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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-08-1307-HMoPa
)	
SHARI L. THOMAS,)	Bk. No. ND 96-12129-RR
)	
Debtor.)	
_____)	
SHARI L. THOMAS,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM¹
)	
JERRY NAMBA, Chapter 7)	
Trustee; FARMER & READY,)	
)	
Appellees.)	
_____)	

Argued and Submitted on June 18, 2009
at Pasadena, California

Filed - July 6, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding

Before: HOLLOWELL, MONTALI and PAPPAS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 Shari L. Thomas ("Thomas") previously appealed the
2 bankruptcy court's order allowing professional fees and expenses
3 of the law firm Farmer & Ready ("Farmer"), counsel for the
4 chapter 7² trustee. The Bankruptcy Appellate Panel determined
5 the bulk of the fees were appropriately incurred; however, it
6 found the bankruptcy court erred in finding the fees were
7 adequately documented and reasonable because Farmer
8 inappropriately "lumped"³ services on its billing entries.⁴ The
9 Panel remanded the matter to the bankruptcy court to review the
10 nature of the work done, amount of time spent on activities, and
11 the overall reasonableness of the fees under the standards set in
12 § 330(a)(3). On remand, the bankruptcy court approved Farmer's
13 final fee application. It imposed a 10% reduction for all lumped
14 time entries over .3 hours, disallowed certain fees, and allowed
15 Farmer's full hourly rate for travel time. Thomas appeals the
16 bankruptcy court's decision. We **AFFIRM**.

17
18 ² Unless otherwise indicated, all chapter, section, and rule
19 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
20 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
21 enacted and promulgated prior to the effective date (October 17,
22 2005) of the relevant provisions of the Bankruptcy Abuse
23 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
24 April 20, 2005, 119 Stat. 23.

25 ³ "Lumping" or block billing results when an attorney enters
26 the daily time spent working on a case, rather than itemizing the
27 time expended on specific tasks. Lumping may also result when a
28 single time entry on a billing record lists multiple activities
without separating the time spent on each activity. Mendez v.
County of San Bernardino, 540 F.3d 1109, 1129 (9th Cir. 2008).

⁴ Unpublished memorandum decision, Thomas v. Namba, et. al.
(In re Thomas), BAP No. CC-07-1053-PaBaK, dated November 5, 2007
("Thomas I").

1 **I. FACTS**

2 Thomas filed a chapter 11 bankruptcy petition on May 31,
3 1996. On October 5, 1996, the case was converted to chapter 7.
4 Jerry Namba ("Trustee") was appointed to replace the previous
5 chapter 7 trustee on June 28, 2000. The bankruptcy court
6 approved Trustee's request to employ David Farmer and his law
7 firm, Farmer, as counsel for the Trustee on August 18, 2000.

8 Farmer filed five interim fee applications during the course
9 of the bankruptcy case, most of which were objected to by Thomas,
10 and all of which were approved by the bankruptcy court. Farmer
11 submitted its Fifth Interim and Final Fee Application ("Final Fee
12 Application") on April 25, 2006. The Final Fee Application
13 listed the cumulative fees and expenses from all fee applications
14 as \$226,896.50 and \$20,284.39, respectively.

15 Thomas filed an opposition to the Final Fee Application,
16 challenging the reasonableness of the fees. For the most part,
17 Thomas objected to fees Farmer incurred in litigation surrounding
18 the sale of certain real property owned by Thomas. Thomas argued
19 the sale of the property was unnecessary, and therefore, any fees
20 related to the sale of the property were unnecessary and
21 unreasonable. Additionally, Thomas argued the Final Fee
22 Application lacked specificity of the services provided and
23 contained unnecessary fees for travel.

24 The bankruptcy court heard the matter on January 26, 2007,
25 and approved the fees and expenses, finding the fees and expenses
26 related to the sale of the property appropriate and all billing
27 entries sufficiently specific. Thomas appealed the decision. On
28 appeal, the Panel, in Thomas I, agreed that the fees related to

1 the sale of property were appropriate; however, it held that the
2 bankruptcy court erred in finding Farmer's Final Fee Application
3 was adequately documented:

4 In light of § 330(a)(3)(A)'s command that the
5 bankruptcy court consider "the time spent on such
6 services," when a professional includes a significant
7 number of lumped time entries, the bankruptcy court
8 can not properly evaluate whether a professional's
9 services were actual, necessary and reasonable.

10 We emphasize that, when properly documented upon
11 remand, it may be that Farmer is entitled to the full
12 amount of fees requested in his application. However,
13 Farmer's extensive use of block billing entries
14 deprived the bankruptcy court of the ability to
15 adequately assess whether the amounts requested were
16 reasonable, or whether Farmer had engaged in proper
17 billing judgment. We believe the bankruptcy court
18 clearly erred when it found that this documentation
19 problem was insignificant.

20 Thomas I:24-25.

21 On November 5, 2007, the Panel vacated Farmer's fee award
22 and remanded the matter to the bankruptcy court for a further
23 review of Farmer's Final Fee Application and an examination of
24 the lumped billing entries.

25 Shortly following remand, on November 26, 2007, Thomas
26 requested from Farmer all time and billing records used to
27 support the Final Fee Application, as well as the deposition of
28 David Farmer, to describe the basis for Farmer's fees. Farmer
29 asserted that because there was no pending adversary proceeding,
30 Thomas' request for deposition and production of documents was
31 not authorized. Farmer additionally responded that it was making
32 efforts to comply with the Panel's instructions to de-lump and
33 properly document its billed services.

34 On January 28, 2008, Farmer sent Thomas a supplemental
35 invoice that de-lumped its Final Fee Application ("De-lumped Fee

1 Statement"). In preparing the De-lumped Fee Statement, Farmer
2 reviewed the original bills, daily time logs⁵ and relevant
3 pleadings and correspondence in order to separate the tasks
4 contained in the billed entries and to correct any errors. The
5 De-lumped Fee Statement adjusted the Final Fee Application to
6 \$244,021.50 in total fees and \$20,959 in total expenses.

