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UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re

GTI CAPITAL HOLDINGS, LLC, an
Arizona limited liability company dba
ROCKLAND MATERIALS,

Debtor.

In Re

G. H. GOODMAN INVESTMENTS
COMPANIES, L.L.C.,

Debtor.

Chapter 11

Case Nos. 03-07923-SSC through 03-
07924-SSC

Jointly Administered

MEMORANDUM DECISION
GRANTING, IN PART, AND
DENYING, IN PART, THE MOTION
TO DISQUALIFY BRYAN CAVE LLP

On November 10, 2004, this Court conducted oral argument on Grant H. Goodman, Teri B. Goodman, Triad Commercial Captive Insurance Company and Stirling Bridge, L.L.C.'s, (hereinafter "Goodman") Motion to Disqualify the law firm of Bryan Cave LLP, counsel for the Examiner, Edward M. McDonough (the "Examiner"). The Court reviewed the various exhibits, affidavits, and the deposition transcript submitted by the parties in responsive and supplemental pleadings. Although counsel for Goodman requested that the Court permit it to pursue limited discovery and that the Court set a further hearing to determine whether Bryan Cave should be disqualified as counsel for the Examiner, the Court concluded no further hearing was necessary.

The Court notified the parties at the conclusion of the November 10 hearing that

1 although it had set forth its decision on the record so that Bryan Cave and the Examiner would
2 know how to proceed in this case, the Court would also set forth its findings of fact and
3 conclusions of law in this written decision and would draft a separate form of order on the matter.

4 In this Decision, the Court has set forth its findings of fact and conclusions of law
5 pursuant to Rule 7052, Rules of Bankruptcy Procedure. The Court has jurisdiction over this
6 matter pursuant to 28 U.S.C. §§1334 and 157. (West 2004).

7 The deposition transcript of Robert S. Porter reflects that he served as the legal
8 counsel and secretary for Triad Commercial Captive Insurance Company and as legal counsel for
9 Stirling Bridge, L.L.C.¹ He testified that at the time of the incorporation of Triad, it acquired
10 \$2,500,000 in capital, but in approximately January 2003, that capital had been depleted to
11 around \$100,000. In investigating the numerous purchases of assets with Triad funds, he became
12 concerned with the actions of Mr. Goodman. Mr. Porter, as counsel, wanted the funds returned
13 to Triad; Mr. Goodman felt, that as the principal of Triad and other entities, the purchases of
14 assets with the funds from Triad were justified. It is clear from Mr. Porter's deposition transcript
15 that he could not resolve the controversy with Mr. Goodman, and in January 2003, he sought
16 legal counsel. The individual that he consulted was Mr. Mark Harrison, who was then a partner
17 at Bryan Cave. The transcript also reflects that at the time Mr. Porter met with Mr. Harrison, Mr.
18 Porter provided information as to the specific transactions from the Triad books and records that
19 were of concern. Although Mr. Porter also had concerns about Stirling Bridge, it is less clear as
20 to the transactions that Mr. Porter discussed with Mr. Harrison. Mr. Porter testified that after
21 consulting with Mr. Harrison, Mr. Porter determined how to proceed as to himself and the subject
22 entities.

23
24 Mr. Harrison's affidavit, which was attached as Exhibit 2 to the Supplemental
25 Response of Bryan Cave, reflects that he followed the procedures of the firm in opening a file and

26
27 1. At the November 10 hearing, the Court notified the parties that although she had
28 read the entire transcript, the testimony at pages 36-49 and pages 94-101 were of particular
importance and concern in resolving these issues.

1 conducting a conflicts check. A second conflicts check was conducted in February 2003, once
2 Mr. Harrison became more familiar with the matter. The names "GTI," "GH Goodman," "Stirling
3 Bridge," and "Triad," as well as other names, were input into the system in the conflicts analysis.
4 Mr. Harrison also provided the invoices resulting from his representation of Mr. Porter; however,
5 since the invoices were redacted, it was of little assistance to the Court other than to note that the
6 legal fees were modest and the number of hours devoted to the representation were limited.

7 At Exhibit 1, Paragraph 22 of his Affidavit, attached to the Supplemental Response filed
8 by Bryan Cave, Mr. Harrison stated that Mr. Porter received legal advice as to how to proceed to
9 avoid personal liability and how to provide appropriate guidance to the entities as in-house
10 counsel. Although Bryan Cave attempts to minimize this contact, Mr. Porter's deposition makes
11 it clear that Mr. Porter had certain books and records from Triad and Stirling Bridge with him and
12 that he discussed the loss of cash from the operations and why he believed Mr. Goodman's
13 actions were inappropriate, perhaps, even criminal. Since Mr. Harrison was a partner at the firm,
14 this information obtained through the representation would have been imputed to the firm.
15 Ethical Rule 1.10.²

16 In July 2003, the Examiner approached Bryan Cave about representing him in
17 these cases. At that time, Robert J. Miller ran a conflicts check which did not include Mr.
18 Porter's name. From this Court's standpoint, given the information provided by Mr. Porter as to
19 Triad and Stirling Bridge, it would have been prudent to add those entities' names to the Bryan
20 Cave data base, so that when Mr. Miller ran a conflicts check once he became aware of the Triad,
21 Stirling Bridge, or other Goodman entities, he would have known that there was a potential
22 problem regarding representation of the Examiner on certain contested matters or issues arising in
23 an adversary proceeding. However, this type of cross referencing was apparently not done. After
24 the conflicts check, Mr. Miller filed the standard Rule 2014 and 2016 affidavit or statement with
25 the Court so that Bryan Cave could be retained as counsel for the Examiner under 11 U.S.C.

