses sought by counsel from the estate will be disallowed even if no interested party objects to the application as the court has a duty to determine independently that fees and expenses requested meet the reasonableness standards. In re Four
I) Standard of Review

Judicial determination of compensation is reviewable on an Abuse of Discretion Standard.[13]

III. Reasonable Compensation for Debtor's Counsel

A sensible starting point with in determining what is reasonable compensation for professionals in representing parties in bankruptcy is by examining what criteria provided by the Texas Rules of Professional Conduct.

The Texas Rules of Professional Conduct requires that Counsel perform certain functions in the representation of his/her client. It is reasonable to expect, if an attorney is to perform certain acts, he/she should be paid for those functions. The Rules of Professional Conduct require:

12 The lawyer not neglects legal matters entrusted to the lawyer. Rule 1.01(b)(1).

13 The lawyer shall not fail to carry out completely the obligations that he/she owes to the client. Rule 1.01(b)(2).

14 The lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Rule 1.03(a).

15 The lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation. Rule 1.03(b)

16 A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer count not form a reasonable belief that the fee is reasonable. Rule 1.04(a).

Judicial precedent is also helpful in the determination of what services an attorney is entitled to receive compensation. Under the provision of the section pertaining to allowance of administrative expenses, the attorney for the debtor is entitled to payment for legal services rendered and for his necessary expenses. In re Brady, 20 B.R. 936 (Bkrtcy. N.D. Ohio 1982). Fee awards to chapter 13 debtors at confirmation and after confirmation are intended to compensate attorneys only for services already tendered and are fully earned when awarded. In re Banks 170 B.R. 942 (Bkrtcy. E. D. Tenn. 1994).

A Studies of Compensation - Debtor's Counsel

In 1991 the American Bankruptcy Institute published an extensive survey of billing and compensation practices in bankruptcy. Excerpts of the report are attached in Appendix "B". The study found that the average chapter 13 required 7 hours of attorney time and 3.3 hours of
paralegal time. The average fee was $820.00. Morgan King, Attorney Fees in Consumer Bankruptcy Cases 196 (King Press)(1996-97).

The National Association of Consumer Bankruptcy Attorneys (NACBA) conducted a study of compensation for Chapter 13 for debtor attorneys in 1992 and published the results in August of 1993. The results of the NACBA study are included in Appendix "C". The NACBA study included a score to determine the functions or duties required of debtor's counsel in connection with the fees awarded. The Attorney Function Score was intended to provide evidence of the involvement of the attorney in the chapter 13 case. Within Texas, the function score ranged from 60 to 90. This NACBA study concludes debtor's counsel was involved in 60-90% of the all the functions of the Chapter 13. Compensation ranged from a low in the Western District of Texas/El Paso division of $1,200.00 to a high range in the Eastern District of Texas [Tyler] of $1,500.00 - $2,500.00. Attorney Fees in Chapter 13 Cases, Morgan King 1996. Pg. 199-209.

NACBA updated the survey in May 1999. A copy of the survey results is attached in Exhibit "D". The Attorney function score was again utilized. The range of scores in for districts in Texas ranged between 70 - 100. The lowest avg. fee was $1,500.00 and found in the Southern District of Texas. The highest average fee in a consumer case was $2,000.00 and found in the Western District of Texas, San Antonio and the Eastern District of Texas, Beaumont and Plano.

B Is there a Routine Case?

No. There is not such thin as a "routine" case. There are many routine services however. Ebert Law Offices, P.C. performs the following services in every Chapter 13 case.

