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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re) Case No. 03-10742-B-7
Sierra Custom Homes,)
a general partnership,)
Debtor.)
_____)

**MEMORANDUM DECISION REGARDING ATTORNEY’S
FINAL APPLICATION FOR COMPENSATION**

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata and claim preclusion.

Before the court is the final application for compensation (the “Application”) filed by Jeffrey L. Wall, Esq., attorney for the chapter 7 trustee. For the reasons set forth below, the Application will be granted in part and denied in part.

This memorandum decision contains the court’s findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a), made applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052. The court has jurisdiction over this matter under 28 U.S.C. § 1334 and 11 U.S.C. § 330¹ and General Orders 182 and 330 of the U.S. District Court for the Eastern District of California. This is a core proceeding

¹Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated *prior* to October 17, 2005, the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

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1 as defined in 28 U.S.C. § 157(b)(2)(A).

2 **Background - Findings of Fact.**

3 Sierra Custom Homes, a general partnership (“Sierra”) filed a voluntary petition
4 for relief under chapter 7 in January 2003. James E. Salven was appointed to be the
5 chapter 7 trustee (the “Trustee”). In March 2003, the court authorized the Trustee to
6 employ Jeffrey L. Wall, Esq., (“Wall”) to serve as his general counsel. The Trustee
7 reports that the bankruptcy case has now been fully administered, and his final report has
8 been reviewed and approved by the United States Trustee (“UST”). In the Application,
9 Wall requests approval of his attorney fees in the amount of \$45,745 and expenses in the
10 amount of \$1,124.17. The Trustee has filed a statement of support for the Application as
11 required by UST Guideline 2.2.2.

12 Sierra was a construction company in the business of building luxury custom
13 private homes. Prior to the bankruptcy, Sierra contracted with Quentin and Gwenlee
14 Cedar (the “Cedars”) to build their new luxury home overlooking Millerton Lake,
15 according to approved plans and specifications, for the sum of \$435,646 (the “Cedar
16 Project”). The Trustee reports that Sierra “drastically underbid” the Cedar Project.
17 Unfortunately, the Cedar Project did not turn out as the Cedars had hoped. It was fraught
18 with defects and delays. In addition, the Cedars requested a number of changes and
19 corrections to the Project.

20 The Cedars did not pay the full amount under their contract with Sierra and for
21 reasons that were disputed, Sierra’s involvement in the Cedar Project terminated abruptly.
22 Ultimately, the Cedars had to contract with another company to finish the Cedar Project
23 and they filed a lawsuit against Sierra in the Fresno County Superior Court for damages
24 resulting from, *inter alia*, alleged negligence and breach of contract (the “State Court
25 Litigation”). In response, Sierra filed this bankruptcy case which stayed the State Court
26 Litigation. The Cedars filed a proof of claim in this bankruptcy alleging unliquidated

1 damages in the amount of \$800,000 (the “Cedar Claim”).²

2 **The Adversary Proceeding.**

3 After this bankruptcy was filed, the Trustee appeared in the State Court Litigation
4 and filed a notice of removal, thus transferring that Litigation to an adversary proceeding
5 in this bankruptcy court. The Trustee also filed an objection to the Cedar Claim. The
6 adversary proceeding, together with the Trustee’s objection to the Cedar claim, were
7 eventually restated in a new adversary proceeding (no. 04-1379) in which the Trustee
8 sued the Cedars to collect \$280,000 representing money the Cedars purportedly owed for
9 “change orders” plus the unpaid progress payments on the original construction contract
10 (the “Cedar Dispute”). The Cedars asserted their Claim as a defense to the Cedar Dispute
11 and as an offset to any recovery the Trustee may be entitled to.

