IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	
AICO RECREATIONAL PROPERTIES, LLC,	)	**Case No. 01-40539-TLM**
	)	
	)	**MEMORANDUM OF DECISION ON FEES AND COSTS**
Debtor	)	
_____	)	

INTRODUCTION AND BACKGROUND

AICO Recreational Properties, LLC ("Debtor") filed a chapter 11 petition for relief on March 29, 2001. Debtor filed an application for approval of the employment of its attorney, Craig R. Jorgensen ("Counsel"), on May 23, 2001. *See* Doc. No. 19. This application was approved by an order of the Court on June 8, 2001. *See* Doc. No. 22.

Counsel sought leave to withdraw as attorney for Debtor on July 25, 2002. *See* Doc. No. 89. This request was granted by the Court's order of August 1, 2002. Doc. No. 93. Debtor, after a hiatus in representation, continued its chapter 11 reorganization with other counsel.

On July 11, 2002, just prior to his withdrawal motion, Counsel sought

allowance of compensation for his services in the case. *See* Doc. No. 84 ("Interim Application"). The hearings on this request were contested, but never concluded.

The chapter 11 was not successful, and the case was converted to a chapter 7 liquidation in May 2003. Counsel's renewed efforts at obtaining compensation culminated with an Application for Allowance of Final Fees and Costs. *See* Doc. No. 286 (the "Final Application"). Counsel seeks $12,279.00 in fees and $956.84 in costs and expenses, for a total of $13,235.84. *Id.* The Final Application is opposed by parties in interest and the former principals of Debtor, Terry and Rosanna Andersen ("Andersens"). *See* Doc. No. 307 (the "Objection").

After several preliminary skirmishes, the Final Application and the Objection came on for hearing pursuant to Court order on April 13, 2005. The matter was taken under advisement at the conclusion of the hearing.

The Court has evaluated the record and the evidence presented at the hearing. This Decision contains and constitutes the Court's factual findings and legal conclusions on the Final Application and the Objection. Fed. R. Bankr. P. 9014, 7052.

DISCUSSION AND DISPOSITION

A. Standards

The Code provides that a professional person who has been employed under § 327(a) may be allowed "reasonable compensation for actual, necessary services

rendered by [that] professional person, or attorney and by any paraprofessional person employed by any such person" as well as "reimbursement for actual, necessary expenses." Section 330(a)(1)(A), § 330(a)(1)(B). In determining the amount of reasonable compensation, the Court is to "consider the nature, the extent, and the value of such services, taking into account all relevant factors[.]" Section 330(a)(3).

Those relevant factors include[1] (A) the time spent on the services; (B) the rates charged; (C) whether the services were necessary to the administration of the case or beneficial at the time rendered toward the completion of the case; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the issue or task involved; and (E) whether the compensation sought is reasonable based on customary compensation to comparably skilled practitioners in nonbankruptcy cases. Sections 330(a)(3)(A) - 330(a)(3)(E).[2] The Court cannot allow compensation for unnecessary duplication of services or for services that were not reasonably likely to benefit the estate or necessary for administration of the case.

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[1] The statutorily listed factors are not exclusive. *See* § 102(3) (terms "includes" and "including" are not limiting.)

[2] *See generally Am. Law Ctr., P.C. v. Stanley (In re Jastrem)*, 253 F.3d 438, 443 (9th Cir. 2001); *In re Fairview Med. Clinic*, No. 99-01288, 2000 WL 33712479 (Bankr. D. Idaho May 8, 2000); *In re Ferreira*, 95 I.B.C.R. 282, 283 (Bankr. D. Idaho 1995).

Section 330(a)(4)(A)(i), § 330(a)(4)(A)(ii).[3]

The burden of establishing entitlement to compensation, and its reasonableness, is on the applicant.[4] The Court has a duty to independently examine the fees requested pursuant to § 330(a).[5] The Court may reduce or deny an applicant's compensation if the burdens of the statute or case law are not met. *See* § 330(a)(2).[6] The Court has wide discretion in determining what is reasonable compensation.[7] This Court takes seriously its obligation to make a careful, informed and deliberate attempt to ascertain reasonable compensation, and does so even in the absence of objection or dispute.

