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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re  
RICK PIERCE

Case No. 98-19111-A-7  
DC No. RMY-1

Debtor.  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
FIRST AND FINAL APPLICATION  
FOR COMPENSATION BY THE LAW  
OFFICES OF ROBERT M. YASPAN

\_\_\_\_\_ /  
A hearing was held December 21, 2005, on the First and Final Application for Compensation of the Law Offices of Robert M. Yaspan as general counsel to the chapter 11 debtor. The chapter 7 trustee, James Salven, appeared at the hearing and stated his support for the application. Bruce Leichty, special counsel to the trustee as well as an administrative claimant, filed written opposition to the application. Following the hearing, the court took the matter under submission. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

Does Bruce Leichty Have Standing to Object?

As a preliminary matter, the court will discuss the question of Mr. Leichty's standing to object to the application. Mr. Yaspan has suggested that Mr. Leichty does not have standing,

1 based in part on an order filed November 4, 2005, granting the  
2 application for allowance of final attorneys fees and costs of  
3 Kimble, MacMichael & Upton ("KMU"). Leichty had opposed the KMU  
4 application. The Ninth Circuit assigned the KMU application to  
5 the Honorable John L. Peterson, and the November 4, 2005 order  
6 was issued by Judge Peterson. In that order, Judge Peterson  
7 opined that as Leichty is not a prepetition creditor of the  
8 debtor and has only an administrative claim against the estate,  
9 he is not a party in interest with standing to object to an  
10 attorney's fee application under Bankruptcy Code § 330. Judge  
11 Peterson further stated that Leichty had not shown in his papers  
12 how he would in any manner be directly and adversely affected  
13 pecuniarily by an order approving the KMU application. Judge  
14 Peterson went on to say:

15 "More important, his special counsel assignment description  
16 does not in any remote fashion clothe him with party in  
17 interest standing to oppose the KMU application. He is  
18 clearly acting well outside his assigned duties. He has  
19 conceded he is not acting as a representative of the  
20 Trustee, and is thus a mere interloper, without portfolio  
and standing to object, and by his opposition simply  
protracts unnecessary litigation, particularly where, as  
explained hereafter, this Court has an independent duty to  
pass upon the fee request."

21 In his opposition to the Yaspan fee application, Leichty  
22 stated that he had concluded that opposing the Yaspan fee  
23 application would not create a conflict of interest with James  
24 Salven, the chapter 7 trustee and his client. Further, he noted  
25 that Judge Peterson's ruling in the KMU application was the  
26 subject of a pending motion for reconsideration. According to  
27 Leichty, there was thus "no law of the case or other legal  
28 doctrine preventing [him] from expressing his Objection to the

1 fees of another administrative claimant, particularly where  
2 approval and payment of those fees would seriously impact any  
3 chance of a distribution to general unsecured creditors."<sup>1</sup>

4 Thus, Leichty is not arguing that he himself would be  
5 directly and adversely affected by an order approving the Yaspan  
6 fee application. Rather, he purports to speak on behalf of  
7 unsecured creditors, although he is not one, and although the  
8 trustee disagrees with his position.

9 Under the circumstances, the court finds persuasive Judge  
10 Peterson's reasoning in a similar fee application in this case.  
11 In both instances, Mr. Leichty, as an administrative creditor on  
12 behalf of himself, and not on behalf of the chapter 7 trustee,  
13 his client, has objected to an application for allowance of  
14 attorney's fees. There are only two differences between the two  
15 applications, neither of which the court finds significant with  
16 respect to the standing question. First, the Yaspan fee  
17 application is for his services as counsel for the debtor, while  
18 the KMU fee application was for KMU's services as counsel for the  
19 chapter 7 trustee. Second, the KMU fee application was for an  
20 amount of under \$35,000, while the Yaspan fee application  
21 requests compensation of almost \$600,000.

22 In January 2006, this court ruled on the Final Application  
23 for Compensation and Reimbursement of Expenses by Danning, Gill,  
24 Diamond & Kollitz, LLP ("Danning-Gill") as counsel for the  
25 Unsecured Creditors' Committee in this case. Leichty also

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28 <sup>1</sup>Opposition to Final Application of Robert M. Yaspan for  
Compensation, filed December 12, 2005, at p. 2, fn. 1.

