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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 11-22755-D-11
	)	
CURTIS A. WESTWOOD,	)	Docket Control No. MLG-7
	)	
Debtor.	)	Date: January 11, 2012
	)	Time: 10:00 a.m.
	)	Dept: D
	)	
	)	

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**MEMORANDUM DECISION**

On August 31, 2011, Meyers Law Group, P.C. ("MLG") filed a first and final application for compensation and reimbursement of expenses for services rendered to the former debtor-in-possession, Curtis A. Westwood, in this case (the "Application"). Comerica Bank ("Comerica"), the largest creditor in this case; Travelers Casualty and Surety Company of America ("Travelers");<sup>1</sup> and Jon Tesar, the trustee appointed in this case (the "Trustee"), oppose the Application (collectively, the "Objecting Parties").

1. When Travelers filed its joinder to the Comerica objection, it concurrently filed a statement of opposition. "Travelers Casualty and Surety Company of America's Joinder to Comerica Bank's Opposition to First and Final Fee Application of Meyers Law Group, P.C. for Compensation and Reimbursement of Expenses," filed October 5, 2011. Travelers appeared at the initial hearing and has not withdrawn its separate opposition.

1                                   **I.    AMOUNT OF COMPENSATION REQUESTED**

2            MLG seeks an award of attorney's fees in the amount of  
3 \$324,102.00 and reimbursement of expenses in the amount of  
4 \$5,426.31, for a total of \$329,528.31. MLG seeks approval of  
5 these amounts for services rendered from February 2, 2011 through  
6 September 28, 2011.

7            On an interim basis, the court entered an order on  
8 November 8, 2011 allowing compensation in the amount of  
9 \$162,051.00 and reimbursement of expenses in the amount of  
10 \$2,713.16, for a total interim award of \$164,764.16 (the "Interim  
11 Award"). For the reasons set forth below, the court will grant  
12 the Application in part.

13                                   **II.   BACKGROUND**

14            Curtis A. Westwood (the "Debtor") filed a voluntary petition  
15 for relief under chapter 11 of title 11 of the United States  
16 Code<sup>2</sup> on February 2, 2011 (the "Petition Date"). The Debtor  
17 operated a real estate development business through various  
18 entities in which he controlled and maintained partial ownership  
19 interests. The Debtor's interests in the entities include the  
20 following:

- 21            •     a 51% interest in Westwood Homes, Inc., a California
- 22                   corporation ("WHI");
- 23            •     a 50% interest in Lucille Westwood LTD ("LWL");
- 24            •     a nominal interest in Sierra de Montserrat Loan Fund
- 25                   LLC ("Loan Fund"); and

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26  
27            2. Unless otherwise indicated, all Code, chapter, and  
28 section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
1532. All Rule references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1       • a 4% interest in Westwood Montserrat LTD ("WML").

2       WHI is the general partner of an entity called Westwood  
3 Promontory LTD ("WPL"), and prior to February 10, 2010, was the  
4 general partner of WML. Together, these entities will be called  
5 the "Westwood Entities." The purpose of the Westwood Entities  
6 was to develop and construct various real estate projects. WML  
7 had the specific purpose of developing a residential project  
8 formally known as Sierra de Montserrat, and a related vineyard  
9 (collectively, the "Montserrat Project").

10       Comerica provided secured financing for the Montserrat  
11 Project in the approximate amount of \$23,000,000. Prior to the  
12 Petition Date, WML defaulted on the Comerica loan, triggering  
13 Comerica's foreclosure upon its collateral and pursuit of the  
14 guarantors. On the eve of the Debtor's bankruptcy, Comerica  
15 obtained a judgment against the Debtor in state court in the  
16 amount of \$14,753,781.40, based on Comerica's alleged deficiency  
17 claim and the Debtor's guarantee on the loan. Faced with  
18 Comerica's enforcement of the judgment, the Debtor commenced this  
19 case. The Debtor disputes Comerica's claim and has appealed the  
20 state court judgment.

21       The Debtor and WHI were also entangled in a separate dispute  
22 over construction bonds, issued for the Montserrat Project prior  
23 to the Petition Date. Specifically, Travelers provided the  
24 construction bonds, obtaining indemnification for the bonds from  
25 WHI and the Debtor, and securing the indemnity obligations with  
26 the personal property of each. In 2007, WML became embroiled in  
27 a dispute with a subcontractor of the Montserrat Project, ARB,  
28 Inc. ("ARB"), and its general contractor, De Silva Gates ("DSG").

