

From: info@ord.uscourts.gov
To: nobody@ord.uscourts.gov
Subject: Activity in Case 6:09-cv-06082-HO In re: Stayton SW Assisted Living, LLC, et al Order
Date: Wednesday, October 31, 2012 4:58:39 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 10/31/2012 at 4:55 PM PDT and filed on 10/31/2012

Case Name: In re: Stayton SW Assisted Living, LLC, et al

Case Number: 6:09-cv-06082-HO

Filer:

WARNING: CASE CLOSED on 01/25/2011

Document Number: 2136(No document attached)

Docket Text:

Order - Amending Order to Show Cause, [2118] and Order Allowing Fees [2125]. This matter comes before the court for the purpose of amending the Order to Show Cause entered 9/13/2012 [2118] referring to enhancement of certain hourly rates of professional employed in the Stayton/Sunwest matter, as confirmed by order allowing fees entered 9/25/12 [2125]. Ordered such orders are amended and modified, to modify the hourly rates of Receiver Michael Grassmueck and his firm, The Grassmueck Group, so as to allow an additional fee award of \$25,000.00 with hourly rate of said Receiver to be so adjusted. Court orders the payment of such fee by Michael Grassmueck, Receiver. Ordered that such orders are amended and modified, to modify the hourly rates of Michael Esler and his firm, so as to allow an additional fee award of \$75,000 with the rate of such attorney to be adjusted. Court orders the payment of such fee by Michael Grassmueck, Receiver. Ordered by Judge Michael R. Hogan. (sln)

6:09-cv-06082-HO Notice has been electronically mailed to:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:)	
)	
STAYTON SW ASSISTED LIVING, L.L.C.,)	Case No. 6:09-cv-6082-HO
)	
(Constituting the Sunwest Unitary)	ORDER TO SHOW CAUSE
Enterprise as determined by the)	
Order on October 2, 2009 in U.S.)	
District Court Case No. 09-cv-6056-)	
HO),)	
)	
Debtor.)	
)	
)	
)	

The Court entered a confirmation order in this matter effective August 5, 2010. Although most of the professionals involved in this case have provided excellent services, certain professionals have proved invaluable in their assistance to the receiver and the court in maximizing distributions to creditors.

The results for senior citizens, employees, investors, lenders, and the public have been exceptional.

Now that the court has the benefit of hindsight with respect to the maximization of the value of assets and pursuit of assets through third-party claims, a more accurate Lodestar calculation under section 330 of the bankruptcy code can be made for certain professionals.

Calculating a reasonable fee generally involves a two pronged approach. A court may first calculate a lodestar figure by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886, 888 (1984). This lodestar figure is presumed to represent an appropriate fee. Under certain circumstances, however, a court may adjust the award upward or downward to take into account the Kerr factors not subsumed within the initial lodestar calculation. Cunningham v. County of Los Angeles, 879 F.2d 481, 487 (9th Cir. 1988).¹

¹The Kerr factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70 (9th Cir 1975). Among the many subsumed factors in the lodestar calculation are the novelty and complexity of the issues involved,

Upward adjustment of the lodestar amount is permissible, provided there is both specific record support and detailed findings that one or more factors are not fully reflected in the lodestar. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986). In bankruptcy cases, fee enhancements may require some accommodation to the peculiarities of bankruptcy matters, especially where enhancements relate to the risk of nonpayment. In Re Buckridge, 367 B.R. 191, 203 (Bankr. C.D.Cal 2007) (citations omitted).

The importance of the services provided by the professionals noted below should not be viewed simply as a success for the distribution to investors, deficiency creditors and LLC members. This case was also a great success for the prevention of losses to dozens of secured lenders, who otherwise would have had to foreclose and no doubt sell their interests at a discount. Of course, a further wrinkle resulted from the nature of the business of the Sunwest Unitary Enterprise complicating the case with the care of residents, some of whom require minute-to-minute attention. Accordingly, the work of the primary professionals in this case didn't merely demonstrate special skill with regard to complex and novel issues delivering exceptional results, but reflect outstanding application of that skill under intense time pressure

the special skill and experience of counsel, and the results obtained. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1464 (9th Cir. 1988).

where lives were literally at stake.

A conservative estimate of the value distributed in this case is 1.6 billion dollars. In addition, even in today's low interest market, the secured creditors are earning a minimum of five percent interest on secured debt that the new joint venture is paying on approximately 950 million dollars of principal. Moreover, there will be more funds coming into the estate from Willamette Property Holdings and Encore in the near future. These results are nothing short of astonishing and border on the miraculous, especially given the limit on hourly rates established by this court early on in the proceedings. And, given these results, a bonus to several professionals who carried the laboring oar is justified.

