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6  
7 UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON  
8

|                            |   |                         |
|----------------------------|---|-------------------------|
| 9 In re:                   | ) | Case No. 04-08822 PCW11 |
|                            | ) | Chapter 11              |
| 10 THE CATHOLIC BISHOP OF  | ) |                         |
| SPOKANE a/k/a THE CATHOLIC | ) |                         |
| 11 DIOCESE OF SPOKANE      | ) | UNITED STATES TRUSTEE'S |
|                            | ) | OBJECTION TO FEES OF    |
| 12                         | ) | PACHULSKI, STANG ET.AL. |
| Debtor.                    | ) | [DOCKET NO. 430]        |

13  
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 Litigants,  
16 Pachulski, Stang, Ziehl, Young, Jones, & Weintraub. The United States Trustee does so  
17 for the following 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  
25 A. DUAL BILLING FOR MEETINGS

26 The firm bills for all the participants in the numerous meetings held by counsel,  
27 and often the purpose of the meeting is not stated.

1 See the entries as follows:

2 1. Section L430 Bankruptcy Litigation on the dates of:

3 2/8 HRR (.2) and JIS (.4)  
4 2/18 GNB (.2) and HED (.3)  
5 2/24 HRR (1.3) and JIS (1.3) and HED (1.3)  
6 3/8 JIS (.2) and JRF (.3)  
7 3/21 JIS (.3) and JRF (.2)  
8 3/28 HRR (1.7) and JIS (1.5)  
HRR (.2) and (.4)

9 Mr. Ratajoo billed \$1,360, Mr. Stang billed \$1,640, Mr. Freeman billed \$200, Ms  
10 Brown billed \$110, and Mr. Douglas billed \$580.

12 2. Section B110 Case Administration on the dates of:

13 2/9 HRR (.1) and JIS (2)  
14 3/29 HRR (.2) and JIS (.2)

15  
16 Mr. Ratajoo billed \$80 and Mr. Stang billed \$840.

17  
18 3. Section B310 Claims Objections on 3/7: HRR (.5) and JIS (.9) and JRF  
19 (.9).

20  
21 Mr. Ratajoo billed \$200, Mr. Stang billed \$360 and Mr. Freeman billed \$360.

22  
23 4. In “Comp of Professionals/Others” section:

24 3/24 HRR (.2) and JIS (.5)

25  
26 Mr. Ratajoo billed \$80 and Mr. Stang billed \$200.

1                                5. In the Declaratory Relief section, see the dates of:

2                                3/10    HRR (2.6) and JIS (2.5) and HED (2.6)  
3                                3/15    JIS (.6) and HED (.6)  
4                                3/22    HED (.3) and GNB (.3)  
5                                3/24    JIS (.5) and GNB (.5)  
6                                3/25    JIS (.6) and GNB (.6)  
7                                3/29    JIS (.3) and HED (.3)  
8                                          HED (.5) and GNB (.5)  
9                                          JIS (.3) and AJK (.3)  
10                              3/30    JIS (.4) and GNB (.4)  
11                              3/31    JIS (.3) and GNB (.3)

12  
13                              Mr. Ratajoo billed \$1,120, Mr. Stang billed \$2,400, Mr. Douglas billed \$2200,  
14                              Ms. Brown billed \$797.50 and Mr. Kornfeld billed \$120.

15                              6. In the Committee Meetings section, the application reflects that both  
16                              Mr. Stang and Mr. Ratajoo attend. There is no justification stated for this duplication of  
17                              time.

18                              See for example, B110 Case Administration:

19                              2/12    HRR (1.2) and JIS (1.5)  
20                              3/8     HRR (1.3) and JIS (1.3)  
21                              3/22    HRR (1.4) and JIS (1.3)  
22                              3/29    HRR (.9) and JIS (.9)

23                              Yet in contrast, in other meetings, only one attorney billed for the time on 2/22, and 3/15.  
24                              Mr. Campbell attended and billed for all these meeting as well.

25                              Mr. Ratajoo billed \$2,000 and Mr. Stang billed \$2,040.

26  
27                              B. DUAL BILLING FOR MULTIPLE REVIEW OF PLEADINGS

Both Mr. Ratajoo and a paralegal created or revised the Critical Dates memo. It appears the time was duplicated, or the paralegal did not complete the task correctly. The estate should not pay for the duplicative efforts to correct the work of another staff member. See the entry from Mr. Ratajoo on 2/22 and 2/28 compared to the preceding entries from FPM for several days.