12 In December 2003, the Trustee requested and received permission to engage the
13 law firm of Thomas E. Campagne & Associates (“Campagne”) to serve as his special
14 counsel for prosecution of the Cedar Dispute. Campagne purportedly specializes in
15 construction litigation and had been initially retained by Larry Byrd’s personal insurance
16 company, State Farm Insurance Co., to defend Sierra in the State Court Litigation. By
17 that time, Campagne had already conducted a significant amount of discovery in the State
18 Court Litigation and had been paid a substantial amount of legal fees. Campagne’s legal
19 fees as special counsel were also to be paid by the insurance company.³

20 In support of Wall’s Application, the Trustee filed a declaration explaining that he
21 and Wall analyzed the Cedar Dispute as “a straightforward breach of contract and
22 foreclosure of mechanics lien action in which the estate was owed a minimum of
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24 ²Sierra’s principals, Richard and Larry Byrd, both filed for bankruptcy relief under
25 chapter 13 in December 2002. The Cedars filed the same claim in both of those cases. Based on
26 the claim, the Cedars tried unsuccessfully to block confirmation of their chapter 13 plans.

27 ³In support of his application for employment, Thomas E. Campagne filed a declaration
28 stating that State Farm had already paid his law firm the sum of \$354,152.85 for services
rendered in the State Court Litigation before the Trustee removed it to the bankruptcy court.

1 \$100,000, (on a breach of contract theory) or on the upper end, as much as several
2 hundred thousand dollars, (on a quantum meruit theory).” The Trustee and his attorneys
3 “assessed the Cedars’ demands as *fallacious and insubstantial*, but recognized it would
4 probably require several days of trial in order to defeat those claims.” (Emphasis added.)
5 The attorneys further advised the Trustee that “the Cedars’ arguments and complaints
6 [appeared] to be *exaggerated and silly*. The case appeared to be one in which the Estate
7 was substantially likely to prevail.” (Emphasis added.)⁴

8 On October 8, 2003, this court held a pre-trial conference in the original
9 “removed” adversary proceeding. Wall and Campagne both attended that pre-trial
10 conference. At that hearing, I specifically asked Wall if he understood the complexity of
11 the issues that the Trustee had to prove to prevail in a complicated dispute involving
12 serious allegations of negligence and multiple construction defects. In light of the
13 Cedar’s substantial claim, I questioned the Trustee’s decision to remove the State Court
14 Litigation and prosecute the Cedar Dispute.

15 That dialogue was transcribed as follows:

16 The Court: [The Cedars are] suing for \$800,000, you’ve got a cross
17 complaint for . . . 280. . . it seems to me like you’ve got a
18 tremendous burden to prove that there wasn’t at least a couple
19 hundred thousand dollars of construction defects. You’ve got to
20 prove - - you’ve got to overcome their claims from 800,000 down to
21 280,000 just to prevent this thing from being a wash. You’ve got to
22 completely disprove all of their claims to collect your 280,000.

23 Mr. Wall: We’re well aware of that, your Honor. They’ve got, like,
24 300,000 for [attorney fees] and things like that in there. **We know**
25 **what’s involved in this case, that’s why we’re going forward with**
26 **it. We very carefully looked at the trustee’s prospects here.**
27 (Emphasis added.)

28 Adversary Proceeding No. 03-1097, Final Pre-Trial Conference Hr’g Tr. 28:12-25, 29:1-3, Oct. 8, 2003.

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⁴Declaration of James E. Salven in support of Attorney’s Fees Application filed on June 4, 2007.

1 **The Trial.**

2 The Cedar Dispute was finally tried before the Honorable Brett Dorian in July
3 2005. Wall attended all five days of the trial and fully participated in that litigation even
4 though the Trustee had employed Campagne for that purpose. It was a five-day court trial
5 and the results were disastrous for the Trustee. In a written decision filed on January 27,
6 2006, Judge Dorian awarded nothing to the Trustee and allowed the Cedar Claim in the
7 amount of \$198,570.42 (the “Memorandum Decision,” filed in adversary proceeding
8 number 04-1379).

