

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

In re:)	
)	
JOHN COLEMAN,)	Case No. 21-11833-SDM
)	
Debtor.)	Chapter 11
)	
)	

**CHAPTER 11 EXAMINER ALBERT ALTRO’S FIRST INTERIM APPLICATION
FOR COMPENSATION AND ALLOWANCE OF FEES AND COSTS**

COMES NOW, Albert Altro, CPA, CIRA, Managing Director of Traverse LLC, and court-appointed examiner (the “Examiner”) for the above-captioned chapter 11 case, and submits this first interim application for the allowance of fees and reimbursement of costs as an administrative expense. The Examiner summarizes this request as follows:

Topic Summarized	Examiner’s Response
Effective date of employment:	February 2, 2022 ¹
Number of prior applications:	Zero (0)
Type of application:	Interim
Dates of service included in this application (the “Application Period”):	February 1, 2022 – October 25, 2022
Amount of fees sought to be allowed:	\$59,622.50
Amount of costs sought to be reimbursed:	\$0.00

BACKGROUND

1. This case was commenced on September 29, 2021 by John Coleman.²

¹ Dkt. # 106.

² Dkt. # 1.

2. On January 12, 2022, the Court entered an order denying John Coleman's Motion to Dismiss³ and appointing an examiner pursuant to 11 U.S.C. § 1104(c) (the "Appointment Order").⁴ The Appointment Order contemplates the Examiner conducting an "investigation pursuant to § 1104(c) of [John Coleman], his assets, any and all payments made on behalf of [John Coleman] prepetition, and any other potential transfer of assets by the [John Coleman] or on his behalf. Further, the examiner shall conduct an investigation as is appropriate considering the actions and conduct of [John Coleman] prepetition and postpetition."⁵

3. On January 31, 2022, the United States Trustee selected Albert Altro, CPA, CIRA and founding member of Traverse, LLC, to serve as the examiner in this case.⁶ On February 2, 2022, the Court entered an order approving the appointment of the Examiner.⁷

4. Since his appointment, as further described herein, the Examiner has diligently carried out the purpose of the Appointment Order, with his efforts culminating in the *Report of Chapter 11 Examiner Albert Altro* (the "Examiner's Report").⁸

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a

³ Dkt. # 66.

⁴ Dkt. # 94.

⁵ Dkt. # 94 at 7.

⁶ Dkt. # 101.

⁷ Dkt. # 106.

⁸ Dkt. # 242.

“core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). The Examiner consents to the entry of a final order with respect to the relief requested herein.

PRIOR AND CURRENT APPLICATIONS

6. The Examiner has not filed any prior applications for compensation in this case. The amount of fees sought through this application are \$59,622.50 in fees relating to the Examiner’s review and analysis of myriad documents and filings in this case and his preparation of the Examiner’s Report.⁹ The Examiner requests that such fees incurred during this case be allowed as an administrative expense, payable from the Estate’s available cash on hand.

7. The requested compensation is based on the customary compensation charged by comparably-skilled accountants in this district. The names and hourly rates of the Examiner’s professionals who billed time during the Application Period are as follows:

Professional	Total Hours	Hourly Rate	Amount Incurred
Albert Altro	95.50	\$395.00	\$37,722.50
Clay Harshbarger	66.00	\$225.00	\$14,850.00
Kitty Cheng	12.00	\$225.00	\$3,900.00
Jerry DeCiccio	14.00	\$225.00	\$3,150.00

8. Pursuant to Bankruptcy Rule 2016(a), Exhibit 1, which is attached hereto, contains a detailed statement of (1) the services rendered and time expended and (2) the amounts requested in this application.

⁹ Dkt. # 242.

9. All accountants and staff employed by the Examiner that were involved in this case have made a deliberate effort to avoid any unnecessary duplication of work, and the Examiner believes no duplication has occurred.

10. All of the services for which interim compensation is sought were rendered by the Examiner solely in furtherance of his duties and functions as Examiner and not on behalf of any individual creditor or other person.