7 A post-remand scheduling conference was held on February 26,
8 2008. Thomas requested she be able to examine Farmer's billing
9 records, including Farmer's computer hard drive in order to
10 determine the accuracy of Farmer's billing records. The
11 bankruptcy court denied the request but required Farmer to
12 provide redacted paper copies of Farmer's daily time logs for
13 Thomas' review.

14 On June 25, 2008, Thomas filed a "Motion to Determine
15 Professional Fees Consistent with the Remand Order" ("Motion to
16 Determine Fees"). Thomas argued that because Farmer billed
17 \$101,377.50 for services that were inappropriately lumped
18 together, that amount should be disallowed. Thomas also
19 contended the Final Fee Application inappropriately contained
20 \$3,600 in fees that appeared to have been for duties the Trustee
21 should have performed. She argued Farmer's fees for travel time
22 should be billed at 50% of the attorney's usual hourly rate.
23 Finally, Thomas contended \$1,368 in fees had either no back up
24
25

26 ⁵ Farmer's daily time log is a contemporaneously, or near
27 contemporaneously, made document by each of Farmer's attorneys,
28 which lists the time spent and the tasks performed by the
attorney for a given day.

1 documentation or were inconsistent with the time listed on the
2 Final Fee Application.

3 On September 12, 2008, Farmer filed an Amended and
4 Supplemented Fifth and Final Fee Application ("Amended Fee
5 Application"). The Amended Fee Application sought approval of
6 \$247,340.50 in total fees and \$21,630.32 in total expenses. The
7 Amended Fee Application incorporated the De-lumped Fee Statement
8 along with a supplemental request for authorization of fees from
9 the billing period since the submission of the Final Fee
10 Application, which included \$13,132.50 in fees associated with
11 Farmer's de-lumping efforts and preparation of the Amended Fee
12 Application.

13 Farmer filed its response to Thomas' Motion to Determine
14 Fees on September 17, 2008. Farmer alleged Thomas incorrectly
15 based her contentions about lumped time on the Final Fee
16 Application rather than on the De-lumped Fee Statement and that
17 her arguments regarding travel time and unnecessary fees were
18 beyond the scope of the remand order.

19 Thomas replied, arguing that in a footnote of Thomas I, the
20 Panel brought the issue of travel time and Farmer's performance
21 of Trustee's duties within the scope of the remand.⁶ Also,
22 Thomas asserted that Farmer's "de-lumping" efforts, as reflected
23

24 ⁶ Footnote 12 of Thomas I reads in part, "The bankruptcy
25 court should further consider Thomas' argument [regarding
26 charging the full hourly rate for travel time] when it re-
27 examines Farmer's time records." And that "[p]resumably, with
28 proper time documentation, the bankruptcy court can assess the
propriety of Trustee's delegation of duties to his counsel."

1 in the De-lumped Fee Statement, were ineffective because they did
2 not rely on contemporaneously produced detailed records.

3 On October 28, 2008, at the bankruptcy court's request,
4 Farmer submitted chronological daily time logs from January 1,
5 2002 to December 27, 2007 ("Daily Logs"). (The daily time logs
6 from 2000 - 2001 had been destroyed). Farmer also submitted, in
7 an amendment, the daily time logs from January 1, 2008, through
8 October 23, 2008. Additionally, on October 28, 2008, Farmer
9 submitted a chronological billing statement beginning with
10 entries from July 17, 2000, through August 7, 2008
11 ("Chronological Billing Statement"). This was amended to include
12 chronological billing entries from August 8, 2008, to October 23,
13 2008. The Chronological Billing Statement listed, in
14 chronological order, all requested fees contained in the Amended
15 Fee Application (which had been purportedly de-lumped by Farmer).

16 The hearing on the Motion to Determine Fees was held on
17 November 12, 2008. The bankruptcy court reviewed the
18 Chronological Billing Statement and compared its entries with the
19 Daily Logs. However, because there were no daily time logs for
20 2000 - 2001, the bankruptcy court's review of the Chronological
21 Billing Statement was compared to the relevant interim fee
22 application which listed each of the billing entries for 2000-
23 2001.

24 Based on this review, the bankruptcy court found several
25 instances where Farmer still had lumped entries. The total
26 amount of the lumped fees (considered by the bankruptcy court to
27 be time over .3 hours that contained more than one service or
28 task in the same entry) totaled \$76,881.50. The bankruptcy court

1 applied a 10% reduction as a remedy for the lumped entries, in
2 the amount of \$7,688.15.

3 The bankruptcy court also disallowed \$13,132.50 from
4 Farmer's fees and \$850.85 in expenses incurred after November 27,
5 2007, because Farmer "wouldn't have had to spend that time if he
6 hadn't lumped in the first place." It subtracted \$5,070.00 for
7 fees that were listed on the Amended Fee Application but not
8 supported by the Daily Logs. Finally, the bankruptcy court
9 deducted \$3,600 in fees for work the Trustee, rather than Farmer,
10 should have performed. The court did not reduce Farmer's billed
11 hourly rate for travel time.

12 The bankruptcy court's Order on Debtor's Motion to Determine
13 Professional Fees Consistent with Remand Order and Amended and
14 Supplemented Fifth and Final Fee Application was entered on
15 November 18, 2008, incorporating its oral findings of fact and
16 conclusions of law, and allowing final fees of \$217,849 and
17 expenses of \$20,779.47. Thomas timely appealed.

18 **II. JURISDICTION**

19 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
20 § 157(b)(2)(a). We have jurisdiction under 28 U.S.C. § 158.

21 **III. ISSUES**

22 1. Did the bankruptcy court abuse its discretion when it
23 reduced by 10% Farmer's fees for lumped billing entries of more
24 than .3 hours?

25 2. Did the bankruptcy court abuse its discretion when it
26 allowed Farmer its full hourly rate for travel time?