Taking into account the nature, extent and value of services provided including the time spent, rates charged, their benefit to the estate, the complexity of the case, and the customary charges for such services, the court proposes that the following professionals receive fee enhancements at multipliers ranging from 1.15 to 1.5:

Ford Elsaesser

There is good reason that the bankruptcy courts were created within the district courts. Leaving constitutional considerations aside, it is a highly complex and code driven area of law complicated with varied and nuanced interests that require a

specialized knowledge and strict dedication. However, the collision of bankruptcy issues with an equitable receivership required withdrawal of the reference of a large number of bankruptcy cases to this court. Mr. Elsaesser proved invaluable to the court in its sudden re-immersion into the world of bankruptcy. His role as attorney for the unsecured creditors committee and subsequently as attorney for post-petition committees and entities similarly proved invaluable. Accordingly, Mr. Elsaesser's hourly rate should be adjusted upward to \$397 from \$350 for a fee enhancement of \$150,000.²

Al Kennedy

Mr. Kennedy was instrumental as the architect of the closing of the many property transfers. Given the nature of the multiple properties and interests in those properties, the closing was abnormally complicated in terms of title insurance in a time of financial distress. Accordingly, Mr. Kennedy's hourly rate should be adjusted upward to \$508 from the initial limit of \$450 for a fee enhancement of \$150,000.³

²Mr. Elsassar billed approximately 3191.6 hours.

³Mr. Kennedy billed approximately 2587.5 hours up to confirmation.

John Stewart

Given the varied interests of the LLC members, Mr. Stewart's role in obtaining signatures from 100 percent of the members on the deeds was critical to enabling title to pass on the properties. Consequently, the estate and the Receiver were relieved of the huge burden and expense of suing LLC members. In addition, Mr. Stewart was appointed by the court to manage third-party claims. He shepherded these claims very expeditiously to successful settlement efforts, with a resulting approximate \$52 million recovery, and for an extremely conservative overall fee. While some of these claims were eventually papered as class action cases, the process was nothing like that often wasteful one. Accordingly, Mr. Stewart's hourly rate should be adjusted upward to \$637.50 from rates of \$395 and \$450 for an enhancement of \$150,000.⁴

Bettina Whyte

It cannot be argued that the return on investments made possible through the negotiation and sale of Holdco properties would have resulted in the substantial advantage to investors absent Ms. Whyte's involvement. Her efforts brought an arguable \$100 million in value to this effort. It is not hyperbole to state that there are very, very few that could have delivered this

⁴Mr. Stewart billed approximately 697.5 hours up to confirmation.

result. Accordingly, Ms. Whyte's hourly rate should be adjusted upward from \$450 to \$679 for an enhancement of \$150,000.⁵

Maggie Lyons and Resolve Financial

Ms. Lyons hourly rate is strikingly low for the quality of services she has rendered to the estate. She has been instrumental to the accounting in this case, the accuracy of claims and vastly improved return as a result. Accordingly, Ms. Lyons' hourly rate should be adjusted upward from \$150 to \$289 for a fee enhancement of \$40,000.⁶

Nancy Isserlis

Ms. Isserlis also shepherded through the LLC members and provided Mr. Stewart with invaluable assistance on bankruptcy issues. Accordingly, Ms. Isserlis' hourly rate should be adjusted upward to \$347 from \$300 for a fee enhancement of \$25,000.⁷

Laura Taylor

Ms. Taylor was of critical importance with respect to preparation of the third-party claims and was an outstanding

⁵Ms. Whyte billed approximately 654.7 hours.

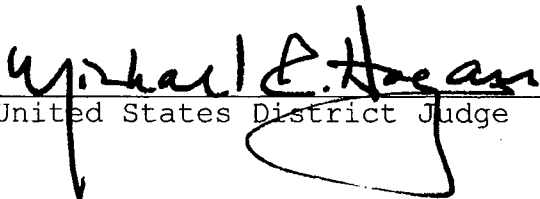
⁶Ms. Lyons and Resolve billed approximately 286.6 hours.

⁷Ms. Isserlis billed approximately 532.5 hours through the date of confirmation.

documentarian. Accordingly, Ms. Taylor's hourly rate should be adjusted upward to \$340 from \$295 for a fee enhancement of \$25,000.⁸

All interested parties are ordered to show cause, in writing, within 10 days from the date of this order why Michael A. Grassmueck, Receiver, should not pay the fee enhancements recommended above. If any objections are received, a hearing will be set.

DATED this 12th day of September, 2012.


United States District Judge

⁸Ms. Taylor billed approximately 553.2 hours through the date of confirmation.