11. The Examiner has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in this case.

12. The Examiner has not shared or agreed to share with any other entity the compensation received, allowance of which is requested herein, except to the extent that the funds received may be distributed to the partners of the Examiner's company, Traverse, LLC. All professional services for which allowance is requested herein were performed by the Examiner for and on behalf of the Estate and not on behalf of any other entity or party-in-interest.

LAW AND ANALYSIS

13. Section 330 of the Bankruptcy Code authorizes the Court to award reasonable compensation for actual, necessary services rendered and reimbursement for actual, necessary expenses incurred by the Examiner.¹⁰ Absent certain exceptions, the Court "shall not allow compensation for – (i) unnecessary duplication of services; or (ii)

¹⁰ 11 U.S.C. § 330(a).

services that were not – (I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case.” 11 U.S.C. § 330(a)(4)(A). The use of the word “including” in section 330(a)(3) indicates that the list is not exhaustive. See 11 U.S.C. § 102(3).

14. In the Fifth Circuit, “the lodestar, *Johnson* factors, and [11 U.S.C.] § 330 coalesce[] to form the framework that regulates the compensation of professionals employed by the bankruptcy estate.” *In re Pilgrims Pride Corp.*, 690 F.3d 650, 656 (5th Cir. 2012) (citing *In re Cahill*, 428 F.3d 536, 539–40 (5th Cir. 2005)).

15. The lodestar is the number of hours reasonably expended multiplied by “the prevailing hourly rate in the community for similar work.” *Transamerican Natural Gas Corp. v. Zapata P’ship, Ltd. (In re Fender)*, 12 F.3d 480, 487 (5th Cir. 1994) (citation omitted). The lodestar is reflected in Exhibit 1.

16. The *Johnson* factors utilized for adjusting a fee upward or downward are as follows:

- (1) The time and labor required;
- (2) The novelty and difficulty of the questions;
- (3) The skill requisite to perform the . . . service properly;
- (4) The preclusion of other employment by the [professional] 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 other circumstances;
- (8) The amount involved and the results obtained;
- (9) The experience, reputation, and ability of the [professionals];
- (10) The “undesirability” of the case;
- (11) The nature and length of the professional relationship with the client;
- (12) Awards in similar cases.

In re Pilgrims Pride Corp., 690 F.3d at 656 (quoting *In re First Colonial Corp. of Am.*, 544 F.2d 1291, 1298–99 (5th Cir. 1977)).

17. Bankruptcy Code Section 330(a)(3) provides that

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, 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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

18. A detailed description of the application of each of the *Johnson* factors relevant to this application is set forth below.

- a. The time and labor expended – The charges for the Examiner’s services in this case for the Application Period are \$59,622.50 in fees. The actual time expended by the Examiner is set forth in detail in Exhibit 1. The time expended by the Examiner was commensurate with the tasks communicated in the Appointment Order. As the Court and parties-in-interest are well-aware, this case presented unique complexities with respect to the Examiner’s investigation, including issues surrounding the Examiner’s access to key information relevant to his report. During the Application Period, the Examiner has diligently and effectively:

- i. reviewed myriad court filings in this case and relevant filings in the Express Grain Bankruptcy;¹¹
 - ii. stayed abreast of new developments impacting the Examiner's investigation and preparation of the Examiner's Report by routine monitoring of press coverage surrounding this case and the Express Grain Bankruptcy;
 - iii. provided multiple updates to the Office of the United States Trustee regarding the status of the Examiner's investigation and the Examiner's Report;
 - iv. attended and participated in the Debtor's 11 U.S.C. § 341 meeting of creditors;
 - v. reviewed the workpapers prepared by the auditors of Express Grain Terminals, LLC and met with the audit partner to discuss said workpapers;
 - vi. reviewed documents produced by the Debtor and other relevant entities,
 - vii. traveled to the United States Attorney's Office for the Northern District of Mississippi and reviewed and analyzed approximately forty-five (45) boxes of documents seized from Express Grain Terminals, LLC and the Debtor by the FBI; and
 - viii. drafted the Examiner's Report and participated in multiple rounds of edits to the same.
- b. Experience, reputation, and ability – Professional services rendered in this case have been performed by accountants with broad experience and a high level of skill in the areas for which they have been employed. The Examiner submits that his accountants, with varying levels of experience and seniority, have been used effectively and efficiently to meet the requirements of the tasks assigned. The Examiner's expertise and experience in these matters has enabled the investigation in this case to progress in an efficient manner to the benefit of the Estate and its creditors. The bulk of the work performed by accountants has been performed by the Examiner and Clay Harshbarger. Any other accountants providing services have devoted minimal time, but

