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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
12)	ESPOSITO, GEORGE & CAMPBELL
13 Debtor.)	[DOCKET NO. 415]

14 The United States Trustee, by and through her attorney, Gary W. Dyer, objects a
15 portion of the fees requested by the local counsel for the Committee of Tort Litigants,
16 Esposito, George & Campbell. The United States Trustee does so for the following
17 reasons:

18 SUMMARY

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

23
24 The firm's time record entry is not topical and makes the review of the fees
25 impractical. While much time was spent to associate the time entries to the topical
26 approach, the court may consider ordering the firm to resubmit the fee request in a
27 topical approach rather than the task oriented definitions presently used.

1 A. DUAL BILLING FOR MEETINGS AND WORK

2 The firm bills for in the numerous meetings held by the two law firms for the
3 Committee of Tort Litigants (CTL). See the entries as follows:
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5 1. Case Management Order:

6 a. Case Administration section:

7	2/8	.5	Telephone conference between Mr. Ratajoo and Mr. Campbell
8	2/8	.75	Mr. Campbell reviews the amended case management order, which duplicates the work done by the Pachulski firm;
9			
10	2/9	.75	Mr. Campbell reviews the CTL's case management order and confers with Mr. Stang;
11	2/9	.75	A second review and conference lumped in with other tasks
12			
13	2/9	.40	In the "LA-AS" section ^{1/} , Mr. Campbell has a telephone conference with Mr. Stang in the case management order
14			
15	2/10	.40	Mr. Campbell reviews the U.S. Trustee's objection to the case management order, which duplicates the work of the Pachulski firm;
16			
17	2/11	.25	Mr. Campbell reviews the responses and the committee's response, which duplicates the Pachulski firms's work;
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19	2/11	.50	Mr. Campbell reviews the response from Mr. Conklin, which duplicates the Pachulski firm's work;
20	2/11	.33	Mr. Campbell confers with an unnamed attorney regarding the case management order
21	2/11	1.2	In the "LA-AS" section Mr. Campbell participated in a general session with Mr. Stang which includes the subject matter of the case management order
22			
23	2/12	.75	Mr. Campbell reviewed the CMO and responses (again)
24	2/14	1.2	In the "BA-OCM" section, Mr. Campbell reviewed the CMO and responses (again);
25			

26 _____
27 ^{1/} The time entries which mention the case management order or the "CMO" are in different sections
28 of the fee application. This is true for other areas of work as well.

1	2/23	.75	Mr. Campbell reviewed the CMO and signed it
2	2/23	.33	Mr. Campbell telephoned Mr. Stang about the CMO
3	2/24	.2	Mr. Campbell telephoned Mr. Stang about the CMO
4	2/24	1.33	In the "BA-OCM" section, Mr. Campbell reviewed
5			the CMO responses and strategy, but does not identify
6			the persons present at this meeting; Mr. Stang's
7			corresponding entry does identify other parties at the
8	2/24	.6	meeting;
9	2/24	.9	Mr. Campbell reviewed the order
10			In the "LA-AS" section, Mr. Campbell conferred with
11			Mr. Stang regarding the CMO issues
12	3/2	.75	In the "GA-RA" section, review of rough draft of
13			CMO
14	3/3	.93	2 entries re: review email comments re CMO;
15			telephone call to debtor's counsel; review of the latest
16			CMO
17	3/4	.6	review of CMO and itinerary
18	3/4	.15	In the "GA-COE" section, review of emails re
19			changes to CMO
20	3/4	1	In the "BA-AS" section, a strategy meeting with Mr.
21			Stang re CMO
22	3/4	.75	In the "GA-RA" section, review of "proposed final.
23			Redline version of CMO"
24	3/8	.5	In the "GA-RA" section, review of final CMO and
25			signature

The applicant spent 16.57 hours and billed \$3,897.

2. Creditors Committee Meetings

a. The entries do not identify the parties present at the meetings or on the telephone. See the entries for:

