

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

In Re: Kevin W. Kulek

Chapter 7 Petition
Bankruptcy Case Number
16-21030-dob
Honorable Daniel S. Opperman

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Keith M. Nathanson, P41633
Keith M. Nathanson, PLLC
Special Litigation Counsel to Randall L. Frank, Trustee
2745 Pontiac Lake Road
Waterford, MI 48328
(248) 436-4833
kn@nathanson-law.com

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**APPLICATION FOR PARTIAL COMPENSATION FOR SERVICES RENDERED AND
COSTS INCURRED FROM NOVEMBER 15, 2016 THORUGH JANUARY 27, 2017**

Now comes Keith M. Nathanson, attorney for the Debtor(s) herein, and moves this Honorable Court as follows:

- A. History of the Case: Debtor filed for relief under Chapter 7 of the Bankruptcy Abuse, Prevention and Consumer Protection Act of 2005. Randall L. Frank was appointed the Trustee in Debtor's Case. Based upon the inconsistencies in Debtor's schedules, Trustee Frank employed Applicant to assist in the investigation of legal issues, misrepresentations, fraudulent statements and hidden assets by the Debtor, to recover money for the estate. Applicant was employed pursuant to Court Order August 10, 2016. Applicant has conducted and participated in two §341 meeting of creditors, and has attempted on 3 separate occasions to conduct a §2004(b) examination of Debtor. Debtor failed to appear for the first §2004(b) examination which was scheduled

pursuant to the stipulation of Applicant and Debtor's Counsel. This Court entered an Order Compelling Debtor to Appear for §2004(b) examination on December 12, 2016 and Debtor again failed and/or refused to appear. Counsel for Trustee was forced to file a motion for contempt and on December 16, 2016 this Court entered an Order of Contempt. Debtor was apprehended on January 20, 2017 at which time the Court conducted a hearing and scheduled a §2004(b) examination at Court on January 27, 2017. This Court ordered Debtor to produce records prior to the hearing, and the Debtor failed to comply.

- B. Services rendered by Applicant have been substantial and Applicant believes that this interim allowance of fees and reimbursement of expenses is appropriate and necessary at this time.
- C. This Court advised Applicant and Opposing Counsel that it would award fees and costs to be paid by Debtor based upon the Debtor's failure to comply with Court Orders and failure to cooperate with the Trustee.
- D. Applicant is requesting fees and costs pursuant to 11 USC §331 and E.D. Mich. LBR 2016-1.
- E. Pursuant to E.D. Mich. LBR 2016-1, Applicant submits the following information:
 - 1. Total Amount of Compensation Sought to be Approved: Pursuant to E.D. Mich. LBR 2016-1(a)(1)(A), Applicant seeks the approval of compensation in the amount of \$6,990.00.
 - 2. Total Amount of Compensation Sought to Be Approved: Pursuant to E.D.

Mich. LBR 2016-1(a)(1)(B), Applicant seeks the approval of expenses in the amount of \$422.00.

3. Pursuant to E.D. Mich LBR 2016-1(a)(1)(C), there is no balance of any retainer on deposit with the Applicant that remains after the payment of any prior fee awards.

4. Time Period During Which Services were Rendered: Pursuant to E.D. Mich. LBR 2016-1(a)(2), Applicant is seeking partial compensation for services rendered from November 27, 2016 through February 13, 2017.

5. Services Rendered and Benefits Received: Pursuant to E.D. Mich LBR 2016-1(a)(3), the following is a general description of the services rendered by Applicant as Legal Counsel for the Trustee commencing November 15, 2016 through January 27, 2016, as they relate to obtaining Debtor compliance and conducting a §2004(b) examination, and a summary of how Applicant's services benefitted the Estate:

A. Services Rendered

- i. Case Administration: Applicant obtained a stipulated order for §2004(b) examination with an extensive list of documents and records for Debtor to produce to attempt to locate in excess of \$500,000 (and up to approximately \$1,200,000) in undisclosed assets and to attempt to gain Debtors compliance to explain the dissipation of these funds. The original §2004(b) examination was scheduled for November 15, 2016. Debtor did not appear. Applicant was forced to file a motion to compel, and obtained an

order compelling Debtor to appear on December 12, 2016, requiring Debtor to appear on December 16, 2016, with all records. Debtor again did not appear and Applicant obtained an Order of Contempt on December 16, 2016. Debtor was apprehended and brought before the Court on January 20, 2017 and a §2004(b) examination was scheduled to be held at the Court on January 27, 2017. Debtor again failed to provide records and the Court conducted a hearing on January 27, 2017 and allowed the Debtor two weeks to provide records (for which Debtor has produced no records), and set a status conference hearing for February 17, 2017. The Court advised Applicant to file a fee application to require that Debtor pay the costs and fees in this application directly, due to his non-compliance.

