

1  
2  
3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA

5 In re  
6 RICK PIERCE

Case No. 98-19111-A-11  
DC No. NK-1

7 Debtor.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
FINAL APPLICATION FOR  
COMPENSATION AND REIMBURSEMENT  
OF EXPENSES BY DANNING, GILL,  
DIAMOND & KOLLITZ, LLP, AS  
COUNSEL FOR THE CHAPTER 11  
OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS

11  
12 A hearing was held October 19, 2005, on the Final  
13 Application for Compensation and Reimbursement of Expenses by  
14 Danning, Gill, Diamond & Kollitz, LLP ("Danning-Gill") as counsel  
15 for the chapter 11 Official Committee of Unsecured Creditors (the  
16 "Committee"). Following the hearing, the court took the matter  
17 under submission. This memorandum contains findings of fact and  
18 conclusions of law required by Federal Rule of Bankruptcy  
19 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a  
20 core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

21 This bankruptcy case began September 23, 1998, when an  
22 involuntary petition under chapter 11 was filed against the  
23 debtor. An order for relief was entered October 14, 1998. On or  
24 about December 1998, the United States Trustee appointed an  
25 Official Committee of Unsecured Creditors. The case was  
26 converted to chapter 7 on October 14, 1999. Danning-Gill filed  
27 its First and Final Application for Compensation and  
28 Reimbursement of Expenses on December 23, 1999, and noticed it

1 for hearing in 2005.

2 The Committee's application to employ Danning-Gill as  
3 successor attorneys was filed April 6, 1999. This application  
4 was made after the Committee was reorganized. In the  
5 application, the Committee proposed to employ Danning-Gill as  
6 successor attorneys. The initial attorney for the Committee had  
7 been Bruce Leichty ("Leichty"). On April 23, 1999, the court  
8 entered an order authorizing the Committee to employ Danning-  
9 Gill.

10 The application covers the period from March 8, 1999,  
11 through October 31, 1999. In the application, Danning-Gill  
12 requests an award of compensation in the amount of \$90,908 and  
13 reimbursement of expenses in the amount of \$15,222.76. The  
14 application is in an appropriate format. The services rendered  
15 are summarized. There is a narrative description of the  
16 services, and all of the time records are attached.

17 The application summarizes the services by professional,  
18 along with the hourly rates of each professional involved. By  
19 far, the bulk of the services were performed by Nancy Knupfer, a  
20 partner at Danning-Gill. Four of the persons who performed  
21 services, including Ms. Knupfer, have rates that exceed \$250 per  
22 hour. However, Danning-Gill states that it will waive all  
23 amounts in excess of \$250 per hour for professional compensation.  
24 If all professionals who performed services are billed at the  
25 lesser of \$250 per hour or their normal billing rate, the  
26 application for compensation of professionals is a request for  
27 approval of \$84,919.50, rather than \$90,908. This calculation is  
28 made as follows: 327.2 hours of work were performed by

1 professionals whose hourly rates exceed \$250 per hour. If that  
2 time is multiplied by a rate of \$250, the resulting total  
3 compensation requested is \$84,919.50.

4 The only opposition to the application was by Leichty.  
5 Leichty describes his status in filing an opposition as follows.  
6 He states that his opposition is:

7 "On behalf of the Law Offices of Bruce Leichty as a Chapter  
8 7 administrative creditor herein (as counsel for Trustee  
9 James Salven), and as a Chapter 11 administrative creditor  
10 herein (as initial counsel for the Creditors' Committee  
11 appointed in the underlying Chapter 11 proceeding, who  
12 intends to file a final application for his fees and costs  
13 incurred representing the Committee), without purporting to  
14 be acting in a representative capacity for the former  
15 Committee herein or the Trustee or any other creditor herein  
16 . . . ."<sup>1</sup>

17 The basis for the opposition is that Danning-Gill's  
18 employment was not authorized until April 23, 1999; Danning-Gill  
19 has failed to show that its fees are reasonable; and Danning-  
20 Gill's representation of the Committee "represented the  
21 hijacking" of the Committee and its services did not benefit the  
22 estate.

23 Having reviewed the fee application, the exhibits in support  
24 of it, the opposition, and the reply, the court is persuaded that  
25 the requested fees should be awarded.

26 It is correct that the order authorizing Danning-Gill's  
27 employment was not entered until April 23, 1999. However, the  
28 application to employ Danning-Gill was filed April 6, 1999, and  
that is the relevant date. As Danning-Gill observes, only one

---

<sup>1</sup>Leichty's opposition to the application, footnote omitted.  
Leichty's client, James Salven, the chapter 7 trustee, does not  
oppose the application.

