

1 GARY W. DYER
2 Attorney for the United States Trustee
3 United States Dept. of Justice
4 Office of United States Trustee
5 United States Courthouse
6 920 West Riverside, Room 593
7 Spokane, WA. 99201
8 Telephone (509) 353-2999
9 Fax (509) 353-3124

7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF WASHINGTON

9 In re:)	Case No. 04-08822 PCW11
)	Chapter 11
10 THE CATHOLIC BISHOP OF)	
11 SPOKANE a/k/a THE CATHOLIC)	
DIOCESE OF SPOKANE)	UNITED STATES TRUSTEE'S
)	OBJECTION TO FEES OF
)	RIDDELL WILLIAMS, P.S.
Debtor.)	[DOCKET NO. 406]

14 The United States Trustee, by and through her attorney, Gary W. Dyer, objects a
15 portion of the fees requested by the counsel for the Committee of Tort Claimants,
16 Riddell Williams, PS. The United States Trustee does so for the following reasons:

17 SUMMARY

18 The United States Trustee objects to the amount of fees for meetings and work of
19 multiple attorneys which do not appear justified, for having multiple attorneys at court
20 hearings, for work which appears to be duplicative of others' work, and for entries of
21 time which are not shown to be beneficial to this estate.

23 A. DUAL BILLING FOR MEETINGS

24 The firm bills for all the participants in the numerous meetings held by counsel,
25 and often the purpose of the meeting is not stated.^{1/} See the entries as follows:

27 _____
28 ^{1/} In the determination of the amount, the lower amount of time is used from the dual entries to

1 a. In section B110:

2 1/11 2 attorneys on telephone call with US Trustee
3 1/18 2 attorneys in telephone conference with Pfau & Jackson
4 2 attorneys in telephone conference with US Trustee
5 1/19 2 attorneys confer about the telephone calls
6 1/20 2 attorneys in telephone conference with US Trustee
7 1/24 2 attorneys conferring about the cash management order
8 1/27 2 attorneys conferring with Jackson regarding committees and co-
9 counsel ideas
10 2/1 2 attorneys conferring before meeting with US Trustee
11 2/3 2 attorneys conferring about the cash management objections and
12 discovery
13 2/3 2 attorneys telephone call with Paukert and court hearing
14 2/22 2 attorneys confer about the case management order
15 2/24 2 attorneys confer about the case management order
16 2 attorney in telephone call to Paukert & Cross
17 2/25 2 attorneys confer about the case management order
18 2 attorneys in meetings with others re: case management order
19 2 attorneys attend the hearing on case management order
20 3/4 2 attorneys in telephone conference with Paukert
21 3/7 2 attorneys confer about the bar date and future claims
22 representative
23 3/22 2 attorneys confer about the future claims representative
24

25 b. In the B150 section:

26 1/4 2 attorneys prepare for the section 341 meeting
27 1/5 2 attorneys attend the first meeting of creditors
28 1/7 2 attorneys attend the committee meeting
1/11 GEF more time preparing for 341
1/12 2 attorneys attend committee meeting
1/25 2 attorneys attend the committee meeting

25 estimate the total costs and reductions of fee, e.g., if one attorney separated the time entry at 1.7
26 hours, while the second attorney lumped time and tasks together in excess of 1.7, the lower time
27 entry of 1.7 was used.
28

1 c. In the L250 section:

2 1/28 2 attorneys confer about intervention

3 2/23 2 attorneys confer about intervention

4 2/23 2 attorneys confer about intervention and estoppel

5 d. In the section 541 adversary proceeding:

6 3/16 2 attorneys confer about the matter

7 3/23 2 attorneys confer about the matter

8 In these dual billings, Mr. Shickish billed \$13,342 and Mr. Frazier billed \$14,210.
9 The L250 intervention section is composed of lumped entries which cannot be
10 unbundled for a dollar amount.