1 **IV. STANDARDS OF REVIEW**

2 A bankruptcy court's award of attorneys' fees will not be
3 disturbed on appeal absent an abuse of discretion or an erroneous
4 application of the law. Smith v. Edwards & Hale, Ltd. (In re
5 Smith), 317 F.3d 918, 923 (9th Cir. 2002). Under the abuse of
6 discretion standard, we must have a definite and firm conviction
7 that the bankruptcy court committed a clear error of judgment in
8 the conclusion it reached before reversal is proper. AT&T
9 Universal Card Serv. v. Black (In re Black), 222 B.R. 896, 899
10 (9th Cir. BAP 1998) (citations omitted).

11 Factual findings made in the course of awarding compensation
12 are not disturbed unless clearly erroneous. See Friedman Enters.
13 v. B.U.M. Int'l, Inc. (In re B.U.M. Int'l, Inc.), 229 F.3d 824,
14 830 (9th Cir. 2000); Rule 8013. A finding is not "clearly
15 erroneous" unless, based on the entire evidence, the reviewing
16 court is left with the definite and firm conviction that a
17 mistake has been committed. United States v. U.S. Gypsum Co.,
18 333 U.S. 364, 395 (1948).

19 **V. DISCUSSION**

20 A bankruptcy court may allow professionals employed by the
21 estate "reasonable compensation for actual, necessary services
22 rendered." 11 U.S.C. § 330. However, § 330(a)(3) requires the
23 bankruptcy court to consider the nature, extent, and value of
24 such services, taking into account all relevant factors,
25 including -

- 26 (A) the time spent on such services;
27 (B) the rates charged for such services;

- 1 (C) whether such services were necessary to the
2 administration of, or beneficial at the time
3 at which the service was rendered toward the
4 completion of a case under this title;
5 (D) whether the services were performed within a
6 reasonable amount of time commensurate with
7 the complexity, importance, and nature of the
8 problem, issue, or task addressed; and
9 (E) whether the compensation is reasonable based
10 on customary compensation charged by
11 comparably skilled practitioners in cases
12 other than cases under this title.

13 11 U.S.C. § 330(a)(3).

14 Additionally, attorneys applying to a court for attorneys'
15 fees should exercise good billing judgment by making "a good
16 faith effort to exclude from a fee request hours that are
17 excessive, redundant, or otherwise unnecessary" Hensley
18 v. Eckerhart, 461 U.S. 424, 434 (1983). Thus, the standard of
19 § 330(a)(3) that compensation be for actual and necessary
20 services makes the exercise of "billing judgment" a required
21 element of a reasonable fee. Unsecured Creditor's Comm. v. Puget
22 Sound Plywood, Inc., 924 F.2d 955, 957-58 (9th Cir. 1991); In re
23 Pettibone Corp., 74 B.R. 293, 303 (Bankr. N.D. Ill. 1987);
24 Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In
25 re Mednet), 251 B.R. 103, 108 (9th Cir. BAP 2000).

26 The bankruptcy court has a responsibility to evaluate fees
27 requested from the estate pursuant to § 330(a)(3) and Rules 2016
28 and 2017. The burden of establishing entitlement to the fees
requested from the estate rests with the trustee. In re Roderick
Timber Co., 185 B.R. 601, 606 (9th Cir. BAP 1995). The burden
"is not to be taken lightly, especially given the fact that every

1 dollar expended on fees results in a dollar less for distribution
2 to creditors of the estate." In re Pettibone Corp., 74 B.R. at
3 305. Thus, the bankruptcy court must award only the fees that
4 are proven to be actual, necessary and reasonable. In re
5 Roderick Timber Co., 185 B.R. at 606.

6 **A. Lumping Services in a Single Billing Entry**

7 The Panel in Thomas I concluded the bankruptcy court could
8 not properly have made a determination under § 330(a)(3) because
9 Farmer submitted numerous billing entries that lumped services
10 together.

11 Lumping services in a single billing entry in a fee
12 application is "universally disapproved" by bankruptcy courts.
13 In re Recycling Indus., Inc., 243 B.R. 396, 406 (Bankr. D. Colo.
14 2000); In re Telcar, Inc., 2007 WL 1438376 *3 (Bankr. D. Idaho
15 2007) (citations omitted). When services are lumped together,
16 the bankruptcy court is prevented from determining the necessity
17 of each service and "from fairly evaluating whether individual
18 tasks were expeditiously performed within a reasonable period of
19 time." In re Hudson, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007);
20 see also Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th
21 Cir. 2007). Thus, lumped fees may impede the bankruptcy court's
22 ability to determine the overall reasonableness of fees
23 requested. Id.; In re Lund, 187 B.R. 245, 251 (Bankr. N.D. Ill.
24 1995). Furthermore, lumping may allow counsel to claim
25 compensation for minor tasks, which would not be compensable if
26 reported separately. In re Recycling Indus., Inc., 243 B.R. at
27 406.

1 On remand, Farmer submitted billing documents that attempted
2 to de-lump services so that the bankruptcy court could review the
3 reasonableness of the fees requested and whether Farmer had
4 engaged in proper billing judgment. The bankruptcy court
5 meticulously reviewed the Chronological Billing Statement, Daily
6 Logs, interim fee applications, and Amended Fee Application. It
7 made specific findings regarding the dates and amounts of billed
8 entries which, even after Farmer's de-lumping efforts, continued
9 to have more than one activity listed, which impeded the
10 bankruptcy court's ability to determine whether those fees were
11 reasonable under § 330(a)(3). The bankruptcy court multiplied
12 the identified time entries by the relevant billing rate (which
13 increased incrementally from \$250 per hour in 2000 to \$325 per
14 hour in 2007) and concluded that \$76,881.50 in fees had been
15 incurred for lumped services. The bankruptcy court then reduced
16 the total lumped amount by 10%, or \$7,688.15.