Office Consolations:
17 Initial Consultation between prospective client and attorney. Provides a cursory review of the client's financial situation, explanation of different types of relief available and the benefits/consequences related to forms of relief inside and outside of Bankruptcy. Review present income stream and anticipated fluctuations in income in connection with the client's necessary living expenses. Finally, if a Chapter 13 is contemplated, a very rough idea of plan payments and an explanation of the requirements associated with a Chapter 13.
18 First Consultation with paralegal. Review and explain the contract of employment with debtor. Review and explain office worksheet with special emphasis to Notarized Oath at the conclusion. Further review with client, the IRS power of Attorney, document warning about bankruptcy crimes, significant declarations and actions to protect client interests from creditors, potential violations of the FDCPA and rights the client has with respect to collection activities and finally a schedule of events through the confirmation of chapter 13 plan.
19 Second Consultation with Paralegal- review completed worksheets provided with an eye towards potential confirmation issues. Available to answer general client questions concerning office procedures and general time frames.
20 Third Consultation with paralegal to review approved petition, statement of affairs, schedules, APD and preliminary plan. Provide client with options for making payment to Trustee.
21 Second Consolation with attorney. Review plan with client and insure client understanding. Give recommendations with respect to method of payment.
Fourth Consultation between client and paralegal. Explain procedure of the Chapter 13 §341 meeting, scope of questions to be asked and obtain necessary supporting documents as requested by standing Chapter 13 trustee.

Third Office Consultation with attorney. Answer client questions and prepare client for testimony. Explain time frame to confirmation and APD's.

Written Correspondence to Client

Confirm status the status of the Attorney client relationship and review necessary instructions.

Review status of chapter 13 petition and availability for in office review with client.

After petition is filed, a copy of the all documents filed with the court.

Payment instructions to the trustee and due dates, including resumption of mortgage obligation and other direct pay items in the plan.

Copy of the filed APD and certificate of service.

Copy of Notice of Section 341 meeting and Debtor's Orientation class. Schedule availability for Office Consultation.

Copy of each secured proof of claim received detailing possible issue.

Copy of any IRS or other Priority claim with analysis if tax analysis has been prepared.

Copy of Objections to Claims/Final Plan worksheets.

Copy of fee application and request for comments

Copy of final plan to be filed with the court.

Copy of Order Confirming Chapter 13 and on Debtor's Objections to Claims.

Confirmation of plan duration and payments after Order of Confirmation is entered.

Any correspondence received from the Trustee after confirmation.

Paralegal tasks

Be available to client to answer questions concerning questions in the worksheets.

Prepare draft of Petition, Schedules, Statement of Affairs, Statement of Intention, Preliminary Plan and APD for attorney review.

Obtain supporting information as necessary from client after attorney review.

Prepare final draft of items to be filed with the court.

Prepare client affidavit to be filed in connection with the Chapter 13 petition.

Request Tax records from Special Procedures (if needed)

Correspond with client as needed.

Prepare certificate of service for fee application.

Act as liaison between office and Trustee personnel relating to confirmation issues.

Act as liaison between legal office and IRS special procedures personnel (if needed).

Negotiate value for secured claims and interest to be paid pursuant to attorney guidelines.

Attorney Tasks

Available to client to answer all legal questions, potential consequence. Keep client
reasonably informed.
50 Review draft of petition for legal problems and factual inaccuracies
51 Review final draft of petition, plan, statement and client affidavit. Approve for client.
52 Final review of documents to be filed with the court. Execute
53 Review file to prepare for office conference with client prior to section 341 meeting.
54 Review file in preparation of 341 meeting.
55 Approve any changes due to the plan or APD prior to confirmation.
56 Review all correspondence, notices and objections received.
57 Review tax records for potential liability.
58 Check proof of claims actually filed with the court.
59 Prepare Objection to Claims/Final Plan worksheet.
60 Prepare Fee Application
61 Review and execute final plan.

Each client and case requires different commitment of time and analysis. Because of the danger of violating the Texas Rules of Professional Conduct, in 1995 Ebert Law Offices, P.C. discontinued the use of flat fees in chapter 13s cases. Client's retaining Ebert Law Offices P.C understand that Ebert Law Offices personnel will report directly to each client for the time spent representing them in bankruptcy and Ebert Law Offices will also seek judicial approval of fees requested.

