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6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 In re:

CASE NO. 04-08822-PCW11

9 THE CATHOLIC BISHOP OF
10 SPOKANE a/k/a THE
11 CATHOLIC DIOCESE OF
12 SPOKANE, a Washington
13 corporation sole,
14 Debtor.

**ESPOSITO, GEORGE & CAMPBELL,
P.L.L.C., MEMORANDUM IN
SUPPORT OF REPLY [DOCKET
NO. 797] TO U. S. TRUSTEE'S
OBJECTION TO FIRST APPLICATION
FOR AWARD OF COMPENSATION
[DOCKET NO. 721]**

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16 **COMES NOW** Esposito, George & Campbell, P.L.L.C. (hereinafter
17 "EG&C"), by and through John W. Campbell, and hereby submits this
18 Memorandum in support of its Reply to the United States Trustee's (hereinafter
19 "UST") Objection to the First Application for Award of Compensation filed by
20 EG&C.

21 **INTRODUCTORY STATEMENT**

22 On November 2, 2005, EG&C filed a lengthy Reply to the UST's Objection
23 to EG&C's First Application for Compensation. That Reply attempted to clarify or
24 address the time entries that the UST objected to on the basis that they did not
25 identify the subject matter, were not organized in topical fashion, did not
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1 differentiate between intervention adversaries, did not identify the specific
2 complaint addressed in an entry, or were generally not categorized in the same
3 manner as the Pachulski Stang Application, thereby making the UST's analysis
4 difficult. These are basically form or organizational objections which are
5 appropriately addressed through the type of explanation set forth in the Reply
6 rather than with legal briefing. Accordingly, those objections will not be further
7 addressed herein.

8 This Memorandum will address the UST's core objection to EG&C's First
9 Application, which is summarized as an objection to "...fees for meetings and work
10 of multiple attorneys which do not appear justified, for having multiple attorneys at
11 court hearings, for work which appears to be duplicative of others' work, and for
12 entries of time which are not shown to be beneficial to this estate."¹

13 In essence, the UST focuses on alleged duplication, then uses that
14 duplication as a springboard for the UST's argument that the duplicative activity is
15 not beneficial to the estate. Because of the alleged duplication, the UST seeks to
16 deny EG&C of approximately 50% of its billed time. As pointed out in EG&C's
17 Reply to the UST's Objection, the UST completely ignores the fact that, pursuant
18 to LR 83.2(c), local counsel, "...shall sign all pleadings, motions and other papers
19 prior to filing and shall meaningfully participate in the case." LR 83.5 is both a
20 directive as to participation and also an assumption of liability for the documents
21 filed and other activity in the case. The very fact that EG&C is acting under the
22 mandate that it "meaningfully participate" in the case is the justification for a
23 certain amount of reasonable duplication in the case.
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26 ¹ UST Objection, page 1.

I. ARGUMENT

A. Reasonable Duplication by Local Counsel is Not Objectionable

The UST cites Matter of First Colonial Corp. of America, 544 F.2d 1291 (5th Cir. 1977); In re Casey, 173 B.R. 893 (Bankr. E.D. Tx, 1994); and In re Liberal Market, 24 B.R. 653 (Bankr. S.D. Ohio 1982) for its position that the court may reduce fees for duplication of services. In Matter of First Colonial, a trustee obtained the appointment of four attorneys, including himself. The court commented on the problem of duplication when the trustee acts both as trustee and attorney for trustee. In Casey, the debtor's original counsel sought assistance from alternate counsel who took over responsibility for the case. The court denied original counsel's compensation since it was duplicative of the work of alternate counsel. In Liberal Market, original counsel withdrew. Substitute counsel then duplicated original counsel's efforts. Original counsel's application was reduced for duplication. Given the facts in these cases, it is not surprising that fees would be reduced for duplication. However, none of the UST's cases addressed duplication in the context of local counsel participating in a case under the mandates of local rules. However, the cases that do address local counsel's involvement in complex reorganization cases clearly support EG&C's activities and the compensation attendant thereto.

A case directly on point is In re Frontier Airlines, Inc., 74 B.R. 973 (Bankr. D. Colo. 1987). In Frontier, the creditors committee made a judgment at the outset of the case that it would seek the services of out of state counsel. Because of local rules, that out of state counsel was required to engage local counsel. When fee applications were submitted by both out of state and local counsel, objections were

1 lodged respecting the duplication of some services. Rejecting the objections, the
2 court stated:

3 “The utilization of more than one law firm almost
4 without question involves some duplication of legal
5 services. In the case of counsel for the committee, since
6 the local rules of this court mandate dual counsel under
7 circumstances where an out of state firm has been hired,
8 such duplication, to a degree, is not only to be excepted,
9 but is not objectionable. For example, local rule requires
10 that local counsel must be meaningfully involved. In
11 order to be meaningfully involved such local counsel
12 must be informed and must attend hearings at which the
13 out of state counsel are also present. The duplication of
14 legal services for those purposes is not objectionable.”
15 [Emphasis added]

16 Id. at 977.

17 Further recognizing the need for coordination and communication, the court
18 observed:

19 “The fee applications which have been submitted reflect
20 the fact that in order to provide the needed services on
21 what, at times, were highly expedited matters, it was
22 clearly necessary for multiple attorneys to be involved.
23 This is not to say that all of those attorneys were
24 performing the same function, but their functions were,
25 in a large part, interrelated and could not be carried out
26 without some degree of coordination and communication
among them. To this end, interoffice conferences among
counsel are not only expected but are necessary and there
is no reason why compensation should not be provided
for such services...” [Emphasis added.]

