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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 Proceedings Under Chapter 11

Case Nos. 2-03-bk-07923-SSC through
2-03-bk-07924-SSC

(Jointly Administered)

In re:
G.H. GOODMAN INVESTMENT
COMPANIES, LLC, an Arizona limited
liability company,

Debtor.

**MEMORANDUM DECISION ON
THIRD AND FOURTH FEE
APPLICATIONS OF BRYAN CAVE**

(Opinion to Post)

I. PRELIMINARY STATEMENT

On December 19, 2005, this Court conducted a hearing on the Bryan Cave Fourth Fee Application and the Fourth Fee Application of the Examiner and his firm. At that time, the Court preliminarily approved both Fee Applications on the record and noted that a written decision would follow.

At the request of Bryan Cave on December 19, the Court also set up a procedure to approve the Third Fee Application of Bryan Cave. The Application of Bryan Cave remained open for one discrete reason. As noted in the Court's Surcharge Decision, there was an issue as to whether Bryan Cave had excluded all of the time necessary from its first three fee applications concerning contested matters from which the Firm was disqualified from representing the Examiner.

1 In its Objection, Comerica interposes five points to be considered by the Court. The
2 Applications include fees associated with the Triad and Registry Funds matters, the
3 Applications include fees associated with litigating the DePrizio adversary, the fees requested
4 are unreasonable because of duplication, the fees requested are unreasonable because of
5 inconsistencies in the entries noted by Bryan Cave and the Examiner and his Firm, and the
6 fees requested are unreasonably high when measured against the contributions made by Bryan
7 Cave, the Examiner and his Firm.

8 1. The Triad and Registry Funds Matters.

9 This objection pertains to the Bryan Cave Application only. Comerica alleges that
10 Bryan Cave was to exclude all entries which pertained to these issues, since this Court
11 excluded Bryan Cave from representing the Examiner, as more fully set forth in the
12 Memorandum Decision dated November 18, 2004.⁴ Comerica believes that it has identified
13 an additional \$5,340.00 in charges that Bryan Cave did not identify and should also be
14 excluded. In its Reply, Bryan Cave requests that the Court reserve ruling on this issue until a
15 final hearing on the Firm's attorneys' fees and costs. The Court will cave out the sum of
16 \$51,006, as identified by Bryan Cave, and the sum of \$5,340, as identified by Comerica in its
17 Objection, or a total of \$56,346, which fees are not approved by the Court at this time. As to
18 whether these fees will be allowed and paid will be determined by the Court at a later point in
19 time.

20 To the extent that Comerica advances the argument that all of the Bryan Cave fees for
21 all four fee applications should be disallowed in their entirety as a result of Bryan Cave's
22 disqualification on these limited issues, that objection is overruled by this Court. In the Ninth
23 Circuit decision of In re Park-Helena Corp., 63 F.3d 877 (9th Cir. 1995) *cert. denied sub nom.*
24 516 U.S. 1049, 116 S.Ct. 712, 133 L.Ed. 2d 667 (1996), the Court approved the denial of the
25 entire fee award requested by the firm as a result of the law firm's willful failure to disclose
26 information to the bankruptcy court. Id. at 882. In this matter, there has been no showing

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28 4.Docket Entry No. 988.

1 that Bryan Cave willfully failed to disclose the information to this Court. Moreover, the
2 Court reviewed all of the information provided to it at the time, and although it could have
3 disqualified Bryan Cave from representing the Examiner on all issues, as requested by some
4 parties in this case, this Court chose the more appropriate remedy of disqualifying the Firm on
5 the discrete issues, Triad and the Registry Funds matter, that posed a problem for the Court.
6 The fees that the Firm incurred as to these discrete issues is being reserved for allowance and
7 payment until the final fee application of Bryan Cave. The Court concludes that this is the
8 best way to handle the matter and is consistent with the Court's November 18, 2004
9 Disqualification Decision.

10 A review of Comerica's Objection and Exhibit C thereto reflect that Comerica may be
11 requesting that the Examiner's Fee Application be reduced by \$13,746 for time expended by
12 the Examiner and his Firm on the Triad/Registry issues. The Court, in its limited
13 disqualification of Bryan Cave, did not disqualify the Examiner from proceeding on the
14 matters. In fact, with Court approval, the Examiner retained special counsel to assist him.
15 Therefore, the Court sees no basis or reason to reduce the allowed compensation of the
16 Examiner for a problem, on a limited issue, of Bryan Cave. The fees of the Examiner for
17 these matters is allowed, since the hourly rate is reasonable, the hours expended is reasonable,
18 and the overall compensation requested is reasonable.

19 2. The DePrizio Litigation.

20 The Examiner argues that in the original appointing him, he was empowered to
21 investigate this litigation on behalf of the bankruptcy estate. Apparently Comerica objects to
22 the sum of \$7,799.50 requested by the Examiner and FTI in its Fourth Fee Application. The
23 Court agrees that the Examiner was empowered to investigate this among many matters.⁵
24 Since the Court charged the Examiner with this specific task, in essence, the Court attempting
25 to obtain an objective view of this litigation, the Court approves these fees and costs as
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28 ⁵Docket Entry No. 880 and Order Approving Appointment of Examiner, dated July 3,
2003.

