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Of Attorneys for Law Office of Paul R.J. Connolly.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
SUNWEST MANAGEMENT, INC.; et al.,  
  
Defendants.

Case No.:09-06056-HO  
  
PETITION AND STATEMENT FOR  
ATTORNEY FEES AND COST BILL  
SUBMITTED BY THE LAW OFFICE OF  
PAUL R.J. CONNOLLY’S ATTORNEYS  
FOR SUNWEST INVESTORS/THIRD  
PARTY CLAIMANTS  
  
By Law Office of Paul R.J. Connolly

The Law Office of Paul R.J. Connolly (“Law Firm”) petitions this Court to award it attorney fees and costs with respect to the settlements with Davis Wright Tremaine (“DWT”), K & L Gates, Thompson & Knight, and various broker-dealers, in an amount to be determined by the Court. The Law Firm seeks compensation for legal services performed on behalf of Sunwest Investors pursuing their Third Party Claims against Sunwest attorneys and certain brokers in the amount of \$290,598.50 as well as reimbursement of costs actually advanced on their behalf in the amount of \$11,945.79. The Law Firm incorporates herein and relies upon the case file in this and related cases in state and federal district and bankruptcy courts, the memorandum below, and the Page 1 - PETITION AND STATEMENT FOR ATTORNEY FEES AND COST BILL SUBMITTED BY THE LAW OFFICE OF PAUL R.J. CONNOLLY’S ATTORNEYS FOR SUNWEST INVESTORS/THIRD PARTY CLAIMANTS

Declaration of Paul R.J. Connolly filed herewith and the exhibits attached thereto.

**I. Factual Background.**

**A. DWT Claims.**

The Law Firm began its representation of various Sunwest Investors during the summer of 2008, shortly after Sunwest ceased making its rental and interest payments to tenant in common and other investors. The Law Firm's initial clients consisted of a group of investors in the Emerald Square assisted living facility in Oklahoma and the Park Place assisted living facility in South Carolina. Eventually, the Law Firm began receiving multiple inquiries from multitudes of other Sunwest investors in other Sunwest-related projects.

i. *Nature of Client Relationships With Law Firm.*

The Law Firm's legal strategy from the outset went down two parallel but independent tracks – one track compiling information for investors on possible work-outs with Sunwest, lenders and others, and the other track investigating possible claims for damages against Sunwest, its various entities, and third parties such as law firms, brokers and other professionals. For the most part, the Law Firm's Sunwest investor clients were given the option of taking one or both tracks, each with its own fee agreement.

ii. *Compensation for Work-Outs and Direct Representation in Receivership/Bankruptcy Cases are Not Sought in This Petition.*

The Law Firm is not seeking compensation for time and costs associated with possible work-outs or in their representation of various client interests in the SEC or Stayton Bankruptcy cases.

iii. *DWT Litigation Strategy.*

The Law Firm's first comprehensive lawsuit that named Davis Wright Tremaine and

Tim Dozois (together “DWT”) was filed on October 30, 2008 in *Davis’ Carnegie Village, LLC et al. v. First American Title Company, et al.*, Marion County Case No. 08C24198. From the outset of this case, the Law Firm’s strategy was to deal with the liability of DWT primarily, focusing most discovery efforts at that defendant and dealing with other defendants only as necessary.

iv. *Notice of Claims to DWT’s Insurers.*

In the course of discovery in the *Carnegie Village* litigation, the Law Firm learned that DWT had excess coverage in the amount of \$40 million, and that the policy was set to lapse on December 31, 2008, which was only a matter of weeks away. Therefore, as part of our representation for all of our Sunwest investor clients, we began the process of getting consent to present claims to DWT and its insurance carriers before the expiration of the policy.