11 B. DUPLICATIVE TIME

12
13 Certain time entries appear to duplicate the work of the other lawyers. In the
14 section numbered B140, and in B150, on 1/4 and 1/5, the preparation for the first
15 meeting of creditors appears to be done by both attorneys. This time is included in the
16 earlier section.
17

18 C. BENEFIT TO THIS ESTATE UNCLEAR AND NOT DESCRIBED

19
20
21
22 Certain entries do not properly or completely describe why they benefit this
23 estate, or should be allowed in this case:

24
25 1. Why the time for the librarian is billed? For example, see the 541 litigation
26 section, entry of 3/14.

27 2. What is the benefit to this estate in the review and analysis the case dockets for
28

1 Portland and Tucson? (Total of amount of time is \$9,795).

2
3 See section B120 on 1/11, 1/12, and 1/14.

4 See section B230 on 1/31.

5 See section B310 on the dates of 3/7, 3/8, 3/9, 3/15 and 3/30.

6
7 See section B320 on 3/18 and 3/19.

8 See section L120 on 3/29.

9
10 3. It appears that the work of the two senior lawyers is being reviewed by each
11 other in each area. Why is this practice compensable?

12
13 4. The time related to the preparation for the case management hearing seems
14 excessive, thus the benefit is not shown:

15 a. Prepare for the hearing by date and hours (total of \$3,395):

16		
17	2/14	2
18	2/22	1.1
19	2/23	2.4
20	2/24	3.2
21	2/25	1

22 b. Plus the review of drafts and proposed drafts (total of \$1,944):

23	2/11	1.2
24	2/22	.7
25	2/24	2.9
26	2/24	.8

27 c. Plus conferences about the subject (total of \$4,666):

1	2/22	.7 (x 2 lawyers)	(\$231 plus 245)
2	2/24	1 (x 2 lawyers)	(264 plus 350)
3	2/24	1.5	(231 plus 525)
4	2/25	1	(330 plus 350)
5	2/25	3	(990 plus 1150)

6 d. Plus attendance at the hearing: 2/25 2.7 (x 2 lawyers) (\$891 plus 945)

7
8 5. The time spent related to the motion to disband the tort litigants committee is
9 excessive and thus the benefit is not to the estate (section B110) (total of \$16,449):
10

11	3/8	.7	research by Mr. Pile
12		1.5	draft opposition by Mr. Pile
13		.2	confer between Mr. Pile and Mr. Frazier
14	3/9	4.7	drafting opposition by Mr. Pile
15		.2	confer between Mr. Pile and Mr. Frazier
16	3/10	1.1	drafting by Mr. Pile
17		8	research and revision by Mr. Frazier
18		5.3	research and revision by Mr. Frazier
19	3/13	4	research and revision by Mr. Frazier
20	3/14	1.6	research by Mr. Pile re § 105
21		.5	revision by Mr. Pile
22		11.6	research and revision by Mr. Frazier
23		.5	review UST opposition
24		.5	review opposition of CTL and UST by Mr. Schickish
25	3/15	1	review UST objection and prepare for hearing by Mr. Frazier
26	3/22	1	research by D. Burress
27		1.7	review of reply from CTL by Mr. Frazier
28	3/23	.9	prepare for hearing by Mr. Frazier
		2	research by D. Burress

3/28 4.7 prep for oral argument
1.9 hearing

Please recall that the motion to disband the committee of tort litigants was focused on the United States Trustee in appointing a second official committee, not disbanding the Committee of Tort Claimants.

6. Intervention in the Pacific Insurance adversary proceeding:

The intervention in the declaratory relief action by Pacific Insurance against the debtor was premised on the perception that the debtor would not fully advocate the coverage issues for the benefit of the estate, thus the need for the committee to intervene. The debtor wants and wanted the largest coverage for any tort claims, thus would advocate for the most coverage. Further, any resolution of the adversary proceeding would necessarily be by a compromise subject to F.R.B.P. 9019. Further, it is the debtor in possession's standing which allows the issue to be resolved or litigated. Thus, the time spent on intervention in this adversary proceeding was not appropriate. The time entries from January 1 through March 30 appear to total the amount of 68.6 hours. Total amount of \$23,727. (This is in addition to the time related to the intervention in the CTL's adversary proceeding to define the property of the estate).