1. Critical Dates Memo: The need for, and description of, this memo are not given, but the name suggests some form of a tracking or strategy device. The entries begin 2/9 and through 2/28, relate to Mr. Ratajoo and Ms. McKeown. On 2/22, it appears that Mr. Ratajoo re-did all the prior work by Ms. McKeown. In March, JER began to work on this memo and appears to have re-done the same work. The chart below shows the date and time:

| Date | HRR | FPM              | JER |
|------|-----|------------------|-----|
| 2/9  | .1  |                  |     |
| 2/9  | .1  |                  |     |
| 2/10 | .5  | 2.6              |     |
| 2/10 | .7  |                  |     |
| 2/11 | .2  |                  |     |
| 2/14 | .8  | 1.8 -create form |     |
| 2/14 | .1  |                  |     |
| 2/15 |     | 1.3              |     |
| 2/22 |     | 1.3              |     |

|       |     |     |           |
|-------|-----|-----|-----------|
| 2/22  | .4  | .4  |           |
| 2/22  | 3.9 |     |           |
| 2/22  | .1  | .1  |           |
| 2/22  | .1  |     |           |
| 2/28  |     | 1   |           |
| 3/3   | .2  |     |           |
| 3/3   | .3  |     |           |
| 3/10  | .3  |     |           |
| 3/10  | .2  |     |           |
| 3/11  | .2  |     |           |
| 3.17  | .2  |     |           |
| 3/17  | .3  |     | .3        |
| 3/17  |     |     | .6        |
| 3/17  |     |     | 2.7 PACER |
| 3/18  | .1  |     |           |
| 3/18  |     |     | .3        |
| 3/18  |     |     | 1.7       |
| 3/21  | .2  |     |           |
| 3/22  |     |     | .2        |
| 3/24  |     |     | .2        |
| 3/25  |     |     | .5        |
| 3/28  | .1  |     |           |
| 3/28  | .1  |     | .8        |
| 3/29  | .2  |     | .7        |
| Total | 9.1 | 8.5 | 8.7       |

Total hours are 26.3.

1  
2  
3 C. BENEFIT TO THIS ESTATE UNCLEAR AND NOT DESCRIBED  
4

5 Certain entries do not properly or completely describe why they benefit this  
6 estate, or should be allowed in this case:

7 1. Research regarding the "SF" Diocese in section L430  
8

9 2/14 JER .5 \$75

10 2/16 JER .8 \$120  
11  
12

13 2. Review and analysis the case dockets for Portland and Tucson several  
14 sections:  
15

16 a. section B100:

17 2/15 .8 \$320

18 2/17 .8 \$320

19 .7 \$280

20 3/22 .6 \$240

21 3/23 3 \$600

22 b. Section L430:

23 2/23 .6 \$240  
24

25 c. Section B310:

26 3/24 .8 \$320  
27

28 d. Section B320:

1 3/29 .4 \$480

2  
3 e. Section of “Decl Relief:”

4 3/25 .5 \$75 (Nisqually)

5 The total amount billed is \$2,875.  
6  
7

8 3. In the Operations section B210, the time spent in reviewing the  
9 implementation for the protection of children on 2/24 (1.4 hours or \$560). It is reviewed  
10 again in the section Declaratory Relief action on 3/15 (2.2 hours or \$880).  
11  
12

13  
14 4. The time spent in reviewing and analyzing the removal complaints on 2/15 and  
15 2/17 in section L430 are not within the scope of the counsel’s or committee’s duties.  
16 Thus the entries totaling approximately 2.7 hours in section L430 are not necessary. The  
17 total amount billed was \$1,080. Please recall that these tasks are the reason for the  
18 employment of Dillon Jackson representing the Pfau/Kosnoff litigants.  
19  
20

21  
22 5. In Asset Analysis section, the entries for 2/26 in which JER researched the  
23 diocese’s website regarding requested donations and types of donations (2/26 for 5.7  
24 hours and 3/3 for 3.6 hours), and the entry of JIS on 2/18, in which he reviewed  
25 accountability.org for the debtor’s assets (see 2/18 for .1 hours and 2/22 for .6 hours).  
26 How that website would provide any viable information is unclear. The total amount  
27  
28

1 billed is \$1,675.  
2  
3

4 6. In the section L430 litigation section, the entry of 2/8 of 1.3 hours for \$960 in  
5 which JIS “draft motion practice rules” is unclear as to need or benefit.  
6  
7