1 When ARB asserted a claim of damages of over \$4,000,000 in a  
2 state court action (the "ARB Action"), Travelers became a party  
3 by virtue of the construction bonds. This event, in turn,  
4 implicated WHI and the Debtor's obligation to indemnify  
5 Travelers. Since the ARB Action was pending on the Petition  
6 Date, Travelers held a contingent, unliquidated secured claim  
7 against the Debtor based on the secured indemnity obligation that  
8 the Debtor owed to Travelers.

### 9 III. THE CHAPTER 11 CASE

10 On February 16, 2011, the court entered an order approving  
11 MLG's employment.<sup>3</sup> MLG assisted the Debtor in fulfilling his  
12 basic duties as a debtor-in-possession; the Debtor timely filed  
13 his schedules of assets and liabilities and statement of  
14 financial affairs, and the Debtor attended meetings of creditors  
15 and filed monthly operating reports. As described below, a  
16 source of significant controversy in the case was the  
17 appropriateness of certain cash outlays made by the Westwood  
18 Entities; the Objecting Parties base much of their opposition to  
19 the Application on the disbursements made by the Westwood  
20 Entities to various third parties following the Petition Date,  
21 but before the appointment of the Trustee (the "Affiliate  
22 Outlays").<sup>4</sup>

23 \_\_\_\_\_  
24 3. Prior to the Petition Date, MLG had received from the  
25 Debtor several retainer payments totaling \$500,000. As of the  
26 Petition Date, the remaining balance of the retainer was  
\$394,227.46. The Interim Award authorized MLG to pay to itself  
\$164,764.16 from the balance of the retainer.

27 4. Comerica was aware of the Debtor's relationship to the  
28 Westwood Entities and the inter-company indebtedness well before  
the Petition Date. Nevertheless, when Comerica was served with

(continued...)

1       The Westwood Entities are account debtors of the Debtor  
2 because certain receivables were generated when the Debtor made  
3 pre-petition loans to the Westwood Entities. The face amount of  
4 the receivables from the Westwood Entities exceeds \$2,000,000.<sup>5</sup>  
5 Because of "limited marketability," the Debtor discounted these  
6 receivables by 25% to 50% from face value.<sup>6</sup> After accounting for  
7 the discounts, the total value of the receivables stands at  
8 \$1,110,382.50.<sup>7</sup> Of import, the Debtor and his sister own and  
9 control the Westwood Entities.<sup>8</sup>

10       On May 18, 2011, Comerica filed a motion for an order  
11 directing the appointment of a chapter 11 trustee (the "Trustee  
12 Motion"). On June 29, 2011, the court granted the Trustee Motion  
13 based on a concern that there was an inherent conflict created by  
14 the Debtor's ownership and control of the Westwood Entities and  
15 the Debtor's duty to collect the aforementioned receivables --

16  
17       4. (...continued)  
18 MLG's employment application, it did not object to MLG's  
19 employment.

20       5. Exhibit B-16 to the Debtor's Schedule B, filed February  
21 16, 2011 and amended on November 28, 2011. The face value of the  
22 Debtor's interest in the receivables breaks down as follows:

23       a secured note issued by WML - \$70,781;  
24       an unsecured note receivable issued by WHI - \$1,426,847;  
25       an unsecured note receivable issued by LWL - \$493,800;  
26       an unsecured note receivable issued by WPL - \$68,000;  
27       an unsecured note receivable issued by WHI for the benefit of a  
28       tax credit trust - \$27,550; and  
29       an unsecured note receivable issued by WML for the benefit of a  
30       family trust - \$132,145.

31       6. Id.

32       7. Id.

33       8. As to some of the Westwood Entities, the Debtor's wife  
34 is also a part owner.

1 the most significant non-exempt assets of the chapter 11 estate.  
2 The court accepted at face value the Debtor's representations  
3 that he had been candid in disclosing information regarding the  
4 Westwood Entities and the extensions of credit. Notwithstanding,  
5 the court found "cause" under § 1104(a), and entered a minute  
6 order granting the Trustee Motion. Subsequently, on July 11,  
7 2011, the court entered an order duly appointing the Trustee.

