

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re

FREEDOM INDUSTRIES, INC.

**Case No. 14-20017
Chapter 11**

Debtor-in-Possession.

ORDER ON FIRST INTERIM PROFESSIONAL FEE APPLICATIONS

Professional fees and expenses for the period 1/17/14 – 3/31/14 are the subject of this order and soon additional fees and expenses for fees and expenses incurred in April of 2014 will be considered. Several of these professionals were authorized to perform work in this Chapter 11 case at a time when it appeared the Debtor would be advancing a Chapter 11 plan in an effort to reorganize and continue operations. Subsequent to the employment of most professionals, the Debtor made the decision to wind down its operation and liquidate assets as a result of what it found to be the enormous difficulty created by the fall-out of the Elk River Spill Incident. All applications to employ were advanced by the former President.

On March 18, 2014, the Court accepted the motion of the Debtor and appointed Mark Welch to direct all wind down operations of the Debtor. The record is not clear as to the extent the former President, the Chief Restructuring Officer (CRO) and/or counsel for the Debtor were overseeing work of professionals. It is the responsibility of persons at this level to oversee professional services to avoid duplication of service and unnecessary cost to the estate. The objections of the US Trustee and the Unsecured Creditors' Committee (UCC) to the professional fees and expenses indicate supervision and coordination of professionals has been less than the Court expected.

As the Court allows interim fees, it must do so with the requirement that all parties recognize the current course of the case as being a liquidation rather than reorganization. Therefore, all professionals need to understand that:

1. Much of the work in connection with litigation pending against the Debtor needs to cease inasmuch as §11 U.S.C. 362 stays much of the pending litigation from advancing. No plaintiff has sought stay relief to advance actions against the Debtor. Only actions under police power, regulatory power or necessary to file pleadings required by this Court and the District Court relative to remand and/ or records preservation requires action. Parties with claims against the Debtor will shortly be able to file claims in accordance with a procedure being finalized. The claims process or scheduling orders by the District Court will control litigation against Freedom.

2. Substantial professional time is being charged at non-discounted rates for travel. Until and unless the Court is convinced otherwise, there will be no professional fees approved for travel and professionals are directed to submit future fee applications with no professional fees asserted for travel time.

3. The practice of over-staffing the case by having 2 and 3 attorneys appear at hearings or attend meetings for which the estate is being billed must cease.

4. Some professionals have identified expenses they have incurred and are seeking reimbursement at a rate greater than their costs. All such mark-ups are hereby DISALLOWED.

The Court calls the CRO's attention to the fact that the Administrative Order of March 21, 2014, which required the CRO to review fees and report on the appropriateness of fees being charged by professionals. The CRO must know, understand, and approve what the various professionals are doing. The CRO has duties running in this case to creditors and claimants as their interests appear (11 USC §507). If the CRO has knowledge of or becomes aware of work that benefit former officers or owners of

the Debtor, rather than creditors, claimants and the present shareholder of the Debtor, there should be no acceptance and endorsement of payment of those fees by the CRO.

Having reviewed the objections of the US Trustee, the Unsecured Creditors' Committee and reviewed the fee and expense requests for the period January 17, 2014 – March 31, 2014, it is the decision of the Court to ALLOW on an interim basis the following fees and expenses.

MorrisAnderson

Recognizing the valid objection of the US Trustee that services billed for March 18, 19 and 20th, 2014, following the appointment of Mark Welch as CRO, do not appear appropriate, \$11,050 will be DISALLOWED and the Court ALLOWS on an interim basis \$90,000 of the \$150,150 in fees accepted for consideration. Further, with respect to expenses and not understanding the necessity for what appears to be excessive air travel, the Court, in the interests of simply moving on with the matter, will allow reimbursement of \$18,000 for air travel and other expenses, DISALLOWING cab, telephone and a portion of the air travel reimbursement requested. The remaining expense request of \$5,337 is DISALLOWED.