23	2/12	1.4 hours
24	2/22	1
25	3/8	1.25
26	3/15	.5
27	3/22	1.25
28	3/29	1
	4/5	1

1 Because the Pachulski firm's fee application indicates Mr. Stang and Mr. Ratajoo
2 attend some meetings, more than one attorney was present at these meetings without any
3 reason or justification given in either fee application. The fees should be denied in their
4 entirety.
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7 3. Strong Arm Powers motion:
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9 In the "GA-DR" section, Mr. Campbell drafted the first version of the motion to
10 assert strong arm powers, which we believe to be the motion regarding the assignment of
11 avoidance powers as described in the Pachulski firm's fee application. On 2/8, Mr.
12 Campbell drafted the motion billing half an hour (.5); then as noted in section "LT-P"
13 section, he reviewed it on 2/9 billing .25 of an hour; and in the "LA-AS" section, on
14 2/11, he was in a general session on the case which included the avoidance motion
15 billing 1.2 hours. The Pachulski firm began work on the motion for assignment of the
16 avoidance powers on 2/11. In the "LA-AS" section, Mr. Campbell on 2/15, conferred
17 with Mr. Stang regarding the CMO and avoidance matters billing .75 hours.
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20 In March the same scattering of entries adds the "GA-RA" section with:
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22	3/14	.5	review of motion to pursue avoidance powers
23		.75	Review debtor's reply to motion
24	3/21	.5	review of debtor's reply to CTC regarding the avoidance
25			actions
26	3/23	.5	meeting with Mr. Stang re numerous issues"pending
27			employment hearing assignment of 544 actions"

28 The applicant spent 4.95 hours and billed \$1,113.75.

 4. Mr. Campbell also spent time related to the remand issues, which are found in

1 the "LA-AS" section on 2/10 for 1.75 hours of legal research and on 2/11 for .1 hours in
2 a telephone call about the legal research. The remand issues were duties of Mr. Jackson
3 for all the tort litigants. The applicant spent 1.85 hours and billed \$416.25.
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6 5. In the "541" subject matter, which the Pachulski firm refers to as the
7 Declaratory Relief matter, Mr. Campbell, in the "Research Litigation" section, on 2/11
8 spent 1.2 hours in researching the core vs. non core issues, and then in the "LA-AS"
9 section, conferred with Mr. Stang on 2/15 and 2/18 for .75 each time. The same tasks
10 were done by the Pachulski firm. There is no need for local counsel to duplicate the work
11 of Pachulski Stang's firm and the fees should be denied in their entirety. The applicant
12 spent 2.7 hours and billed \$607.50.
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16 6. Lawyer time to talk to clerk's office or chamber's staff:
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18 There is no reasonable basis for paying counsel to call the court staff for hearing
19 dates or to follow up on orders. Clerical staff should be doing this task.

20 A. See the entries of "BA-CA" section:

21 3/16 2.07 (5 different entries)
22 3/22 .20
23 3/23 .73 (two entries)
24 3/24 .50 (two entries)
25 3/29 .20
26 3/30 .20

27 In the "BA-FE" section, the similar entries are:

28 3/29 .60

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3/30 .25

In the “GA-COE” section, a similar entries are:

3/14 .20

4/4 .5

The applicant spent 5.25 hours and billed \$1181.50. These fees should be denied in their entirety.

7. Intervention matters:

a. The intervention matters are for two different adversary proceedings. First, the intervention sought by the Claimant’s Committee (CTC) in the 541 adversary and second, the intervention by the Litigant’s Committee in the Pacific Insurance adversary proceeding. The fee application does not cleanly segregate the two adversary proceedings nor the subject matter. Entries related to these two adversary proceedings cross into virtually every fee category and the descriptions of the subject matter do not clearly distinguish in which one it belongs.

“GA-R”	3/10	.75	research regarding intervention
“GA-COE”	3/14	.2	Telephone call to case administrator regarding intervention.
“GA-RA”	3/15	.6	review of motion to intervene (cannot tell whose motion this is)
“GA-RA”	3/16	.8	review CTL’s motion to intervene in declaratory relief action
“GA-COC”	3/16	.4	Telephone call with Joe Schickish re intervention
“LA-AS”	3/16	.75	review of all intervention documents of CTC
“GA-RA”	3/17	.6	review the first draft of notice and order re

				intervene
	"GA-RA"	3/18	1.1	review CTC motion
	"BA-CA"	3/18	.5	Review of all intervention documents
	"GA-COC"	3/21	.5	Telephone call with Stang about procedural status of motion to intervene in light of the withdrawal of reference
	"LA-AS"	3/21	.75	telephone call with Mr. Stang re CTC theory on intervention
	"GA-COC"	3/22	.25	Telephone call with Shaun Cross re intervention

It is very difficult to assess the value and the subject matter of the time entries when they are spread throughout the categories of this fee application and to even identify the true subject matter. It is also impossible to ensure a correct evaluation of duplicative time between the Pachulski firm and this firm's time. The applicant spent 6.7 hours and billed \$1,507.50. The time should be disallowed in its entirety.

8. Lack of subject matter descriptions:

In several entries, the lack of a subject matter makes the review of the time entry impossible. The lack of a subject matter category for the different types of litigation events in the case adds to the difficulty of the review.