1 reasonable, the hourly rate as reasonable, and the overall time expended by the Examiner and
2 FTI as reasonable. These fees should be allowed on an interim basis under 11 U.S.C. §330.

3 The Court does agree with Comerica that these fees should not be surcharged against
4 the collateral of Comerica. This conclusion is consistent with this Court's extensive analysis
5 in its Surcharge Memorandum Decision.⁶

6 3. The Rolling Stock And Surcharge Litigation.

7 The Court has reviewed Exhibits G and H to Comerica's Objection to determine
8 whether these fees and costs incurred by Bryan Cave or the Examiner and his Firm should be
9 disallowed. Comerica has highlighted these entries in red and blue and presumably wishes to
10 exclude all of the entries so highlighted. No clear basis is given to excluding these fees other
11 than Comerica's interpretation of the Surcharge Decision. However, as noted by Bryan Cave
12 and the Examiner, they have ultimately been successful in the litigation of these issues.

13 Bryan Cave and the Examiner successfully set aside Comerica's lien on certain rolling stock
14 as a result of a summary judgment procedure. That Decision is now on appeal. Bryan Cave
15 and the Examiner were also successful on most issues that they advanced as a part of the
16 surcharge litigation against Comerica. The Court has reviewed the attorneys' fees and costs
17 expended by Bryan Cave and the Examiner and his Firm on these matters and concludes that
18 the hours expended are reasonable, the hourly rate is reasonable, and the overall
19 compensation requested is reasonable.

20 4. Duplication Of Entries Of Bryan Cave.

21 In its Objection, Comerica lists various entries that it would like to the Court disallow
22 because it believes that the attorneys at Bryan Cave were duplicating the work of each other.
23 The Court has reviewed the highlighted entries and notes that the detail reflects that if the
24 tasks being performed by the Firm required more than one attorney to work on a matter.
25 Given the amount of work required in this case, the Court does not find it unreasonable to
26 delegate several attorneys to work on an issue to have it tried before the Court in a timely
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28 **6.**Memorandum Decision dated November 21, 2005, Docket Entry No. 1232.

1 manner. The other entries focused on by Comerica refer to more than one attorney preparing
2 or handling a matter in the Court. Given the many issues to be resolved, the Court does not
3 find it unreasonable that the issues to be heard or determined by the Court were assigned to a
4 number of attorneys. The Court finds that the hours expended on the various matters is
5 reasonable, the hourly rate is reasonable, and the overall compensation requested is
6 reasonable.

7 5. Inconsistencies Between the Bryan Cave and the Examiner's Fee Application.

8 Comerica, in its Exhibit J, focuses on the difference in the time entries between the
9 Applications. In most cases, a Bryan Cave attorney makes an entry noting a conference or
10 discussion with the Examiner or one of his staff but there is no corresponding entry in the
11 Examiner's Application. However, this Court agrees with the Applicants that there is no
12 reason to doubt that these contemporaneous time entries are accurate, and that the bankruptcy
13 estate is actually being charged less because one of the professionals did not record his or her
14 time. In essence, the billing practices of the Applicant actually enure to the benefit of
15 Comerica as one of the creditors of this estate. The Court has reviewed all of the entries
16 which have been questioned and will allow the fees as outlined in the Applications.

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18 **B. The Third Fee Application Of Bryan Cave And The Exclusion Of Fees
19 Because Of The Firms' Disqualification.**

20 Pursuant to this Court's request at the December 19, 2005 hearing, Bryan Cave sent a
21 notice to all creditors alerting them that a hearing would take place on January 30, 2006,
22 concerning the Firm's final computations of those fees that were incurred by the Firm in
23 connection with the Triad/Registry disputes prior to July 31, 2004. The Court had noted that
24 Bryan Cave had previously identified these entries after its disqualification on these limited
25 issues, but the Court wanted to ensure that creditors would be made aware of these
26 computations and be given a final opportunity to object if they disagreed. At the hearing on
27 January 30, Comerica noted that not all of the time entries from the First, Second, or Third
28 Fee Applications on these matters had been excluded by Bryan Cave. This Court disagrees.

1 It has reviewed the entries in the amount of \$9,262.75 and accepts same as the appropriate
2 entries and amount for services to be excluded from the First, Second, and Third Fee
3 Applications for time expended by Bryan Cave on the Triad and Registry matters for which
4 the Firm was later disqualified as counsel for the Examiner. The Court will also allow Bryan
5 Cave's request that this disallowance on fees, on a temporary basis, may be addressed by the
6 Court at a hearing on the final fee application to be submitted by Bryan Cave. Since these
7 entries will be excluded by the Firm, the Court will approve, on an interim basis, the Third
8 Fee Application of Bryan Cave.