C Additional Services

Make note and remember B.R. 2016 mandates the duty to report compensation. B.R. 2016 applies to additional services.

At the very minimum, Ebert Law Offices performs the following tasks for each of the four following services.

1 Amendments

· If to amend schedules to include additional creditors or to change treatment of creditors in the Chapter 13 plan:
· Amend appropriate schedule d, e or f;
· Prepare amended plan, and if applicable, prepare amended APD;
· Prepare amended mailing matrix;
· Prepare and file certificate of service; service on additional creditors, including 341 meeting notice
· If to amend Debtors Income/Budget: consult w/ client re: changes in status
· Draft amended Schedules I/J and
· Draft amended Plan,
· Notify client of new plan payments

2 Defending Motions to Dismiss
· Send letter to client advising them of their options regarding the motion to dismiss
· Attempt to conference w/ client to determine his intentions regarding the motion to dismiss
· Conference with client re: past due payments, ability to pay
· If needed prepare modification request to cure arrearage to Trustee (if after confirmation)
· Discuss entering into an Interlocutory Order (IO) to cure payment arrearages pre-confirmation or post-confirmation
· Discuss w/ client the requirement for a wage order or automatic withdrawal from checking account (ACH debits)
· Assist client w/ preparation of wage order/ACH debit forms
· IF a modification is needed, request amended budget/income information from client
· Prepare amended Schedules I/J
· Service of Modification on parties in interest; file modification w/ court, serve Ch. 13 Trustee w/ file marked copy of Modification
· Attend docket call to insure case n/ dismissed
· Attend hearing if necessary

3 Modifications

Ebert Law Offices provides the following services in each Modification filed:

62 Office Conference with attorney or paralegal. The duration and the determination of whom the client will meet with is determined by the reason for the modification.
63 Prepare modification request
64 Notify client of new payment schedule, terms of the new plan
65 Prepare and serve on all parties in interest a copy of the modification
66 Prepare document for filing w/ the bankruptcy court and serve filed copy with the Ch. 13 Trustee
· Discuss w/ client the requirement for a wage order or automatic withdrawal from checking account (ACH debits)
67 Assist client w/ preparation of wage order/ACH debit forms
68 Attend preliminary docket call to assure approval of the Modification
69 Attend hearing if necessary

4 Defending Motions for Relief from the Automatic Stay

· Send client letter advising him of the motion and options available to him
· Review file to determine client’s original intent with respect to the property—if client intends to surrender, no answer is typically not filed
· Calendar applicable default dates
· Consult w/ client regarding intentions, options, etc.
· Prepare response to motion to lift stay; service on all parties in interest and file w/
court
· Attend preliminary docket call
· Negotiate w/ creditor to resolve disputes, enter into Agreed Order as needed
· Contact client regarding documents needed: e.g. proof of insurance; proof of payments, etc.
· If a hearing is necessary: prepare witness/exhibit lists; prepare client for hearing, service on creditor exhibits, and witness list

III. Reasonable Compensation for non-debtor counsel

A. Special Counsel

Attorney employed for a specific or special purpose also are subject to a bankruptcy court's review of their requested compensation. This employment can prove troublesome to attorney not familiar with the requirements of employment and standards of review in bankruptcy.

As discussed in the bankruptcy rules 2016 and 2017, and the Bankruptcy requirements in 11 U.S.C. §§ 330 and 327, counsel pursuing a cause of action in which potential proceeds become a part of the bankruptcy estate, should seek to be employed prior to bringing the question to an adjudicated conclusion. Professionals applying for fees must demonstrate that their services were actual, necessary and reasonable. In re Chas. A. Stevens & Co., 105 B.R. 866, Bkrtcy. N.D. Ill. (1989). Prior approval of employment, however, eliminates much, if not all the review. A contingency fee approved when the employment relationship and contingency fee agreement has been submitted and approved by the court. In re Allred, 152 F.3d 923, C.A. 9 (Ariz. 1998).