See the entries of "GA-COC" section for the dates of 3/21 (.1) and 3/28 (.3) where the telephone call has no subject matter.

See section "GA-RA" for entries dated 3/4 (.75) and 3/17 (.5) . Further, on 3/8 in an entry related to a .6 of an hour to "detail review of complaint" but which complaint? On the same day is a .9 of an hour to "review of answer to complaint" but which complaint?

1 In section "GA-PP," the entry of 3/10 (.75) refers to a review of answer and notes
2 in preparation for planning meeting, but no subject matter of what answer or meeting.

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4 In these examples, the applicant spent 3.9 hours and billed \$877.50. These fees
5 should be denied in their entirety.

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8 9. Rule 26 matters

9 The applicant was involved in the Rule 26 disclosures for at least one
10 adversary proceeding. The Pachulski firm, as noted in their fee application, was the
11 main author and driving force. The entries for this firm in sections "GA-DR" are:

12 3/14 .75
13 3/15 .6
14 3/21 .9
15 3/23 .75
16 3/29 .33
17 .25
18 .33
19 3/31 .5
20 .33
21 4/4 .6

22 In entries in both "GA- PP" for 1.2 hours and in "GA-R" on 3/15 for .75 hours,
23 3.23 for .4 of an hour, and 4/1 for .3 of an hour) (we cannot tell why this entry was in
24 this section), the description does not demonstrate why they should be compensated for
25 the same work. Other entries are in "LA-AS" section for 2.25 hours spent strategy
26 meetings on 3/10, and 1.1 hours spent on 3.29 also do not demonstrate the need for this
27 applicant's participation.

28 The applicant spent 11.34 hours and billed \$2,551.50. These tasks were done by

1 the Pachulski Stang firm and this applicant's duplicative services should not be allowed.

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5 10. Review of Portland pleadings:

6 In section "GA-RA", the 3/7 entry for .75 hours for the review of the
7 Portland pleading re sue the Parishes (sic) separately" has no context nor any need for
8 this counsel to review that pleading. The Pachulski firm was the author and driving
9 force on the complaint to determine what the property of the estate was. The location of
10 this time entry is this category simply out of context as well.
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14 B. DUPLICATIVE TIME BETWEEN THE TWO FIRMS
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16 The two firms did not work together to share their work, their interests or their
17 efforts. The jumbled categorization of the firm's time entries makes the comparison
18 with the Pachulski firm's fee application very difficult. It appears the following can be
19 gleaned from the two fee applications although they do not necessarily parse:
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Date/ Pachulski Subject	Description	Lawyer and time/ Campbell's category
23 2/8 L430	case management	HRR .5 JWC
24 2/11 L430	avoidance motion	HRR .5 JWC

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2/16	L430	avoidance motion	JIS 1 JWC
2/18	L430	committee formation	JIS .7 JWC
2/14	L430	case management order	JIS JWC
3/10	Dec Relief	conference call re declaratory relief	JIS 1.2 plus 2.5 HED 2.6 JWC 2.25 plus 1.5 (in LA-AS)
3/11	Dec Relief	telephone call re meet and confer, Rule 26	HED JC
3/15	L430	intervention	JIS .3 JWC
3/15	Dec Relief	Office conference; telephone call with JWC	JIS .6 HED 1.5
3/21	Dec Relief	CTC intervention/strategy meeting	JIS .70 JRF .60 JWC .75 (in LA-AS)
3/23	L430	discovery, Rule 26	HED .4 JWC

It may be possible to guess at the missing time entries of Mr. Campbell to compare to the time of the Pachulski firm. However, it is the duty and burden of the applicant to provide the clear information for the evaluation under section 330.

ARGUMENT

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
6 re Pettibone Corp., 74 B.R. 293, 305 (Bankr.N.D.Ill.1987).

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

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

14
15 Section 330(a) of the Bankruptcy Code authorizes the court, after notice and a
16 hearing, to award to a trustee, an examiner, or other professional person employed under
17 11 U.S.C. § 327 or 1103 --

18
19 (A) reasonable compensation for actual, necessary services rendered by the
20 trustee, examiner, professional person, or attorney and by any paraprofessional
21 person employed by any such person; and

22 (B) reimbursement for actual, necessary expenses.

