

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:) CASE NO: 07-20027
)
)
SCOTIA DEVELOPMENT, LLC, AND) Corpus Christi, Texas
OFFICIAL UNSECURED CREDITORS')
COMMITTEE,)
) Friday, December 5, 2008
) (8:59 a.m. to 9:06 a.m.)
Debtor.)

OBJECTIONS TO CLAIMS / MOTION HEARINGS

** PARTIAL TRANSCRIPT **
(RULING ONLY)

BEFORE THE HONORABLE RICHARD S. SCHMIDT,
UNITED STATES BANKRUPTCY JUDGE

Appearances: See next page
Courtroom Deputy: Frenchie Carbia
Court Recorder: Janet Silika
Transcribed by: Exceptional Reporting Services, Inc.
14493 S. Padre Island Drive
Suite A-400
Corpus Christi, TX 78418-5940
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

COURTROOM APPEARANCES FOR:

Debtor: N. PETER HOLZER, ESQ.
Jordan Hyden et al.
500 N. Shoreline Dr.
Suite 900
Corpus Christi, TX 78471

PATRICK LANCELIN, ESQ.

TELEPHONIC APPEARANCES FOR:

Scotia Pacific: ERIC FROMME, ESQ.
Gibson, Dunn & Crutcher, LLP

Scotia Development, LLC: KATHRYN A. COLEMAN, ESQ.
Gibson, Dunn & Crutcher, LLP

Official Unsecured
Creditor's Committee: MAXIM B. LITVAK, ESQ.
Pachulski Stang Ziehl & Jones LLP

Also Present: BRIAN HALE, ESQ.

1 Corpus Christi, Texas; Friday, December 5, 2008; 8:59 a.m.

2 **THE COURT:** The first thing I wanted to do was I want
3 to go ahead and announce my decision with respect to the
4 Gibson, Dunn and Crutcher fee application.

5 I would start by saying that as a general rule that I
6 found the representation of Gibson, Dunn and Crutcher to be
7 exemplary, despite the fact that they were involved in what
8 might be called an ethical minefield in the sense that their
9 representation throughout the case -- they were representing a
10 debtor and were adverse to some interests and as the case
11 proceeded and the status of the debtor, the opportunities of
12 debtor plans changed their interests -- were required to change
13 throughout the case.

14 I thought that they did an exemplary job of handling
15 their client, as well as the interests of the case throughout
16 the case and particularly in the confirmation hearing. I
17 thought that their arguments and their witnesses were
18 particularly helpful for the Court and provided benefit to the
19 estate in the sense that I thought, in fact, that their
20 witnesses and their argument were those that led the Court to
21 make findings of amounts that perhaps would have otherwise been
22 much lower for the value of some of the property.

23 Once that's said, then, evaluating the amounts of the
24 application, there was no evidence presented to suggest that
25 the amount of work that was done or that the fees charged on an

1 hourly basis were anything but within -- they were all
2 necessary, that they were all reasonable and that the rates
3 charged, considering the difficulty of the case, the size of
4 the case, the national nature of the case, all of their rates
5 were reasonable.

6 There were really only three areas of the fee
7 application that I had trouble with. The first one is the
8 amount that was charged for the contract lawyer service. It's
9 important to note that the theory for fee applications, at
10 least in the Southern District of Texas, is that all of the
11 overhead charges of a law firm are included in the hourly rate
12 of the lawyers and, therefore, as a result of that if it's
13 necessary for you to hire lawyers and pay actual funds for
14 those lawyers and you are providing overhead for those lawyers,
15 the actual costs of those lawyers -- those contract lawyers --
16 does not include overhead, so it does seem appropriate to me to
17 charge for overhead.

18 Now, my experience on what a reasonable overhead
19 charge tells me, at least 20 years ago when I was in the
20 practice of law, that it was perhaps more like 50 percent; in
21 other words, the actual in comparison to the cost of the
22 lawyers that perhaps it would be about 50 percent.

23 However, there was no evidence to suggest anything
24 different than that the overhead that was actually expended by
25 Gibson, Dunn and Crutcher associated with these lawyers was the

1 amount. Although it was higher than -- it was more than 100
2 percent of the actual cost of the lawyers -- there was nothing
3 to indicate that that was not the actual overhead that was
4 related to those lawyers -- the office space, the secretarial
5 time, all of the other myriad of issues that comprise overhead;
6 so that I believe that the amount that was suggested -- there
7 were three parts to the fees charged for the contract lawyers:
8 The actual fee, which I find to be reasonable; there was
9 overhead, which probably over the last 20 years has probably
10 gone up anyway --

11 So anyway, my experience does not outweigh the
12 evidence before me, which suggests that it's whatever that they
13 said it was, which there was nothing to -- no evidence to
14 contradict that. So, I would find that that is reasonable.

15 I don't find anything to support the notion that you
16 can also charge an additional profit margin. And I don't find
17 any support for that. It would be similar to trying to charge
18 profit for the use of the mail or, you know, when you had a
19 mail charge, add a profit onto that. We don't allow that, so I
20 don't know how I could allow profit in addition to the overhead
21 charge and the actual charge. So, I am not approving the
22 profit charge that was in it.

23 Then there were two minor other problems. In the
24 Southern District of New York, it apparently is okay to feed
25 office workers after hours. And for some reason, which escapes

1 me, the Southern District of Texas local rules don't provide
2 that. Quite honestly, I don't even necessarily agree with
3 that; however, since that's the rule in the Southern District
4 of Texas, I think I'm bound to follow it and so those minor
5 charges for food for office employees after hours have to be
6 extracted from the fee application.

7 The other local rule does not allow any charges for
8 alcohol. There were some minor charges for alcohol on the
9 bills, also. It's always been my theory that bankruptcy
10 lawyers ought to be able to charge the same as other lawyers
11 and I'm sure that it's customary to probably drink wine with a
12 meal at night. But, I'm not going to go against the local
13 rule.

14 And so, I will approve the fee application and you
15 may submit an order that subtracts from the expenses the profit
16 for the contract workers, the minor charges for -- I assume --
17 sandwiches at night for the office workers, and the minor
18 charges for alcohol; and submit that order to me and I'll sign
19 it.

20 **(This portion of the proceeding concluded at 9:06 a.m.;**
21 **hearing continued; not transcribed)**

22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



December 9, 2008

TONI HUDSON, TRANSCRIBER