- ii. Claims Administration: Applicant has attempted to reconcile the limited records provided by Debtor to ascertain what claims may be valid, what claims may have been excluded and any amounts which Debtor may owe.
- iii. Employment and Fee Applications: Applicant has assisted the Trustee with filing their Affidavit to Employ Counsel's Firm as Special counsel to ensure all aspects of the case have been handled correctly. In addition, Applicant prepared this Fee Application.
- iv. Sale, Realization and Liquidation of Estate Property: Applicant

has located numerous items of property owned by Debtor which Debtor failed to disclose in his petition and has yet to turn over any of the non-disclosed, non-exempt assets. In addition, Applicant has located assets transferred by Debtor to third-persons prior to filing the instant petition and has numerous Adversary Proceedings pending (not part of this fee application).

- v. Benefits to the Estate: Applicant has located, to date, approximately \$150,000.00 worth of assets which Applicant is pursuing on behalf of the Estate. Additionally, Debtor has waived his rights to a discharge pursuant to 11 USC §727(a)(10), and the Court has entered an order to that effect.

- 6. Statement required by E.D. Mich LBR 2016(a)(10): Applicant has provided a copy of this fee application to the Trustee and the Trustee is in agreement with the fees and expenses that are being requested in this Fee Application.
- 7. Current Status of the Bankruptcy Case: Pursuant to E.D. Mich. LBR 2016-1 (a)(15), a status conference is set for February 17, 2017. Debtor was to produce records within two weeks (by February 10, 2017) but has produced nothing to date. Applicant anticipates at least two more adversary complaints will be filed. Debtor's §2004(b) still has not been taken.
- 8. Future Services: Pursuant to E.D. Mich LBR 2016-1(a)(6), Applicant expects to continue to provide future services in attempting to locate, gather and secure assets for the benefit of the Estate.

9. Pursuant to E.D. Mich LBR 2016-1(a)(7), Applicant is unaware of any accrued unpaid administrative expenses.
10. Services of More than One Attorney and Paralegal: Pursuant to E.D. Mich. LBR 2016-1(a)(8), Applicant does not believe that an award is sought for services of more than one professional and paraprofessional.
11. Prior Applications: Pursuant to E.D. Mich LBR 2016-1(a)(9), this is Applicant's first Interim Application for Fees and Expenses.
12. Pursuant to E.D. Mich LBR 2016-1(a)(10), Trustee was given the opportunity to review the application and has approved the requested amount.
13. Pursuant to E.D. Mich LBR 2016-1, Applicant has attached hereto the following exhibits:
 - A. Exhibit 1 – Proposed Order for First Interim Application of Attorney for Trustee for Services Rendered Between November 15, 2016 and February 13, 2017.
 - B. Exhibit 2 – Copy of Affidavit to Employ Counsel's Firm
 - C. Exhibit 3 – Summary of number of hours of services rendered by each attorney/paralegal and the hourly rate of each
 - D. Exhibit 4 – Itemized time records in chronological order, of each specific service for which an award of compensation is sought. These time records indicate (i) the date each service was rendered; (ii) a description with particularity of the services rendered; (iii) identification of the attorney/paralegal who performed the services; and (iv) the time spent

performing the service.

E. Exhibit 5 – A brief biographical statement of the professional experience of each attorney/paralegal for whom an award of compensation is sought.

F. Exhibit 6 – An itemized statement of disbursement for which an award of compensation is sought.

14. The total time spent by Applicant during the period covered by this Application (as it relates to the “§2004(b)” examination and Debtor compliance & docs only) has been 23.3 hours which represents fees in the amount of \$6,990.00

WHEREFORE Applicant prays it be awarded fees in the amount of \$6,990.00 and reimbursement of expenses in the amount of \$422.00 for a total of \$7,412.00 to be paid by Debtor to Special Litigation Counsel forthwith, and if Debtor does not pay, that Applicant may reduce same to a money Judgment against Debtor, and that further Applicant may be permitted to petition the Estate for payment of these costs and fees if not paid by Debtor, with any payments by Debtor to be credited to the balance due for these fees.

/s/ Keith M. Nathanson, P41633
Keith M. Nathanson, P41633
Keith M. Nathanson, PLLC
Special Litigation Counsel
2745 Pontiac Lake Road
Waterford, MI 48328
(248) 436-4833
kn@nathanson-law.com
Dated: February 16, 2017

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**NOTICE OF PARTIAL COMPENSATION FOR SERVICES RENDERED AND COSTS
INCURRED FROM NOVEMBER 15, 2016 THORUGH JANUARY 27, 2017**

Keith M. Nathanson, of Keith M. Nathanson, PLLC, attorney for the Debtors(s), has filed an Application for Approval of Partial Compensation for Services Rendered and Costs Incurred from November 15, 2016 through January 27, 2017, pursuant to LBR 2016 & 9014-1. Pursuant to LBR 2016-2(a)(1) the amounts sought are as follows:

- a. Compensation Sought: \$6,990.00
- b. Expenses Sought: \$ 422.00
- c. Retainer Received \$ 7,412.00

Your rights may be affected. You should read these papers carefully.