1 entry was made in its time records from March 8, 1999, and it  
2 does not charge the Committee for that entry. Its services as  
3 far as billing is concerned commenced March 18, 1999. It is this  
4 court's long-standing policy that a thirty day window between  
5 commencement of services in a chapter 11 case and filing the  
6 application to be employed is generally not an unreasonably long  
7 period. See, In re Sinor, 87 B.R. 620 (Bankr. E.D. Cal. 1988).  
8 Here, the gap between the commencement of services on March 18,  
9 1999, and filing the application on April 6, 1999, is certainly  
10 not unreasonable and does not require the court to consider this  
11 as a nunc pro tunc application.

12 Second, based on Bankruptcy Code § 330(a), the court is  
13 persuaded that the compensation requested is reasonable,  
14 particularly when reduced as described above to \$84,919.50.  
15 Section 330(a)(3) provides that in determining the amount of  
16 reasonable compensation, the court shall consider the nature,  
17 extent, and value of the services in question. The court is to  
18 take into account all relevant factors. Those factors include  
19 the time spent on the services; the rates charged for the  
20 services; whether the services were necessary to the  
21 administration of the estate or beneficial at the time at which  
22 the service was rendered toward the completion of the case;  
23 whether the services were performed within a reasonable amount of  
24 time commensurate with the complexity, importance and nature of  
25 the problem; and whether the compensation is reasonable based on  
26 the customary compensation charged by comparably skilled  
27 practitioners in non-bankruptcy areas.

28 For the reasons described by Danning-Gill in its reply, the

1 court finds that the services were reasonable. Danning-Gill  
2 spent almost 351 hours on this case as counsel for the Committee  
3 over a ten month span. During that time, this was an extremely  
4 active chapter 11 case. Because of the factors in the case,  
5 counsel for the Committee was required, in order to adequately  
6 represent its client, to be extremely active in the case.

7 Numerous issues were raised in the case, some of which were  
8 novel and difficult. The issues included obtaining access to the  
9 debtor's books and records that were then being held by the  
10 Federal Bureau of Investigation; determining whether it was  
11 feasible to complete the development of or sell real property;  
12 and resolving litigation, in particular the Easy Riders'  
13 litigation, that could represent a value to the estate. Under  
14 all the circumstances of this case, the amount of time the  
15 Committee's counsel spent on these various factors was  
16 reasonable.

17 It was appropriate in this case for the Committee to have  
18 counsel that was sophisticated in dealing with chapter 11 issues,  
19 as Danning-Gill is. Because the case required a substantial  
20 amount of time and effort, it precluded counsel from much other  
21 work, particularly Ms. Knupfer.

22 Especially with the reduction to \$250 per hour for all time  
23 keepers, the hourly rates are within hourly rates charged by  
24 comparable attorneys in non-bankruptcy cases. Although the fees  
25 are not contingent, they are subject to asset recovery by the  
26 chapter 7 trustee. There has been significant delay in any hope  
27 of payment. Danning-Gill and the Committee had to act quickly in  
28 the case.

1       It is difficult to determine, five years later, the extent  
2 to which the services provided by Danning-Gill benefitted the  
3 estate. Certainly, it was important that Committee counsel, as  
4 well as the debtor's counsel, was actively involved in the  
5 beginning of the case to protect and preserve assets. The court  
6 does not yet know the extent to which the chapter 7 trustee has  
7 recovered assets or the extent to which there will be any benefit  
8 at all to unsecured creditors. Nonetheless, it is clear that at  
9 the time the services were rendered, the services by Danning-Gill  
10 were necessary. Danning-Gill is very experienced in handling  
11 chapter 11 matters. Overall, the services were reasonable.

12       Essentially, Leichty's opposition is based primarily on his  
13 continuing concern that the reformation of the Committee resulted  
14 in an unfairly constituted Committee as well as in the Committee  
15 terminating his services as its counsel and retaining Danning-  
16 Gill. However, there is no support for any of these assertions.  
17 The fact that some members of the Committee later were defendants  
18 in avoidance actions is not in and of itself an indication that  
19 any actions by the Committee were improper.

20       For the above reasons, the application will be granted.  
21 Expenses will be reimbursed in the amount of \$15,222.76.  
22 Professional compensation will be awarded in the reduced amount  
23 of \$84,919.50. Danning-Gill may submit an appropriate form of  
24 order consistent herewith.

25 DATED: January 18, 2006.

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