Babst, Calland, Clements, & Zomnir

With respect to the application of Babst, Calland, Clements & Zomnir, Special Environmental Counsel for the Debtor, the Court notes that both the US Trustee and the Unsecured Creditors' Committee have raised almost identical objections to the fee application for over \$300,000, a sum that grossly exceeds the sum budgeted by the Debtor for the period through June, 2014. The application lumps daily time entries, making it impossible to determine what effort was devoted to certain tasks. The application includes nebulous things such as attending daily meetings with multiple counsel doing so. It includes time billed at full billing rates for travel, which the Court will not ALLOW, and as the Unsecured Creditors' Committee points out does not include any kind of assigned task codes to permit the application to be reviewed to determine for whose benefit the work was performed. The Court will

ALLOW interim fees of \$100,000 (because of the importance of environmental services and the budget submitted by the Chief Restructuring Officer to continue such service) and approve reimbursement of the \$6,555.91 in expenses. However, Babst Calland must file a full and complete application assigning codes for the work and including appropriate detail so that an intelligent review can be made of their request for fees. In doing so they should eliminate all time charges for travel and bring their application up to date through April, 2014, including the same detail for all periods. The application for fees will not be considered further until so amended.

Pietragallo Gordon Alfano Bosick and Raspanti

The fee application submitted by Pietregallo, Gordon is also problematic for the Court to review. The application must be resubmitted with appropriate unredacted description of the work being done and served on the US Trustee, under seal with the Court, the Unsecured Creditors' Committee's counsel and counsel for the Debtor and the Chief Restructuring Officer so that meaningful review can be made by the Chief Restructuring Officer and the Court to determine the real beneficiaries of the services provided. The Court SUSTAINS the objections to the allowance of professional fees for travel time and the amended application should eliminate the duplicative work that was also done by the Debtor's primary bankruptcy counsel, McGuireWoods. The Court SUSTAINS objections to the numerous entries describing communications with AIG and will require the applicant to resubmit its application to describe the nature of the conversations with AIG. Further, the Unsecured Creditors' objections to time entries for updating call logs is SUSTAINED. The Court SUSTAINS the objections of the Unsecured Creditors' Committee to charging for the review of the docket in the Chapter 11 case. There must be reasons for billings where teaming of counsel occurs for Committee meetings and there must be a sufficient description of the work being done so the Court can determine its value to the Debtor rather than to former officer, or shareholders of the Debtor. If work that the firm did was primarily for the benefit of former officers or owners, that compensation should be sought by the firm from those

individuals and not the estate. Until there is a complete unredacted application from Petriogallo submitted, there will be no further consideration for fees requested for the period. If the April application, which the Court has not yet reviewed is no more complete, that will also have to be resubmitted. Inasmuch as it is impossible for the Court to understand what services the firm has performed that is of value to the Debtor, the Court can make no decisions about the expenses that have been advanced at this time.

Frost Brown Todd

With respect to the application of Frost, Brown, Todd, LLC, the Court notes that there has been little progress by the Unsecured Creditors' Committee over a 2 month period of a method to identify what could be thousand's of Elk River Spill claimants, who have thus far, not been properly advised of the standing they have in the Chapter 11 liquidation case. However, the Court finds valuable assistance by the Committee in reviewing the Poca sale issues and professional fees. Payment of interim fees of \$57,000 is authorized, as are all itemized expenses of \$3,769.50.

McGuireWoods LLP

With respect to the requested fees and expenses of McGuire, Woods, the Court notes that McGuire Woods is primary bankruptcy counsel for the Debtor. As counsel at the time the case was filed, it consulted with the previous officer of the Debtor and the new shareholder to staff the case with multiple firms who seem to have provided duplicative services. McGuire Woods, the primary legal professional in the case, can consult with the CRO to prevent or minimize duplicative work. They must ensure that it is only the Debtor and creditors as their interests appear in this case who are receiving services for the fees being billed to the estate.