8 When it granted the Interim Award, the court noted that it  
9 lacked sufficient information to assess whether the Affiliate  
10 Outlays were improper or inappropriate. To better understand  
11 these transactions, the court requested that the Trustee  
12 investigate the propriety of the Affiliate Outlays, and allowed  
13 further briefing.

14 After conducting his investigation, the Trustee filed a  
15 report on December 5, 2011 that set forth the Trustee's position  
16 regarding the Affiliate Outlays. In essence, the Trustee stated  
17 that he would not have authorized some of the post-petition  
18 payments made by the Westwood Entities, based on his belief that  
19 some of the Affiliate Outlays would impede the estate's recovery  
20 of the receivables. At the same time, the Trustee appreciated  
21 the complex interrelationships among the Westwood Entities, some  
22 of whom continue to operate a business.<sup>9</sup> The court finds that

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23  
24 9. Report of Chapter 11 Trustee Jon Tesar on Post-Petition  
25 Activity of Affiliated Entities, filed December 5, 2011  
26 ("Trustee's Report") at 3:13-15 ("[WHI and LWL] ... continue to  
27 conduct business. ... I understand they service homeowner claims  
28 and continue searching for ways to liquidate certain real estate  
assets"); and 7:18-21 ("The 5 Entities are relatively complicated  
intertwined ventures. I probably do not completely understand  
the interrelationships and motivations of these entities. ... As  
a result, not all of the spending decisions make sense to me.")

1 the Affiliate Outlays reflect payments made on outstanding  
2 obligations that predated this case as well as payments permitted  
3 in the ordinary course of operating a real estate development  
4 business.<sup>10</sup> Although the Trustee has indicated that he believes  
5 some of the Affiliate Outlays were imprudent, there is nothing in  
6 the record to suggest that the Affiliate Outlays were fraudulent  
7 or that other wrongful activity occurred in this case. As  
8 explained below, the court will not penalize MLG solely for  
9 representing a debtor-in-possession, who, incidentally, owns and  
10 controls non-debtor entities that are indebted to the Debtor's  
11 estate.

12 As a result of the conflict that existed among the Westwood  
13 Entities, the Objecting Parties argue that MLG's compensation  
14 should be reduced, across the board, by 35%. In particular, the  
15 Objecting Parties seek these across-the-board reductions in MLG's  
16 fees for the following services: (1) the preparation of the  
17 Debtor's Motion for Authority to Obtain Secured Postpetition  
18 Financing and Grant Postpetition Liens, filed June 15, 2011,  
19 Docket Number 129 (the "Financing Motion Services"); (2) the  
20 drafting of the Debtor's plan and disclosure statement (the "Plan  
21 Services"); (3) the settlement of the ARB Action involving  
22 Travelers (the "Travelers Settlement Services"); (4) the services  
23 performed after the Trustee was appointed (the "Post-Trustee  
24 Services"); and (5) the services performed in defending the  
25 Debtor's claim of exemptions (the "Exemption Defense Services").

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28 10. See, e.g., Trustee's Report at 4, ¶ 2; 5, ¶¶ 4-5; 6, ¶ 6.

1 For the reasons stated below, the court will not implement  
2 an across-the-board reduction, but will (1) deny the fees  
3 requested for the Financing Motion Services; (2) reduce by 30%  
4 the fees requested for the Plan Services; (3) reduce by 30% the  
5 fees requested for the Travelers Settlement Services; (4) deny  
6 fees requested for the Post-Trustee Services to the extent such  
7 services do not pertain to preparation of the Application; and  
8 (5) approve the fees requested for the Exemption Defense Services  
9 to the extent such services were rendered before the Trustee was  
10 appointed.

### 11 III. ANALYSIS

#### 12 A. Standards for Evaluating Fee Applications

13 The Application is brought pursuant to § 330. Section  
14 330(a)(3) sets out the standards by which courts should determine  
15 the reasonableness of compensation of professional persons.  
16 Reasonableness is determined by considering the nature, extent,  
17 and value of the services rendered, taking into account all  
18 relevant factors, including the time spent; the rates charged;  
19 whether the services were necessary to the administration of, or  
20 beneficial at the time they were rendered toward the completion  
21 of, the case; whether the services were performed within a  
22 reasonable amount of time commensurate with the complexity,  
23 importance, and nature of the problem, issue, or task addressed;  
24 whether the professional is board certified or otherwise has  
25 demonstrated skill and experience in the bankruptcy field; and  
26 whether the compensation is reasonable based on the customary  
27 compensation of comparably skilled attorneys in other types of  
28 cases. § 330(a)(3); see In re Eliapo, 298 B.R. 392, 401 (9th



1 Cir. B.A.P. 2003), rev'd in part on other grounds, 468 F.3d 592  
2 (9th Cir. 2006).

3 The applicant has the burden of proof to demonstrate that it  
4 is entitled to the fees and costs requested under § 330.