¹¹ *In re Express Grain Terminals, LLC*, No. 21-11832 (Bankr. N.D. Miss.).

maximum assistance, depending on the particular specialty of each accountant. The Examiner submits that the fees for time expended, and rates charged for such services, are reasonable given the experience and special knowledge of each accountant working on the case.

- c. The skills required for performance of services – The Examiner and his team have significant experience in the restructuring arena both within and without bankruptcy courts across the nation. The Examiner believes and respectfully submits that he and his team are highly regarded in the areas of corporate restructuring, forensic accounting, and investigations regarding unknown assets and causes of action. The Examiner and his team are highly regarded as financial and accounting professionals throughout the nation and possess the experience, reputation, and ability to merit an award of the compensation and reimbursement requested herein.
- d. The novelty and difficulty of issues – This case presented difficult issues pertaining to discovery, investigation, and analysis of both the Debtor’s and his companies’ complex finances.
- e. The customary fees – The Examiner has applied for allowance of compensation for fees that reflect his billing rates charged to clients by the Examiner. The Examiner believes that his customary fees for services are equal to or below those of other accounting firms in the national bankruptcy community and within the range of fees approved for chapter 11 examiners of similar experience within the Mississippi bankruptcy courts.
- f. The amount involved and the results obtained – The Examiner’s investigation required the expenditure of substantial time and effort by the Examiner. The Examiner represents that the time expended is commensurate with the size and complexity of this case and the number of contested issues involving the Examiner’s input and attention, including but not limited to the Examiner’s efforts to obtain access to documents relevant to his investigation. The Examiner believes his services were performed as effectively and efficiently as possible and that the time expended is commensurate with the issues and objectives involved. The Examiner heeded the Court’s concerns regarding the cost of his investigation, and, as reflected in Exhibit 1, excluded from this application any potentially duplicative time entries. The Examiner’s Report represents the culmination of the Examiner’s efforts in this case.

- g. Preclusion from other employment – While the Examiner was not precluded from other employment during the Application Period, the professionals who have devoted time to this case were prevented from working on other matters.
- h. Contingent nature of fees – The fees sought in this Application were contingent only to the extent that all fees due to Estate professionals in a pending bankruptcy proceeding are contingent upon the success of the case, the availability of cash, review by the Office of the United States Trustee, Region V, and the approval of the Court.
- i. Time limitations and other circumstances – From the outset of the Examiner’s appointment, the Examiner has moved at an accelerated pace. This case has involved the usual filing deadlines for motion practice.
- j. The undesirability of the case – This case involved substantial time and effort, especially with respect to the Examiner’s review and analysis of myriad documents and filings in this case, gaining access to relevant information for the Examiner’s investigation, and drafting the Examiner’s Report.
- k. The nature and length of the professional relationship with the client – the Examiner had no relation to or with the Estate or the Debtor prior to his appointment.
- l. Awards in similar cases – The Examiner avers that an order of compensation on the basis provided for herein is comparable to that awarded to chapter 11 examiners in similar cases in the Fifth Circuit and, particularly, among Mississippi bankruptcy courts.

WHEREFORE, PREMISES CONSIDERED, the Examiner respectfully requests entry of an Order allowing as an administrative expense, payable from the Estate’s available cash on hand, the sum of \$59,622.50 incurred during the Application Period, comprised of \$59,622.50 in fees. The Examiner further requests general relief.

THIS the 30th day of November, 2022.

Respectfully submitted,

CHAPTER 11 EXAMINER ALBERT ALTRO

BY: /s/ Garrett A. Anderson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a complete and correct copy of the foregoing filing was provided to all parties receiving notices and filings herein pursuant to the Court's ECF noticing system.

This the 30th day of November, 2022.

/s/ Garrett A. Anderson
Garrett A. Anderson