The questions of fees becomes more complicated in cases where the special counsel fails to obtain the bankruptcy court's approval prior to of his/her employment. Unquestionably, the proceeds of any judgment become part of the bankruptcy estate. "[I]t is clear that this check constitutes property of the Debtor's estate which must be administered in accordance with the rules and procedures of the Bankruptcy Code." In re Willis, 143 B.R. 428, 434 (Bkrtcy. E.D. Tex 1992).

Counsel for the plaintiff/debtor would obviously prefer to take his contingency fee off the top prior submitting the funds over to the court or without having to face a judicial review of the reasonableness and necessity of services. However, without prior approval of the court in his application for employment, this action is prohibited.

Arguably, counsel for the plaintiff/debtor (or debtor's estate) retains an inchoate lien for his reasonable fees and expenses upon his client's cause, of action, and upon the proceeds derived therefrom subject to a bankruptcy court determination of the reasonableness of the fee. In re Albert, 206 B.R. 636, B.R. 638 (Bkrtcy. D. Mass. 1997).

Hope is not lost, however. Failure of counsel to obtain approval of employment prior to
judgment is not necessary fatal. Counsel may still receive adequate compensation. Judge Sharp appropriately held In re Willis that the "common fund" doctrine protects counsel who, without seeking prior compensation add to the value of the bankruptcy estate. Attorneys are entitled in a contingency, notwithstanding failure of debtor/trustee to assume the executory contract of employment, the attorney is entitled to compensation through the use of the common fund doctrine. In re Willis, at 433. "[T]he common fund doctrine recognizes that 'one who accomplishes the creation of a fund for the benefit of another is entitled to reimbursement therefrom the reasonable costs thereby incurred." Id. at 433 citing Haynes v. Rederi A/S Aladdin, 362 F.2d 345, 351 (5th Cir. 1966); Cappel v. Adams, 434 F2d. 1278, 1279 (5th Cir. 1966).

With respect to interest on fees, it appears unlikely that interest on money judgments in civil cases is applicable in bankruptcy cases. St. Paul Fire & Marine Ins. Co. v. Vaughn, 779 F.2d 1003, C.A.4 (Va.) 1985.

2) Class Action Counsel

Like specially appointed counsel, attorney fees for Attorneys representing a debtor in a class action suit present a similar unique problem. Reasonably, we can expect counsel for the class will likely not be aware of the bankruptcy proceeding. If unaware of the bankruptcy, how can the attorney for the class seek to be employed pursuant to 11 U.S.C. §327?

Class action is controlled by Rule 23 of the Federal Rules of Civil Procedure. Rule 23(e) provides that all settlements must be approved by the District Court. Fed. R. Civ. P. 23(e). "Courts have wide discretion to approve, reject or limit fees earned by attorneys in prosecuting a class action. (See generally 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure §1803 (1986 & 1994 Supp.); Alan Hirsh & Diane Sheehe, Awarding Attorney's Fees and Managing Litigation 49-88 (Federal Judicial Center 1994).

In the instant situation, the question arises, will or should the bankruptcy court accept the determination of the District Court or will the Bankruptcy Court make it's own decision?

In a chapter 11 contested, when counsel is representing the debtor, and the representation has been approved by the Bankruptcy Court, the fee arrangement and fees are allowed. In re Joint Eastern and Southern District. Asbestos Litigation, 982 F.2d 721 (C.A.2(N.Y), 1992).

In any event, it seems likely the common fund doctrine would be implemented When a common fund is awarded to a class of plaintiffs, attorney fees are appropriately awarded from that fund on theory that person who obtain benefit of lawsuit without contributing to its cost are unjustly enriched at successful litigant's expense. Gottlieb v. Barry 43 F.3d 474. Class action litigates who worked for bankruptcy estates on contingent basis are generally entitled to be compensated for actual and necessary services under the "common fund" standards as apply to class-action litigates in general. In re Churchfield Management & Inv. Corp. 98 B.R. 838, Bkrtcy. N.D. Ill. (1989).

