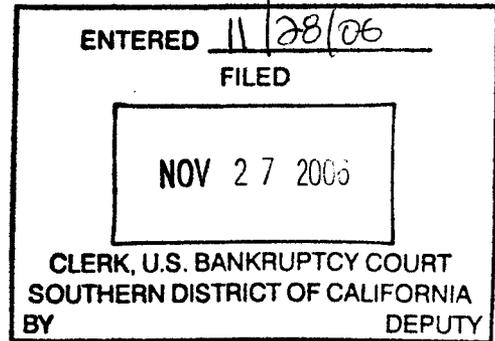


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 06-00062-B11

12)

12 ALPHA MEDICAL CENTER PARTNERS,) ORDER ON APPLICATION

13 LLC,) OF THE DUCKOR FIRM FOR

14) AWARD OF FEES AND COSTS

14 Debtor.)

15)

16 This matter came on regularly for hearing on the application

17 for attorneys fees and costs filed by the Duckor Spradling

18 Metzger & Wynne law firm in their capacity as special litigation

19 counsel. That application is opposed by two alleged creditors as

20 excessive.

21 The Court has subject matter jurisdiction over the

22 proceeding pursuant to 28 U.S.C. § 1334 and General Order

23 No. 312-D of the United States District Court for the Southern

24 District of California. This is a core proceeding under

25 28 U.S.C. § 157(b)((2)(A), (B).

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1 There are two major issues concerning the fee application.
2 The first concerns the substantial charges for efforts to have
3 the firm employed. The second involves fees claimed for the
4 motion for summary adjudication given that a similar motion had
5 already been prepared and filed in state court.

6 The firm sought employment as special litigation counsel
7 pursuant to the more flexible standard of 11 U.S.C. § 327(e).
8 The same parties that object here submitted a letter objection to
9 the United States Trustee, which resulted in the matter being set
10 for hearing before this Court. Prior to the hearing, Mr. Metzger
11 filed his Supplemental Declaration. In it, he stated:

12 2. After receipt of a copy of Matthew
13 Rutherford's letter to the U.S. Trustee . .
14 ., I reviewed our firm's records to determine
15 whether [the firm] had ever represented the
16 Waltz Family Limited Partnership, a member in
17 the Debtor. Upon that review, I learned that
Stephen Treadgold, then a partner at [the
firm] had provided legal services to the
Waltz Family Limited Partnership for a brief
period in the spring of 2003 and again for a
brief period in the spring of 2004.

18 3. I was not personally involved in
19 this representation which related to
20 transactional advice, apparently rendered by
Mr. Treadgold, to the Waltz Family Limited
Partnership.

21 4. My first involvement with Alpha
22 Medical [sic] Partners, LLC commenced in late
23 August, when our firm was retained by Alpha
24 Medical Center Partners, LLC in connection
25 with litigation initiated by the Company
against Messrs. Gaines and Abney and defense
of the Company with respect to cross-
complaints filed against it.

26 That declaration was signed March 1, 2006.

1 The hearing was held on March 16. At the hearing, the Court
2 stated:

3 The biggest problem for me is the Duckor
4 Spradling firm, because of a number of
5 things. But the most important of which, and
6 which I had written in my notes long before
7 this morning's argument, was the Duckor
8 firm's involvement in drafting the first
9 amendment to the AMC Partners operating
10 agreement. Its relationship, and then being
11 in a position, now, of working for certain
12 interests in accomplishing that. And then
13 going in to defend that when that work is
14 going to be a major subject of contention in
15 the context of the litigation.

16 I'm also concerned about, at least at
17 this point in time I think it would be
18 remediable; the inadequate disclosure about
19 the \$125,000 and the drawdowns on it; timing;
20 and the rest of it. Because that is an issue
21 that should have been at least in part of a
22 supplemental once it got raised. It hasn't
23 been. So given where we are and given the
24 state of the record at this point in time, I
25 have to find that while I think it's close, I
26 think there is a conflict sufficient under
327(e) to preclude the employment of the
Duckor firm.

 Since the issue of the firm's employability first came
before the Court in March, the Court has wondered what sort of
conflicts check was performed by the firm, both when it was
retained in the state court litigation in August, 2005, and when
it applied to be employed by the estate in 2006. The fact that
Mr. Metzger had no knowledge that his former partner, Mr.
Treadgold, had done any work for a driving principal of the
debtor in the prior two years, much less that the work involved
the amended partnership agreement, a centerpiece of the
litigation, suggests that little or no conflicts check was done.

1 On March 28, 2006, Mr. Metzger filed another declaration, in
2 support of the renewed application for employment. In this one,
3 he stated:

4 2. On September 7, 2005, the WFLP
5 {Waltz Family Limited Partnership} deposited
6 \$125,000 into the [firm] client trust account
7 for the benefit of AMC Partners.

8 A chart which followed showed that virtually all of the
9 \$125,000 was consumed by the firm for fees and expenses between
10 September 9, 2005 and January 13, 2006. However, this
11 information was not disclosed in support of the original
12 employment application of the firm.

13 The objecting parties contend the fees and expenses of the
14 firm incurred leading up to the failed attempt at employment on
15 March 16, 2006 should be disallowed, and does not seriously
16 contest those incurred thereafter. They contend \$11,578.50
17 should be disallowed. The Court is inclined to think the fees
18 incurred after March 16, in doing what should have been done
19 initially, are the fees that should be disallowed. Moreover, the
20 Court is of the view that if the firm had done it right the first
21 time around, even much of the initial fees could have been
22 avoided because no hearing or supplements would possibly have
23 been necessary. However, since that is speculative, the Court
24 has not deducted from the fees incurred on or before March 16 on
25 the employment application. The Court disallows the fees sought
26 on the efforts at employment of the firm after March 16 that the
Court can identify with those efforts. They are the billing

1 Court has conducted a paragraph-by-paragraph comparison of the
2 two pleadings, and noted substantive additions to the more recent
3 motion, for which compensation should be allowed. The Court
4 cannot find, however, over \$26,000 in fees in difference between
5 the former and latter pleadings, which is what the Court
6 calculates was incurred between January 31 and May 3. Given the
7 amount of work involved in the earlier motion, which formed much
8 of the core for the later papers, and that the firm was already
9 compensated for that work, the Court finds and concludes that
10 \$13,000 of the fees claimed are excessive and are disallowed.

11 At the hearing, counsel for the firm offered two billing
12 corrections, reducing the fees claimed on 2/1 from \$787.50 to
13 \$202.50, and on 2/28 from \$316 to \$118.50, for a further
14 reduction in fees claimed of \$782.50.

15 Because the attorneys fees allowed are being reduced
16 significantly from those requested, the Court concludes there
17 should be a corresponding reduction in the proportional costs
18 allowed. The fees have been reduced by a total of \$25,222.50,
19 about 38%, to \$41,610.00. Costs allowed are reduced from the
20 \$10,016.57 sought to \$6,210.27.

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1 For the foregoing reasons, as well as those previously set
2 out on the record, attorneys fees and costs for the firm are
3 allowed on an interim basis, and subject to possible disgorgement
4 under the Bankruptcy Local Rules as follows:

5 Attorneys fees allowed: \$41,610.00
6 Costs allowed: \$6,210.27

7 IT IS SO ORDERED.

8 DATED: NOV 27 2006

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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court