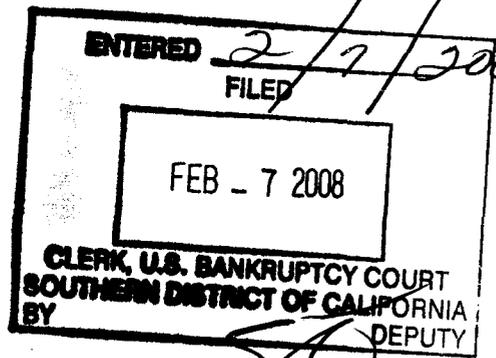


1 WRITTEN DECISION - NOT FOR PUBLICATION



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6 UNITED STATES BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 07-02209-B13
12)
12 ANUSAGA ATOE and) ORDER ON FEE APPLICATION
13 TAIU TAIU MOI,)
14 Debtors.)

15 This is, for purposes of this fee application, only, a
16 companion case to Moran, in which the Order is filed
17 contemporaneously herewith.

18 Counsel for the Chapter 13 debtors have applied for \$4,000
19 in attorneys fees for their work through confirmation (\$1,000 of
20 which has been paid directly by the debtors), and submit it as an
21 "Application for Final Award of Compensation". In support of
22 their application they submit "Exhibit A", which is a checklist,
23 or template of possible services in a case filed post - BAPCPA,
24 with a column for time entries. Both Mr. Doan and Mr. Larkin
25 filed brief supporting declarations asserting under penalty of
26 ///

1 perjury that the time entries in Exhibit A were accurate,
2 including the total time spent by each on the case.

3 The Chapter 13 Trustee filed a "Response", objecting to the
4 fees sought as excessive or unsupported, and asking that the fees
5 allowed be capped at the maximum presumptive or no-look fee for a
6 consumer Chapter 13 case in this district, which was \$2,800 at
7 the time of the bankruptcy filing.

8 After a hearing, the court invited supplemental information
9 from counsel, which was provided in the form of supplemental
10 declarations from Mr. Doan and Mr. Larkin. Thereafter, the
11 matter was taken under submission.

12 The Court has subject matter jurisdiction over the
13 proceeding pursuant to 28 U.S.C. § 1334 and General Order
14 No. 312-D of the United States District Court for the Southern
15 District of California. This is a core proceeding under
16 28 U.S.C. § 157(b)(2)(A), (B).

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18 Discussion

19 This application for fees was filed at a time when this
20 district's judges were gathering information and considering
21 revisions to the presumptive fees allowed to Chapter 13 debtors'
22 attorneys without the necessity of a formal fee application. The
23 desirability of such a procedure has long been recognized, In re
24 Geraci, 138 F.3d 314 (7th Cir. 1998), and more recently approved
25 in In re Eliapo, 468 F.3d 592 (9th Cir. 2006). A significant
26 goal of the instant application was to use it to advance the Doan

1 firm's views on the subject. The Application argues that the
2 presumptive fees are "wholly inadequate to provide reasonable
3 compensation to this Firm" at the rates then set, and they even
4 argued they could have "forum-shopped" by filing in Los Angeles
5 where the presumptive fee is \$4,000 for a consumer case. They
6 recognize that in jurisdictions that do utilize a presumptive fee
7 approach, the presumptive fee is the usual maximum allowed unless
8 the applicant can show that the services provided were
9 "extraordinary or unusual". The Doan firm also attached to its
10 application a copy of a commercial matrix purporting to show the
11 average hourly rates charged by attorneys based on their years of
12 practice, and a copy of the results of a KPMG study ranking large
13 cities in terms of the cost of doing business.

14 Outside of the Bankruptcy arena, lawyers and clients are
15 relatively unfettered in the agreements they may make for
16 representation, subject to unconscionability. In the bankruptcy
17 context, and especially in Chapter 13 cases, however, it is
18 different. The concept of Chapter 13 is that a debtor's earnings
19 over time will be used to repay creditors. In Chapter 13, a
20 debtor's post-petition earnings are property of the bankruptcy
21 estate (11 U.S.C. § 1306), and all available projected disposable
22 income (11 U.S.C. § 1322(a)(4)) is to be paid to the Chapter 13
23 trustee to distribute to the debtor's creditors over the life of
24 the plan proposed by the debtor and confirmed by the court.

25 It is both interesting and appropriate to note that in the
26 calculation of "current monthly income" (defined at 11 U.S.C.

