

#2590

signed 11-12-02

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In re:**

**DIDDE WEB PRESS CORP.,  
DIDDE CORP.,**

**DEBTORS.**

**CASE NO. 00-42776-11  
CASE NO. 00-42777-11  
CHAPTER 11  
(Jointly Administered)**

**ORDER ON FINAL FEE APPLICATION OF DEBTORS' COUNSEL**

This matter is before the Court on the final application for fees and expenses for Polsinelli Shalton & Welte, PC ("PSW"), counsel for the former debtors-in-possession. Objections have been filed by the Unsecured Creditors Committee ("the UCC"), the Chapter 11 Trustee ("the Trustee"), and the United States Trustee ("the US Trustee"). PSW's own attorney-members, from its Kansas City, Missouri, office, have defended the application. The UCC appears by counsel William J. Connelly of Hinshaw & Culbertson, Chicago, Illinois, and Carol R. Bonebrake of Goodell, Stratton, Edmonds & Palmer, L.L.P., Topeka, Kansas. The Trustee, Robert L. Baer of Cosgrove, Webb & Oman, Topeka, Kansas, appears *pro se*. The US Trustee appears by Staff Attorney Richard A. Wieland. The Court has reviewed the relevant pleadings, heard argument, and is now ready to rule.

The Court has reviewed the total time spent on these cases from December 27, 2000, to April 30, 2002, and in accordance with its previous decision in *In re Smith*<sup>1</sup> finds as follows. PSW's first fee

---

<sup>1</sup>No. 83-40427, Order (Dec. 10, 1984), motion to modify and amend denied (Jan. 30, 1985). For ease of reference, the Court points out that its standards are the same as those set out by then-Bankruptcy, now-District Judge Robinson in the appendix to her decision in *In re Krug*, 174 B.R. 826, 830-32 (Bankr.D.Kan. 1994), except that this Court allows travel time at only one-half a professional's normal rate, except to the extent work is accomplished while traveling.

application covered December 27, 2000, to April 30, 2001, and the Court allowed fees of \$405,073.50 and expenses of \$29,975.71 on that request. This final application seeks an additional \$288,508.25 in fees and \$27,845.28 in expenses.

The Court must resolve the following complaints made by the objecting parties: (1) PSW charged around \$87,000 for time spent drafting and presenting plans of reorganization and disclosure statements, but the plans were effectively abandoned shortly after they were filed; (2) PSW charged about \$150,000 for time spent on two sales of the debtors' assets, and much of that time centered around trying to sell the assets to insiders of the debtors; and (3) after the Trustee was appointed in July 2001, PSW spent a large amount of time on matters of questionable value to the bankruptcy estates, including opposing the UCC's motion for authority to pursue certain litigation, investigating the debtors' protections under directors' and officers' liability insurance policies, opposing the UCC's subpoenas of PSW's files concerning its representation of the debtors, and opposing the UCC's motion to file a liquidating plan. The Court notes that its consideration of these issues was hampered by the overly-general nature of the complaints. For example, the UCC said of PSW's efforts to construct reorganization plans:

- a) Those efforts were not reasonable.
- b) Those efforts were not likely to benefit the Estate.
- c) Those efforts were not, given the context within which they were expended likely to be of benefit to the Estate.
- d) Those efforts were for naught in that, the plan and disclosure statement were effectively withdrawn by the Debtors and Applicant within days of their presentment in favor of an attempt by Debtor [sic] and Applicant to have the Debtors' assets sold to insiders of the Debtors.
- e) Those efforts account for an amount in excess of \$87,000.00 of the compensation sought in the Final Application.
- f) Those efforts do not warrant \$87,000.00 in compensation.

Then the UCC repeated these statements verbatim in attacking PSW's work on the asset sales except to change the dollar amount used in items "e)" and "f)" and to change item "d)" to read: "Those efforts were, as highlighted by the Objection filed by the [US Trustee] with respect to the Final Application, not even for the benefit of the Estate but were, instead, for the benefit of individuals who were insiders of the Debtors." Such general complaints do little to help the Court perform the onerous task of reviewing the propriety of all the time entries in an application seeking several hundred thousand dollars in fees.

The parties did succeed in resolving some of the complaints about PSW's application. Objections to charges for attorney travel time at full hourly rates, deliveries from PSW's Kansas City office to Topeka, computer-assisted legal research, and faxes have been resolved through an agreement to reduce the amounts sought by a total of \$18,097.38.

The Court concludes that the first two unresolved complaints do not justify any deductions from PSW's request for fees and expenses. With respect to the first complaint, the Court ordinarily expects that counsel for a chapter 11 debtor-in-possession will do some work on a plan, even if only a liquidating plan. The facts known to the Court in these cases do not indicate efforts to craft reorganization plans were improper. The debtors both filed for bankruptcy on December 27, 2000. Didde Web Press Corporation filed its disclosure statement and plan on April 5, 2001, and Didde Corporation, owner of all Didde Web's stock, filed its disclosure statement and plan on April 25, 2001. Before bankruptcy, the companies' business had involved a limited number of sales of very expensive printing presses, and the sale of parts for presses they had previously sold. After bankruptcy and through May 2001, the debtors were unable to convince any customers to buy new presses. In

formulating their plans, the debtors had assumed they could continue to sell some new presses.

