

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF KENTUCKY**

IN RE: )  
 )  
BUSINESS INTELLIGENT SYSTEMS, LLC )  
 )  
 ) CASE NO. 02-36646(1)(11)  
 )  
\_\_\_\_\_  
Debtor(s) )

**MEMORANDUM-OPINION**

This matter is before the Court on the Final Application for Approval of Compensation for Services Rendered by Wather, Roark, Gay & Todd, PLC (“WRG&T”) During the Period July 1, 2003 through June 15, 2005 and the Objection of Steven A. Turner (“Turner”), Douglas Wise (“Wise”), Ken Day (“Day”) and Business Intelligent Systems, LLC (“Debtor”) to Fee Application by Wather, Roark, Gay & Todd. The Court considered the written submissions of the parties and the arguments of counsel at the hearing held December 12, 2005. For the following reasons, the Court approves the Application.

**FACTS**

On November 3, 2003, this Court entered an Order approving the employment of WRG&T on behalf of the Debtor for the purposes of all matters in the Chapter 11 proceeding and in a civil action pending in the United States District Court for the Western District of Kentucky, styled, Thomas W. Frentz, et al v. F. Pulsetrak.Com, LLC (“the Civil Action”). The Order authorizing WRG&T’s employment provided that WRG&T would represent the estate in the Civil Action and be paid at an hourly rate of \$200 an hour for partners, \$150 an hour for associates and “of-counsel” time, \$85 an hour for paralegals and that all expenses would be paid out of the estate assets “which fees shall not exceed \$40,000.00 prior to an actual recovery for the estate” and the firm would be

entitled to 33-1/3% of the recovery if settled prior to trial or prior to an appeal and 40% if settled or paid after appeal.

On June 15, 2005, this Court entered an Order granting WRG&T's Motion to Withdraw as Counsel for the Debtor. WRG&T claimed it could no longer represent the Debtor due to a conflict between Wise and Turner. The withdrawal occurred prior to any recovery in the Civil Action.

WRG&T incurred legal fees of \$47,886 and total expenses of \$1,519.79 in connection with the Civil Action. Through this Application, WRG&T seeks its pro rata share of the \$40,000 set aside to pay fees and expenses of WRG&T and its co-counsel, Middleton & Reutlinger ("MR"). Nevertheless, WRG&T currently seeks only its expenses, plus \$2,000 from the available cash in the estate of \$13,722.59. It requests that the balance be paid upon recovery or when there are sufficient assets in the estate.

### **LEGAL ANALYSIS**

WRG&T seeks approval of legal fees in the amount of \$43,183 and expenses of \$5,085.86 in connection with its professional services provided to the Debtor in the Civil Action. Unlike the Order approving the employment of its co-counsel, MR, the Order of November 3, 2003 specifically authorized WRG&T to represent the estate in the Civil Action at an hourly rate capped at \$40,000 "prior to an actual recovery for the estate" and on a one-third contingency fee basis if the matter was settled prior to trial or appeal and 40% if settled or paid after appeal.

Wise, Turner, Day and the Debtor object to the payment of any fees to WRG&T contending it withdrew prior to any recovery and that it failed to aggressively pursue the case. The Court reviewed the time entries of WRG&T and finds them to be actual and necessary as required by 11

U.S.C. §330. The Court will not, with the benefit of hindsight, second guess the actions taken by the Debtor's counsel in pursuit of the Civil Action.

The November 3, 2003 Order authorized the payment of an hourly fee to WRG&T not to exceed \$40,000 prior to any recovery. WRG&T seeks only its expenses and an additional \$2,000 with the balance to be paid when there is a recovery or more money in the estate. The Court finds this to be a reasonable request and will grant the Application for payment of WRG&T's expenses of \$1,519.79 and \$2,000 in legal fees to be paid on a pro rata basis with other administrative fees and expenses. Once the amount of administrative fees and expenses are determined, WRG&T may be paid in accordance with this Memorandum-Opinion.

#### **CONCLUSION**

For those reasons set forth above, the Final Application for Approval of Compensation for Services Rendered by WRG&T, PLC during the period July 1, 2003 through June 15, 2005 is **GRANTED**. An Order accompanies this Memorandum-Opinion.

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**ORDER**

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Application of Compensation for Services Rendered by Wather, Roark, Gay & Todd, PLC during the period July 1, 2003 through June 15, 2005, be and hereby is, **GRANTED**.