Id. at 977.

1 Similarly, in In re Prudhomme, 152 B.R. 81 (Bankr. W.D. La. 1992), the
2 court observed that the role of local counsel “...is to insure that the court has a
3 member of its bar and under its general control to be accountable in the event
4 abuse of process or other infraction occurs.” Id. at 88 *citing* Sanders v. Russell,
5 401 F.2d 241 (5th Cir. 1968). With this background, the court concluded that local
6 counsel’s attendance at a lift stay hearing with out of state counsel was not
7 duplicative since ... “attendance of local counsel protects an interest of the court.”
8 Id. at 89. The court further concluded “...review of orders for status conferences
9 and orders to the debtor in possession, the review of the initial debtor conference
10 package from the United States Trustee, calls within the Arens firm, review of the
11 schedules and statements on matter relating to the 341 meeting and a 2004
12 examination are clearly compensable.” Id. at 89.

13 Finally, in In re Amdura Corp, 139 B.R. 963 (Bankr. D. Colo. 1992) the
14 Frontier court was again confronted with alleged duplication between out of state
15 and associated local counsel. Again the court reiterated its position that “to be
16 sure, some duplication is required by the local rules of this court, which mandate
17 that W&S associate with local counsel who must be “meaningfully involved” in
18 the case. Id. at 970. Following a review of the evidence, the court concluded
19 “...some duplication is unavoidable if local counsel is to be ‘meaningfully
20 involved’ in the case as mandated by this court’s rules”. Id. at 970.

21 Frontier, Amdura Corp, and Prudhomme are directly on point and
22 unanimously conclude that rules requiring local counsel to meaningfully
23 participate in the case necessitate reasonable duplication including, but not limited
24 to, review of documents and orders, attendance at status conferences,
25 communication between local and out of state counsel, review of schedules and
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1 statements, and attendance at hearings. See also, In re Air Vermont, 114 B.R. 48
2 (Bkrtcy. D. Vt. 1988) (drafts of documents do not constitute duplication); In re
3 Spanjer Brothers, 191 B.R. 738 (Bkrtcy N.D. Ill. 1996) (duplication allowed for
4 coordination between counsel of consolidated estates).

5 The UST's objection to the fees of EG&C are blind to this district's local
6 rule and the attendant obligations placed on EG&C as well as the practical day to
7 day tasks required to meaningful participate in the case. The bulk of the UST's
8 objection relate to EG&C's participation in the Case Management Order,
9 attendance at creditors meetings, participation in the drafting of Rule 26
10 disclosures, review of Portland pleadings related to the drafting of an amended
11 §544 complaint, alleged duplication of work related to both §541 and §544 issues,
12 as well as a general alleged duplication simply based upon the fact that the UST
13 finds it difficult to compare some of the Pachulski Stang entries with those of
14 EG&C. Drafting and reviewing documents, such as the CMO, FRCP 26 report,
15 amended §544 complaint, or attendance at regular creditors meetings are clearly
16 the type of activities that are attendant to "meaningful involvement" and are further
17 recognized as compensable in Frontier, Amdura Corp., and Prudhomme.

18 The UST's objection cites duplication cases which do not remotely touch
19 upon the obligations of local counsel. It appears the UST has rolled out a
20 boilerplate brief paying no attention to local rule, EG&C's role, or the facts in the
21 case. On this basis, the UST's objection respecting the duplication of services
22 should be summarily denied.
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1 **B. The Activities of EG&C Were Likely To and Did Benefit the Debtor's**
2 **Estate**

3 As the UST points out, pursuant to 11 U.S.C. §330(a)(4)(A), in order to be
4 compensable, the work undertaken by counsel must be: (I) reasonably likely to
5 benefit the debtor's estate; or (II) necessary to the administration of the case. The
6 effort in corresponding time entries of EG&C directly benefited the estate on
7 several levels. First, the activities of EG&C were necessary to the administration
8 of the case since LR 83.2(c) requires "meaningful participation" of local counsel.
9 The administration of the case through the activity of the Tort Litigants'
10 Committee could not have taken place without local counsel, whether that be
11 EG&C or alternate local counsel. Second, the direct benefit to the estate is
12 evidenced by this Court's 50-page unequivocal decision respecting property of the
13 estate. Finally, to the extent the UST argues that there is no benefit because of the
14 alleged duplication, that issue is put to rest by the Frontier, Amdura Corp., and
15 Prudhomme cases previously cited.
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17 **III. CONCLUSION**

18 It is disappointing that the UST cannot acknowledge or does not understand
19 EG&C's responsibilities as local counsel and the arduous task of on one hand
20 staying meaningfully involved in the case and abreast of all significant
21 developments while on the other attempting not to duplicate the efforts of
22 Pachulski Stang. But as pointed out in Frontier and the other cases cited herein,
23 some amount of duplication will result from the fact that local counsel participates
24 in the formation of documents, signs the documents with the same liability as if it
25 was acting as primary counsel, communicates with primary counsel, and must
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1 generally deal with the omnipresent issues and procedures attendant to a case of
2 the size and complexity of the Catholic Bishop. The UST's objections respecting
3 duplication or lack of benefit to the estate are without merit and should be denied.

4 The undersigned respectfully requests that the Court fully allow the fees and
5 costs requested in EG&C's First Application for Award of Compensation.
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8 RESPECTFULLY SUBMITTED this 10th day of November, 2005.

9 ESPOSITO, GEORGE & CAMPBELL,
10 P.L.L.C.

11 By /s/ John W. Campbell
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13 Local Counsel for the Tort Litigants
14 Committee
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