8 7. Travel time of JIS on 2/24 and 2/25 for 11 hours at \$400 an hour is billed at  
9 full hourly rate and no other substantive time is billed for that travel time.  
10  
11

12 C. PARALEGAL TIME FOR COPYING AND PACER SEARCHES  
13

14 The entries for the paralegals copying and printing documents from PACER, as  
15 well as the ECF filing, are clerical work, totaling \$1,575. See section B110, with the  
16 entries on:  
17

|    |      |     |     |       |
|----|------|-----|-----|-------|
| 18 | 3/17 | JER | 2.7 | \$405 |
| 19 | 3/18 | JER | 1.7 | 255   |
| 20 | 3/21 | JER | .4  | 60    |
| 21 |      | JER | .4  | 60    |
| 22 | 3/22 | JER | .7  | 105   |
| 23 | 3/24 | JER | 1.5 | 225   |
| 24 | 3/25 | JER | .7  | 105   |
| 25 | 3/28 | JER | .7  | 105   |
| 26 | 3/29 | JER | .7  | 105   |
| 27 | 3/30 | JER | .5  | 75    |
| 28 | 3/31 | JER | .5  | 75    |



1 D. DUPLICATIVE TIME BETWEEN THE TWO COMMITTEES

2  
3 So far, the two committees' counsel do not work together to share their work,  
4 interests or their efforts. The reasons are unclear and only stated as a vague mistrust  
5 *between the committee members*, not between the lawyers. As this distrust is not and  
6 should not have been the end of the discussions, such inertia should not be rewarded by  
7 the court.  
8

9 The time spent in research in the adversary proceeding to determine the property  
10 of the estate regarding the trust issues, corporation sole issues, summary judgment issues  
11 were duplicated between the committees. We can find no time entry that indicates the  
12 two firms shared any research with each other. As in the objection to the Riddell  
13 Williams fee application, the time should be reduced to a reasonable amount as if the  
14 committees had shared their research.  
15  
16  
17  
18

19 E. THE TIME RELATED TO THE MOTION FOR ASSIGNMENT OF  
20 THE AVOIDANCE ACTIONS TO THE COMMITTEE OF TORT  
21 LITIGANTS SHOULD NOT BE COMPENSATED.

22 The motion to have the avoidance actions (if any) assigned to the Committee of  
23 Tort Litigants was not only premature on the merits, because of the dispute over the  
24 scope of the property of the estate, but was largely based upon the case authority of such  
25 assignment being allowed pursuant to a plan. The committee argued that the doctrine of  
26 futility of even asking for the authority to handle those matters (if any exist) rather than  
27  
28

1 make a demand on the diocese and realize how premature the motion would be. Nor can  
2 the committee do anything but speculate about how the diocese would react if the court  
3 rules that the foundational issues in the 541 matters are adverse to the diocese's position.  
4  
5 Raising novel and aggressive issues early in this case did not serve the estate nor the  
6 committee. The expenditures of 25.3 hours from 2/11 to 3/24 on this motion should be  
7 denied in its entirety at this time, pending any plan confirmation.  
8  
9

10 **F. THE TIME SPENT IN THE CASH MANAGEMENT ORDER IS EXCESSIVE**  
11

12 The committees and the debtor spent an excessive amount of time in the cash  
13 management order's creation and negotiations. The debtor's counsel captures its time in  
14 Case Administration in the first month, then in Business Operations in the second month.  
15 The Tort Litigant's counsel spent \$5,840 on the matter, and their local counsel's time  
16 records are indecipherable in their organizational structure. The Claimants' Committee  
17 counsel spent \$27,531 related to Financing aspects of the case.  
18

19  
20 The cash management process should have taken much shorter time and cost, and  
21 no more than \$10,000 among all the parties. The stated purpose of the order was to keep  
22 the status quo in place and reserve the rights regarding the property of the estate issues.  
23

24 The court is requested to allow only \$10,000 in total as a reasonable fee for this  
25 task and order, and to allocate that fee among the applicants.  
26

27 **G. INTERVENTION IN THE PACIFIC INSURANCE ADVERSARY PROCEEDING:**  
28

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 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. The fees of this applicant should be reduced by \$44,065.

## ARGUMENT

## 1. THE LAW RELATED TO FEE APPLICATIONS.

The burden of proof for each entry of a fee application is on the applicant. In re Manoa Fin. Co., 853 F.2d 687, 691 (9th Cir. 1988); In re Recycling Industries, Inc., 243

1 B.R. 396 (Bankr. D. Colo. 2000). This burden is not to be taken lightly, especially given  
2 the fact that every dollar expended on fees results in a dollar less for distribution to  
3 creditors of the estate. In re Yankton College, 101 B.R. 151, 158 (Bankr.S.D.1989); In re  
4 Pettibone Corp., 74 B.R. 293, 305 (Bankr.N.D.Ill.1987).