17 Thomas assigns error to the bankruptcy court's 10% reduction
18 of lumped fees. Thomas contends Farmer failed to comply with
19 Rule 2016, which requires that a request for fees set forth
20 services rendered and time expended in a detailed billing
21 statement. Because of this failure, Thomas argues the Trustee
22 has not met his burden of showing Farmer's fees are reasonable,
23 necessary and beneficial to the estate, and therefore, should be
24 denied in their entirety. See, e.g., In re Breeden, 180 B.R.
25 802, 810 (Bankr. N.D. W.Va. 1995) (disallowing all lumped fee
26 entries because the format in which they were presented did not
27 allow for a thorough reasonableness analysis).

1 Thomas also alleges that even though Farmer produced the
2 Daily Logs that informed Farmer's De-Lumped Fee Statement, the
3 De-lumped Fee Statement is inaccurate because it is based on a
4 current estimation of the past time spent on the specific tasks
5 referenced in the billing statements, instead of on original
6 contemporaneously prepared detailed time records. Thomas
7 contends that because there are no contemporaneously prepared
8 (un-lumped) detailed time records, all the original lumped fees
9 of the Final Fee Application should be disallowed.

10 While the failure to maintain contemporaneous time records
11 affects the reliability of the records, it does not automatically
12 mandate a denial of the fees. In re Porcheddu, 338 B.R. 729, 737
13 (Bankr. S.D. Tex. 2006); In re Pinkins, 213 B.R. 818, 824
14 (Bankr. E.D. Mich. 1997). Even without contemporaneous time
15 records the bankruptcy court may be able to make a reasonableness
16 determination through information extraneous to the fee records.
17 In re Porcheddu, 338 B.R. at 737; In re Moss, 320 B.R. 143, 155
18 (Bankr. E.D. Mich. 2005). The bankruptcy court determined it was
19 able to properly review the Daily Logs and compare them with the
20 Chronological Billing Statement and "the interim fee application
21 when there were no logs to get to the lumped billing" in order to
22 evaluate whether the fees were reasonable, necessary or
23 beneficial and reflected good billing judgment. Hr'g Tr. at
24 28:19-21. We do not find the bankruptcy court erred in finding
25 that the Daily Logs, which were contemporaneously prepared, or
26 the Chronological Billing Statement, which was later prepared to
27 further document Farmer's fee request, were adequate to review.

1 However, in reviewing the documents submitted by Farmer, the
2 bankruptcy court agreed with Thomas that there were still entries
3 that contained lumped billing. When fee applications are
4 submitted with a portion or all of the requested fees based on
5 lumped entries, courts may reduce, rather than disallow,
6 compensation. Welch, 480 F.3d at 948 (courts have discretion to
7 reduce block billed hours); Mendez v. County of San Bernardino,
8 540 F.3d 1109, 1129 (9th Cir. 2008) (finding it appropriate to
9 reduce hours due to block billing, but not to make an across-the-
10 board reduction or rejection of all hours). The bankruptcy court
11 found Farmer had expended extensive and good faith efforts to de-
12 lump the billing records and determined a 10% reduction on lumped
13 time was an "appropriate penalty" for a violation of Rule 2016.
14 As we discuss below, reducing fees is a recognized remedy when
15 services have been lumped together. Therefore, we find the
16 bankruptcy court's reduction of the Amended Fee Application's
17 lumped billing entries was not an abuse of discretion.

18 Thomas argues, however, that even if the bankruptcy court
19 was authorized to reduce the lumped billing entries, a 10%
20 reduction was not enough of a reduction considering that 32% of
21 Farmer's fees were based on lumped entries.

22 In setting a percentage penalty for lumping, most courts
23 "typically make an adjustment ranging from 5% to over 30%, which
24 is consistent with the finding of the California State Bar's
25 Committee on Mandatory Fee Arbitration that block billing may
26 increase time by 10% to 30%." Darling Int'l., Inc. v. Baywood
27 Partners, Inc., 2007 WL 4532233 * 9 (N.D. Cal. 2007); Welch, 480
28 F.3d at 948.

1 However, the amount of total fees that have been lumped does
2 not dictate the percentage of the reduction. For example, in
3 Gundlach v. N.A.A.C.P., 2005 WL 2012738 *4 (M.D. Fla. 2005), all
4 of the requested fees were based on lumped billing and the court
5 applied a 30% reduction for the lack of documentation and "to
6 offset redundancy." In Spalding Lab., Inc. v. Ariz. Biological
7 Control, Inc., 2008 WL 2227501, * 4 (C.D. Cal. 2008), where all
8 of the requested fees were based on lumped billing, the court
9 imposed a 15% reduction because it determined that lumping
10 services could increase time records by 10% to 30%. The court,
11 in Ambriz v. Arrow Fin. Serv., LLC, 2008 WL 2095617 * 4 (C.D.
12 Cal. 2008), applied a 20% reduction on fees due to lumping of
13 services even though one attorney submitted only 17% of his total
14 fees in a lumped format and the other attorney seeking fees
15 submitted merely 9% of its fees as lumped entries. Yet, the
16 court in In re Recycling Indus., Inc., 243 B.R. at 407, took only
17 a 5% reduction when 10% of the fees requested were based on
18 lumped billing entries.

19 The variance in the percentage of reduction for lumped
20 billing appears to reflect the court's understanding of the
21 litigation involved and its determination of what is reasonable
22 within that context. In re Dutta, 175 B.R. 41, 46 (9th Cir. BAP
23 1994) (fee awards are "left to the discretion of trial courts
24 because they involve essentially factual matters"). The
25 bankruptcy court "has the benefit of first-hand contact with the
26 litigation and the lawyers involved." Welch, 480 F.3d at 946.
27 Therefore, it is well situated to make a determination as to what
28 is reasonable under the circumstances. See, e.g., Darling Int'l,

1 Inc., 2007 WL 4532233 at * 9 (the court reduced fees by 19% where
2 40% of the bills were lumped because it found there was "little
3 reason to doubt the overall veracity of the records" and the fee
4 bill was not unreasonable).