5 Roderick v. Levy (In re Roderick Timber Co.), 185 B.R. 601, 606  
6 (9th Cir. 1995)(citing In re Travel Headquarters, Inc., 140 B.R.  
7 260, 261 (9th Cir. B.A.P. 1992)). Based on the records  
8 presented, the court determines, in its own discretion, the  
9 reasonable compensation for actual, necessary services rendered  
10 and expenses incurred. Travel Headquarters, 140 B.R. at 262; §  
11 330(a)(1)(A)-(B).

12 The court shall not allow compensation for unnecessary  
13 duplication of services or services that were not reasonably  
14 likely to benefit the estate or necessary to the administration  
15 of the case. § 330(a)(4). All fees previously allowed on an  
16 interim basis remain subject to review at a later stage in the  
17 case. See § 330(a)(5).<sup>11</sup>

#### 18 **B. Nature, Extent, and Value of the Services**

19 From the outset, considering the interrelationships among  
20 the Westwood Entities and the pending state court litigation,  
21 MLG's representation of the Debtor was not always a  
22 straightforward task; the court appreciates the difficulty  
23 encountered by MLG in shepherding the Debtor through the process

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25  
26 11. The Objecting Parties do not object to the quality of  
27 the services rendered or the time spent and the rates charged.  
28 Rather, the Objecting Parties focus their opposition on whether  
the particular services were necessary or beneficial to the  
bankruptcy case.

1 of meeting his fiduciary duties to the estate, while the Debtor  
2 maintained management positions with the Westwood Entities.

3 MLG competently handled the administration of this case and  
4 helped the Debtor navigate through the chapter 11 process until  
5 the Trustee was appointed. Notwithstanding the Objecting  
6 Parties' general grievance that MLG's services were tainted by a  
7 conflict of interest, the court declines to deny fees to MLG in a  
8 blanket fashion. With that said, however, not all of MLG's  
9 services were necessary to the administration of the case, or  
10 beneficial at the time they were rendered. The court will now  
11 address the Objecting Parties' objections in detail.

### 12 **C. The Objections**

13 The court will first address the Objecting Parties' general  
14 contention that MLG's services were fatally infected with  
15 conflicts, such that a 35% across-the-board reduction in fees is  
16 warranted.<sup>12</sup> The court is mindful that it granted the Trustee  
17 Motion and appointed the Trustee based, in part, on the inherent  
18 conflict created by the Debtor's ownership and control of the  
19 Westwood Entities and the Debtor's duty to collect accounts  
20 receivable from those entities. In the context of evaluating the  
21 Application, however, this conflict and that the Trustee was  
22 appointed does not per se warrant an across-the-board reduction.  
23 Absent an indication that MLG turned a blind eye to conduct  
24 clearly detrimental to the estate, or was representing the  
25 interests of the Westwood Entities while simultaneously

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27 12. Comerica Bank's Opposition to First and Final  
28 Application of Meyers Law Group, P.C. for Compensation and  
Reimbursement of Expenses, filed October 5, 2011 ("Opposition")  
at 5:7-6:23.

1 representing the Debtor as debtor-in-possession, an across-the-  
2 board reduction is not warranted.

3 The abstract concept of a debtor-in-possession -- as  
4 distinguished from a debtor -- presents an inherent tension in  
5 every reorganization case. The reasoning of the court in In re  
6 Bonner Mall P'ship, 2 F.3d 899 (9th Cir. 1993) is instructive.<sup>13</sup>  
7 In addressing the argument that allowing a debtor-in-possession  
8 to run the business in lieu of a trustee encourages self-dealing,  
9 the court responded as follows:

10 "[T]he very purpose of the Code's creation of the debtor-in-  
11 possession was to increase the power of those in control of  
12 the debtor during the reorganization process. Bankruptcy  
13 law is very formalistic in that it treats the debtor, the  
14 debtor-in-possession, and old equity as legally distinct  
15 entities when in reality they may all be one and the same.  
16 *The risk of self-dealing among these entities at the expense*  
17 *of creditors is a risk created by the Code itself."*