9 In the Memorandum Decision, the court described the work which Sierra
10 performed on the Cedar’s home as “glaringly shoddy.” (Memorandum Decision 1:22.)
11 The Memorandum Decision addressed each of the Trustee’s theories of recovery on a
12 construction contract, including the quantum merit claim, and stated: “[The Trustee] fails
13 to understand how recovery is determined.” (Memorandum Decision 6:13-14.) With
14 regard to the Trustee’s legal authorities, Judge Dorian also noted: “The cases that the
15 trustee has cited do not stand for the proposition urged by the trustee that Sierra can
16 recover any additional amounts above the value of what it actually provided to the
17 Cedars.” (Memorandum Decision 7:18-20.) Finally, the Memorandum Decision
18 described other arguments proffered by the Trustee, such as the “breach of good faith and
19 fair dealing” argument, as “meritless.” (Memorandum Decision 10:14-15.)

20 Based on the Memorandum Decision, Judge Dorian entered a judgment in favor of
21 the Cedars (the “Judgment”), but that was not the end of the Cedar Dispute. The Trustee
22 filed an appeal of the Judgment in February 2006. The Trustee ultimately decided not to
23 prosecute the appeal and the parties stipulated to dismiss the appeal five months later.

24 **The Trustee’s Final Report.**

25 In November 2006, Wall filed his Application. In that Application, Wall requests
26 compensation for legal services in the amount of \$45,745 (261.4 hours at \$175 per hour)
27 and reimbursement of costs in the amount of \$1,124.17.

28 In March 2007, the Trustee filed his final report (the “TFR”). The TFR reported

1 total cash receipts in the estate of \$49,231.81. It appears that most of the money in the
2 estate was collected through Wall's activities unrelated to the Cedar Dispute and the court
3 has no reservation about approving his fees for that service. Wall states in support of his
4 Application that he litigated several breach of contract actions against other customers
5 who had failed to pay Sierra for various reasons. Those activities resulted in numerous
6 settlements, one in the amount of \$27,500, and the rest described as "small." Wall's
7 efforts resulted in various "preference" and "fraudulent transfer" recoveries totaling about
8 \$13,750.

9 The "Case Narrative" filed with the TFR suggests that Wall pursued numerous
10 litigation matters in an effort to collect Sierra's "accounts receivable" for construction
11 work that went array.⁵ The Trustee states that all matters, with the exception of the Cedar
12 Dispute, were either dismissed or settled "due to defendants providing *proof of*
13 *offset/damages*" (emphasis added). The TFR also reported administrative claims,
14 including Wall's Application, totaling \$56,370.26, a priority tax claim filed by the
15 Internal Revenue Service ("IRS") in the amount of \$19,608.11, and general unsecured
16 claims, (including the Cedar Claim allowed by Judge Dorian) in the amount of
17 \$1,397,624.72. The TFR showed that the estate is "administratively insolvent," meaning
18 that all of the assets in the estate would be distributed to pay the Trustee and his
19 professionals, principally Wall.⁶

20 **Wall's Fee Application.**

21 Both the TFR and the Application were heard together. By minute order, this
22 court ordered Wall to provide more information with regard to (1) the legal services
23 rendered by project category, (2) the legal fees and costs requested for each project
24

25 ⁵The court's docket shows a total of 7 adversary proceedings filed in this case, unrelated
26 to the Cedars.

27 ⁶The Trustee requested compensation of \$5,673 based on the statutory formula under
28 § 326(a). The Trustee had also employed Janzen, Tamberi and Wong ("JTW") as his
accountant. JTW requested compensation of \$2,406.50.

1 category, and (3) a statement of the results achieved in each project category. Wall was
2 instructed to show, with specificity, how the services rendered in relation to the
3 unsuccessful Cedar Dispute were reasonably likely to benefit the estate.

4 In response, the Trustee filed a declaration describing, from his perspective, the
5 problems underlying the Cedar Dispute and the work that was performed in that litigation.
6 The Trustee states, in essence, that Wall analyzed the merits of his case against the
7 Cedars, and the theories advanced. The Trustee elected to move forward with the Cedar
8 Dispute based on the analysis and recommendations of his attorneys, presumably Wall
9 and Campagne.