The adversary proceeding has only been withdrawn to the District Court, with no substantive motions or trial matters calendared or decided. The fees requested related to this area of the case are excessive. The Committee should only be reviewing the matter, and the debtor is the one with standing to pursue the matter. Nothing in the pleadings or

schedules would suggest the debtor is not aggressively pursuing the insurance coverage matters within its fiduciary duties. There is and was no need for the committee to intervene.

C. PARALEGAL TIME FOR COPYING AND PACER SEARCHES

The entries for the paralegals copying, printing documents from PACER is clerical work. See the entries for CC and SKR in the fee application. The time entries are (total of \$1,274):

a. In section B100:

2/1	CC	ECF filing
-----	----	------------

b. In section B110:

1/3	SKR	retrieve documents from docket
1/4	SKR	retrieve documents from docket
1/18	CC	ECF filing
2/9	CC	ECF filing
2/18	KKR	retrieve dockets/documents
3/10	SKR	retrieve pleadings from docket
3/14	CC	ECF filing
3/15	CC	ECF filing (twice)

c. In section B140:

1/19	CC	ECF filing
------	----	------------

1 d. In section B160

2	1/10	CC	ECF filing
3	1/28	CC	ECF filing
4	1/31	CC	ECF filing
5	3/3	CC	retrieve example of fee application
6	3/11	CC	ECF response

7
8 e. In the 541 section (Tort Litigants v. Diocese):

9	3/15	CC	ECF filing
10	3/16	CC	ECF filing
11	3/17	CC	ECF filing

12
13 D. DUPLICATIVE TIME BETWEEN THE TWO COMMITTEES

14 The two committees did not work together to share their work, their interests or
15 their efforts. The reason is stated as a mistrust *between the committee members*, not
16 between the lawyers. This distrust is not and should not have been the end of the
17 discussions and should not be rewarded by the court.

18
19 The Declaratory Relief area, the intervention area, the assignment of the
20 avoidance actions to the Committee of Tort Litigants, and cash management orders are
21 areas where the interests of the two committees, in relationship with the diocese, would
22 be so close as to be indistinguishable. Yet each committee counsel ignored the other
23 resulting in much work on the similar issues. We have objected to all committee
24 counsel's fees on these matters.

25
26
27 The motion to have the avoidance actions (if any) assigned to the Committee of
28

1 Tort Litigants was not only premature on the merits, because of the dispute over the
2 scope of the property of the estate, but was largely based upon the case authority of such
3 assignment being allowed pursuant to a plan. We have objected to this. See the
4
5 Objection to the Pachulski Stang firm's fees. As Claimant's committee counsel spent
6 \$5,225 in reviewing and joining the motion, we object to that request.

7
8 **E. THE TIME SPENT IN THE CASH MANAGEMENT ORDER IS EXCESSIVE**

9 The committees and the debtor spent an excessive amount of time in the cash
10 management order's creation and negotiations. The debtor's counsel captures its time in
11 Case Administration in the first month, then in Business Operations in the second month.
12
13 The Tort Litigant's counsel spent \$5,840 on the matter, and their local counsel's time
14 records are indecipherable in their organizational structure. The Claimants' Committee
15 counsel spent \$27,531 related to Financing aspects of the case.

16
17 The cash management process should have taken much shorter time and cost, and
18 no more than \$10,000 among all the parties. The stated purpose of the order was to keep
19 the status quo in place and reserve the rights regarding the property of the estate issues.
20

21 The court is requested to allow only \$10,000 in total as a reasonable fee for this
22 task and order, and to allocate that fee among the applicants.