5 Here, the bankruptcy court reviewed the previously submitted
6 interim fee applications, the Chronological Billing Statement,
7 the Daily Logs, and the Amended Fee Application carefully. The
8 bankruptcy court reduced Farmer's fees because, even though
9 Farmer attempted to de-lump the billing records, it still found
10 entries that contained lumped services. The bankruptcy court
11 determined an appropriate penalty based on Farmer's efforts as
12 well as its knowledge of the more than seven years of litigation
13 between the parties. We do not find the bankruptcy court's 10%
14 reduction as penalty for lumped billing practices to be outside
15 the norm, or to be a clear error of judgment. Therefore, we do
16 not find the bankruptcy court abused its discretion when it
17 reduced Farmer's Amended Fee Application by \$7,668.15 due to
18 lumped billing.

19 We next address Thomas' contention that the bankruptcy court
20 made a significant error because, in reaching its total of lumped
21 hours, it did not find time entries of .3 hours or less to be
22 "lumped." The local bankruptcy rules ("Local Rules") state that
23 "[a] summary that lists a number of services under only one time
24 period is not satisfactory" in applications for compensation.
25 Local Rule 2016-1(a)(1)(E)(ii). The Local Rules specify that
26 "[t]ime spent must be accounted for in tenths of an hour and
27 broken down in detail by the specific task performed. Lumping of
28 services is not satisfactory." Local Rule 2016-1(a)(1)(E)(iii).

1 Nevertheless, the bankruptcy court:

2 [did] not count .3 as lumped time. You know, if it's a
3 call to [counsel] and a letter to the client, who cares
4 whether it's .1 and .2 and which one it is. You know,
5 if its .2 hours to [counsel] and .1 to the client,
6 that's fine. If it's vice versa, that's fine too. I
7 did not count lumping until we started at .4 hours.
8 Okay. Because it has to be .1 to one topic and .2 to
9 the other topic, and in no instance when it was a total
of .3 was I offended by an application of the greater
time to one or the other of the services rendered.

10 Hr'g Tr. 5:19-25; 6:1-3 (November 12, 2008).

11 Our review of the record reveals a dozen lumped billing
12 entries of .3 hours or less.⁷ Each of those entries involve two
13 tasks, usually a telephone call to counsel or the Trustee and
14 drafting correspondence. The bankruptcy court reviewed these
15 entries and made a determination of the reasonableness of the
16 time spent on such services, whether they were necessary and
17 beneficial, and if such services were performed within a
18 reasonable amount of time. Therefore, we find that although the
19 time entries lumped two services together, the bankruptcy court
20 made an appropriate determination under § 330(a)(3).

21 **B. Hourly Rate for Travel Time**

22 Thomas previously challenged Farmer's practice of charging
23 for its travel time at its full hourly rate in Thomas I; however,
24 the Panel was unable to determine whether the court erred in
25 authorizing full payment for Farmer's travel time because most of

27 ⁷ The total fees for lumped time of .3 hours or less is
28 \$1,059.00.

1 the travel time was included in lumped time entries. Therefore,
2 the issue of the reasonableness of Farmer's travel time was
3 remanded to the bankruptcy court to be considered as part of its
4 re-examination of all of Farmer's time records.

5 On remand, the bankruptcy court found that there should be
6 no discount for Farmer's travel time for several reasons:

7 Santa Barbara is a small legal market. Most everybody
8 qualified to participate in this case located in Santa
9 Barbara was already involved or had been conflicted
10 out. . . . But we do have a relatively small group of
11 lawyers in town. The San Luis Obispo Bar practices
12 almost exclusively - - Bankruptcy Bar - - practices
13 almost exclusively in Santa Barbara because it's too
14 far to go to San Jose probably, and we're in the
15 district. So one must make court appearances. One
16 shouldn't be talking on a cell phone. And now it is
17 illegal. So one can only be billing to one case at a
18 time, unless you have a chauffeur and you can sit in
19 the back seat and bill all you want to all your other
20 cases. But then you'd be having expenses of a
21 chauffeured driver that would be disallowed.

22 And Mr. Farmer's billing rates, although they are, I
23 imagine what the market will bear in San Luis Obispo,
24 or they might be higher, are relatively low for the
25 Central District of California. He is not billing
26 \$750 an hour to drive to Santa Barbara and back. . . .
27 So because we have such a limited Bar, it's necessary
28 many times to have lawyers from Ventura, even Los
Angeles and certainly San Luis Obispo. They have to
drive. It's not like walking down and spending five
minutes. . . . So I'm not going to make any deduction
for driving, and those are my reasons why.

H'rg. Tr. 8-9 (November 12, 2008).

1 Thomas assigns error to the bankruptcy court's decision to
2 allow Farmer its full hourly rate for travel time. Thomas
3 asserts travel time is not productive, and therefore, charging a
4 full hourly rate is unreasonable.

5 As the Panel in Thomas I recognized, there is no consensus
6 among courts about what hourly rate should be allowed for
7 professional's travel time under § 330. 3 COLLIER ON BANKRUPTCY,
8 § 330.05[3][b][iii]. Some districts have proscribed the
9 allowable rate for travel through general orders or local rules.
10 See, e.g., Bankr. N.D. Tex. General Order 2000-7, Standing Order
11 on Guidelines for Compensation and Expense Reimbursement of
12 Professionals (Dec. 21, 2000) (limiting compensation for travel
13 time to 50% of normal billable rate unless legal work is being
14 performed during travel); Delaware Local Bankruptcy Rule 2016-2
15 ("Travel time during which no work is performed shall be
16 separately described and may be billed at no more than 50% of
17 regular hourly rates."). Other districts have an established
18 policy setting the compensable billing rate for travel. In re
19 Kuhn, 337 B.R. 668, 676 (Bankr. N.D. Ind. 2006) (district policy
20 limits travel compensation to 50% of the ordinary rate charged
21 for legal services); Prologis Six Rivers Ltd. P'ship v. Gould
22 (In re Gould), 363 B.R. 45, 53 (Bankr. D. Conn. 2007) (policy in
23 district is to allow 100% compensation for travel time due to
24 attorneys' lost income opportunity while traveling).