1 § 101(10A)) using Form B22C, and projected disposable income,
2 including Schedule J of a debtor's expenses, (see In re Pak, 378
3 B.R. 257 (9th Cir. BAP 2007) no provision is made for attorneys'
4 fees, in any amount. So, in the large number of cases where a
5 debtor proposes to pay less than all debt, the debtor must
6 promise to pay all projected disposable income over the required
7 applicable commitment period of the plan. Theoretically, at
8 least, that leaves no income over the life of the plan to pay
9 attorneys' fees, whether up through confirmation or for post-
10 confirmation events such as defending against relief from stay
11 motions, motions to dismiss, pressing claims objections, or
12 prosecuting adversary proceedings. It can become even more
13 confusing because 11 U.S.C. § 1322(a)(2) requires that any plan
14 provide for payment in full of all priority claims under 11
15 U.S.C. § 507. Section 507(a)(2) provides for priority status for
16 administrative expenses allowed under § 503(b), which includes
17 attorneys' fees awarded under § 330(a). Section 330(a)(4)
18 provides in full:

19 (4)(A) Except as provided in subparagraph (B)
20 the court shall not allow compensation for -

21 (I) unnecessary duplication of service;
22 or

23 (ii) services that were not -
24 (I) reasonably likely to benefit
25 the debtor's estate; or

26 (II) necessary to the
administration of the case.

(B) In a chapter 12 or chapter 13 case in
which the debtor is an individual, the court

1 may allow reasonable compensation to the
2 debtor's attorney for representing the
3 interests of the debtor in connection with
4 the bankruptcy case based on a consideration
5 of the benefit and necessity of such services
6 to the debtor and the other factors set forth
7 in this section.

8 This Court favors the policy embodied in § 330(a)(4) because
9 case administration is well served by competent representation of
10 Chapter 13 debtors, as routinely provided by the Doan firm. The
11 process is, however, in a sense hydraulic, where siphoning off
12 funds to pay attorneys which would otherwise be distributed to
13 creditors means that payments to creditors are delayed, plan life
14 is extended, the funds have to be replaced from some source not
15 identified at plan confirmation, or the debtor's ability to
16 successfully perform the plan is compromised. And, with
17 attorneys' fees accorded priority status, they are paid earlier
18 in the process than most creditors unless the attorney agrees to
19 some other treatment. All of the foregoing reflects the tension
20 between payment of creditors and drawing off funds to pay
21 attorneys' fees and costs, and in Chapter 13 cases firms are not
22 operating in a free market environment unfettered by restraints
23 such as "necessity", "benefit", and reasonableness. Against that
24 backdrop, presumptive or no-look fees are an important process
25 and result in substantial economies in Chapter 13 cases in part
26 because the time and expense of formal fee applications are
27 avoided in the routine cases.

28 As noted, the Doan firm filed an "Exhibit A", which was a
29 stock description of possible events (plus some argument about

1 Code requirements) in the form of a template which could be used
2 in any Chapter 13 case, and the only variable might be the amount
3 of time expended on a particular box for a particular debtor. By
4 way of example, one box is captioned "New Notice Requirements to
5 Creditors". The task description recites:

6 Under 342(f), creditors can request that all
7 notices to be sent to such creditor
8 nationwide will be sent to a specific
9 address. 342(g)(2) states we can get NO
10 monetary penalty for stay violations unless
11 proper notice address is used. Stay
12 violation time increases, particularly among
13 small businesses (small auto dealers, for
14 example), because we have a harder time
15 getting sanctions. We documented proper
16 addresses per pulling a credit report and
17 recent billing statements so that notice was
18 sent to the proper address.

19 In the instant case, the Doan firm claimed 30 minutes of time was
20 spent on that "activity" (the same amount of time as in Moran).

21 Another example: The task description is:

22 Attorney certification now places higher duty
23 of care on attorney certifying the petition
24 and also certifying that [sic] has no
25 knowledge after inquiry that schedules are
26 incorrect. In this regard, Mr. Doan was held
to a higher standard of care and had to
provide further review and supervision to the
case being filed. Mr. Doan provided final
review prior to filing the case.

The time claimed for the "activity" was 60 minutes, just as in
Moran, and presumably was performed by Mr. Doan as the
description indicates.

The Chapter 13 trustee objected to the utility of "Exhibit
A" on multiple grounds, central to which was that a person

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1 reviewing it could not tell what specific task was performed in
2 this case, when it was performed, or by whom it was performed.

