

11 USC §506(b)
Attorney Fees

USNB v. FMC Corp BAP No. OR-90-1138 MeRO
In re Your Town and Country Co-op 386-01239-S11
1/18/91 unpublished BAP reversed & remanded DDS oral ruling

The debtor and some creditors objected to the fees requested by USNB as part of its secured claim under §506(b). The objecting parties claimed that the fees were excessive, but did not itemize their objections. The bankruptcy court scheduled a hearing on the fees.

At the close of the hearing on the fees, Judge Sullivan announced that he had reviewed in detail four of the thirty two months of fees, and found 24.125% of the time in those months to be unreasonable. Based on the sample, the court awarded 75.875% of the total fees requested. The Judge then announced which specific time entries in the four month period were unreasonable. He allowed a maximum of .10 hour for a telephone call to court personnel, and also decreased the time billed for other routine matters such as phone calls and the drafting of various pleadings.

The BAP reversed the award and remanded the case for further consideration of the proper amount of the fees. The panel stated that the court had abused its discretion by not giving the parties an opportunity to respond to the specific reductions before making a final determination on the fee award.

The panel stated that "nothing in this decision should be read as a condemnation of the audit technique employed by the trial court. Such a method may be valid where counsel have an

opportunity to refute the conclusions reached on the basis that the
audit sample was not representative."

P91-2(5)

NOT FOR PUBLICATION

FILED

JAN 18 1991 *cd*

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re)	BAP No. OR-90-1138 MeRO
YOUR TOWN AND COUNTRY CO-OP,)	Bk. No. 386-01239-S11
Debtor.)	

UNITED STATES NATIONAL BANK
OF OREGON,

MEMORANDUM

Appellant,

v.

FMC CORPORATION,
HELENA CHEMICAL CO.,
WILBUR-ELLIS CO., and
UNITED STATES TRUSTEE,

Appellees.

Argued and Submitted
September 13, 1990 at Portland, Oregon

Filed: JAN 18 1991

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Donal D. Sullivan, Bankruptcy Judge, Presiding

Before: MEYERS, RUSSELL, and OLLASON, Bankruptcy Judges

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I

At the close of a hearing for attorney's fees, the bankruptcy court announced that it had examined in detail four of the thirty-two months of fees and determined that due to excessive time billed only 75.875% of the fees claimed for these four months were reasonable. The court then awarded 75.875% of the requested compensation in the thirty-two months overall, denying fees in the amount of \$5,506.06. The Bank contests this methodology in awarding legal fees. We **REVERSE** and **REMAND**.

II

FACTS

Appellant, the United States National Bank of Oregon ("Bank"), a secured creditor of Your Town & Country Co-op ("Debtor"), engaged attorneys for a thirty-two month period and eventually obtained full payment of its secured claim of nearly \$2 million. Upon final liquidation of the Debtor's assets, appellant filed a motion pursuant to 11 U.S.C. § 506(b) for attorney's fees of \$22,540.00 and expenses of \$861.38.

The trial court employed the "lodestar" method for calculating attorney's fees--namely, multiplying reasonable rates by a reasonable amount of hours worked. The court did not announce which time charges it had determined to be unreasonable until the end of the fee application hearing. It

1 announced that it had set maximum time allowances for certain
2 tasks, such as "routine" telephone calls, preparation of a
3 "routine" motion or order and review of the file and had
4 disallowed all time charges which exceeded these allowances.
5 Applying these categorical time reductions, the court calcu-
6 lated the proportion of allowed fees to requested fees in each
7 of four selected months and averaged these percentile figures
8 arithmetically. This produced the "adjustment figure" of
9 75.875%, which the judge then applied to the entire thirty-two
10 months of fees. In this manner, the requested reimbursement
11 of \$22,540.00 was reduced to \$17,033.94.

12 13 III

14 DISCUSSION

15 Although the bankruptcy court conducted a hearing for
16 fees, it did not inform the Bank's attorneys that their fees
17 had been categorically discounted until the end of the hear-
18 ing. Consequently, the Bank was denied an opportunity to
19 advise the court in reaching its findings. We hold that this
20 was an abuse of discretion.

21 We follow the reasoning of In re Nat'l Paragon Corp., 87
22 B.R. 11, 13 (E.D. Pa. 1988), in which across-the-board reduc-
23 tions of attorney time spent in conference were disallowed.
24 The district court stated:

25 [T]he decision itself by the bankruptcy court to deny,
26 across-the-board, full compensation for each lawyer's
time spent in intra-office conferences constitutes an
abuse of discretion. Using such an approach, the

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bankruptcy court does not consider the reasonableness of the requested time or the reasonableness of the conference itself. Rather, debtor's counsel is awarded only a fraction of the fees to which it may be legitimately entitled. . . Assuming, without any justification for doing so, that all requests for compensation for intra-office conferences are excessive is a clear abuse of discretion.

Other courts have also rejected overbroad fee reductions. See, e.g., Matter of Cena's Fine Furniture, Inc., 109 B.R. 575, 582 (E.D. N.Y. 1990) (While some "puffing" took place in the records, the bankruptcy court erred in finding that the time records were essentially incredible in toto); Moore v. Jas. H. Matthews & Co., 682 F.2d 830, 839 (9th Cir. 1982) (Abuse of discretion to reduce attorney's hours by half and billing rates by more than one-half solely because the judge believed counsel produced some less than useful material);¹ In re Fine Paper Antitrust Litig., 751 F.2d 562, 594 (3rd Cir. 1984) (Error to cut 50% of all pretrial memorandum time).

Parties must be given a chance to respond before attorney's fees may be reduced. Wilson v. Dep't of Health and Human Services, 834 F.2d 1011, 1012 (Fed. Cir. 1987).

Much of the evidence on which the judge will base his award or denial of fees may be disputed; the evidence presented by an attorney petitioning for fees may be incomplete. The denial of fees obviously harms the petitioning attorney. Just as obviously, award of attorneys' fees harms the unrepresented claimant by reducing his net recovery. These opposing interests should be afforded

¹ Because the computation of attorney's fees in bankruptcy matters is analogous to that performed in other areas of the law, the reasoning of non-bankruptcy decisions may be applied to the case at issue. In re Powerine Oil Co., 71 B.R. 767, 771 n.3 (9th Cir. BAP 1986).

1 a hearing to provide an evidentiary basis for
2 resolution of disputed factual matters and to
3 allow the parties to supplement possibly incom-
plete statements of opposing parties.

4 Lindy Bros. Bldrs., Inc. of Phila. v. American R.&S. San. Corp.,
5 487 F.2d 161, 169 (3rd Cir. 1973).

6 There was a fee award hearing in this case; yet the Bank was
7 not given a fair opportunity to address the deficiencies cited at
8 the conclusion of the hearing. We therefore hold that the
9 bankruptcy court erred in reducing attorney compensation without
10 first giving appellant the chance to respond to the asserted
11 problems in its claim for fees. While the Panel has determined
12 to remand this appeal for further proceedings, nothing in this
13 decision should be read as a condemnation of the audit technique
14 employed by the trial court. Such a method may be valid where
15 counsel have an opportunity to refute the conclusions reached on
16 the basis that the audit sample was not representative.

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18 IV

19 CONCLUSION

20 The award of fees is REVERSED and this proceeding is
21 REMANDED to the bankruptcy court for further consideration of the
22 proper amount of attorney compensation.
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