

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

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

**PHELPS DUNBAR LLP’S FIRST INTERIM APPLICATION FOR  
COMPENSATION AND ALLOWANCE OF FEES AND COSTS**

COMES NOW, the law firm of Phelps Dunbar LLP (“Phelps”), attorneys for the Chapter 11 Examiner, Albert Altro (the “Examiner”), and submits this first interim application for the allowance of its fees and reimbursement of expenses and costs. Phelps summarizes this request as follows:

Topic Summarized	Phelps Response
Effective date of employment:	February 2, 2022 <sup>1</sup>
Number of prior applications:	Zero (0)
Type of application:	Interim
Dates of service included in this application (the “Application Period”):	February 2, 2022 – October 31, 2022
Amount of fees sought to be allowed:	\$60,114.00
Amount of costs sought to be reimbursed:	\$295.77

**BACKGROUND**

1. This case was commenced on September 29, 2021 by John Coleman.<sup>2</sup>

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<sup>1</sup> Dkt. # 116.

<sup>2</sup> Dkt. # 1.

2. On January 12, 2022, the Court entered an order denying John Coleman's Motion to Dismiss<sup>3</sup> and appointing an examiner pursuant to 11 U.S.C. § 1104(c) (the "Appointment Order").<sup>4</sup> 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."<sup>5</sup>

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 the Coleman Case.<sup>6</sup> On February 2, 2022, the Court entered an order approving the appointment of the Examiner.<sup>7</sup>

4. On February 28, 2022, the Court entered its *Order Granting Examiner Albert Altro's Application to Employ Phelps Dunbar LLP as Counsel*,<sup>8</sup> which approved Phelps' employment *nunc pro tunc* to the date of the Examiner's appointment, February 2, 2022.<sup>9</sup>

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<sup>3</sup> Dkt. # 66.

<sup>4</sup> Dkt. # 94.

<sup>5</sup> Dkt. # 94 at 7.

<sup>6</sup> Dkt. # 101.

<sup>7</sup> Dkt. # 106.

<sup>8</sup> Dkt. # 116

<sup>9</sup> Dkt. # 116 at 2.

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

### PRIOR AND CURRENT APPLICATIONS

6. Phelps has not filed any prior applications for compensation in this case. The amount of fees and expenses sought through this application are (i) \$60,114.00 in fees and (ii) \$295.77 incurred during Phelps’ representation of the Examiner in this case. Phelps requests that such fees and expenses 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 bankruptcy attorneys in this district. The names and hourly rates of Phelps professionals and paraprofessionals who billed time during the Application Period are as follows:

<b>Professional/Paraprofessional</b>	<b>Total Hours</b>	<b>Hourly Rate</b>	<b>Amount Incurred</b>
Sarah Beth Wilson	53.80	\$450.00	\$24,210.00
Garrett A. Anderson	138.90	\$230.00	\$31,947.00
Danielle Mashburn-Myrick	9.60	\$335.00	\$3,216.00
Michael Richmond (Paralegal)	5.70	\$130.00	\$741.00

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. All attorneys, paraprofessionals, and staff employed by Phelps that were involved in this case have made a deliberate effort to avoid any unnecessary duplication of work, and Phelps believes that no duplication has occurred. As reflected in Exhibit 1, to further avoid the risk of charging for the duplication of work, Phelps has reduced or discounted its charges for fees for work performed and expenses incurred by \$11,609.84.

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

11. Phelps 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. Phelps 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 Phelps.

13. During the Application Period, Phelps incurred expenses in connection with its representation of the Examiner totaling \$295.77, as indicated on Exhibit 1. Phelps bills clients at \$0.15 per page for photocopies. Additionally, the expenses incurred include the actual cost of automated research and courier services. Conference call charges represent actual costs of conference calls. Automated research and electronic discovery charges represent actual costs charged to Phelps. Phelps submits that all efforts were made to keep out-of-pocket expenses at a minimum and that such expenses are reasonable based on the services provided heretofore by Phelps.

14. The Examiner has been afforded the opportunity to review this Application and has approved of the requested amount.

### LAW AND ANALYSIS

15. 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 Phelps.<sup>10</sup> Absent certain exceptions, the Court “shall not allow compensation for – (i) unnecessary duplication of services; or (ii) 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).

16. 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)).

17. 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.

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

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<sup>10</sup> 11 U.S.C. § 330(a).

(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 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 other 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; (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)).

19. 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).