B. Allowance of compensation for services

1. Dates the requested services were rendered

a. Commencement date

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[3] *See generally Smith v. Edwards & Hale, Ltd. (In re Smith)*, 317 F.3d 918, 926 (9th Cir. 2002); *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 106-09 (9th Cir. BAP 2000); *Lobel & Opera v. United States Tr. (In re Auto Parts Club, Inc.)*, 211 B.R. 29, 33 (9th Cir. BAP 1997); *In re Schwandt*, 95 I.B.C.R. 268, 269 (Bankr. D. Idaho 1995).

[4] *See, e.g.*, *Schwandt*, 95 I.B.C.R. at 268 (citing *In re Xebec*, 147 B.R. 518, 524 (9th Cir. BAP 1992)).

[5] *In re Mahaffey*, 247 B.R. 823, 825 (Bankr. D. Mont. 2000); *Auto Parts Club*, 211 B.R. at 33; *Schwandt*, 95 I.B.C.R. at 269; *In re Maruko Inc.*, 160 B.R. 633, 637-38 (Bankr. S.D. Cal. 1993).

[6] *Fairview Med.*, 2000 WL 33712479 at *1 (citing § 330(a)(2)); *see also Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997).

[7] *In re Columbia Plastics, Inc.*, 251 B.R. 580, 584-85 (Bankr. W.D. Wash. 2000) (citing *In re Fin. Corp. of Am.*, 114 B.R. 221, 224 (9th Cir. BAP 1990), *aff'd*, 946 F.2d 689 (9th Cir. 1991)).

Counsel has requested compensation for the period of May 23, 2001 through August 1, 2002. *See* Final Application at 1.[8]

May 23, 2001 was the date of the filing and service of the application for approval of Counsel's employment under § 327(a). There were certainly legal services rendered by Counsel prior to that date, *i.e.*, Counsel assisted Debtor in the initial filing of the case on March 29, 2001, and the Court's record clearly reflects activity by him after filing and before May 23. But the date of service of the application for approval of employment is significant under the local rules of this Court. *See* LBR 2014.1(c) (order approving employment relates back to date of service of such application).[9] The order approving Counsel's employment contained no provision modifying this May 23, 2001 effective date. *See* Doc. No. 22. Counsel has therefore appropriately excluded any request for compensation or

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[8] In actuality, the earliest date of any service shown in the itemization attached to the Final Application is August 2, 2001.

[9] Attorneys and other professionals for a chapter 11 debtor in possession may not be compensated for services rendered prior to the effective date of the Court's order under § 327 approving their employment. *In re Ball*, 04.3 I.B.C.R. 87 (Bankr. D. Idaho 2004); *In re Voechting*, 03.4 I.B.C.R. 237 (Bankr. D. Idaho 2003); *Ferreira*, 95 I.B.C.R. at 283; *In re Olmstead*, 95 I.B.C.R. 210, 211 (Bankr. D. Idaho 1995). The Court's file reflects that no attorney, other than Counsel, ever obtained the required Court approval for employment under § 327 during the chapter 11, and it reflects that no other professionals were employed with Court approval in the chapter 11. (The attorneys who appeared for Debtor after Counsel withdrew never filed required Rule 2016(b) disclosures, nor did Debtor ever seek to approve their employment). Thus, Counsel's request would appear to be the only chapter 11 professional expense potentially allowable. No payments by Debtor to any other lawyer or professional would be proper. *In re Dale's Crane, Inc.*, 99.1 I.B.C.R. 8, 8-9 (Bankr. D. Idaho 1999). Ensuring that other attorneys and professionals for this chapter 11 Debtor did not receive unauthorized payment is something that the chapter 7 Trustee would necessarily verify in his administration of the estate, since such payments would be recoverable.

reimbursement for services rendered in the post-petition period prior to May 23, 2001.[10]

b. Services after the motion to withdraw was filed

The Andersens argue that Counsel should not be allowed compensation for any services rendered after he sought leave to withdraw as attorney for Debtor. Objection at 4. However, Counsel was obligated to continue in his role as attorney for Debtor until the Court authorized the withdrawal. *See* LBR 9010.1(f)(2). There is no basis for a *per se* denial of compensation for services between the motion to withdraw and the order allowing withdrawal. However, the Court has carefully reviewed the services during that period to ensure that they meet the standards of § 330(a) and are properly compensable.