1 objected to that application. In its Findings of Fact and  
2 Conclusions of Law on the Danning-Gill application the court did  
3 not address the question of whether Leichty had standing to  
4 object.

5 The Post-Petition Retainer Issue.

6 Leichty's primary opposition to the Yaspan fee application  
7 is his assertion that the applicant paid himself from a post-  
8 petition retainer of \$14,000 without court approval. He raises  
9 no objection to the fees or expenses in and of themselves.<sup>2</sup>

10 Even if the court were to rule that Leichty did have  
11 standing to object to this application, it would overrule his  
12 objection about the post-petition retainer. The court has some  
13 recall of the subject of the debtor's motorcycle, the sale of the  
14 motorcycle or loan secured by the motorcycle, and the use of the  
15 money acquired thereby to pay a retainer to Mr. Yaspan. It is  
16 certainly true that the debtor's statements about the motorcycle  
17 (did he sell it or did he borrow money secured by it) were  
18 inconsistent. However, the United States Trustee was closely  
19 monitoring the case during the initial stages and did not appear  
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21 <sup>2</sup>The Leichty opposition was filed on December 12, 2005, five  
22 days after the bar date for opposition of December 7, 2005. In  
23 his opposition, Leichty asks the court to excuse the late filing.  
24 Yaspan filed a reply on December 16, 2005, two days after the  
25 deadline for reply. However, the court excuses the lateness of  
26 the reply because of the lateness of the Leichty opposition.  
27 Also filed in connection with the application were a supplemental  
28 declaration of Robert M. Yaspan and a declaration of Rick Pierce  
filed, respectively, December 19 and December 20, 2005, as well  
as a post-hearing declaration of Bruce Leichty filed December 22,  
2005. As none of those documents is timely under any  
circumstances, the court will not consider any of the documents  
filed after December 16, 2005.

1 at the hearing on the application to employ Yaspan.

2 Yaspan's declaration in support of the application to employ  
3 him disclosed, properly, that he had received a retainer<sup>3</sup>, which  
4 had been placed in his client trust account. The declaration of  
5 Rick Pierce filed January 22, 1999, regarding the motorcycle is  
6 an attempt to clarify the series of events involving his pledge  
7 of the motorcycle and payment of a retainer to Mr. Yaspan.

8 In the court's view, the various transactions involving the  
9 motorcycle at the beginning of this case do not rise to a level  
10 that would preclude the court from approving the fees requested  
11 by Yaspan.

12 The Application of the Factors in 11 U.S.C. § 330(a).

13 No one has opposed the Yaspan application on any of the  
14 grounds set forth in Bankruptcy Code § 330(a)(3) and(4). The  
15 chapter 7 trustee stated his support for the application at the  
16 hearing. The United States Trustee did not participate.

17 Nonetheless, the court has an independent duty to review the  
18 application to determine if the compensation requested is  
19 reasonable, taking into account the factors described at  
20 Bankruptcy Code § 330(a)(3) and (4). The court has reviewed in  
21 detail this application, including the Memorandum of Points and  
22 Authorities, the declaration of Robert M. Yaspan, and the time  
23 records. As everyone would likely acknowledge, this was a  
24 difficult chapter 11 case and a difficult case in which to  
25 represent the debtor in possession. It was an involuntary  
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27 <sup>3</sup>He incorrectly designated it as \$15,000, rather than  
28 \$14,000.

1 bankruptcy, and thus there was no prepetition planning or  
2 organization of books and records to make counsel's task easier.  
3 The debtor consented to the entry of an order for relief on  
4 October 14, 1998, and first consulted Yaspan in early November  
5 1998. As Yaspan points out, gathering materials to file  
6 schedules of assets and liabilities and a statement of affairs  
7 was difficult and time-consuming because the records were  
8 scattered and not in an orderly state. Thus, it was necessarily  
9 necessary to file first and second amended schedules. Yaspan  
10 developed with the debtor an action plan for the bankruptcy  
11 estate that involved marketing real property and pursuing  
12 litigation.

