

1 Option One, and \$127,000 in junior obligations. Consequently, at
2 least on paper, and without consideration of costs of sale and
3 any exemption claim, the Nevada property purported to have
4 \$173,000 in equity and the San Diego property \$203,000. On
5 Schedule F, debtor listed five creditors with total claims of
6 \$171,121.86. The largest was Stock Enterprises, with a judgment
7 of \$102,121.86, followed by David Morgan with a loan claim of
8 \$50,000.

9 On April 15, 2005 Option One filed for relief from stay on
10 the San Diego property. The meeting of creditors was continued
11 to May 6, and on April 25 debtor filed opposition to Option One's
12 motion and requested a hearing. Debtor also filed amendments to
13 Schedules D and F. On D two creditors were added, with claims
14 totalling \$36,396 on the San Diego property, and one deleted with
15 a \$120,000 claim, thereby increasing the purported equity in the
16 San Diego property to \$286,604. Schedule F deleted a \$3,000
17 claim. With that state of affairs, and Option One's impending
18 relief from stay hearing, the trustee consulted prospective
19 counsel, Mr. Slater on May 3, 2005. That same date, Mr. Slater
20 made calls about litigation in Riverside, and the next day talked
21 with Mr. Gardner about Stock Enterprises' claim.

22 The relief from stay hearing was continued, as was the first
23 meeting of creditors. Meanwhile, the trustee was obtaining a
24 market analysis for the Nevada property, and counsel was
25 endeavoring to learn about \$120,000 on deposit in an attorney's
26 trust account in Phoenix. At the same time, counsel was filing

1 notice in both San Diego and Nevada to ensure the estate's
2 interest in the real estate in both places was protected.

3 Stock apparently had obtained a default judgment against
4 Mr. Logue prepetition. Postpetition, debtor sought to set it
5 aside. Stock sought relief from stay to oppose those efforts.
6 Then, on May 16, the second trust deed holder on the Nevada
7 property sought relief to foreclose, and was ready to go sale if
8 relief was granted. Then the meeting of creditors was continued
9 again. Debtor, meanwhile, urged the trustee to liquidate the
10 Nevada property first, in the hopes the San Diego residence could
11 be preserved.

12 An offer of \$900,000 from Mr. Coleman for the Nevada
13 property was relayed to the trustee in late May. The seminal
14 event in the case occurred at the continued meeting of creditors
15 in early June when the debtor wrote the trustee a check for
16 \$200,000, which was thought to be an amount sufficient to pay all
17 unsecured creditors in full and leave an amount to cover
18 administrative claims of the trustee and his professionals. At
19 the same time, debtor also disclosed information about the liens
20 on the Nevada property which was not in the schedules. A title
21 report also showed discrepancies, but the issue as of the § 341
22 meeting became what was the purpose in dealing with the real
23 estate if the prepetition unsecured creditors could be paid in
24 full from the \$200,000. The trustee made that clear at the
25 meeting of creditors.

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1 The trustee promptly sought and obtained a claims bar date,
2 which was set for September 7, 2005. Meanwhile, the trustee had
3 opposed the relief from stay motion on the Nevada property
4 because of his intent to sell it, and had obtained a continuance
5 of the motion on the San Diego property. The trustee, through
6 counsel, also obtained a stipulation from debtor extending time
7 for all parties in interest to object to discharge and/or
8 dischargeability.

9 Trustee's counsel sought an ex parte turnover order in late
10 June to require the Phoenix attorney to surrender the funds in
11 his trust account which the debtor claimed were his from a
12 prepetition sale of a check cashing business to Buckeye. The
13 attorney insisted on a court order to protect himself because
14 apparently Buckeye made demand on him for the same funds.