20. A detailed description of the application of each of these factors relevant to this application is set forth below.

- a. The time and labor expended – The charges for Phelps’ services in this case for the current application period are (i) \$60,114.00 in fees and (ii) \$295.77 in expenses relating to Phelps’ representation of the Examiner in this case. The actual time expended and details of expenses incurred by Phelps are set forth in detail in Exhibit 1. The time expended by Phelps for legal services was commensurate with the factual and legal issues involved in the representation of the Examiner. During the Application Period, Phelps has diligently and effectively:
  - i. reviewed and advised the Examiner regarding all pleadings relevant to his examination and investigation that have been filed in this case and in *In re Express Grain Terminals, LLC*, No. 21-11832 (Bankr. N.D. Miss.);
  - ii. briefed, attended, and argued multiple contested hearings regarding the Examiner’s access to documents germane to his investigation over the objection of various parties-in-interest;
  - iii. attended and actively participated in the 11 U.S.C. § 341 meeting of creditors;
  - iv. coordinated with multiple parties, including the Debtor, to obtain voluntary access to relevant files and documentation for the Examiner’s investigation, all at a reduced cost to the Estate when compared with formal methods of discovery; and
  - v. advised the Examiner with regard to the preparation and modification of the Examiner’s Report; and
  - vi. assisted the Examiner in preparing his first application for interim compensation.
- b. Experience, reputation, and ability – Professional services rendered in this case have been performed by attorneys with broad experience and a high level of skill in the areas for which they have been employed. Phelps submits that its attorneys, with varying levels of experience and seniority, have been used effectively and efficiently

to meet the requirements of the tasks assigned. Phelps' expertise and experience in these matters has enabled the Examiner's 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 attorneys has been performed by Sarah Beth Wilson and Garrett A. Anderson. Any other attorney or paraprofessional providing services to the Examiner devoted minimal time, but maximum assistance depending on the particular specialty of each attorney or paraprofessional. Phelps submits that the fees for time expended, and rates charged for such services, are reasonable given the experience and special knowledge of each attorney working on the case.

- c. The skills required for performance of services - Phelps' attorneys have appeared before courts in this district and throughout Mississippi in bankruptcy cases on behalf of creditors for many years. Phelps believes and respectfully submits that they are highly regarded in the areas of bankruptcy law and commercial law in the State of Mississippi and throughout the Southeast. Phelps' attorneys possess the experience, reputation, and ability to merit an award of the requested compensation and reimbursement.
- d. The novelty and difficulty of issues - This case presented difficult issues pertaining to discovery and investigation.
- e. The customary fees - Phelps has applied for allowance of compensation for fees that reflect its billing rates charged to clients by Phelps. Phelps believes that its customary fees for services are equal to or below those of other firms in the national bankruptcy community and within the range of fees approved for attorneys of similar experience within the Mississippi bankruptcy courts.
- f. The amount involved and the results obtained - Phelps' representation of the Examiner during the Examiner's investigation required the expenditure of substantial time and effort by Phelps. Phelps represents that the time expended is commensurate with the size and complexity of this case and the number of significant legal issues involved in the case, including but not limited to the Examiner's efforts to obtain access, over various parties' objections, to documents relevant to his investigation. Phelps believes its services were performed as effectively and efficiently as possible and that the time expended is commensurate with the issues and



objectives involved. The Examiner's Report represents the culmination of Phelps' representation of the Examiner in this case.

- g. Preclusion from other employment - While Phelps 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 counsel 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 Phelps' employment, Phelps 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 gaining access to relevant information for the Examiner's investigation and advising the Examiner regarding the Examiner's Report.
- k. The nature and length of the professional relationship with the client - Phelps had no relation to or with the Estate, the Debtor, or the Examiner prior to engagement. Phelps presently represents the Examiner in other matters.
- l. Awards in similar cases - Phelps avers that an order of compensation on the basis provided for is comparable to that awarded in similar cases in the Fifth Circuit and, particularly, among Mississippi bankruptcy courts.

WHEREFORE, PREMISES CONSIDERED, Phelps respectfully requests entry of an Order allowing as an administrative expense, payable from the Estate's available cash on hand, the sum of \$60,449.77, which is comprised of (a) \$60,114.00 in fees and (ii) \$295.77 in expenses, incurred during the Application Period. Phelps further requests general relief.

THIS the 30th day of November, 2022.

Respectfully submitted,

**PHELPS DUNBAR LLP**

BY: /s/ Garrett A. Anderson

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*Attorneys for Chapter 11 Examiner Albert Altro*

I, Albert Altro, Chapter 11 Examiner, have reviewed this application and approve of the requested amount.

/s/ Albert Altro (with permission)

Albert Altro

Dated: November 30, 2022

**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