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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA

9
10 In re Case No. 06-10324-A-11F
DC No. WLG-11
11 PROPERTY DEVELOPMENT GROUP, LLC,
12 Debtor. FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE
APPLICATION FOR PAYMENT OF
INTERIM FEES AND EXPENSES
13 _____/

14 This is an application for payment of interim fees and
15 expenses in this chapter 11 case.

16 The case was filed March 23, 2006, and the court approved
17 Walter Law Group's application to be employed as attorney for the
18 debtor-in-possession on March 30, 2006. The application requests
19 payment of compensation and reimbursement of expenses for May 1,
20 2006, through May 31, 2006, in the total amount of \$50,747.35.
21 It reflects that on the date the petition was filed, applicant
22 held a retainer of \$86,211.17, which it still holds. The court
23 previously approved interim compensation in the amount of \$38,228
24 in fees and \$1689.26 in costs.

25 This memorandum contains findings of fact and conclusions of
26 law required by Federal Rule of Bankruptcy Procedure 7052 and
27 Federal Rule of Civil Procedure 52. This is a core proceeding as
28 defined in 28 U.S.C. §157(b)(2)(A) and (O).

1 The application reflects a blended hourly rate, including
2 attorneys and paralegals, of \$277.50.

3 This application is brought under § 331 of the Bankruptcy
4 Code. That section allows professionals to apply for interim
5 compensation prior to the date of a hearing under § 330.

6 Bankruptcy Code § 330(a) sets out the requirements for
7 compensation of professionals employed in bankruptcy cases.
8 Those requirements include the time and the rates for legal
9 services; whether the services were performed within a reasonable
10 amount of time, taking into account the complexity, importance
11 and nature of the issue; whether the requested compensation is
12 reasonable based on the customary compensation charged by
13 comparably skilled practitioners in cases other than cases under
14 the Bankruptcy Code; and whether there was any unnecessary
15 duplication. The court has an independent duty to review fee
16 applications of professionals employed in bankruptcy cases even
17 where no party in interest has objected.

18 Compensation for bankruptcy counsel is meant to be
19 commensurate with compensation awarded to nonbankruptcy attorneys
20 for "comparable services." In re Nucorp Energy, Inc., 764
21 F.2d 655, 659 (9th Cir. 1985). See also, Bankruptcy Code
22 § 330(a)(3)(F). This is a calculation that the court cannot make
23 without evidence.

24 The court is reluctant to disallow compensation requested
25 under § 331, preferring to leave such question for determination
26 of a final award of compensation under § 330. That is
27 particularly true in a case like this one, which is a large
28 chapter 11 case marked by intense and ongoing negotiation among

1 the parties. In fact, applicant continues to hold a retainer of
2 over \$86,000, which has not yet been utilized to pay previously
3 approved fees.

4 That having been said, of the \$50,222 in fees in this
5 application, over \$13,000 was incurred by paralegals for work
6 that to a great extent appears clerical in nature. Also, the
7 time records show billings for inter-office conferences or
8 telephone calls between and among persons who work in applicant's
9 office, where both persons have billed. There appears to be
10 duplication of services. Some of the entries are vague, for
11 instance, entries for "review and response to miscellaneous e-
12 mails."

13 Clerical services are not compensable as professional time.
14 Instead, clerical services are part of a professional's overhead.
15 See, In re Rauch, 110 B.R. 467, 477. "11 U.S.C. § 330(a)(2)
16 allows for reimbursement of actual, necessary expenses, but it
17 does not provide for expenses for clerical work. The type of
18 expenses allowed to be reimbursed are telephone charges, fax
19 charges, bond premium charges, and the like." (emphasis in
20 original).

21 The Rauch decision has been expressly approved by the Ninth
22 Circuit Court of Appeals:

23 "Caselaw also supports our conclusion that § 330(a)(2) does
24 not contemplate reimbursement for normal overhead expenses.
25 In In re Rauch, 110 Bankr. 467, 476-77 (Bankr. E.D. Cal.
26 1990), the bankruptcy court held that the Chapter 11 trustee
27 could not receive reimbursement for clerical duties,
including letter writing, phone answering, leaving messages,
balancing the bank statement, and writing checks, because
those duties constituted overhead and were nonreimbursable
under § 330(a)(2). . . . We find this analysis correct."

28 In re U.S. Trustee v. Miquel, et al, 32 F.3d 1370, 1374 (9th Cir.

1 1994).

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3 Also, the United States Trustee has promulgated "Guidelines
4 for Reviewing Applications for Compensation and Reimbursement of
5 Expenses filed under 11 U.S.C. § 330" (the "UST Fee Guidelines").
6 The UST Fee Guidelines also observe that whether an expense
7 appears to be in the nature of nonreimbursable overhead, such as
8 word processing, proofreading, secretarial and other clerical
9 services, is relevant to an award of compensation under § 330.
10 See, UST Fee Guidelines at ¶ B(5)(vi). Moving an item from the
11 expense category to the fee category does not change the result.

12 Clerical services performed by paralegals and attorneys are
13 not made compensable because the person performing the service is
14 designated a paralegal or an attorney rather than a secretary.

15 Many more fees will be incurred in this case before its
16 conclusion. Applicant holds a retainer sufficient to pay all the
17 fees requested here. Therefore, the court will allow interim
18 compensation in the amount requested, noting, however, that in
19 any final application, services that appear from a reading of the
20 time records to be clerical will not be compensable.

21 Applicant may submit a proposed form of order, which shall
22 provide that the fees are to be paid from the retainer.

23
24 DATED: July 24, 2006.

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26 _____
27 /S/ WHITNEY RIMEL, Judge
28 United States Bankruptcy Court