25 Thomas has not directed us to a local rule or district
26 practice which establishes a set policy for compensable travel
27 time and we do not find the Central District of California has
28 set such guidelines or policies. Therefore, consistent with the

1 § 330(a)(3) analysis, the bankruptcy court must make a subjective
2 evaluation of the reasonableness of the fees sought. Thus,
3 whether travel time is to be compensated at a full or partial
4 rate should be evaluated "not as to whether such time was
5 productive, but whether it was reasonable and necessary." In re
6 The Academy, Inc., 2005 WL 950642 * 2 (Bankr. M.D. Fla. 2005); In
7 re Bank of New England Corp., 134 B.R. 450, 455 (Bankr. D. Mass.
8 1991) (quoting In re Cano, 122 B.R. 812, 814 (Bankr. N.D. Ga.
9 1991)).

10 Reasonableness of fees for travel time has been evaluated by
11 "the services rendered, the time constraints imposed, the
12 difficulties of the problems which have been handled, the impact
13 on the business of the attorney's ability to service other
14 clients, and the results achieved. In re Frontier Airlines,
15 Inc., 74 B.R. 973, 979 (Bankr. N.D. Colo. 1987). Other courts
16 conclude compensation at the full hourly rate is appropriate if
17 the time is "(1) actually spent for travel; (2) a reasonable time
18 considering the distance traveled; (3) necessary in the sense
19 that the travel was required in connection with the bankruptcy
20 court process; and (4) beneficial in the sense that the legal
21 services for which the travel was undertaken advanced the
22 administration of the estate." In re Holka, 2005 WL 1806436 * 2
23 (Bankr. E.D. Mich. 2005); In re Braddy, 195 B.R. 365, 367-68
24 (Bankr. D. Mich. 1996) (addressing issues of competitive
25 disadvantage if travel time is not reimbursed at full rate).

26 Here, the bankruptcy court touched upon all these factors by
27 determining that counsel outside of Santa Barbara was necessary
28 to represent the estate due to conflicts within a small bar and

1 that Farmer's travel and attendance at court hearings in Santa
2 Barbara was necessary and beneficial to the bankruptcy case. The
3 bankruptcy court found that Farmer was unable to bill other
4 clients during the time he was traveling to Santa Barbara for
5 hearings⁸, and that the fee charged was modest by comparison to
6 other rates charged in the district. Therefore, the bankruptcy
7 court applied the correct legal standard under § 330 by finding
8 Farmer's full hourly rate was necessary and reasonable.

9 While we may have arrived at a different conclusion, we
10 cannot simply substitute our judgment for that of the bankruptcy
11 court. United States v. Henderson, 241 F.3d 638, 646 (9th Cir.
12 2000). The bankruptcy court's order regarding fees is reviewed
13 for an abuse of discretion. In re Mendez, 231 B.R. 86, 88 (9th
14 Cir. BAP 1999). Discretion is abused "when the judicial action
15 is "arbitrary, fanciful or unreasonable" or "where no reasonable
16 man [or woman] would take the view adopted by the trial court."
17 Golden Gate Hotel Ass'n v. City & County of San Francisco, 18
18 F.3d 1482, 1485 (9th Cir. 1994); United States Cellular Inv. Co.
19 Of L.A., Inc. v. GTE Mobilnet, Inc., 281 F.3d 929, 934 (9th Cir.
20 2002). As one court elaborated, "[i]f reasonable men [or women]
21 could differ as to the propriety of the action taken by the trial
22 court, then it cannot be said that the trial court abused its
23 discretion." Ohanian v. Irwin (In re Irwin), 338 B.R. 839, 844

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26 ⁸ The bankruptcy court, when it stated it was illegal to
27 talk on a cell phone, was talking about the state of the law in
28 California at the time of the hearing. Even though talking on a
cell phone while driving was legal when Farmer was driving to and
from Santa Barbara on the case, it was not advisable.

1 (E.D. Cal. 2006). Thus, reversal under the abuse of discretion
2 standard is possible only "when the appellate court is convinced
3 firmly that the reviewed decision lies beyond the pale of
4 reasonable justification under the circumstances." Harman v.
5 Apfel, 211 F.3d 1172, 1174 (9th Cir. 2000).

6 Given that courts differ on whether the award of travel time
7 is compensable at a full hourly rate, the bankruptcy court is
8 entitled to draw upon its own experience with the local practice
9 and customs to factor into the determination of reasonableness of
10 the fees charged for travel. We "defer to the bankruptcy court
11 for judgments pertaining to the competitiveness and development
12 of its local legal community." Bachman v. Laughlin (In re
13 McKeeman), 236 B.R. 667, 673 (8th Cir. BAP 1999). Because we are
14 not convinced the bankruptcy court's decision was unreasonable or
15 unjustified under the circumstances, we do not find the
16 bankruptcy court abused its discretion in awarding Farmer its
17 full fees for travel time.

18 VI. CONCLUSION

19 The bankruptcy court conducted a careful analysis of
20 Farmer's time records and concluded that \$76,881.50 in fees were
21 for services improperly lumped together in a single billing entry
22 and applied a 10% penalty to that amount. We find no error in
23 the bankruptcy court's finding of fact as to the lumped time and
24 no abuse of discretion in imposing a 10% reduction on those fees.
25 Nor do we find the bankruptcy court abused its discretion when it
26 allowed the full hourly rate for Farmer's travel time.
27 Therefore, we **AFFIRM**.