23
24
25 **ARGUMENT**

26
27 **1. THE LAW RELATED TO FEE APPLICATIONS.**

1 The burden of proof for each entry of a fee application is on the applicant. In re
2 Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988); In re Recycling Industries, Inc., 243
3 B.R. 396 (Bankr. D. Colo. 2000). This burden is not to be taken lightly, especially given
4 the fact that every dollar expended on fees results in a dollar less for distribution to
5 creditors of the estate. In re Yankton College, 101 B.R. 151, 158 (Bankr.S.D.1989); In re
6 Pettibone Corp., 74 B.R. 293, 305 (Bankr.N.D.Ill.1987).
7

8
9 The applicant is required to provide the court with a sufficiently detailed
10 application. In re Nucorp Energy Inc., 764 F.2d 655, 658 (9th Cir. 1985).
11

12 Professionals have an obligation to exercise billing judgment. Unsecured
13 Creditors' Committee v. Puget Sound Plywood, Inc., 924 F.2d 955, 959 (9th Cir.1991);
14 In re Auto Parts Club, Inc. 211 B.R. 29, 33 -34 (9th Cir.BAP (Cal.),1997).
15

16 Section 330(a) of the Bankruptcy Code authorizes the court, after notice and a
17 hearing, to award to a trustee, an examiner, or other professional person employed under
18 11 U.S.C. § 327 or 1103 --
19

20
21 (A) reasonable compensation for actual, necessary services rendered by the
22 trustee, examiner, professional person, or attorney and by any paraprofessional
23 person employed by any such person; and

24 (B) reimbursement for actual, necessary expenses.

25 The court has discretion to award less than the amount of compensation requested. 11
26 U.S.C. § 330(a)(2).
27
28

1 Section 330(a)(3) provides:

2
3 In determining the amount of reasonable compensation to be awarded, the court
4 shall consider the nature, the extent, and the value of such services, taking into
5 account all relevant factors, including -

6 (A) the time spent on such services;

7 (B) the rates charged for such services;

8 (C) whether the services were necessary to the administration of, or
9 beneficial at the time at which the service was rendered toward the
10 completion of, a case under this title;

11 (D) whether the services were performed within a reasonable amount of
12 time commensurate with the complexity, importance, and nature of the
13 problem, issue, or task addressed; and

14 (E) whether the compensation is reasonable based on the customary
15 compensation charged by comparably skilled practitioners in cases other
16 than cases under this title.

17
18 Section 330(a)(4)(A) of the Bankruptcy Code establishes limitations on the award of
19 compensation:

20 Except as provided in subparagraph (B), the court shall not allow compensation
21 for -

22 (i) unnecessary duplication of services; or

23 (ii) services that were not—

24 (I) reasonably likely to benefit the debtor's estate; or

25 (II) necessary to the administration of the case.

26 These guidelines grew out of court decisions beginning with Johnson v. Georgia
27 Highway Exp., Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). The Johnson factors assist in
28 determining the initial "reasonable" hourly rate, as well as the final adjustments to the
lodestar. See, In re Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988). Generally, so

1 long as the rates being charged are the applicant's normal rates charged in bankruptcy or
2 non-bankruptcy matters alike, they will be afforded a presumption of reasonableness."
3
4 In re Jefsaba, Inc., 172 B.R. 787, 798 (Bankr. E.D. Pa. 1994) (citations omitted). As the
5 rate must be reasonable "so must the time spent by the professionals on the various tasks
6 to be performed." Id. Indeed,

7
8 We review fee applications paying particular attention to the level of professional
9 . . . billing time viz-a-viz the complexity of the task being performed. The nature,
10 extent and complexity of the task . . . determines the level of professional . . . who
11 should perform the task, and, consequently, the reasonableness of the fees
12 charged . . . It is unreasonable for a senior attorney to perform routine tasks such
13 as preparing a debtor's schedules Consequently, fees charged at a senior
14 attorney's hourly rate for such services are unreasonable. Id. at 796-97 (citation
15 omitted).

16 The entries noted above in this objection are not shown to be reasonable nor
17 necessary to this case. The double billing of meetings, the aggressive motion for the
18 assignment of the avoidance actions, the entries related to other cases or other non-
19 debtor dioceses are not compensable under the principles of reasonableness or necessity.

20
21
22
23 2. DUAL BILLING FOR MEETINGS AND REVIEW OF PLEADINGS
24 MUST BE JUSTIFIED OR OTHERWISE BE DENIED.