In reviewing the entries between the motion to withdraw on July 25, 2002 and the closing date of the Final Application, the Court finds entries totaling 1.9 hours ($247.00) in "case administration" and entries totaling 1.0 hours ($130.00) in "plan/disclosure statement" project categories. These specific entries are not objectionable.

Since Counsel was obligated to withdraw in accord with the rules and procedures of this Court, and since the specific services are not found improper,

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[10] It appears that Counsel received no payment prior to filing. *See* Doc. No. 2 (Rule 2016(b) disclosure); Doc. No. 8 (at statement of financial affairs, response to question 9); Doc. No. 20 (Rule 2014(a) verified statement). And Counsel apparently waived any claims for unpaid prepetition services since he verified in Doc. No. 20 that he was disinterested, something that he could not do were he an unpaid creditor of Debtor.

the objections to the "post-withdrawal" services will be overruled.

Further, the Andersens' objection as to allowance of the July 31, 2002 "costs" is overruled. This is facially a month-end summary of all costs incurred in July, and it does not relate solely to post-withdrawal costs or expenses. Further, even if a nexus between a particular cost and the withdrawal motion could be shown, that would not make such an expense improper. For example, Counsel could appropriately charge for the photocopy and mailing expenses incurred in complying with LBR 9010.1 in seeking withdrawal and in serving the motion and resulting order.

2. Rates charged for services

Counsel attached to his Final Application an itemization setting forth the specific tasks performed by date, time and description of work, segregated into "project categories" consistent with the fee guidelines of the Office of the U.S. Trustee.[11] Counsel then proposed payment for such services by way of suggested hourly rates for the timekeepers involved.

This approach is in accord with the "lodestar" concept. Lodestar calculations have regularly been used to evaluate appropriate compensation

[11] At times, a second, separate itemization showing all services listed in chronological order without regard to project categories can be of assistance in reviewing and analyzing fee requests. Given the objections here regarding duplicated services on particular days, addressed further *infra*, this was likely one of those times. However, the Court has been able to complete its review and analysis without requiring any "restatement" of the itemization.

pursuant to § 330.[12] The concept requires application of an appropriate hourly rate to a reasonable amount of time spent performing actual, necessary and reasonable services, supplemented by the standards summarized above. *See also* § 330(a)(3)(B) (identifying rates charged as a factor); § 330(a)(3)(E) (implicating market rates by identifying customary compensation charged by comparably skilled practitioners as a factor).

Counsel uses an hourly rate of $130.00 for his services, and a $40.00 per hour rate for his paralegal. Both these rates are well within the range of reasonable rates charged in chapter 11 bankruptcy cases in this District.[13] Nothing was suggested to the contrary. The Court will apply those rates to the compensable services of Counsel and his paraprofessional.

3. Services rendered

The lodestar approach applies the rate(s) to the "actual [and] necessary" time spent in delivering professional services. *See* § 330(a)(1)(A). Thus, one factor the Court considers is the "actual" time that was spent in performing professional services, as shown in Counsel's applications. *Id.*; *see also*

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[12] *See, e.g., Unsecured Creditors' Comm. v. Puget Sound Plywood Inc.*, 924 F.2d 955, 960 (9th Cir. 1991); *In re Pintlar Corp.*, No. 93-02986, 1994 WL 704476 (Bankr. D. Idaho Nov. 30, 1994) (citing *Yermokov v. Fitsimmons (In re Yermokov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)); *Maruko*, 160 B.R. at 638.