The Law Firm recognized that there was a distinct possibility that the policy could be cancelled at its expiration and any claims that were tendered after December 31, 2008 would be denied. As this was explained to our then-current clients, the Law Firm received numerous requests from other Sunwest investors to be included in the Law Firm’s claim letter. We agreed to present such claims on behalf of these new clients on a limited basis – the Law Firm would present the claims for a flat fee, with subsequent representation to be negotiated at a later date. As a result of this effort, which involved significant administrative burden and expense during the 2008 holiday season, the Law Firm presented claims from approximately 370 Sunwest investors to the attorneys representing DWT on December 30 and 21, 2010, which was supplemented on January 2, 2009.

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v. *Work Performed in DWT Litigation and Subsequent Mediation Protocol.*

During the first six months of 2009, the Law Firm continued to exchange discovery with the attorneys representing DWT, including gathering and compiling discovery from the Law Firm's various investor clients as requested by DWT. Also during this time, the Law Firm began filing additional lawsuits against DWT, K&L Gates, certain brokers and others. These efforts continued until approximately June 2009, when, under the auspices of the SEC Receivership case, an agreement was reached between the Receiver and attorneys for investor plaintiffs to allocate responsibilities between and among the various claimants attorneys, in an effort to avoid duplication of efforts and further erode DWT's wasting policy. Also at that time, a mediation protocol had been set up that had the effect of staying any direct activity against DWT in the litigation. All of these developments had to be communicated to the Law Firm's numerous clients, which was done primarily by email in an attempt to preserve resources and provide information in a relatively cost-effective manner. However, considerable time was expended answering individual questions from clients via telephone and email.

vi. *Law Firm's Participation in Mediation and Settlement Duties.*

In or around October 2009, after considerable negotiations, the attorneys for DWT and the plaintiff investor counsel reached an agreement in principle on a global settlement of all Sunwest-related claims. At that time, the Law Firm expended significant time and effort explaining the terms of the settlement to clients, conferring with opposing and aligned counsel regarding the proper form of settlement agreement, and ensuring that appropriate notifications were submitted to the courts in which the litigation was pending, including filing

motions to stay and in some cases notices of dismissal without prejudice. The Law Firm also expended significant energies in getting its clients' signatures to the settlement agreement and delivering them to the attorneys representing DWT in a timely manner.

**B. K & L Gates Claims.**

The Law Firm also presented claims for approximately 50 investors to K & L Gates, also in December 2008, and filed two lawsuits against that law firm in early 2009: *Momyer's Overlook, LLC, et al. v. K & L Gates LLP, et al.*, Marion County Case No. 09C16149 and *Bolster's 9<sup>th</sup> & Rose, LLC, et al. v. K & L Gates LLP, et al.*, Marion County Case No. 09C14990. This litigation required a significant amount of motions practice, as well as extensive document discovery from the Law Firm's clients. However, the litigation was stayed in early 2010 as the global mediation process under this Court began to take shape.

During the K & L Gates mediation, the attorneys representing K & L Gates demanded interviews with certain investors in order to test the factual underpinnings for the claims against that law firm. Two of the Law Firm's clients were chosen for interviews, and the Law Firm spent significant time gathering discovery, preparing the clients for the interviews, and attending the interviews.

**C. Broker-Dealer Claims.**

The Law Firm also represents 16 clients in litigation against several broker-dealers. In the summer and fall of 2010, the Law Firm filed lawsuits against these broker-dealers and their affiliated entities, which were almost immediately mediated and for which an agreement in principal was reached in August 2010. The Law Firm participated in two rounds of mediations and in several conference calls thereafter.

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**II. Compensation for Reasonable and Necessary Attorney Fees and Costs is Equitable Under the Circumstances.**

As shown above, the Law Firm provided an appreciable benefit to the Receivership Estate, and the legal services performed enhanced the value of the settlements that were negotiated with the law firms and brokers - value that far exceeds the reasonable hourly cost of the legal services. Additionally, the Law Firm endeavored to reduce the ultimate cost to its clients, and ultimately the Receivership Estate, by cooperating with other counsel, including the Receiver's counsel, the Court-appointed mediation counsel, and the law firms of Esler, Stephens & Buckley ("ESB") and Grenley, Rotenberg, Evans, Bragg & Bodie ("Grenley"). This is borne out by the relatively low lodestar amount of \$290,598.50 in relation to attorney fee requests from other firms that exceed the Law Firm's request by multitudes.