26
27 2 . Under Local Bankruptcy Rule 9011-1, this Court incorporates the ethical rules
28 promulgated by the Arizona Supreme Court and requires any attorney practicing before this Court
to adhere to said ethical rules.

1 §327 (a). The Court approved said retention by Order dated July 24, 2003.

2 In August 2003, Mr. Porter again approached Mr. Harrison about legal
3 representation. This time, after conferring with Mr. Miller, Mr. Harrison declined the
4 representation.

5 As the Court noted at the November 10, 2004 hearing, the Bankruptcy Code sets
6 up a variety of procedures for counsel that has represented a creditor or a debtor pre-petition, yet
7 wishes to represent a professional of a bankruptcy estate post-petition. Subsections (c) and (e) of
8 11 U.S.C. §327 do not prohibit certain types of representations of estate professionals, but limit
9 that representation to that of special counsel or something similar. Bankruptcy Rules 2014 and
10 2016 provide the framework to the professionals so that complete disclosure may be provided to
11 the Court. Through the disclosure process, this Court is able to determine whether representation
12 under Subsection (a), (c), or (e) of Section 327 is appropriate. When the Court is deprived of
13 complete information through the disclosure process, the Court is unable to craft an appropriate
14 form of order which is in the best interest of the bankruptcy estate. Although Bryan Cave believes
15 that it was, and is, disinterested, and may continue to represent the Examiner on the contested
16 matters concerning whether Triad should have an administrative claim against this estate and
17 whether Mr. Goodman should have the sum of \$250,000 which he previously paid into the
18 Court's Registry Account returned to him, based upon this Court's review of the Affidavit of Mr.
19 Harrison and the deposition transcript of Mr. Porter, Bryan Cave's representation of Mr. Porter,
20 and the information that it obtained as a result of that representation, this Court does not see how
21 Bryan Cave may proceed with such a representation on these contested matters. At least as to
22 these contested matters, Bryan Cave has an interest which is materially adverse to "any class of
23 creditors or equity security holders, by reason of any direct or indirect relationship to, connection
24 with, the debtor . . . or for any other reason...." 11 U.S.C. §101 (14)(E).

25 A review of Ninth Circuit case law also reflects the importance of timely and
26 ongoing disclosure. In the decision of In re Park-Helena Corp., 63 F.3d 877 (9th Cir. 1995) *cert.*
27 *denied sub nom.* 516 U.S. 1049, 116 S.Ct. 712, 133 L.Ed.2d 667 (1996), the Court cited with
28 approval numerous cases which focused on the applicant seeking appointment as a professional

1 for the bankruptcy estate having the burden to provide "full, candid, and complete" disclosure or
2 to provide all of the facts to the appointing court. "Negligent or inadvertent omissions do not
3 vitiate the failure to disclose." Id. at 881. Because the firm in Park-Helena was engaged in a
4 willful failure to disclose information to the bankruptcy court, the Ninth Circuit concluded that the
5 bankruptcy court acted within its discretion in denying the entire fee award requested by the firm.
6 Id. at 882. As noted at the hearing on November 10, 2004, this Court has found no such willful
7 failure by Bryan Cave. However, as noted in this decision, this Court does intend that Bryan
8 Cave review its current and past fee applications to advise the Court on whether compensation
9 approved, or to be approved, by this Court concerning Triad, Stirling Bridge, or Mr. Goodman's
10 involvement with these entities, as outlined, in part, in these contested matters, should be denied
11 in whole, or in part.

12 Professionals have a duty to engage in complete disclosure to the court; no matter
13 how trivial or irrelevant the information may appear to be. In re Park-Helena Corp., 63 F.3d 877
14 (9th Cir. 1995) cert. denied *sub nom.* 516 U.S. 1049, 116 S.Ct. 712, 133 L.Ed.2d 667 (1996); In
15 re Elias, 215 B.R. 600 (9th Cir.BAP 1997); In re Fraga, 210 B.R. 812 (9th Cir.BAP 1997); In re
16 Jore Corp. 298 B.R. 703 (Bankr.D.Mont. 2003); In re Hathaway Ranch Partnership, 116 B.R.
17 208 (Bankr. C.D. Cal. 1990); In re B.E.S. Concrete Prods., 93 B.R. (Bankr. E.D. Cal. 1988).
18 This duty is ongoing, so counsel is required, as the case progresses, to renew the conflicts checks
19 or analyze its representation of the bankruptcy estate and related entities or persons as appropriate
20 and advise the Court if a problem has arisen.