[13] In the absence of direct evidence on rates, the Court is entitled to rely on its experience based on the thousands of cases it administers over the course of each year. *See, e.g., In re Dale's Crane, Inc.*, 99.1 I.B.C.R. at 11 n.13 (Bankr. D. Idaho 1999) (citing *In re Spillane*, 884 F.2d 642, 647 (1st Cir. 1989)).

§ 330(a)(3)(A).

No credible evidence was presented to show or indicate that the time recorded by Counsel and set out on the itemization was not in fact spent by him, or his paralegal, in performing the described services. Attention therefore turns from the "actual" time factor to other factors under § 330.

One such factor is whether all those actual services were "necessary." The Code elaborates by indicating that the Court should take into account "whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, [the] case." Section 330(a)(3)(C). Closely related to the question of necessity is the question of reasonableness. The Code requires the Court's attention to "whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed." Section 330(a)(3)(D).

The Court therefore turns its focus to these factors, and to the Andersons' specific objections.

a. "Professional" services versus other work

Only professional services may be compensated under § 330; clerical and similar services are not compensable.[14] This is true whether the service is

[14] *See, e.g., In re Haskew*, 01.2 I.B.C.R. 62, 65 (Bankr. D. Idaho 2001).

performed by a lawyer or a paralegal.

The Court has had several occasions to evaluate paraprofessional services in bankruptcy cases. It has expressed its approval of use of paralegals, which can provide a distinct benefit to the economic and competent delivery of services to the client. It has at times, however, been forced to adjust certain claims for allowance where the services were not sufficiently described or were clerical or otherwise noncompensable in nature.

The Court does not find any entries of Counsel's time in the Final Application to be problematic under this standard. And the services rendered by Counsel's paralegal are here, with one exception, adequately described, non-clerical, and performed within a reasonable period of time. The exception is the entry on February 27, 2002 for .5 hours ($20.00) to "Download and print documents e-mailed from clients" which will be disallowed on the basis that the description provided reflects clerical rather than paraprofessional work. The Court will allow all other paralegal services charged.

b. Necessity and reasonableness of professional services

After reviewing the pleadings in detail and in light of the evidence presented at hearing and the authorities noted, the Court concludes that the services set forth in the Final Application were justified in light of the complexity and exigencies of the case, and the services meet the requirements of the Code and case law for allowance.

While the reorganization effort was unsuccessful through the date of Counsel's withdrawal, the magnitude and pace of legal activities and the nature of those activities were fully consistent with the facts of the case and the needs of Debtor. This proposed reorganization, by any measure, was legally and factually complicated. The services demanded of counsel for such a debtor-in-possession were significant.

The Court has reached this conclusion following its consideration of all the specific objections made by the Andersens to particular services or charges, or to allowance of compensation generally, and only after its required independent analysis of the Final Application.

Though the Objection will be overruled and the Final Application allowed, further discussion of some of the Andersons' specific objections is appropriate.

c. Services related to disclosure statement

The Andersens argue that much of the original and amended disclosure statements prepared in this case represented the work of individuals other than Counsel, that Counsel made mostly "editorial changes" and, thus, he should not be allowed the compensation requested. Objection at 1-2.

Certainly there is a good deal of time charged in connection with the preparation of disclosure statements in this case. But the weight of the evidence presented does not support the idea that the services required of Counsel were

minimal or "editing" only.

Debtor's reorganization proposal contemplated further development of a resort complex, including use of a local improvement district ("LID") and a real estate investment trust ("REIT") as sources of additional, essential funding. While Debtor's principals and a consultant provided much information to Counsel in regard to these proposals and plans, it remained incumbent upon Counsel to ensure that the myriad requirements of bankruptcy law were addressed and satisfied. In reviewing all the exhibits, particularly Exhibits A through I, and the disclosure statements of record, it appears Counsel's services relating to the disclosure statement and plan as claimed in the Final Application were necessary and reasonable.

d. Services related to relief from stay litigation

The Andersens contend that Counsel failed to properly and aggressively defend the stay relief proceedings brought by creditor McKinney.[15] Many of the assertions in the Objection can be viewed as "claims" against Counsel, *e.g.*, for his alleged failure to introduce what the Andersens believe to be relevant documents and evidence, for his alleged failure to investigate, for his alleged failure to adequately inform Debtor of appeal rights and other matters, and so on. The

[15] The disputes over Counsel's conduct in relation to McKinneys, McKinneys' attorney, and the stay lift litigation form a large part of the conflict between the Andersens and Counsel. These issues relate as well to the withdrawal of Counsel, and the litigation Debtor and the Andersens pursued in connection with appeal and attempted reconsideration of stay relief orders.