**A. The Law Firm Should Be Reimbursed at Similar Rates to That of Other Third Party Claims Counsel.**

As noted in the Declaration of Paul R.J. Connolly, the Law Firm's customary billing rates are lower than the rates submitted by ESB and Grenley for attorneys, paralegal and staff of similar experience levels. The primary reason for the difference in customary billing rates is due to the location of the firms – the Law Firm is located in Salem, Oregon, while the ESB and Grenley firms are located in Portland, Oregon.

It would be inequitable to compensate similarly experienced professionals at vastly different rates based solely on the location of their home offices. Indeed, the bulk of the legal work, including the multitude of mediations, court appearances, and meetings, occurred either in Portland or in Eugene. Throughout these cases, and in other cases

before this court, both related and not related to the instant Receivership case, the Law Firm has proven that it operates on-par with its Portland counterparts. For this reason, the Law Firm has requested compensation at billing rates that are equivalent to those sought for professionals with similar experience levels by the other law firms.

**B. Much of the Law Firm's Requested Attorney Fees and Costs Will Be Refunded to the Law Firm's Clients.**

While the majority of the Law Firm's clients agreed to a contingent fee arrangement, some clients opted to pay the Law Firm on a time and materials basis. For those clients who did pay portions of the Law Firm's incurred fees and costs, an award of attorney fees and costs to the Law Firm will result in a refund to many of the Law Firm's clients.

**C. Attorney Fees and Costs Incurred Pursuing Claims Against Defendants Other Than DWT, K & L Gates and Brokers Are Not Sought.**

In many of the cases brought by the Law Firm, the settling defendants are not the only named defendants in the litigation. The attorney fee detail in the attached Exhibit 1 does not include fees incurred in connection with claims against any defendant other than the settling law firms and brokers, and where fees benefitted both claims against settling defendants and non-settling defendants, the fees were reduced in proportion to the number of non-settling defendants in the case. Thus, the fees listed in Exhibit 1 reflect, to the extent humanly possible, only those fees that have a nexus to the claims against the settling parties DWT, K & L Gates and the settling brokers.

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**D. To the Extent the Court Awards a Multiplier to Any Other Counsel, Such Multiplier Should be Applied to the Law Firm as Well.**

The Law Firm recognizes that whether and to what extent the Court will award a multiplier to any attorney for investors in this case rests within the sound discretion of the Court, sitting in equity. To the extent that any multiplier is awarded to any law firm, the Law Firm asks that the same multiplier be awarded to the Law Firm.

In support of the Law Firm's claim for a multiplier, it bears noting that the Law Firm is a small business operating with only three full time attorneys and four to five full time staff. The Law Firm's agreement to represent the Sunwest investors took considerable time and resources that the Law Firm could have devoted to other more profitable sources of revenue. In addition, the ever-expanding complexities of the case required the Law Firm to hire additional staff and make other capital expenditures that otherwise would not have been necessary. The Law Firm undertook significant risk on these additional investments, not only on the direct time and effort devoted to the cases. These factors counsel towards an award of a multiplier on the Law Firm's lodestar amount.

**III. Conclusion.**

Based on all the facts and circumstances in this case, the Law Firm respectfully requests an award of reasonable and necessary attorney fees incurred in its work on behalf of Sunwest Investors over the last two and a half years in the sum of \$290,598.50, plus reimbursement of the Law Firm's and its clients' out-of-pocket expenses, costs and disbursements in the sum of \$11,945.79. While the Law Firm was but one member of the team which with the mediators gained over \$55 million in third-party settlements for the benefit of Sunwest Investors, the Law Firm respectfully submits that it contributed

significantly to the group effort and helped achieve a result far greater than its incurred fees and expenses.

DATED this 7<sup>th</sup> day of January, 2011.

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