21 The Court also concludes that Bankruptcy Rule 2014, which must be adhered to
22 by any professional who seeks appointment under Section 327, requires that the professional
23 disclose "all of the [firm's] connections with the debtor, creditors, any other party in interest, *their*
24 *respective attorneys and accountants ...*" Such disclosure, as noted by this Court, allows the
25 Court to craft appropriate orders concerning the professional. In this case, if the Court had
26 known in August 2003, or shortly thereafter, of Bryan Cave's representation of Mr. Porter,
27 counsel for Triad and Stirling Bridge, it would have limited Bryan Cave's representation of the
28 Examiner concerning any disputes that the estate might have with Mr. Porter, Triad, or Stirling

1 Bridge, or Mr. Goodman's involvement with Mr. Porter, Triad, or Stirling Bridge.

2 After analyzing this matter, this Court concludes that the Motion to Disqualify
3 must be granted, in part, and denied, in part. Bryan Cave shall not represent the Examiner in the
4 contested matters in which the Examiner seeks to challenge the administrative claim of Triad and
5 the claim of Mr. Goodman to a return of the sum of \$250,000 placed by Mr. Goodman in the
6 Court's Registry Account. The Court sees no reason, however, to disqualify the firm from its
7 representation of the Examiner in all other matters before the Court, given Mr. Harrison's limited
8 representation of Mr. Porter on issues related to Triad and Stirling Bridge.
9

10 Given the current fee application of Bryan Cave before this Court, which was last
11 heard on August 19, 2004, this Court will deny that fee application, without prejudice, at this
12 time. Bryan Cave needs to review carefully said application in the case administration area or in
13 other areas related to the contested matters with Triad and the Registry Funds, and determine
14 which entries may be problematic given this Court's ruling. Bryan Cave needs to advise the Court
15 if it still seeks compensation for said services. In turn, this Court has previously approved, on an
16 interim basis, other fee applications of the firm. Bryan Cave should review those applications,
17 although the entries may be few and insignificant, and advise the Court of the entries which may
18 have related to the investigation, analysis, or recovery of assets of Triad or Stirling Bridge, and
19 the pursuit of the contested matter as to the administrative claim of Triad, or Mr. Goodman's
20 claim to the funds in the Court's Registry Account. Bryan Cave shall notify the Court of these
entries and its position as to whether it should still be compensated for same.

21 Based upon the foregoing, the Motion to Disqualify Bryan Cave filed by the
22 Goodman entities is granted, in part, and denied, in part, with Bryan Cave being disqualified from
23 representing the Examiner on the contested matters involving Triad and the turnover of certain
24 Court Registry funds to Mr. Goodman. Bryan Cave may not represent the Examiner as to any
25 issues related to Mr. Porter, Triad, Stirling Bridge, and Mr. Goodman's liability, responsibility, or
26 requests for the turnover of assets as to Triad and Stirling Bridge.

27 The fee application filed by Bryan Cave on July 27, 2004 is denied without
28 prejudice.

Bryan Cave shall examine its prior fee applications, approved by this Court on an interim basis, and notify the Court of any entries involving Triad, Stirling Bridge, and the investigation of their assets and liabilities, or involving Mr. Goodman and his request for the turnover of the funds in the Court Registry Account, and the firm's position on whether it should still be compensated for the services rendered. Upon request, the Court will then set a hearing on the matter.

7 Any party wishing to object to the request for compensation of Bryan Cave should
8 follow Local District Court Rule 2.20 (which is in the process of being renumbered), which
9 requires a detailed objection by any party opposing a FCC application.

DATED this 1 day of November, 2004.

Honorable Sarah Sharer Curley
Chief U. S. Bankruptcy Judge

1 Copy of the foregoing mailed

2 11/18/2004 to:

3
4 John J. Hebert, Esq.
Hebert Schenk P. C.
5 1440 E. Missouri Ave.
Missouri Commons Ste. 125
6 Phoenix, Arizona 85014
Attorneys for Debtor

7
8 Robert J. Miller, Esq.
Bryan Cave, LLP
Two N. Central Ave., Ste. 220
9 Phoenix, Arizona 85004-4406
Attorneys for Examiner

10
11 Marty Harper, Esq.
Gary Ansel, Esq.
Shughard Thomson & Kilroy, P.C.
12 One Columbus Plaza
3636 N. Central Avenue., Ste. 1200
13 Phoenix, AZ 85012
Attorney for Goodman Entities

14
15 John R. Clemency, Esq.
Tadjudeen O. Oladiran, Esq.
Greenberg Traurig
16 2375 East Camelback Road, Ste. 700
Phoenix, Arizona 85016
17 Attorneys for Comerica

18
19 UST

20 By M.D. Martinez

21

22

23

24

25

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