15 The trustee sought to employ a Nevada broker to sell the
16 property, ostensibly to Coleman. However, Coleman never made the
17 requisite deposit to move the sale forward, the second trust deed
18 holder was pressing to move forward since he had to protect his
19 own position against the first, and the trustee apparently
20 concluded that the estate had sufficient assets to pay creditors
21 without resort to the Nevada property. On August 1, the trustee
22 gave notice he intended to abandon the Nevada property because:
23 "Estate has received funds in an amount sufficient to pay all
24 scheduled unsecured claims. Therefore, the administration of
25 this property is unnecessary." That same date, the Court granted
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1 relief to the holder of the second allowing him to go to sale on
2 or after September 16, which was after the claims bar date.

3 On September 2, Stock filed its objection to the proposed
4 abandonment, contending the trustee should wait past the claims
5 bar date, and should also be sure there would be no sold-out
6 junior creditors who then became unsecured creditors entitled to
7 participate as such in the estate's funds. Three weeks later,
8 Stock withdrew its objection before hearing. Stock's objection
9 had been preceded in early August by phone and mail
10 communications between Stock's counsel and trustee's counsel,
11 pressing for sale of the Nevada property.

12 On or about October 1, 2005 trustee's counsel changed firms,
13 and the successor substituted in. Fees accrued as of that point
14 in time were \$32,846, and costs of \$426.21 for the original firm.
15 Stock's essential objection is that trustee's counsel "over-
16 lawyered" the case when "all" that had to be done was wait out
17 the claims bar date to ascertain if the \$200,000 would be
18 sufficient to pay claims. The Court disagrees in some measure.
19 The trustee clearly could not, and did not know in June 2005 the
20 full extent of claims against the estate, much less whether there
21 were unknown creditors claiming to be secured by junior positions
22 on the Nevada and/or San Diego properties, who might become
23 unsecured if foreclosures by senior creditors occurred. Indeed,
24 that was Stock's argument against the trustee's abandonment of
25 the Nevada property. The trustee had to seek a claims bar date
26 and allow the time to run, which he did. Further, the Court

1 recognizes that even hindsight is not "20-20", and neither the
2 trustee nor his professionals should be held to a hindsight
3 standard.

4 The issues involving the Nevada property consumed a lot of
5 attorney time, only to be abandoned and foreclosed upon. The
6 Court's review of the firm's time records indicates approximately
7 \$8,729 accrued just in the efforts to sell the property, and
8 another \$3,368 in dealing with the creditor's relief from stay
9 motion. The Court is persuaded that Stock did urge the trustee
10 to press the sale, and that Stock opposed abandonment, which did
11 necessitate action. However, much of counsel's time was spent in
12 June and July in promoting the sale efforts. The Court finds no
13 basis for reducing the fees incurred, and sought to be paid, for
14 the work on the Nevada property.

15 The other big ticket item for the period of service of the
16 original firm was work on recovering the funds held by attorney
17 Groves and to which Buckeye also laid claim - essentially an
18 interpleader. The trustee had reason to believe the funds more
19 property of the bankruptcy estate, and had a duty to attempt to
20 recover them. The only real question might be why bother if the
21 estate is solvent from the \$200,000 payment. But, of course,
22 whether the estate is in fact solvent at the time the funds are
23 being pursued was in fact unknown to the trustee and his counsel.
24 In hindsight, perhaps they could have waited to fight over the
25 funds until they could see if they were necessary, but at what
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1 risk to the estate's interest with Buckeye also demanding the
2 funds.

3 The Court shares Stock's dismay that accrued fees had risen
4 to the level they had, especially when the parties thought the
5 estate was likely solvent if administrative fees stayed low. But
6 the real properties were there, and could not be ignored. Nor
7 could the funds in Groves' account. In its review, the Court
8 noted that the firm included interest charges on accrued but
9 unpaid fees, which is not compensable. In re Riverside-Linden
10 Investment Co., 945 F.2d 320, 324 (9th Cir. 1991). Those charges
11 totalled \$561.52, and are disallowed.