25 Where multiple attorneys attend a hearing or conference, the applicant needs to
26 show a contribution to the hearings or conference to allow compensation. Microwave
27 Products of America, Inc. 102 B.R. 661 (Bankry., W.D.Tn. 1989); Wabash Valley
28

1 Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry. S.D. Ind. 1987). Only one
2 attorney may charge for a conference where no adequate explanation is given. In re
3 Adventist Living Centers, Inc. 137 B.R. 692 (Bankr. N.D. Ill. 1991). Attorneys should
4 work independently without the incessant conferencing. In re Pettibone Corp., 74 B.R.
5 293 (Bankr. N.D. Ill 1987).
6

7
8 The multiple meetings and conferences do not describe their necessity. The
9 narrative for the fee application does not describe their necessity nor their effectiveness.
10

11 12 3. INCOMPLETE TIME RECORDS MERIT A DENIAL OF FEES.

13 Where time entries lack the subject matter or substance of the event, the fees may
14 be denied. Wabash Valley Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry.
15 S.D. Ind. 1987). In re Pettibone Corp., 74 B.R. 293 (Bankr. N.D. Ill 1987).
16

17 The applicant is required to provide the court with a sufficiently detailed
18 application. In re Nucorp Energy Inc., 764 F.2d 655, 658 (9th Cir. 1985).
19

20 The time records that fail to show the relevance, leaving the reviewer to guess, are
21 insufficient in their description. The time entries for the review of the Portland and
22 Tucson cases are not shown to be beneficial or relevant to this case, as the dynamics of
23 the creditor body, the theories and approaches in the different cases have not been
24 parallel or consistent. In each instances when argued or mentioned before this court, the
25 parties
26
27
28

1 distinguish the Portland and Tucson cases for various reasons and theories.
2
3

4 4. COURT MAY REDUCE FEES FOR DUPLICATION OF
5 SERVICES IN THE CASE BY OTHER COUNSEL
6

7 The court may reduce the fees of counsel for time that is duplicative of services
8 performed by other counsel in the case. See, Matter of First Colonial Corp. of America,
9 544 F.2d 1291 (5th Cir. 1977); In re Casey, 173 B.R. 893 (Bankr. E.D. Tx. 1994); In re
10 Liberal Market, 24 B.R. 653 (Bankr. S.D. Ohio 1982).
11

12 The work of the different committees' lawyers are duplicative of each other.
13 There was no concerted effort to reduce the costs of attorneys and share the workload.
14 The distrust between the committee members is simply not an excuse for the respective
15 counsel to double-bill the estate. The lawyers, all of whom are creative and capable,
16 could have (and still should) craft a sharing agreement that solves the communication
17 and confidentiality concerns to handle the distrust. Instead, for whatever reason(s), the
18 lawyers went their own way and billed the estate in areas where the two committees
19 shared the same interests. Therefore, the court should not allow the full compensation of
20 the two committees' lawyers for such duplication.
21
22

23 Riddell Williams has billing \$239,000 for the time period between January 1 and
24 March 31, while Pachulski Stang is billing \$190,000 with local counsel of \$35,600, for
25 the time period between February 8 and March 31. The total is \$464,000 for all counsel
26 for the two committees during this first fee application period.
27
28

The main issues of the case are the property of the estate and the claims’ liquidation and resolution. The court can see from the fee applications what fees were spent on those issues, and it is vastly lower than \$464,000.

CONCLUSION

The court is respectfully requested to find that the fees requested by counsel in this case are not reasonable, and to reduce the fee by \$89,000. Specifically, the reductions are:

1. Dual billings: \$13,342
2. Benefit not shown:
 - a. Other case reviews: \$7,903
 - b. Excessive in case management order: \$4,286
 - c. Disband motion: \$16,000
3. Intervention in Pacific Insurance and section 541 litigation: \$23,727
4. Paralegal billed when clerical: \$1,274

Alternatively, the court should consider a holdback 50% of the allowed fees until clear and demonstrable benefit is shown by later events in the case, and for such other and further relief as deemed appropriate under the circumstances.

Dated this 3rd day of October 2005.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

ILENE J. LASHINSKY
United States Trustee

____/s/ Gary W. Dyer_____

GARY W. DYER
Attorney for the United States Trustee