Andersens argue in effect that the estate was injured by the manner in which Counsel performed his services. *See* Objection at 5 ("Debtor and many claimants suffer for [Counsel's] ineptitude"). Because of this injury, they maintain no compensation should be allowed. *See id.*

These sorts of complaints fail, in the present context, because the Andersens lack the legal standing to assert affirmative claims for relief against Counsel, whether as a defense or offset to allowable compensation, for the injuries suffered by *Debtor* or its estate.[16] Only the estate, now under the supervision and control of the chapter 7 Trustee, can make such claims. The Andersons' arguments on this score are therefore rejected insofar as they encompass or rely upon claims of the estate to affirmative relief that the Andersens cannot properly advance personally.

However, some of the objections to services on stay relief issues also can be read as disputes over the reasonableness of Counsel's services, thus presenting a valid § 330(a) question. For example, the Court views the Andersens' arguments as contending that Counsel's use of information they developed or provided him would have improved the prospects for a successful defense to creditors' motions and/or reduced the time he spent in defending those motions.

[16] Counsel represented *Debtor*, not the Andersens, thus making any claimed negligence or other culpable conduct something to be asserted by Debtor. The Andersens have not shown that they personally can assert claims against Counsel.

The Court has carefully considered the evidence, to the extent it exists, and the arguments on these contentions. It is not persuaded that the disagreements between Counsel and the Andersens regarding the proper legal strategy in the stay relief defense reflect that Counsel's services were unreasonable in nature or amount. And the Court has been careful in this analysis, as it must be, not to substitute "20-20 hindsight" for what the Code requires, which is an evaluation of "whether the services were necessary to the administration of, or beneficial *at the time the service was rendered* toward the completion of, a case under this title." *See* § 330(a)(3)(C) (emphasis added).[17]

e. Allegedly duplicative entries

The Andersens assail a host of entries that they contend are not just duplicative of other entries but "cleverly disguised" duplications. Objection at 3. The Court has carefully reviewed each challenged entry.

The task of determining whether there may have been a duplication was made more difficult by the relatively terse manner in which most services were

[17] The Andersens also objected to certain services in the project category of "stay relief" that on their face relate instead to the category of "plan and disclosure statement." The Court concludes that Counsel's placing the entries in the wrong category does not require automatic disallowance. Rather, the Court has considered these entries as if they appeared in their appropriate category. The use of the U.S. Trustee fee guidelines' "project categories" is designed "to facilitate review of the application" and evaluation of the services. An entry erroneously categorized is not *per se* improper and noncompensable. None of these challenged entries, therefore, are disallowed.

described.[18] For example, "telephone call from Terry [Andersen]" or "letter to atty. Christensen" would not be complete or specific enough to allow the Court to conclude that the subject matter is different from that involved in another call or letter to the same individual the same day.

However, in several instances where entries are challenged by the objectors as duplicative, the subject matter *is* differentiated. *See, e.g.*, 10/15/01 (.2 hours for "telephone call with Terry [Andersen] & Jim Hansen *re: research*"); 10/15/01 (.2 hours for "telephone call with Terry [Andersen] & Jim Hansen *re: Plan*"); and 10/15/01 (.3 hours for "telephone call with Terry [Andersen] & Jim Hansen *re[:] Stipulation*"). (Emphasis added). It thus sufficiently appears from the Final Application itself that there was no duplication on October 15 but, instead, either three separate calls or a longer, single conference call that Counsel separated into component parts for the purpose of complying with the U.S. Trustee fee guidelines.[19]

The Andersons point to other entries that appear duplicative. For example, Counsel charged .4 hours on December 18, 2001 for "Review Disclosure &

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[18] Counsel should consider making more complete and informative entries in future cases. At a minimum, it would reduce the likelihood of objection and reduce the amount of evidence and explanation required in obtaining allowance.