23 The court is has discretion to award less than the amount of compensation requested. 11
24 U.S.C. § 330(a)(2).

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26 Section 330(a)(3) provides:

27 In determining the amount of reasonable compensation to be awarded, the court
28 shall consider the nature, the extent, and the value of such services, taking into

1 account all relevant factors, including -

- 2 (A) the time spent on such services;
3 (B) the rates charged for such services;
4 (C) whether the services were necessary to the administration of, or
5 beneficial at the time at which the service was rendered toward the
6 completion of, a case under this title;
7 (D) whether the services were performed within a reasonable amount of
8 time commensurate with the complexity, importance, and nature of the
9 problem, issue, or task addressed; and
(E) whether the compensation is reasonable based on the customary
compensation charged by comparably skilled practitioners in cases other
than cases under this title.

10 Section 330(a)(4)(A) of the Bankruptcy Code establishes limitations on the award of
11 compensation:

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

- 14 (i) unnecessary duplication of services; or
15 (ii) services that were not—
16 (I) reasonably likely to benefit the debtor's estate; or
(II) necessary to the administration of the case.

17 These guidelines grew out of court decisions beginning with Johnson v. Georgia
18 Highway Exp., Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). The Johnson factors assist in
19 determining the initial "reasonable" hourly rate, as well as the final adjustments to the
20 lodestar. See, In re Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988). Generally, so
21 long as the rates being charged are the applicant's normal rates charged in bankruptcy or
22 non-bankruptcy matters alike, they will be afforded a presumption of reasonableness."
23 In re Jefsaba, Inc., 172 B.R. 787, 798 (Bankr. E.D. Pa. 1994) (citations omitted). As the
24 rate must be reasonable "so must the time spent by the professionals on the various tasks
25 to be performed." Id. Indeed,

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

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

14 15 2. DUAL BILLING FOR MEETINGS AND REVIEW OF PLEADINGS 16 MUST BE JUSTIFIED OR OTHERWISE BE DENIED.

17 Where multiple attorneys attend a hearing or conference, the applicant needs to
18 show a contribution to the hearings or conference to allow compensation. Microwave
19 Products of America, Inc. 102 B.R. 661 (Bankry., W.D.Tn. 1989); Wabash Valley
20 Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry. S.D. Ind. 1987). Only one
21 attorney may charge for a conference where no adequate explanation is given. In re
22 Adventist Living Centers, Inc. 137 B.R. 692 (Bankr. N.D. Ill. 1991). Attorneys should
23 work independently without the incessant conferencing. In re Pettibone Corp., 74 B.R.
24 293 (Bankr. N.D. Ill 1987).

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27 The multiple meetings and conferences do not describe their necessity. The
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1 narrative for the fee application does not describe their necessity or their effectiveness.

2 Further, the dual billing is also between the two law firms for the single
3 Committee of Tort Litigants. It should not be allowed.
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5 6 3. INCOMPLETE TIME RECORDS MERIT A DENIAL OF FEES.

7 Where time entries lack the subject matter or substance of the event, the fees may
8 be denied. Wabash Valley Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry.
9 S.D. Ind. 1987). In re Pettibone Corp., 74 B.R. 293 (Bankr. N.D. Ill 1987).
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11 The time records that fail to show the relevance, leaving the reviewer to guess, are
12 insufficient in their description. The time entries for the review of the Portland and
13 Tucson cases are not shown to be beneficial or relevant to this case and all time should
14 be disallowed in their entirety.
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16 17 4. COURT MAY REDUCE FEES FOR DUPLICATION OF 18 SERVICES IN THE CASE BY OTHER COUNSEL

19 The court may reduce the fees of counsel for time that is duplicative of services
20 performed by other counsel in the case. See, Matter of First Colonial Corp. of America,
21 544 F.2d 1291 (5th Cir. 1977); In re Casey, 173 B.R. 893 (Bankr. E.D. Tx. 1994); In re
22 Liberal Market, 24 B.R. 653 (Bankr. S.D. Ohio 1982).
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24 The work of the two firms for the CTL are duplicative of each other. At the time
25 of the employment of the two firms, the court warned counsel of the need to avoid
26 duplication. They have not heeded the warning. Nor have they presented a coherent fee
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1 application to demonstrate they avoided duplication or used good billing judgment.

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4 CONCLUSION

5 The court is respectfully requested to find that the fee application does not comply
6 with the required form as it does not provide the topical summary of tasks done in a
7 coherent fashion, and that fees requested by counsel in this case are not reasonable, and to
8 reduce the fee by \$15,000, and for such other relief as may be appropriate.
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10 Dated this 3rd _day of October 2005.

11 Respectfully submitted,

12 ILENE J. LASHINSKY
13 United States Trustee

14 /S/ Gary W. Dyer
15 GARY W. DYER
16 Attorney for the United States Trustee
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