V. Conclusion
Congress did intend attorney in bankruptcy receive comparable compensation. However, I find many attorneys do not wish to make the time commitment to represent their client's in a manner similar as counsel would in a matter outside title 11. If the representation is inadequate or sloppy, discounted compensation is mandated.

This author believes, reasonable fees begin with the service to the client and attention to the minute details of the representation. The greater the genuine interest, sincere time commitment and objective results achieved, the more likely the court is to favorably consider requests for compensation.

[1] 11 U.S.C. §330(a)(2) The court may, on its own motion or on the motion of the United States trustee, or any other party in interest, award compensation that is less than the amount that is requested.

[2] 11 U.S.C. §330(a)(3)(A) in determining the amount of reasonable compensation to be awarded the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -
(A) the time spent on such services
(B) the rates charged for such services
(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and
(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.
(F)

[3] 11 U.S.C. §330(4)(B) - In a chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

[4] 11 U.S.C. §330(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for (i) unnecessary duplication of services; or (ii) services that were not (I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case.

[5] B.R. 2016(a) Application for Compensation or Reimbursement. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars in any sharing of compensation or
agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for services rendered by an attorney or accountant even though the application is services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

[6] 11 U.S.C. §329(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after on year before the date of or in connection with the case by such attorney, and the source of such compensation.

[7] B.R. 2016(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

[8] This title permits compensation of professionals competitive with other fields in order to attract bankruptcy specialist of high quality, thereby avoiding the "bankruptcy haircut" resulting from the previous "economy of administration" standard utilized under former section 1 et. seq. Of this title. Matter of Liberal Market, Inc., 24 B.R. 653, Bkrtcy. S.D. Ohio (1982).

[9] Section 330 authorizes compensation for services and reimbursement of expenses of officers of the estate. It also prescribes the standards on which the amount of compensation is to be determined. As notice above the compensation allowable under this section is subject to the maximum set out is sections 326, 328, and 329. The compensation is to be reasonable, for actual necessary services rendered, based on the time, the nature, the extent and the value of the services rendered, and on the cost of comparable services other than under a cause under the bankruptcy code. The effect of the last provision is to overrule In re Beverly Crest Convalescent Hospital, Inc., 548 F. 2d 817 (9th Cir. 1976, as amended 1977), which set an arbitrary limit on fees payable based on the amount of the district judge's salary, and other similar cases that require fees to be determined based on notions of conservation of the estate and economy of administration. If that case were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of
the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all of their cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

Section 330(a) contains the standard of compensation adopted in H.R. 8200 as passed by the House rather than the contrary standard contained in the Senate amendment. Attorneys’ fees in bankruptcy cases can be quite large and should be closely examined by the court. However bankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a cause under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a cause under title 11 Contrary language in the Senate report accompanying S. 2266 is rejected and Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in the bankruptcy code.

[10] 11 U.S.C. 2017 (a) Payment or Transfer to Attorney Before Order for Relief. On motion by any party in interest or on court's own initiative, the court after notice and hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case to an attorney for services rendered or to be rendered is excessive

(b) Payment or Transfer to Attorney after Order for Relief. ON motion by the debtor the United States Trustee, or on the court's own initiative, the court after notice and hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer or agreement therefor is for services in any way related to the case.

[11] 11 U.S.C. §330(a)(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

[12] 11 U.S.C. §329(b) If such compensation exceed the reasonable value of any such services the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to (1) the estate, if the property transferred (A) would have been property of the estate; or (B) was to be paid by or on behalf of the debtor under a plan under chapter _13 of this title; or (2) the entity that made such payment.