1 PAPPAS, Bankruptcy Judge, dissenting in part.

2

3 For the reasons explained by the majority, I join them in
4 affirming the bankruptcy court's decision concerning the
5 "lumping" issue. I agree with my colleagues that the bankruptcy
6 court, on remand, engaged in a comprehensive review of Farmer's
7 time and billing records, made detailed fact findings, and
8 carefully designed an appropriate, balanced remedy for dealing
9 with the remaining deficiencies in Farmer's billing records by
10 imposing a measured reduction of the amount of fees requested.

11 On the other hand, I cannot join my colleagues' decision to
12 affirm the bankruptcy court's approval of the full amount of
13 Farmer's request for compensation for attorney travel. In stark
14 contrast to the record upon which the bankruptcy court relied to
15 resolve the time-lumping challenge, there is plainly nothing in
16 the record to justify the court's apparent finding that \$250-\$350
17 per hour is a reasonable rate to compensate an attorney, not for
18 lawyering skills and expertise, but to drive between the office
19 and the courthouse.

20 Farmer's itemization of services attached to its Amended Fee
21 Application shows that it billed the bankruptcy estate in excess
22 of \$33,000 for time spent by its attorneys driving their personal
23 vehicles between San Luis Obispo, the site of the firm's offices,
24 and the bankruptcy courthouse in Santa Barbara.¹ Four hours was

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27 ¹ Farmer lawyers also drove to more distant destinations to
28 attend depositions in Encino and Woodland Hills, and to attend an
appellate argument in Pasadena. These trips are also billed at
full hourly rates in the time records.

1 usually billed for each of these many trips,² for which Farmer
2 sought compensation from the bankruptcy estate at \$250 to \$350
3 per hour. As a result, for each court appearance, this travel
4 time alone cost the estate over \$1,000.³ Almost invariably, the
5 time spent by the Farmer attorney performing actual legal
6 services at the destination was significantly less than the time
7 spent driving.

8 Since the issue was raised but not resolved in the prior
9 appeal, the Panel asked the bankruptcy judge to "further
10 consider" Farmer's habit of charging at full hourly rates for
11 travel time, a practice which "the bankruptcy court did not
12 address and apparently endorsed." Thomas I at 25 n.12. But
13 unlike the approach it took to the lumping issue, on remand, the
14 bankruptcy court provided only the briefest comments and analysis
15 of its reasons for authorizing such high amounts for Farmer
16 lawyers' time spent driving, and it cited no evidence in the
17 record to support Farmer's claim.⁴ In remarking about the travel
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20 ² Occasionally, lesser amounts of time were charged,
21 presumably because the lawyer participated in court hearings
involving more than one case.

22 ³ The firm also billed for reimbursement of "mileage" for
23 these trips. I assume these trips were all necessary, and
24 therefore have no concerns with Farmer recovering its out-of-
25 pocket costs. I mention this simply to provide context in
considering the total cost to have a Farmer attorney appear for
the trustee at even a brief hearing in this case.

26 ⁴ At oral argument, Farmer's counsel conceded that the
27 evidentiary record to support full hourly rates for travel time
was "thin." This is a classic understatement, since there is no
28 proof in the record to show this billing practice was reasonable.

1 time charges, the bankruptcy judge merely observed that, because
2 of the limited number of local bankruptcy attorneys, it may have
3 been necessary for trustee to retain counsel from outside of
4 Santa Barbara. Hr'g Tr. 7-8 (November 12, 2008). The bankruptcy
5 court also apparently thought full hourly rates were proper
6 because, when compared to other rates apparently charged in cases
7 in the Central District of California, Farmer's charges were
8 "modest." Hr'g Tr. 9:1-6 (November 12, 2008).

9 I do not question the bankruptcy court's reasons for
10 blessing the necessity of trustee's decision to hire counsel from
11 San Luis Obispo, nor am I concerned with its conclusion that
12 Farmer's rates for the legal services its lawyers provided to the
13 trustee are reasonable. According to the majority, once the
14 bankruptcy court reached such conclusions, it apparently had
15 unfettered discretion to allow, discount, or disallow full hourly
16 rates for the lawyers' travel time. I respectfully disagree with
17 such a notion.

18 As to the appropriate amount to be allowed for nonproductive
19 travel time, the bankruptcy court's observations simply miss the
20 mark. That hiring out-of-town counsel was necessary, and that
21 Farmer's rates for legal work are reasonable, do not justify
22 allowing its lawyers to charge the exact same rate for such
23 divergent tasks as appearing in a courtroom and driving up and
24 down Highway 101. And that a Los Angeles attorney may charge
25 \$750 per hour for legal services in some cases does not explain
26 why it was reasonable for the Farmer lawyers to charge \$250 per

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1 hour and more to drive their cars in this case.⁵

2 My views are hardly radical.⁶ It is a bankruptcy estate
3 professional's burden to prove that all compensation requested
4 is reasonable. Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)
5 ("Fee applicant bears the burden of establishing entitlement to
6 an award and documenting the appropriate hours expended and
7 hourly rates.") (cited for the burden of a bankruptcy
8 professional in Hale v. U.S. Tr. (In re Basham), 208 B.R. 926,
9 930 (9th Cir. BAP 1997), aff'd sub nom. In re Byrne, 152 F.3d 924
10 (Table) (9th Cir. 1998)). The bankruptcy court has an
11 independent duty to scrutinize professional fee requests. Mayer,
12 Glassman & Gaines v. Washam (In re Hanson), 172 B.R. 67, 74 (9th
13 Cir. BAP 1997). In reviewing whether the amount sought for an
14 estate professionals' services is reasonable, § 330(a)(3)(D)

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16 ⁵ The import of the bankruptcy court's oblique reference to
17 rates of \$750 per hour for cases elsewhere in the district is
18 perplexing. Obviously, some bankruptcy attorneys command high
19 rates for their services; the media has reported rates for
20 bankruptcy lawyers appearing in chapter 11 mega-cases in some
21 courts of \$1,000 per hour or more. But the court did not
22 indicate that such rates have ever been approved in the Santa
23 Barbara division, nor did it state that lawyers charging \$750 per
24 hour in other Central District cases did so for travel time. As
25 a result, such an "apples and oranges" comparison is of little
26 value in the context of this particular case.