Without such sales, reorganization became impossible. The Court understands this problem to have been the main reason for the debtors' decision to sell their assets rather than to continue efforts to reorganize. Because the debtors had not sold new presses with great frequency even when their business was going well, the Court is not convinced that four months was too long to work on plans before deciding the absence of sales had become an insurmountable obstacle to reorganization.

Particularly considering the short time period involved, the Court is convinced that PSW properly spent time formulating disclosure statements and plans for the debtors, even though the futility of those efforts became apparent shortly after those documents were filed.

Turning to the second complaint, the Court notes that the two asset sales for which PSW provided legal guidance to the debtors brought gross prices of \$8.85 million and \$10.3 million, so PSW's \$150,000 in fees constituted less than eight-tenths of one percent of the sales prices. While \$150,000 in legal fees, considered in the abstract, might seem excessive for just two sales, when the fact the sales produced over \$19 million is added to the equation, the fees sound more reasonable. In that context, the size of the fees alone is not enough to convince the Court that they are excessive. Furthermore, although efforts were made to sell the assets to insiders, both sales were ultimately made to other parties. The Court believes that counsel for the debtors-in-possession would have to have done at least some work to make the sales to non-insiders possible, and notes that the objectors failed to identify a single specific time entry that they allege benefitted only the insiders. Typically, at least in sales of such dollar size, the initial bidder (often referred to as a "stalking horse") is used to help generate interest among other potential bidders. Sales to insiders are only suspect to the extent one

might think the price they pay is too low, so the fact these sales were made to other parties who outbid the insiders convinces the Court that the sales were sufficiently beneficial to the bankruptcy estates to overcome any inference of impropriety that the insiders' participation in the bidding might otherwise have created. Consequently, the Court finds that PSW's work on the sales was reasonable and beneficial to the estates, and its fees for them need not be reduced because of the insiders' involvement.

The third complaint does cause the Court some concern. By the Court's calculation, PSW charged about \$33,500 from August 2001 to October 2001 for: (1) opposing the UCC's motion for authority to pursue litigation, its subpoenas of PSW's files, and its motion to file a plan; and (2) investigating the debtors' directors' and officers' liability policies. Despite misgivings about the time spent opposing the motion to pursue litigation and investigating the liability policies, the Court has decided not to make any deductions for these items, in large part because the objectors have not questioned any specific time entries on these points. However, the Court will make deductions for the document production and UCC plan issues.

Of the \$33,500, about \$4,500 for around 23 hours of work concerned the UCC's initial subpoena. The Court quashed that subpoena on September 4, and the UCC then filed a motion for a subpoena duces tecum. PSW opposed this motion, but most of the time entry descriptions for work on this matter also include time spent on other issues then pending, so the Court cannot determine how much was charged for this work. Entries that include at least some time on the document subpoena issue charged a total of about \$10,500. By September 27, the document subpoena issue was resolved by the Court's oral ruling that PSW could keep its work product, but must give all other contents of its files to the Trustee, who could then decide what information was privileged and what should be

disclosed to the UCC. After that ruling, PSW charged another \$9,800 or so, representing about 53 hours, for work getting ready to and then turning the documents over to the Trustee. The Court is convinced that PSW spent too much time dealing with the subpoenas and document production.

The UCC's motion to file a plan also provoked an excessive response from PSW. As PSW states in its application, the first asset sale was completed during the time period covered by its first fee application and the second sale (which liquidated the debtors' remaining physical assets) was essentially complete by June 29, 2001, when the Court orally approved it. The UCC did not file its motion to file a liquidating plan until nearly three months after that. By that time, the Trustee had been appointed, the debtors' exclusive period had expired so the UCC was already free to file a plan, and the debtors' operating business assets had been liquidated, leaving only potential causes of action as candidates for further liquidation. Nevertheless, PSW spent 16.10 hours, at a total charge of \$3,492, opposing the motion. Most of the opposition actually concerned allegedly baseless and improper accusations in the UCC's motion. The Court understands the natural tendency to respond vigorously to such accusations, but believes that counsel must exercise more restraint when they want a bankruptcy estate to foot the bill for their response.

The Court is convinced that some of the time spent on the subpoenas, document production, and the UCC's plan motion was unnecessary or excessive. As a result, the Court will deduct a total of \$8,500 from the fees sought for them. As indicated, PSW resolved some of the objections to its application by agreeing to delete \$8,875 in travel time, and to delete \$1,892.50 in charges for its lawyers or paralegals traveling to Topeka to file pleadings or make other deliveries. (The Court notes that it took these concessions into account when it made the deductions noted above.) The deductions

from PSW's request for fees therefore total \$19,267.50. The total fees allowed on PSW's second application are therefore \$269,240.75, bringing its total final fee award for these cases to \$674,314.25.

PSW has also requested actual, necessary out-of-pocket expenses of \$27,845.28. As indicated, it agreed with the objecting parties that \$2,000 in Lexis/Westlaw charges and \$5,329.88 in fax charges should be deducted from this request. The Court finds no other deductions to be made. The allowable expenses on this application are therefore \$20,515.40, and the total expense award in these cases is \$50,491.11.

PSW's total allowed compensation in these cases is \$724,805.36. This amount must be offset against any payments that PSW has already received, and PSW must return to the estates any excess it might have been paid. If PSW has not yet been paid that amount, the remaining balance will constitute an administrative expense of the debtors' chapter 11 estates.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this \_\_\_\_ day of November, 2002.

---

JAMES A. PUSATERI  
BANKRUPTCY JUDGE