As stated with respect to all firms, no fees will be authorized where travel time is being billed at full professional rates and the objections of the US Trustee and Unsecured Creditors' Committee are SUSTAINED and those sums in the amount of \$44,479 are DISALLOWED for the period through March

31, 2014. Furthermore, the administrative secretarial overtime and what appear to be excessive hourly rates (especially in light of the changes since employment) for everybody from paralegals to lead counsel, is receiving substantial scrutiny. Final professional fees of McGuire Woods to be awarded will consider future performance to control unnecessary duplication services by professionals in this case. Some remaining objections of the Unsecured Creditors' Committee and the US Trustee that the Court is considering are:

1. multiple attorneys of the applicant attending bankruptcy hearings and other matters with no apparent necessity for such coverage;
2. significant charges related to litigation matters which appear to be excessive in light of the fact that the Debtor clearly had the right to rely on provisions of §362;
3. improper items of expense listed for reimbursement;

After considering all of the above, McGuire Woods is ALLOWED interim compensation in the amount of \$300,000 and ALLOWANCE of expenses of \$20,000. The remaining \$299,043 in fees and \$12,355 in expenses is UNDER ADVISEMENT.

Barth & Thompson

As to the first application of Barth & Thompson, and finding no objections to the requested fees and expenses, and upon inspection of the same, the Court ALLOWS reimbursement of all expenses of \$372.73 requested and \$16,000 of the requested fees.

Environmental Consultants, Inc.

Environmental Consultants, Inc. has requested reimbursement of fees and expenses and having reviewed the substantial objections of the US Trustee and the Unsecured Creditors' Committee find as follows: Environmental Consultants have submitted fee (\$219,560) and expense (\$95,922) requests that exceeded budgets for their work, they have not provided a breakdown for the services provided to permit an understanding of the value and necessity of the services for which they are billing and have

charged time for travel and other activity that will NOT BE ALLOWED. They have also not provided sufficient support for the expenses they have billed and included a 12% markup that will NOT BE ALLOWED. Because the Chief Restructuring Officer has indicated intent to continue using services of this firm, the Court will ALLOW a partial payment of \$75,000 in fees and \$35,000 in expenses, but require an amended application to address the objections of the United States Trustee and the Unsecured Creditor's Committee before any further consideration is given for requested fees and expense reimbursement.

The Court is aware that the comments and holdback being made to the Environmental Consultants, and perhaps to environmental counsel, are substantial, and the Court acknowledges that such could cause complications for the Chief Restructuring Officer in accomplishing the mandated environmental work at the site. Accordingly, as procedural safeguard available to the Chief Restructuring Officer, if there is any immediate need for a more complete allowance of the fees and/or expenses for environmental counsel or environmental consultants to meet progress the Chief Restructuring Officer must achieve to meet DEP orders or other environmental officials, the Court will consider any request on an expedited basis for additional allowance should the Chief Restructuring Officer request it. At which time, the Court will expect local counsel for the Debtor and the Unsecured Creditors' Committee to appear in person and will authorize the telephone appearance of out-of-town counsel for the Debtor and the Unsecured Creditors' Committee. Accordingly, it is hereby

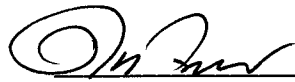
ORDERED that the Chief Restructuring Office make interim payments as authorized above. It is further

ORDERED, because it is not clear to the Court, the US Trustee and the UCC who is assigning and coordinating work to various professionals, the Court, US Trustee and UCC need to be advised as to the extent that the work of various professionals employed by the Debtor have been directed by authorized

officers of the Debtor in the past and are receiving assignments and oversight by the Chief Restructuring Officer or counsel for the Debtor, McGuire Woods now.

IT IS SO ORDERED

ENTERED: JUN 03 2014



Ronald G. Pearson, Judge

RGP:ls