3 In addition to the trustee's concerns, which the Court
4 shares, the Court has difficulty with the time claimed by the
5 firm as attorney time for certain events. An example is
6 "Attorney Review with Debtor Prior to Filing" which states:

7 This includes time spent reviewing the
8 petition with the debtor to ensure accuracy,
9 answering questions, making corrections to
10 draft petition, explanation of the schedules
and statement of financial affairs, chapter
13 calculations and for filing the case and
uploading e-docs to the trustee.

11 Two full hours of attorney time are claimed for that "activity",
12 as in Moran.

13 The total time claimed for Doan firm attorneys on "Exhibit
14 A" in support of this "final" application was 60 minutes for
15 Mr. Doan and 900 minutes for Mr. Larkin (the latter included
16 2 hours for preparing the fee application and 2 more hours for
17 the hearing to be held on it), again, the same in Moran.

18 Prior to the hearing on the application, the Chapter 13
19 trustee filed a supplemental objection, and a supporting
20 declaration. The trustee argued that the Court should consider
21 factors utilized by other courts, such as the novelty and
22 difficulty of any legal question, fees charged in the community
23 for similar work, the degree of risk taken by the firm, and time
24 and labor actually required. The supporting declaration of
25 Mr. Murdock was a compilation of confirmation orders in 638 cases
26 all filed after BAPCPA and all assigned to the Chapter 13 trustee

1 in this case. The fees approved in those cases upon confirmation
2 averaged \$2,591.47. Here, the Doan firm seeks \$4,000.

3 As noted, the Court asked for more specific information
4 after the hearing on the fee application. Both Mr. Doan and
5 Mr. Larkin filed supplemental declarations in which they stated
6 they had "further reviewed" their "time in the aforementioned
7 case and converted the same from our files and Bestcase Software
8 to our new 'Bankruptcy Pro/Doing Time' Software." They
9 discovered that the time asserted in "Exhibit A" was misallocated
10 between them, and that Mr. Doan had put 1.45 hours in on the case
11 and Mr. Larkin's were reduced to 14.55 from 15 hours. They both
12 then added time for events subsequent to the time period covered
13 by "Exhibit A", which are not part of the instant, noticed, fee
14 application.

15 After detailed review of both the original application and
16 the Doan firm's supplemental information (insofar as it related
17 to the time frame covered by the fee application), the Court
18 finds that the fees sought are unreasonably high and do not
19 reflect the sound billing judgment required in bankruptcy cases.
20 The supplemental declarations have attorneys doing work that is
21 sometimes ministerial and should be relegated to lower billing
22 staff or paralegals. Mr. Doan's claimed hourly rate of \$450 is
23 not appropriate in a routine consumer Chapter 13 case which, to
24 this point, this is. The Court is aware that the firm has filed
25 an adversary proceeding against Asset Acceptance, for which it
26 intends to submit a separate fee application. Mr. Doan's

1 supplemental declaration makes reference to "\$8,820 on the IRS AP
2 case" which will also be sought by separate application, but the
3 Court notes it sees nothing in the firm's records submitted to
4 the Court that any work has been performed in this case on an
5 adversary proceeding involving the IRS, nor is there any such
6 information on the court's docket in this case.

7 As the firm recognized, it has the burden of showing that
8 this case is "extraordinary or unusual" in some meaningful way in
9 order to depart from the presumptive fee and to add to the cost
10 of the debtor's estate both in fees generally and fees for filing
11 and defending a fee application. The firm has made no effort
12 whatsoever to show that this case is outside the ordinary
13 consumer Chapter 13 case. To the extent the firm's goal was to
14 provide additional information to the court in support of
15 increases to the presumptive fees in this district, the firm has
16 been successful. The firm's arguments were shared, and
17 considered in the increases the court as a whole adopted
18 subsequent to the hearing and supplemental briefing in this case.
19 However, the firm was afforded opportunities to do that directly,
20 as was the rest of the Chapter 13 bar, and the associated costs
21 should not be borne by the creditors of their bankruptcy estate.

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Conclusion

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For all the foregoing reasons, the Court finds and concludes
that through confirmation in this case this is a routine consumer
Chapter 13 case and the presumptive or no-look fee of \$2,800 is

1 the appropriate fee. The Court further finds and concludes that
2 the template proffered by the firm as "Exhibit A" is of little
3 utility to the court in the context of a fee application because
4 it does not reveal what was done, when it was done, or by whom.
5 Because the firm has already received \$1,000 directly from the
6 debtors, the balance due to the Doan firm from the debtors'
7 payments to the trustee is \$1,800.00.

8 IT IS SO ORDERED.

9 DATED: FEB -7 2008

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12 PETER W. BOWIE, Chief Judge
13 United States Bankruptcy Court
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