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Seeking and Objecting to Creditors' Attorney's Fees

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Seeking and Objecting to Creditor's Attorney's Fees

As a creditor, recovery of post-petition attorney's fees hinges on several factors, including whether your claim is secured or unsecured. Specifically, recovery rests on the court's analysis and application of 11 U.S.C §§502, 503 and 506. This discussion of the standards and factors in recovering attorney's fees will assist creditor's in receiving compensation, but also give the debtor an understanding of the requirements on the creditor and when to object when they do not meet the relevant standards.

I. Reasonableness Standard for Approval of Attorney's Fees

Courts will determine the reasonable value of services provided in order to protect the debtor/estate from overreaching creditor's attorneys. First, the claim for fees must be reasonable under state law, otherwise §502(b)(1) will disallow such claim.¹ Next, the reasonableness of the claims must be determined under the federal standard. The Fifth Circuit's standard² set forth the following as factors to consider: (1) The time and labor required; (2) the novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of

¹ Tex. R. Prof Conduct 1.04 ("Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;(3) the fee customarily charged in the locality for similar legal services;(4) the amount involved and the results obtained;(5) the time limitations imposed by the client or by the circumstances;(6) the nature and length of the professional relationship with the client;(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.")

² *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) ; *see also Blackburn-Bliss Trust v. Hudson Shipbuilders, Inc.*, 794 F.2d 1051, 1058 (5th Cir. 1986).

other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or the circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The "undesirability" of the case; (11) The nature and length of the professional relationship with the client; and (12) Awards in similar cases.

II. Post-Petition Claims for Attorney's Fees

The secured status of a creditor's claim directly impacts a creditor's ability to recover post-petition attorney's fees. While claims for attorney's fees typically cut off at the petition date, there remain some avenues for recovery of fees post petition. In order to recover post-petition attorney's fees, the pre-petition claim must create some right to recover that is valid under state law or a contractual basis. The Supreme Court in *Travelers Casualty* highlighted the basic federal rule in bankruptcy that "state law governs the substance of claims" and that "we generally presume that claims enforceable under applicable state law will be allowed in bankruptcy unless they are expressly disallowed."³ *Travelers* clarified prior law and established that, under 11 U.S.C. § 502(b)(1), attorney's fees authorized by pre-petition contract may be a valid claim against the estate. The ability to recover on this claim becomes contingent on the type of claim against the debtor, i.e., secured or unsecured.

A. Recovering Attorney's Fee on Over-Secured Claims

Recovery of attorney's fees when the creditor holds an over-secured claim requires an analysis of the claim under 11 U.S.C §§ 502(b)(1) and 506(b).⁴ § 502(b)(1) disallows a claim, "to

³ *Travelers Casualty & Surety Co. v. Pacific Gas & Electric Co.*, 549 U.S. 443, 451 (2007).

⁴ *In re Pioneer Carriers, LLC*, 581 B.R. 809 (Bankr. S.D. Tex 2018) (outlines the Fifth Circuit's method to determine the validity of an over-secured creditor's claim).

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