13 Yaspan represented the debtor from November 1998 to October  
14 1999. In October 1999, Yaspan found out that the debtor had been  
15 indicted and was under arrest and advised Rick Pierce as the  
16 debtor-in-possession that Yaspan could not continue to represent  
17 Pierce as a debtor-in-possession, as a fiduciary, given the fact  
18 that Pierce was in jail. Eventually, the case was converted to  
19 chapter 7.

20 In reviewing the various categories of services performed by  
21 Yaspan, the court concludes that the time spent on the services  
22 was reasonable and that the services were necessary to the  
23 administration of or beneficial at the time the services were  
24 rendered toward the completion of the chapter 11 case. The  
25 largest categories were categories involving Broker One/real  
26 estate matters for which the requested fees are \$97,810.90 and  
27 the Easy Riders matter for which the requested fees are  
28 \$260,536.75. The total of these two categories is \$358,347.65.

1 Subtracting these two categories from the total amount of fees,  
2 the remaining fees, having to do with administration of the  
3 chapter 11 case and other bankruptcy related matters, comes to  
4 \$237,214.70 of fees. It is important to keep this in mind when  
5 deciding whether the fees and costs are reasonable.

6 At the beginning of the case, the debtor and other parties  
7 believed that the debtor's real property in Tulare County was a  
8 likely source of recovery for creditors. Thus, the time spent on  
9 that matter by Yaspan was reasonable. That time included filing  
10 a lengthy adversary complaint against over two dozen defendants  
11 having to do with the validity, extent, and priority of the liens  
12 on the real property.

13 An even more time consuming matter was the Easy Riders  
14 litigation, on which Yaspan incurred fees of \$260,536.75. This  
15 litigation, long after Yaspan's involvement ceased, turned out to  
16 be the most significant asset of the estate. In order to realize  
17 a benefit for the estate from the debtor's shares in Easy Riders,  
18 extensive litigation was necessary.

19 Making matters even more complicated was that many of the  
20 debtor's documents came to be in the possession of the FBI,  
21 which, at a minimum, made the case more time consuming.

22 Having reviewed the time records, the court further finds  
23 that the services were performed in a reasonable amount of time,  
24 given their complexity. The court does not find unnecessary  
25 duplication of services or services not reasonably likely to  
26 benefit the debtor's estate or necessary to administration of the  
27 case. There is one exception. On April 30, 1999, "DY" billed  
28 \$192.50 (3.5 hours at \$55 per hour) to "Prepare and review April

1 billings for Court, client and Creditors Committee." No April  
2 Billing Statement was filed, though Yaspan did file monthly  
3 reports of fees for other months. Thus, the fees allowed shall  
4 be reduced by \$192.50.

5 The only remaining issue is the rate charged for the  
6 services. The application states that the blended hourly rate  
7 for professional services performed by attorneys and legal  
8 assistants is approximately \$260.69. Robert M. Yaspan's hourly  
9 rate during the period of this case was \$315, and Stephen Daly's  
10 was \$265. In the court's Findings of Fact and Conclusions of Law  
11 regarding the Danning-Gill fee application, the court observed  
12 that four of the attorneys in that firm had rates exceeding \$250  
13 per hour. In its application, Danning-Gill recognized that its  
14 hourly rates above \$250 an hour were greater than the customary  
15 hourly rates in the market. For instance, in the KMU fee  
16 application, then attorney Lee billed at \$212.33 an hour. A  
17 declaration filed September 30, 2005, by Bruce Leichty stated his  
18 hourly rate was \$200 per hour.

19 As it did in the Danning-Gill ruling, the court concludes  
20 that a reasonable hourly rate in 1998/1999 for attorneys  
21 representing chapter 11 debtors in the Fresno Division of the  
22 Eastern District of California did not exceed \$250 per hour. If  
23 the fees in this application were billed at the lesser of the  
24 timekeeper's hourly rate in the application, or \$250 per hour,  
25 the application is reduced by \$63,472.15. Robert M. Yaspan  
26 billed at an hourly rate of \$315 for a total of 630.98 hours.  
27 Stephen Daly billed at an hourly rate of \$265 for a total of  
28 1,460.03 hours. The total hours billed at over \$250 per hour is,