12 Accordingly, the firm of Ferrette & Slater is allowed
13 attorney's fees of \$32,284.48 and costs of \$426.21.

14 The successor firm, Slater and Truxaw seeks fees of
15 \$27,719.50, costs of \$302.69, and up to \$750 to wrap up its work
16 on the case. Most of the fees sought in the various billing
17 categories are relatively nominal, and are not in serious
18 dispute. The major category is Claims Administration, for which
19 the firm seeks \$18,444. Roughly \$7,000 of that was incurred in
20 resolving the Buckeye claim (in addition to almost \$8,000 of the
21 fees incurred by the predecessor firm). A similar amount
22 (approximately \$7,000) was incurred by counsel in efforts to
23 oppose Stock's efforts to obtain an early distribution to
24 unsecured creditors from funds in the trustee's possession, all
25 after the claims bar date had passed. As the record reflects,
26 the Court ultimately ordered an interim distribution. In the

1 Court's view, both then and now, a full-fledged opposition by the
2 trustee's counsel was not warranted under the circumstances. At
3 most, a brief statement comprised of a status report and summary
4 of reasons why an interim distribution should not be ordered
5 would have been appropriate, but not what was submitted, all at
6 ostensibly the creditors' expense. The Court disallows \$5,000 of
7 the fees sought for those efforts.

8 The Buckeye issue is the most troubling. As the Court
9 understands the circumstances, one of debtor's businesses sold a
10 check-cashing business to Buckeye. Attorney Groves held
11 approximately \$127,000 in a trust account which Buckeye claimed
12 was earmarked for it. The trustee, on the other hand, contended
13 the funds were property of the bankruptcy estate. Groves was
14 just a stakeholder, with no interest in the funds, and with two
15 competing claimants. He acceded to a turnover order obtained by
16 the trustee, and Buckeye was left to try to recover the funds
17 from the trustee. The trustee ultimately delivered the funds to
18 Buckeye through a settlement that authorized the trustee to
19 retain \$5,000 to partially defray the attorneys' fees the estate
20 had incurred. So, approximately \$15,000 in fees were incurred
21 during the Groves/Buckeye claim resolution, and Buckeye agreed
22 the estate could keep \$5,000 of the over \$127,000, with the
23 balance going to Buckeye.

24 As the Court has already noted, the trustee had to do
25 something about the estate's claim to the funds held by Groves.
26 How much, and when something had to be done is not reviewable by

1 hindsight, and it is clear to the Court that the services, when
2 rendered, were reasonably likely, and intended to benefit the
3 bankruptcy estate, consistent with 11 U.S.C. § 330(a). On the
4 other hand, the Court is persuaded it should not have taken
5 \$15,000 of professional time to reach the conclusion that Buckeye
6 was likely to prevail on its claim, as the terms of the
7 settlement clearly evidence. Accordingly, the Court disallows
8 \$5,000 of the fees sought by the successor firm for work on the
9 Buckeye claim resolution.

10 The Court is also concerned with the approximately \$4,833 of
11 fees incurred in preparing the fee applications for both firms.
12 Given the amount of effort expended since the applications were
13 filed, however, the Court has determined to make no reduction in
14 the fees allowed for preparation of the fee applications. Also,
15 the Court did not identify any interest charges on the successor
16 firm's application.

17 Accordingly, fees for the successor firm, Slater & Truxaw,
18 are allowed in the amount of \$17,719.50, and costs are allowed in
19 the amount of \$302.69. Further, the Court authorizes up to \$750,
20 as actually and necessarily incurred by the firm in concluding
21 its work on the case, subject to review and approval of the
22 trustee.

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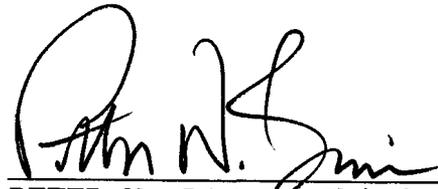
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1 The trustee's fee application will be addressed in a
2 separate order.

3 IT IS SO ORDERED.

4 DATED: FEB -2 2007



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

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