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10 **C. Additional Fees and Expenses To Be Surcharged As To Comerica.**

11 Bryan Cave and the Examiner seek to finalize two open issues from the Surcharge
12 Decision of this Court. The first issue is to determine to what extent the fees and costs
13 incurred by Bryan Cave and the Examiner for the July 2004 time period should be surcharged
14 against Comerica's collateral. The second issue is to determine what expenses incurred by
15 Bryan Cave and the Examiner from any of their fee applications prior to the July 2004 cutoff
16 date should also be surcharged against the Comerica collateral. Prior to the hearing on these
17 issues on January 30, 2006, Bryan Cave submitted a detailed declaration. Comerica did not
18 submit any controverting declaration.

19 During the course of the surcharge litigation, Bryan Cave and the Examiner submitted
20 their invoices from July 2004, requesting that the fees set forth therein be surcharged against
21 Comerica's collateral. In the Surcharge Decision, the Court noted that it could not yet rule on
22 these invoices, since they had not been incorporated into any fee applications, on notice to
23 creditors and interested parties, and approved at a hearing before the Court on the allowance
24 of the fees.⁷ Bryan Cave and the Examiner have since incorporated these fees into their
25 Fourth Fee Applications which have now been allowed by this Court as set forth herein. At
26 the surcharge trial, Comerica presented no evidence controverting surcharge. The Court has

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⁷ Surcharge Decision, p. 58.

1 reviewed Bryan Cave and the Examiner's Reply to Comerica's Objection to having these fees
2 surcharged, as well as the Exhibits attached to the Reply. Based upon this Court's review of
3 the July invoices, the Court concludes that the Examiner and Bryan Cave have excluded those
4 fees which should not be surcharged, consistent with this Court's Surcharge Decision, and the
5 Court will allow the Examiner to surcharge the amount of \$7,863 in fees against Comerica's
6 collateral⁸ and Bryan Cave to surcharge the amount of \$22,881.50 in fees.⁹

7 As to the Bryan Cave expenses, the Firm was not able to identify certain expenses as
8 relating to a matter for which Comerica caused or consented to or a matter which provided a
9 direct and substantial benefit to Comerica. For instance, telephone calls and legal research
10 expenses could not be directly tied to matters for which Comerica's collateral should be
11 surcharged, so Bryan Cave deleted those matters from its computations. Certain copying
12 charges were also deleted as noted in Bryan Cave's declaration. The Court has reviewed the
13 remaining expenses, which primarily related to the copying and facsimile charges incurred in
14 the marketing and sale of Comerica's collateral. To the extent that Comerica believes that the
15 copying and facsimile areas at Bryan Cave are operated as profit centers, there is no support
16 in the record for said assertion. Moreover, the United States Trustee's office monitors the fee
17 applications of law firms to make sure that the charges for such services are reasonable, and
18 said Office has filed no objection to the reasonableness of said charges. The Court concludes
19 that they are reasonable. The Court also concludes that based on this Court's Surcharge
20 Decision, Bryan Cave has set forth a basis for expenses in the amount of \$16,822.95 to be
21 surcharged against Comerica's collateral.

22 As to the Examiner, he and his Firm seek to have additional bond premiums paid
23 earlier in this case also charged against Comerica's collateral based upon the analysis in this
24 Court's Surcharge Decision. Specifically, the Examiner seeks to have the following expenses
25 additionally surcharged;

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27 **8.**See Exhibit 1 attached to the Examiner's and Bryan Cave's Reply.

28 **9.**See Exhibit 2 attached to the Examiner's and Bryan Cave's Reply.

1	7/3/03	Bond Expense	\$12,000
2	11/1/03	Bond Expense	2,784
3	12/16/03	Bond Expense	600
4	3/23/05	Bond Expense	42,000
5		Total:	\$57,384

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7 Consistent with this Court’s Surcharge Decision, these bond expenses were caused by
8 or consented to by Comerica or Comerica received a direct and substantial benefit from the
9 Examiner obtaining such premiums. Therefore, these bond expenses in the amount of
10 \$57,384 will also be surcharged against Comerica’s collateral.

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III. CONCLUSION.

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14 The Fourth Fee Applications of Bryan Cave and the Examiner shall be allowed by this
15 Court, except that as to Bryan Cave, the fees in the amount of \$56,346 shall not be allowed at
16 this time, since they relate to the Triad/Registry matters as to which Bryan Cave was
17 disqualified. Thus, Bryan Cave will have fees in the amount of \$257,523.50 (\$313,869.50
18 minus \$56,346) and costs of \$13,911.66 approved, and the Examiner shall have fees in the
19 amount of \$499,762 and costs of \$18,568.09 approved. Bryan Cave may revisit, at a hearing
20 on its final fee application in this case, whether the disallowed fees may be recovered by it.

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The Court accepts the computations of Bryan Cave that fees in the amount of
\$9,262.75 shall be temporarily disallowed from its First, Second, and Third Fee Applications,
since those fees also related to the Triad/Registry contested matters. Bryan Cave may revisit
whether these fees should be allowed at a final hearing on its fee application.

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The July 2004 fees of Bryan Cave and the Examiner, as set forth in their Fourth Fee
Applications, shall be surcharges against the collateral of Comerica. The Examiner has set
forth fees in the amount of \$7,863 and Bryan Cave has set forth fees in the amount of
\$22,881.50 which may be surcharged against Comerica’s collateral.