10 Wall also filed a response. That declaration reveals that Wall worked on at least
11 four other disputes in which Sierra had constructed a home and the customers refused to
12 pay what was “due” when the work was done. In each of those cases, the customer
13 “concocted reasons why they should not pay.” With one exception, each dispute was
14 settled for a “small return in the estate.”⁷

15 With regard to the Cedar Dispute, Wall spent 153.4 hours working on the Cedar
16 Dispute for which he requests compensation in the amount of \$26,845.00. Wall explains
17 his decision to prosecute the Cedar Dispute:

18 The largest project assigned to me in this bankruptcy case was the
19 Cedar litigation. In retrospect, hindsight being much better than
20 foresight, the Trustee would have been better off continuing to
21 litigate the lawsuit that was pending in state court when the
22 bankruptcy petition was filed, but at the time I was assigned the case,
23 it seemed the better course to remove it to bankruptcy court and try it
24 there. The Trustee told me that over one hundred thousand dollars
25 was owed to the Estate by Quentin and Gwenlee Cedar. After
26 several meetings with the Trustee, and a *review of the evidence from*
27 *the state court case*, I formed the opinion the potential recovery
28 justified the effort. *It should be noted that there was not enough*
money in the estate to pay for the litigation, so I believed, in essence,
that by agreeing to pursue this case for the Trustee, I would be paid
only if I prevailed. Thus, I was taking a large risk. (Emphasis
added.)

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28 ⁷Declaration of Jeffrey Wall Supporting Application for Fees filed on June 4, 2007.

1 **Issue.**

2 It is the court's function to determine how much of Wall's work on the Cedar
3 Dispute is compensable. Obviously, the Trustee had to do some work with regard to the
4 Cedar Dispute in performance of his duty to investigate the claim and make an informed
5 decision about its value to the bankruptcy estate. The court does not question the
6 Trustee's decision to employ Wall to advise and assist him in that effort and Wall is
7 entitled to some reasonable compensation for that service. However, Wall did not break
8 his "Cedar Dispute" time into subcategories. Therefore, the court has reviewed the record
9 and Wall's time entries relating to the Cedar Dispute and tried to separate the proverbial
10 "wheat from the chaff."

11 The Trustee acknowledges in his TFR that collection of Sierra's accounts was
12 complicated by the fact that *all of the customers asserted offsets and damage claims*.
13 Wall summarily discounted all of those complaints as "concocted." He described the
14 Cedars' objections as "fallacious and insubstantial" and advised the Trustee to move
15 forward boldly with the Cedar Dispute, even after the court questioned that course of
16 action based on the Cedar's alleged offset and damage claims.

17 Wall acknowledged that there was not enough money in the estate to pay for
18 litigation of the Cedar Dispute and that he understood he would only be paid for that work
19 if the Trustee prevailed. Well, the Trustee did not prevail in the Cedar Dispute, but Wall
20 has requested payment for his services anyway. The issue, therefore, before the court is
21 whether Wall's fees incurred in connection with the Cedar Dispute were reasonable and
22 necessary to the administration of the case, or reasonably likely to benefit the bankruptcy
23 estate at the time they were incurred. § 330(a)(4)A(ii).

24 **Analysis and Conclusions of Law.**

25 **Applicable Law.**

26 Neither the Trustee, nor the UST has questioned the fact that nobody will receive
27 anything from all the work that was done in this case except the Trustee's professionals.
28 However, the bankruptcy court has an independent duty to review the reasonableness of a

1 professional's fees, even when the trustee who employed that professional does not
2 object. *In re Montgomery Drilling Co.*, 121 B.R. 32, 35-36 (Bankr. E.D. Cal. 1990).