27 ⁶ The only reported court of appeals decision on this topic
28 affirmed a bankruptcy court's order awarding attorney fees at
half the usual hourly rate for travel time. Caplan & Drysdale v.
Babcock & Wilson Co. (In re Babcock & Wilson Co.), 526 F.3d 824,
828-829 (5th Cir. 2008). The same occurred in the only BAP
decision concerning travel time compensation. Bachman v.
Laughlin (In re McKeeman), 236 B.R. 667 (8th Cir. BAP 1999). To
be fair, I acknowledge that both appellate courts deferred to the
discretion of the local bankruptcy judge.

1 commands that the bankruptcy court consider "the complexity,
2 importance, and nature of the . . . task addressed" In
3 applying § 330(a), bankruptcy courts have, forever, required that
4 the rate allowed for compensation of the professional match the
5 level of skill required to perform that service. In addition,
6 the Ninth Circuit mandates that estate professionals exercise
7 appropriate billing judgment in fashioning their fee requests.
8 Unsecured Creditor's Comm. v. Puget Sound Plywood, Inc., 924 F.2d
9 955, 957-58 (9th Cir. 1991). In other words, as most bankruptcy
10 professionals have come to understand, the trustee's law firm can
11 not expect to be paid senior partner rates for performing
12 services that could be more economically performed by junior
13 partners, associates, paralegals, or perhaps in this case, by
14 nonprofessional staff or even a commercial service.

15 I agree with my colleagues that in reviewing matters
16 involving professional compensation, the Panel should show
17 deference to the expertise of local bankruptcy courts. Still,
18 even the generous abuse of discretion standard of review requires
19 that there be some factual or other support in the record for a
20 requested fee, or some analysis showing the bankruptcy court's
21 special reasons for not requiring proof of reasonableness. In re
22 Dutta, 175 B.R. 41, 46 (9th Cir. BAP 1994) ("[Although]
23 attorneys' fee awards are left to the discretion of trial courts
24 because they involve essentially factual matters, the Supreme
25 Court has nevertheless mandated that a trial court must provide a
26 'concise but clear explanation of its reasons for the fee
27 award.'" (quoting Hensley, 461 U.S. at 437) and that "[w]hile a
28 trial court need not necessarily explain its analysis in terms of

1 elaborate mathematical calculations, for example, it must provide
2 sufficient insight into its exercise of discretion to allow an
3 appellate court to exercise its reviewing function.”).

4 Conceivably, payment of a professional’s full hourly rate
5 for travel time could be justified. But there is nothing in this
6 record to show this case was so distinctive as to allow the same
7 rate of compensation to Farmer attorneys to argue an appeal
8 before the Ninth Circuit, as to drive to and from that argument.⁷
9 Though it may have been necessary for Farmer attorneys to get to
10 the courthouse from their offices, driving their cars is not
11 “legal services.” Compensation must match the level of skill
12 required to perform the service. At bottom, the bankruptcy court
13 should have required some evidence, testimony, or other
14 information from Farmer to show that its practice of billing at
15 full hourly rates for driving was justified and reasonable in
16 this case.⁸ Because the record includes no such evidence or

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18 ⁷ To accommodate difficulties in developing proof, and
19 because estate professionals may simply prefer to drive
20 themselves to court, the majority acknowledges that many
21 bankruptcy courts and bankruptcy bars have chosen to develop
22 local practices allowing compensation for travel time at
23 standard, reduced rates (e.g., 50% of the full hourly rate).
24 Such local protocols are practical and defensible. See, e.g.,
25 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468
26 F.3d 592, 599 (9th Cir. 2006) (bankruptcy court may rely on
27 presumptive “no look” fee guidelines in lieu of reasonableness
28 analysis for routine services in chapter 13 cases). Still,
whether this approach is appropriate under § 330(a) will depend
upon the facts of each case and the hourly rate involved.

26 ⁸ The bankruptcy court suggested that charging the
27 bankruptcy estate for a lawyer’s “chauffeur” would not be
28 allowed. Of course, a negative connotation attaches to the use

(continued...)

1 information, I reluctantly conclude that the bankruptcy court
2 abused its discretion by allowing full hourly rates to attorneys
3 for travel. I therefore dissent.⁹

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10 ⁸(...continued)
11 of this term to describe what could in reality consist of a wide
12 array of transportation services. Moreover, I disagree with the
13 court's premise that a professional driver's charges would be
14 disallowed. Indeed, in my own rural district, I have encountered
15 estate professionals who have devised truly sensible approaches
16 to this task. For example, one lawyer employs a paid driver,
17 either someone from the firm or otherwise, to drive him long
18 distances to and from court. The bankruptcy estate is charged
19 for the driver's services, but invariably this cost is
20 significantly lower than paying the senior attorney's hourly
21 rates. En route, the lawyer performs billable services, thereby
22 suffering no lost opportunity costs for the need to travel. That
23 this scenario is not impractical folly is demonstrated by
24 Farmer's own billing records in this case, which show that the
25 bulk of the legal services its attorneys performed were for
26 telephone conversations and for preparation and review of
27 pleadings and documents. In this age of cell phones and laptops,
28 is it speculative to assume that similar services could not be
performed while riding in a car? Of course, without evidence,
one can only wonder.

23 ⁹ I also dissent from my colleague's decision not to publish
24 this ruling as an Opinion. Because the Panel endorses the
25 bankruptcy court's approval of full hourly rates for estate
26 professional travel time without a showing of any special facts
27 or circumstances, an approach potentially at odds with the
28 practice observed in many of the circuit's districts, the
decision is certainly one of substantial importance and interest
to the bankruptcy bench and bar. See 9th Cir. BAP R. 8013-1(a),
(b).