18 Bonner Mall, 2 F.3d at 915 (emphasis added).

19 Granted, the court appointed the Trustee because of the problems  
20 created by the Debtor's ownership of and authority over the  
21 Westwood Entities. In so doing, the court recognized that the  
22 creditors in this case had a crisis of confidence in the Debtor's  
23 ability to faithfully maximize the value of the estate. As a  
24 result, the court concluded that it was in the interests of  
25 creditors to appoint the Trustee to ensure maximum recovery on  
26 the accounts receivable owing from the Westwood Entities.

27 Having said that, the court notes that the dual rights and  
28 duties of a debtor-in-possession and individual debtor often

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29 13. Although the Bonner Mall case decided the viability of  
30 the "new value" exception in the chapter 11 "cramdown" context,  
31 its comments are helpful in addressing the Objecting Parties'  
32 conflict argument.

1 create a situation that is conflict-ridden. As the court in  
2 Bonner Mall aptly stated, the conflict is created by the Code  
3 itself, and it is with that understanding that the court  
4 evaluates the Application. Therefore, the court finds that a 35%  
5 blanket reduction in MLG's fees is not warranted.

6 Next, the court will address the Objecting Parties'  
7 grievances as to certain categories of services rendered by MLG.  
8 The court will deny MLG's fees in whole with respect to the  
9 Financing Motion Services. That motion sought court approval to  
10 borrow up to \$50,000 from WHI on a secured basis in order to  
11 compensate certain valuation experts. The court finds that such  
12 a proposal was manifestly unreasonable at the time the Financing  
13 Motion Services were rendered. The court agrees with the  
14 Objecting Parties' argument that "[t]he Debtor's attempt to  
15 borrow money from WHI on a secured basis rather than simply  
16 authoriz[e] WHI to repay a small fraction of its obligations to  
17 the estate in no way served creditors' interests."<sup>14</sup> Considering  
18 WHI's substantial obligation to the Debtor's estate and the  
19 overall relation between the Debtor and WHI, the court finds that  
20 MLG's decision to go forward with the Financing Motion Services  
21 was unreasonable.<sup>15</sup> Accordingly, the court will deny MLG's  
22 requested compensation in the amount of \$10,694 for the Financing  
23 Motion Services.

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25  
26 14. Opposition at 7:12-14.

27 15. Although the pursuit of financing to pay the  
28 contemplated experts may have been necessary at the time, the  
specific proposal under the Financing Motion Services was simply  
inappropriate.

1       The court will approve in part MLG's fees with respect to  
2 the Plan Services. The Objecting Parties argue that following  
3 the filing of the Trustee Motion, MLG should have abandoned work  
4 on the Plan Services because it became apparent that the  
5 landscape of the case would change if and when a chapter 11  
6 trustee was appointed.<sup>16</sup> The Objecting Parties question whether  
7 MLG should be paid from the estate for preparing a "never-filed"  
8 plan and disclosure statement when MLG was representing a debtor-  
9 in-possession with "dual roles ... which constituted a manifest  
10 and disqualifying conflict."<sup>17</sup>

11       The ultimate goal of a chapter 11 debtor is to confirm a  
12 plan. While that is true, the court recognizes that MLG may also  
13 have had certain strategic objectives in mind when continuing  
14 work on the Plan Services. Namely, MLG may have wanted to  
15 counter the Trustee Motion and rebut arguments against the  
16 Debtor's good faith by having a plan on file. Therefore, the  
17 court will not penalize MLG for continuing the Plan Services  
18 notwithstanding the filing of the Trustee Motion. Nevertheless,  
19 the court shares the Objecting Parties' concern that the Debtor  
20 never filed a plan and disclosure statement. Thus, the court  
21 does not have the benefit of evaluating the documents to  
22 ascertain the necessity and reasonableness of the Plan Services.

23       "The lodestar approach is the primary, not exclusive method  
24 for calculating fees, and [] the court could employ an  
25 alternative formula where the court could not realistically  
26

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27       16. Opposition at 7:23-8:2.

28       17. Id. at 9:1-6.