If you do not want the court to grant the Application for Approval of Payment of Post Confirmation Attorney Fees, or if you want the court to consider your views on the motion, **within 21 days**, you must:

1. File with the court a written response or an answer, explaining your position at:

**United States Bankruptcy Court
P.O. Box 911
Bay City, Michigan 48708**

If you mail your response to the court for filing, you must mail it early enough so the court will receive it before the expiration of the 21 day period stated above.

You must also mail a copy to: Keith M. Nathanson, Special Litigation Counsel, Keith M. Nathanson, PLLC, 2745 Pontiac Lake Road, Waterford, MI 48328.

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

/s/ Keith M. Nathanson, P41633

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ORDER FOR PARTIAL COMPENSATION FOR SERVICES RENDERED AND COSTS

INCURRED FROM NOVEMBER 15, 2016 THOROUGH JANUARY 27, 2017

Keith M. Nathanson, of Keith M. Nathanson, PLLC, Special Litigation Counsel, as Applicant, having filed an application for approval of fees and costs pursuant to LBR 2016-1 and 9014-1; notice being sent to the Debtor(s) and Chapter 13 Trustee, no response having been filed; and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED THAT:

1. The Court approves applicant's fees and expenses as follows:
2. Prior award for fees: \$0.00
Prior award for cost: \$ 0.00
Total award to date: \$ 0.00

Present award for fees: \$6,990.00
Present award for cost: \$ 422.00
Present award : \$7,412.00

TOTAL OF FEES AND COSTS \$

Retainer received to date \$0
Retainer Balance Remaining: \$0.00

TOTAL FEES TO BE PAID AS AN ADMINISTRATIVE EXPENSE: \$7,412.00
WITH CREDIT TO BE GIVEN FOR ANY PAYMENTS MADE BY DEBTOR
DIRECTLY TO THIS BALANCE

3. This award covers a partial award of services rendered and costs incurred from November 15, 2016 through February 13, 2017.
4. Debtor shall forthwith pay the fees and costs in this order directly to Keith M. Nathanson, and if Debtor does not pay, that Applicant may reduce same to a money Judgment against Debtor, and that further Applicant may be permitted to petition the Estate for payment of these costs and fees if not paid by Debtor, with any payments by Debtor to be credited to the balance due for these fees

Proposed Order Exhibit "1"

Exhibit 2 – See Attached

Exhibit 3:

Attorney:

Keith M. Nathanson

23.30 hours \$300 per hour

Exhibit 4 – Project Categories

21.1 Hours – Case Administration – \$6,330.00

2.2 Hours – Fee Application – \$660.00

Total:

23.3 Hours \$6,990.00

Exhibit – 5

Biographical Statement of Keith M. Nathanson

Undergraduate Degree: University of Michigan, 1985, Biology

Detroit College of Law, Juris Doctor Cum Laude, 1988

Member State Bar of Michigan, American Bar Association, State Bar of Michigan

Family Law Section, State Bar of Michigan Solo/Small Firm Section

Former Member Representative Assembly, State Bar of Michigan

Former Board Member, State Bar of Michigan, Young Lawyers Section

Admitted to practice, November 1988, State of Michigan.

Admitted to Eastern District of Michigan, Western District of Michigan, Northern District of Illinois, 6th Circuit Court of Appeals

Participated in filing chapter 7, chapter 11 and chapter 13 bankruptcy petitions since 1988. Participated in numerous adversary proceedings throughout the bankruptcy litigation process.

Co-author and contributor to Handling the Collection Case in Michigan (ICLE)

Speaker and presenter at National Business Institute on topics of bankruptcy and debt collection.

Speaker at the State Bar of Michigan Family Law Section on Debt Collection and Bankruptcy issues in Family Law Cases.

Co-Author: Collecting Judgments from Start to Finish in Michigan (2002) ASIN B0006RXXB0.

Co-Author: Successful Judgment Collections in Michigan (1999) ASIN
B0006RC1TK.

Managing Member of Keith M. Nathanson, PLLC

Senior Partner at The Nathanson Law Group, P.C.

Managing Member of Lexington Legal of Michigan, PLLC

Affiliate Counsel to Lexington Law

Exhibit 6 – Disbursements

Court Reporter – 1/27/17 -- \$150.00 (attendance fee)

Court Reporter 11/15/16 - \$75 (attendance fee – Debtor no show)

Court Reporter 12/16/16 - \$75 (attendance fee – Debtor no show)

Mileage to/from Bay City – 1/27/17 – 188 miles @\$0.65 - \$122.00