[19] While it could not be determined from the Final Application alone which of these two scenarios actually occurred, the evidence at hearing established that there was a single call on October 15 addressing multiple topics, and Counsel divided the call into components in order to comply with the requirements of the U.S. Trustee fee guidelines. *See* Exhibit L (daily time sheets).

Model; Telephone call with Clients; Telephone call to Atty. Christensen; Preparation of Letter" in the project category "relief from stay proceedings", and a separate charge for .4 hours in the category "plan & disclosure statement" which is identically described.

The evidence at hearing, however, established that there was but a single .8 hour charge, and that Counsel elected to separate it into two .4 hour entries in two different categories based on his evaluation of the subjects addressed. Counsel corroborated this explanation by introducing his "day sheets" showing the original time entry. In the end, it was shown that the entries were not duplicative.

However, even though he could and did justify this charge, Counsel conceded that his manner of presentation in the Final Application made it appear as if this entry was improperly duplicated. That the Andersens, or the Court, were concerned about the possibility of duplication was reasonable.

In addition to the "splitting" of time in the fashion described, some of the problems in the Final Application are attributable to Counsel's occasional practice of using "lumped" entries, *i.e.*, a single entry listing several different and distinct services with an aggregate time. One example is the December 18, 2001 entry discussed immediately above. Another can be found on January 10, 2002 (2.5 hours for "Telephone call with Jim Hansen; Telephone call with Clients; Preparation of Disclosure Statement; Review legal requirements for LID"). Yet

another example can be found on December 19, 2001 (2.4 hours for "Conference with clients; Attend Hearing; Conference with Atty. Christensen; Telephone call to Jim Hansen").

Such lumping is not appropriate.[20] It impedes reasoned analysis. Absent additional explanation, the Court may disallow the entire entry, because lumped entries do not meet the burden of justification placed on a fee applicant.

Here, however, Counsel's evidence at hearing, particularly his "day sheets," show the blocks of time in which he worked and the subjects addressed within those blocks, and thus assist him in meeting his burden. After careful review, the Court concludes no reduction is warranted for those entries in the Final Application that to some degree reflect lumping.[21]

f. Other objections

The Andersens argue that certain entries in the Final Application did not appear in Counsel's Interim Application. Objection at 4-5 (alleging "[t]hese new and unwarranted charges appear to have evolved from the ashes of defeat"). They thus argue these entries should be summarily rejected. The argument is not well taken.

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[20] *In re Jordan*, 00.1 I.B.C.R. 46, 49 (Bankr. D. Idaho 2000) (citing *Xebec*, 147 B.R. at 525). The U.S. Trustee fee guidelines, otherwise referred to and followed by Counsel, expressly discourage this sort of lumping.

[21] Those sorts of lumped entries are relatively few and comprise only a minor part of all entries.

It must first be noted that the Final Application here supercedes all the prior submissions. In fact, the Court previously admonished Counsel to ensure that everything he sought to be paid was included in his Final Application, as this would be the controlling submission the Court would evaluate. His addition of time entries not earlier included in the Interim Application is not necessarily improper.

The next problem with this objection flows from the fact that the Interim Application had a "cut-off" date of April 30, 2002. *See* Doc. No. 84 at 3. The Interim Application's "summary" and its attached itemization of services by date and time corroborate this assertion. *Id.* The inclusion in the Final Application of time entries after April 30 cannot therefore be objectionable.