1 quantify to numerical precision the lodestar calculation." In re  
2 Auto Parts Club, Inc., 211 B.R. 29, 35 (9th Cir. B.A.P.  
3 1997)(citing Unsecured Creditors' Comm. v. Puget Sound Plywood,  
4 Inc., 924 F.2d 955, 960 (9th Cir. 1991)). "If a fee application  
5 is inadequate, the court should not be forced to wade through it  
6 in order to calculate a lodestar." Id. When it was presented  
7 with difficulties of calculation, the court in Puget Sound  
8 abandoned the lodestar approach, and instead, awarded counsel  
9 only one third of requested fees.

10 Here, the court is presented with the difficulty of  
11 determining the reasonable value, and the benefit to the estate,  
12 of the Plan Services, when the plan and disclosure statement were  
13 never even presented to the court. This makes it very difficult  
14 for the court to assess the necessity and reasonableness of the  
15 Plan Services. Therefore, the court will step outside of the  
16 lodestar approach in evaluating the Plan Services. Because the  
17 court finds that there may well have been a valid and reasonable  
18 motivation behind the Plan Services, yet lacks the benefit of  
19 reviewing the documents, the court will reduce by 30% MLG's  
20 requested compensation in the amount of \$70,512 for the Plan  
21 Services, and thus, the reduced amount that the court will  
22 approve is \$49,358.40.

23 The court will approve in part MLG's fees with respect to  
24 the Travelers Settlement Services. MLG was engaged in extensive  
25 settlement efforts arising from the ARB Action: the dispute  
26 involved "close to ten parties in interest."<sup>18</sup> The Objecting  
27 Parties agree that the Travelers Settlement Services "had the

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28  
18. The Application at 9:23.

1 indirect benefit of significantly reducing the contingent,  
2 purportedly secured, claim of Travelers against the Debtor's  
3 estate based on an [i]ndemnity [a]greement," which would  
4 ultimately reduce Travelers's claim.

5       The problem lies in the Debtor's choice to condition the  
6 settlement on confirmation of a plan of reorganization proposed  
7 by the Debtor. As a result of this decision, the settlement was  
8 never approved, nor even made its way before the court. The  
9 court observes, and as the Objecting Parties have noted, the  
10 settlement could likely have been approved by a Rule 9019  
11 compromise motion even if it involved the transfer of assets.  
12 The court appreciates that, for purposes of plan confirmation,  
13 the Debtor may have been attempting to obtain an impaired  
14 accepting class as required by § 1129(a)(10), and understands  
15 that the Debtor may have had strategic reasons for structuring  
16 the settlement in the way he did.

17       As to the Travelers Settlement Services, the court is again  
18 presented with the difficulty of determining the benefit to the  
19 estate of the Travelers Settlement Services, when the settlement  
20 was never even presented to the court through a compromise motion  
21 or a plan. This makes it very difficult for the court to assess  
22 the necessity and reasonableness of the Travelers Settlement  
23 Services. Therefore, the court will step outside of the lodestar  
24 approach in evaluating the Travelers Settlement Services.  
25 Accordingly, the court will reduce by 30% MLG's requested  
26 compensation in the amount of \$59,923 for the Travelers  
27 Settlement Services, and thus, the reduced amount that the court  
28 will approve is \$41,946.10.

1       The Objecting Parties also take issue with the Post-Trustee  
2 Services. They argue that compensation for MLG's services  
3 rendered on or after July 12, 2011 should not be approved. The  
4 court agrees, but only to the extent that the Post-Trustee  
5 Services were not in regard to preparing the Application.

6       The Supreme Court has clearly stated that "§ 330(a)(1) does  
7 not authorize compensation awards to debtors' attorneys from  
8 estate funds, unless they are employed as authorized by § 327,"  
9 and "[i]f the attorney is to be paid from estate funds under §  
10 330(a)(1) in a Chapter 7 case, he must be employed by the trustee  
11 and approved by the court." Lamie v. U.S. Trustee, 540 U.S. 526,  
12 538-39 (2004). Lamie's "underlying rationale turned on cessation  
13 of status as debtor in possession[, which] indicates that there  
14 is no reason to doubt that [Lamie] applies equally to chapter 11  
15 cases in which a trustee is appointed." In re Johnson, 397 B.R.  
16 486, 490 (Bankr. E.D. Cal. 2008).