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

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

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

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

21 (B) reimbursement for actual, necessary expenses.

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

26 Section 330(a)(3) provides:

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

4 (A) the time spent on such services;

5 (B) the rates charged for such services;

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

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

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

12  
13 Section 330(a)(4)(A) of the Bankruptcy Code establishes limitations on the award of  
14 compensation:  
15

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

18 (i) unnecessary duplication of services; or

19 (ii) services that were not—

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

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

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

1 non-bankruptcy matters alike, they will be afforded a presumption of reasonableness."  
2 In re Jefsaba, Inc., 172 B.R. 787, 798 (Bankr. E.D. Pa. 1994) (citations omitted). As the  
3 rate must be reasonable "so must the time spent by the professionals on the various tasks  
4 to be performed." Id. Indeed,

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

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

19  
20  
21 2. DUAL BILLING FOR MEETINGS AND REVIEW OF  
22 PLEADINGS MUST BE JUSTIFIED OR OTHERWISE BE DENIED.

23 Where multiple attorneys attend a hearing or conference, the applicant needs to  
24 show a contribution to the hearings or conference to allow compensation. Microwave  
25 Products of America, Inc. 102 B.R. 661 (Bankry., W.D.Tn. 1989); Wabash Valley  
26 Power Association, Inc., 69 B.R. 471, 16 CBC2d (Bankry. S.D. Ind. 1987). Only one  
27  
28

1 attorney may charge for a conference where no adequate explanation is given. In re  
2 Adventist Living Centers, Inc. 137 B.R. 692 (Bankr. N.D. Ill. 1991). Attorneys should  
3 work independently without the incessant conferencing. In re Pettibone Corp., 74 B.R.  
4 293 (Bankr. N.D. Ill 1987).

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

### 10 3. INCOMPLETE TIME RECORDS MERIT A DENIAL OF FEES.

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

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

19 Much of the time records fail to show the relevance, leaving the reviewer to  
20 guess, and therefore are insufficient in their description. The time entries for the review  
21 of the Portland and Tucson cases are not shown to be beneficial or relevant to this case  
22 and should be denied in their entirety.

### 25 4. COURT MAY REDUCE FEES FOR DUPLICATION OF 26 SERVICES IN THE CASE BY OTHER COUNSEL

27 The court may reduce the fees of counsel for time that is duplicative of services  
28

1 performed by other counsel in the case. See, Matter of First Colonial Corp. of America,  
2 544 F.2d 1291 (5<sup>th</sup> Cir. 1977); In re Casey, 173 B.R. 893 (Bankr. E.D. Tx. 1994); In re  
3 Liberal Market, 24 B.R. 653 (Bankr. S.D. Ohio 1982).

4  
5 The work of the different committees' lawyers are duplicative of each other.  
6 There was no concerted effort to reduce the costs of attorneys and share the workload.  
7 The distrust between the committee members is simply not a valid basis for the  
8  
9 respective committee's counsel to double-bill the estate. The lawyers, all of whom are  
10 creative and capable, could have (and still should) craft a sharing agreement that solves  
11 the communication and confidentiality concerns to handle the distrust. Instead, for  
12  
13 whatever reason(s), the lawyers went their own way and billed the estate in areas where  
14 the two committees shared the same interests. The court should not allow the full  
15 compensation of the two committees' lawyers for such duplication.

16  
17 The tactical choices made in this case have increased the professional costs  
18 dramatically without a corresponding benefit. There was little to no consultation between  
19 the committees to streamline their activities and focus the case, and the competitiveness  
20 for leverage points or positions, by being first, or by intervention, has not been beneficial  
21 to the estate. It has caused the estate to be billed nearly \$1,000,000 in the first three  
22 months of the case.

## 23 24 25 26 CONCLUSION

27 The court is respectfully requested to find that the fees requested by counsel in this  
28



1 case are not reasonable, and to reduce the fee by \$40,000.

2  
3 Dated this 3<sup>rd</sup> day of October 2005.

4 Respectfully submitted,

5  
6 ILENE J. LASHINSKY

7 United States Trustee

8  
9 \_\_\_/s/ Gary W. Dyer\_\_\_\_\_

10 GARY W. DYER

11 Attorney for the United States Trustee  
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