3 The standard for compensation of an attorney employed to work for the trustee in a
4 bankruptcy case is defined in § 330(a). Section 330(a)(1)(A) authorizes the court to
5 award "reasonable compensation for actual, necessary services rendered" by the attorney.
6 Section 330(a)(1)(B) authorizes "reimbursement for actual, necessary expenses." Section
7 330(a)(2) authorizes the court to "award compensation that is less than the amount of
8 compensation that is requested." The court must find that the compensation is reasonable.
9 Section 330 (a)(3) requires the court to consider "the nature, the extent, and the value of
10 such services, taking into account all relevant factors." Those "relevant factors" include
11 the time spent, the rates charged, and whether the services "were necessary to the
12 administration of, or beneficial at the time at which the service was rendered toward the
13 completion of" the bankruptcy case.

14 Even if the court finds that the services billed by an attorney are "actual," meaning
15 that the fee application reflects time entries properly charged as legal services, the
16 attorney must still demonstrate that the work performed was necessary and reasonable.
17 *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound*
18 *Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney employed under § 327 must
19 exercise good billing judgment with regard to the legal services undertaken. *Id.* at 959.
20 The court's authorization to employ an attorney to work in a bankruptcy case does not
21 give that attorney "free reign [sic] to run up a [legal fee] tab without considering the
22 maximum probable [as opposed to possible] recovery." *Id.* at 958. Prior to working on a
23 legal matter, the attorney is obligated to consider:

24 (a) Is the burden of the probable cost of legal services disproportionately
25 large in relation to the size of the estate and maximum probable recovery?

26 (b) To what extent will the estate suffer if the services are not rendered?

27 (c) To what extent may the estate benefit if the services are rendered and
28 what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

1 An attorney employed under § 327 is not held to guarantee the result of his/her
2 legal services. However, the attorney must demonstrate that the legal services billed to
3 the bankruptcy estate were “‘reasonably likely to benefit the estate when the services
4 were rendered’ §§ 330(a)(3)(C) and (a)(4)(A)(ii)(I)”; *Roberts, Sheridan & Kotel, P.C. v.*
5 *Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (9th Cir. BAP 2000). “A
6 bankruptcy court also must examine the circumstances and the manner in which services
7 are performed and the results achieved in order to arrive at a determination of a
8 reasonable fee allowance.” *Id.* When a cost benefit analysis indicates that the trustee and
9 his professionals are the only parties likely to benefit from the professional services, then
10 “the service is unwarranted and a court does not abuse its discretion in denying fees for
11 those services.” *Id.* at 109 (citation omitted).

12 A chapter 7 trustee’s attorney is responsible for his/her role in prosecuting
13 unsuccessful litigation, even if the trustee made the decision to pursue the litigation in the
14 first place. The attorney at least acquiesced in the decision. *Leichty v. Neary (In re*
15 *Strand)*, 375 F.3d 854, 859 (9th Cir. 2004). If the trustee insists on pursuing litigation
16 which is not cost-effective, then the attorney should seek to withdraw or, at least,
17 recommend that the trustee obtain a second opinion. *Id.* citing *Digesti & Peck v. Kitchen*
18 *Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 563 (9th Cir. BAP 1992)
19 (citation omitted).

20 **Reasonableness of Wall’s Fees Relating to the Cedar Litigation.**

21 Based on all of the circumstances and the applicable law, this court is not
22 persuaded that a large portion of Wall’s legal fees incurred in connection with
23 prosecution of the Cedar Dispute were necessary or reasonable. Wall’s efforts certainly
24 generated nothing for the bankruptcy estate, except a reduction of the unsecured Cedar
25 Claim. However, liquidation of the Cedar Claim was meaningless in the absence of
26 significant assets to pay to unsecured creditors. Given the fact that there was already a
27 substantial priority claim on file by the IRS and more than \$1 million of other unsecured
28 claims, it was highly unlikely that the unsecured creditors would receive a significant

1 distribution from the assets which the Trustee did collect.