The Andersens also believe and argue that the inclusion in the Final Application of *pre*-April 30 time entries that were not included in the Interim Application means these entries are fabricated and false. The evidence presented at hearing did not bear out this concern. Counsel stated that, after the Court's caution to be totally inclusive, he had his staff scour the office files to ensure that all potentially compensable time was captured and reported. He says they located, through correspondence and other internal files, documents showing that compensable time had been spent but not earlier recorded in a fashion that would result in it automatically appearing on the fee applications. Counsel says he

reviewed and verified his staff's conclusions. His explanation was adequate, and his assertion that all time entries in the Final Application represent actual work performed was not effectively impeached.[22]

In conclusion, all compensation sought, except $20.00 of paralegal time, will be allowed.

C. Allowance of reimbursement for costs and expenses

The Code authorizes reimbursement of actual and necessary expenses as well as compensation for services. *See* § 330(a)(1)(B).

The Court has evaluated Counsel's claimed costs and expenses totaling $956.84.[23] Because the Final Application is silent on the basis for calculation of certain of these charges, such as the rate used per page for photocopying, the Court has reviewed the entirety of the record and evidence in this case in order to consider the reasonableness of the amounts claimed.[24]

Given the pleadings filed and the mailings made to creditors, and the

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[22] Certain of the specific entries to which the Andersens raise objection were not absent from the Interim Application but, rather, were in different project categories. Counsel "re-categorized" certain of the prior entries in preparing the Final Application.

[23] The Interim Application asserted costs of $2,458.62. It appears that Counsel's Final Application struck all costs claimed in the Interim Application that were incurred prior to August 31, 2001 (totaling $1,871.59). The Final Application added charges for costs incurred after the April 30 cut-off of the Interim Application (totaling $369.81).

[24] It is within the Court's discretion to deny reimbursement if it concludes the costs are not adequately explained. *Jordan*, 00.1 I.B.C.R. at 49; *In re Young*, 98.2 I.B.C.R. 43 (Bankr. D. Idaho 1998). The Court concludes that, in the context of the instant case, sufficient information exists to support the reasonableness of the costs claimed.

volume of paper in such filings and mailings, the Court will allow the postage and photocopy expenses claimed.[25] Additionally, the long distance telephone and mileage costs as claimed in the Final Application appear reasonable and are allowed.

CONCLUSION

Having reviewed in detail Counsel's Final Application and submissions, and the Andersens' Objection, and having undertaken its required independent evaluation, the Court will overrule the Andersens' Objection and will allow Counsel compensation for services and reimbursement of expenses in a total amount of $12,259.00, reflecting a $20.00 reduction for the requested paralegal charge on February 27, 2002. Costs of $956.84 will be allowed as claimed. Counsel's total allowance is thus $13,215.84.

This allowance is entitled to treatment as an administrative expense. *See* § 503(b)(2). However, Counsel's fees and costs are a chapter 11 administrative expense in a case subsequently converted to chapter 7. Thus, this allowance is placed in a position subordinate to chapter 7 administrative expenses and may be paid only as provided by § 726(b).[26]

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[25] These pleadings, filings and mailings include two disclosure statements (35 and 32 pages respectively) and two plans (14 pages each) served on half a dozen parties; hearing notices to the entire 88-party mailing matrix (one of which included a copy of the amended disclosure statement, *see* Doc. No. 78); and miscellaneous pleadings and exhibits used at hearings.

[26] The chapter 7 Trustee has not filed an interim report nor is there any evidence regarding the amount of funds presently available or anticipated from which the Trustee will

(continued...)

Counsel may submit an order in accord herewith.

DATED: April 19, 2005

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

[26](...continued)
make distributions. Whether the estate is solvent enough to reach the chapter 11 administrative expenses in whole or part is unknown. This means the practical economic value to the present litigation is likewise unknown.

CERTIFICATE RE: SERVICE

A "notice of entry" of this Decision, Order and/or Judgment has been served on Registered Participants as reflected by the Notice of Electronic Filing. A copy of the Decision, Order and/or Judgment has also been provided to non-registered participants by first class mail addressed to:

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Case No. 01-40539-TLM (AICO Recreational Properties LLC)

Dated: April 19, 2005

/s/Jo Ann B. Canderan
Judicial Assistant to Chief Judge Myers