17       When the Trustee was appointed in this case, the Debtor  
18 ceased to be a debtor-in-possession. As such, MLG's  
19 representation authorized under § 327 terminated as of the  
20 Trustee's appointment. The following services were rendered by  
21 MLG on or after July 12, 2011: preparation of the Application,  
22 certain aspects of case administration, and a portion of the  
23 Exemption Defense Services.<sup>19</sup> The court will consider and discuss  
24 these categories separately below.

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25  
26       19. MLG seeks a total of \$20,821.00 for the Post-Trustee  
27 Services. MLG seeks a total of \$19,007 for the time spent  
28 preparing the Application, all of which was generated in the  
post-Trustee period. MLG seeks a total of \$9,072 for the case  
administration category, \$806 of which was generated in the post-  
Trustee period. MLG seeks a total of \$19,860 for the Exemption  
Defense Services, \$1,008 of which was generated in the post-  
Trustee period.



1       The court will approve all of MLG's requested compensation  
2 in the amount of \$19,007 for time spent preparing the  
3 Application. "[B]ankruptcy counsel are entitled to compensation  
4 for time and effort spent in preparing fee applications." In re  
5 Nucorp Energy, Inc. 764 F.2d 655, 662 (9th Cir. 1985). To  
6 require attorneys to file fee applications, yet "refuse to award  
7 compensation [to them] for the time spent preparing or litigating  
8 fee applications," would result in the dilution of the attorney's  
9 rate for services. Id. The compensation of professionals in the  
10 bankruptcy arena is a peculiar practice. To be paid, Rule 2016  
11 requires the professional to prepare and present an extensive fee  
12 application. Lest the dilution of deserved fees, the court will  
13 not deny compensation for time and effort MLG spent in preparing  
14 the Application.

15       As stated above, the Supreme Court in Lamie emphasized that  
16 an attorney can only be paid if he or she is employed by the  
17 trustee and approved by the court. From February 2, 2011 through  
18 July 11, 2011, MLG was authorized under § 327 as the  
19 representative of the debtor-in-possession. However, MLG's time  
20 spent in preparing the Application should not be discounted  
21 merely because most of it was prepared in the post-Trustee  
22 period, as the Bankruptcy Code and Rules require the preparation  
23 of the Application. Lamie's requirement that the representative  
24 be authorized under § 327 does not compel this court to deny  
25 substantially all of MLG's fees for the preparation of the  
26 Application. On the other hand, MLG's services pertaining to  
27 case administration and the Exemption Defense Services in the  
28 post-Trustee period will be denied, because these were either

1 services rendered on behalf of the estate's representative -- the  
2 Trustee -- when the Trustee had not retained MLG pursuant to §  
3 327, or services rendered on behalf of the Debtor. Thus, the  
4 court will deny \$806 of MLG's services performed in the case  
5 administration category and \$1,008 for the Exemption Defense  
6 Services.

7       The Objecting Parties' last specific objection concerns the  
8 Exemption Defense Services. As stated above, \$1,008 of the  
9 \$19,860 requested by MLG for these services will be denied since  
10 that portion of the fees was generated in the post-Trustee  
11 period. The court will approve, however, the rest of those fees  
12 because the Exemption Defense Services were not only reasonable  
13 but fundamental to the representation of an individual in chapter  
14 11 proceedings, and rendered at a time when the Debtor was a  
15 debtor-in-possession. As stated earlier, when the debtor is an  
16 individual there often is an inherent tension that arises from  
17 the Bankruptcy Code's creation of the debtor-in-possession  
18 entity. A debtor-in-possession owes a fiduciary duty to  
19 creditors to maximize the value of the estate. Paradoxically, a  
20 debtor who is an individual enjoys the benefits of exemptions  
21 provided by the Bankruptcy Code that are -- by definition --  
22 designed to reduce recovery for creditors. Based on this  
23 reasoning, the court finds that although the Exemption Defense  
24 Services benefitted the Debtor, they also assisted the overall  
25 administration of the case.

#### 26                                   IV. CONCLUSION

27       Based on the foregoing, the court will limit MLG's fees to  
28 \$272,463.50. The court will also award MLG its costs, in the

1 amount requested of \$5,426.31. Thus, the total award will be in  
2 the amount of \$277,889.81. Reducing the Interim Award amount of  
3 \$164,764.16 from the total award amount, the total adjusted  
4 amount of the award is \$113,125.65.

5 The court will issue an appropriate order.

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8 Dated: February 6, 2012

/s/

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ROBERT S. BARDWIL

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United States Bankruptcy Judge

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