2 The Trustee had a statutory duty to “examine proofs of claim and object to
3 allowance of any claim that is improper,” but that duty is specifically limited by the term
4 “if a purpose would be served.” § 704(5) Here, it is difficult for the court to see that any
5 real “purpose was served” by all of the effort which Wall devoted to litigating the Cedar
6 Claim, particularly since the cost of that effort exceeded any benefit to the creditors.
7 Legal fees incurred solely to reduce an unsecured claim should not be allowed where the
8 potential distribution to unsecured creditors was insignificant. *In re Riverside-Linden Inv.*
9 *Co.*, 85 B.R. 107, 111 (Bankr. S.D. Cal. 1988), *aff’d*, 99 B.R. 439 (9th Cir. BAP 1989),
10 *aff’d*, 925 F.2d 320 (9th Cir. 1991) (citation omitted). Prosecution of the Cedar Dispute
11 significantly delayed the Trustee’s ability to “expeditiously” close the case and distribute
12 the assets, which was his duty under § 704(1).

13 Early in the adversary proceeding, this court admonished Wall and the Trustee to
14 carefully consider the issues raised by the Cedars, and the potential difficulty of collecting
15 anything from the Cedars based on the construction of their home. Even at that time, this
16 court had serious reservations about the Trustee’s ability to disprove the Cedars’ defenses
17 and to actually collect any money above what the Cedars had already paid. Wall assured
18 the court that he and the Trustee had thoroughly reviewed evidence of Sierra’s work,
19 which Judge Dorian later described as “glaringly shoddy,” and evaluated the Trustee’s
20 theories of recovery which Judge Dorian eventually found to be “meritless.”

21 The facts of this case are similar to the facts in *In re Puget Sound Plywood*. In that
22 case, counsel for the unsecured creditors’ committee (“Uziel”) incurred a substantial
23 amount of legal fees objecting to the legal fees charged by secured creditor Chase
24 Commercial Corporation (“Chase”), which exceeded \$120,000. The debtor actively
25 questioned the merits of the objection, and the ultimate results were substantially less than
26 Uziel had anticipated. The bankruptcy court reduced Uziel’s fees from the amount billed,
27 \$21,465.00 to \$6,172.32, one-third of the actual recovery plus \$1,000 for other services.
28 The district court and the Ninth Circuit Court of Appeals both affirmed. In its ruling, the

1 Circuit noted that “Uziel knew that \$120,000 was not a probable recovery.” 924 F.2d at
2 959. The court also noted that the debtor’s general manager had advised the Committee
3 in several conversations that, “pursuing the Chase matter ‘didn’t appear to . . . [be] a very
4 good risk-reward situation and that there was a high chance that the legal fees would
5 more than exceed any possible recovery and that [PSP] didn’t think [it] ought to throw
6 good money after bad.’” *Id.*

7 Looking at the “big picture,” there obviously was a reason why Sierra, a
8 construction company, failed so miserably and had to file for bankruptcy relief under
9 chapter 7. The Trustee knew early in the case that many of Sierra’s customers had not
10 paid Sierra based on offsets and damage claims. The Trustee either dismissed or
11 recovered only a small settlement in virtually all of those cases except the Cedar Dispute.
12 With regard to the Cedar’s home, the Trustee acknowledged that Sierra “drastically
13 underbid” the project from which the Trustee should have inferred that there were
14 probably other problems with Sierra’s internal operations. Given that track record of
15 construction problems, it is not clear why Wall and the Trustee were so confident in their
16 ability to both (1) completely disprove all of the issues in the Cedar Claim and (2)
17 affirmatively prove and collect substantial breach of contract damages from the Cedars,
18 the same people who were so passionately unhappy with Sierra’s work. Against this back
19 drop, Wall and the Trustee should have taken the Cedar’s complaints much more
20 seriously.

21 It is not clear what “advice” the Trustee relied on from his attorneys; presumably,
22 that included “advice” from special counsel Campagne. It is clear, however, that that
23 “advice” was soundly erroneous. To the extent that Wall and the Trustee may have relied
24 on Campagne’s familiarity with, and analysis of the Cedar Dispute, that reliance was
25 misplaced. Campagne was employed by an insurance company to defend the Cedar’s
26 complaint for damages in the State Court Litigation. Campagne was first and foremost an
27 insurance defense attorney. Prior to being employed as the Trustee’s special counsel,
28 Campagne’s duties ran to the insurance company, not to the bankruptcy estate. To the

1 extent that Campagne helped define the Cedars' complaints as "exaggerated and silly," it
2 appears that Campagne was thinking more of the argument he might make to a jury, not
3 the advice he should be giving to a bankruptcy trustee. The Trustee's duties are defined
4 in § 704; the Trustee's duties run to the creditors. The Trustee's duties called for an
5 independent and prudent analysis of the Cedar Dispute. The court is not persuaded that
6 litigation of the Cedar Dispute was "necessary to the administration of the case" or
7 "reasonably likely to benefit the debtor's estate." § 330(a)(4)(A)(ii).

8 In *Puget Sound Plywood*, the court found that one-third of the legal fees was a
9 reasonable reward for the work performed in light of the results achieved. Here, Wall has
10 allocated 153.4 hours of his time to the Cedar Dispute. Using *Puget Sound Plywood* as a
11 starting point for the analysis, one-third of that time would be 51.1 hours. Wall's billing
12 records show that he began working on, and billing for, the Cedar Dispute on April 1,
13 2003. By the time he had spent 51 hours on the Cedar Dispute, it was December 2, 2003
14 - eight months later. By that time, virtually all of the proofs of claim had been filed.
15 Wall knew about how much money was, or would be in the estate.⁸ Wall had already
16 settled several other collection matters in which Sierra's customers had provided proof of
17 offsets and damages. Wall had had numerous meetings and discussions with Campagne
18 and his staff. He had reviewed all of the relevant Cedar pleadings, including the
19 discovery that had been done in the State Court Litigation. He had communicated with
20 Quentin Cedar and the Cedar's attorney about the Dispute. He had reviewed the Cedar's
21 initial discovery disclosures in the adversary proceeding. He had reviewed Campagne's
22 video tapes of the Cedar Project. He had discussed the case with Sierra's principal,
23 Richard Byrd and done a substantial amount of work on an ill-fated summary judgment
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27 ⁸The docket shows that all of the adversary proceedings which did produce a settlement
28 had been settled and dismissed, or had a pending settlement motion by December 2003.

1 motion.⁹ Within that time, Wall had also attended the above-referenced pre-trial
2 conference at which the court questioned his analysis of the Cedar Dispute and his
3 conclusions regarding the likely recovery. By the time Wall had spent 51 hours working
4 on the Cedar Dispute, he either knew, or should have known, that there were serious
5 problems with Sierra’s performance of the Cedar Project, that protracted litigation with
6 the Cedars was not likely to produce any benefit for the estate, and that the net benefit
7 from litigation over the Cedar Claim would be relatively insignificant. By that time Wall
8 should have taken steps to extricate the Estate from any further participation in the Cedar
9 Dispute and stop the “slow bleed” of estate assets.¹⁰ If the Trustee insisted on pursuit of
10 meritless litigation, Wall should have sought to withdraw as the Trustee’s general
11 counsel. *In re Strand*, 375 F.3d at 859.

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23 ⁹The Trustee filed a motion for summary adjudication of issues on November 12, 2003.
24 That motion was granted in part and denied in part. The court ruled that there was no dispute as
25 to certain dates and amounts paid by the Cedars. However, there were triable issues of material
26 fact regarding Sierra’s performance of its contract with the Cedars and the value of the work it
27 did.

28 ¹⁰To the extent that the Cedars still asserted a claim against Larry Byrd’s insurance
company, the Dispute could have been remanded to the state court where Campagne could
continue to litigate those issues for the insurance company.

