

DEC 22 2015

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	CC-15-1109-TaKuKi
6	MORRY WAKSBERG M.D., INC.,)	Bk. No.	2:06-bk-16101-BB
7	Debtor.)		
8	_____)		
9	THE BANKRUPTCY LAW FIRM, PC,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	ALFRED SIEGEL, CHAPTER 7)		
13	TRUSTEE,)		
14	Appellee.)		
	_____)		

Argued and Submitted on November 19, 2015
at Pasadena, California

Filed - December 22, 2015

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

Honorable Sheri Bluebond, Chief Bankruptcy Judge, Presiding

Appearances: Kathleen P. March of The Bankruptcy Law Firm,
P.C. argued for appellant; Byron Moldo of Ervin,
Cohen & Jessup LLP argued for appellee.

Before: TAYLOR, KURTZ, and KIRSCHER, Bankruptcy Judges.

* 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 8024-1(c) (2).

1 chapter 11 bankruptcy petitions. An official committee of
2 unsecured creditors was appointed in the corporate case, and
3 the Law Firm was employed as the committee's counsel. The
4 bankruptcy court later entered an order approving a final
5 compensation award to the Law Firm, half of which it collected
6 immediately. Eventually, both bankruptcy cases were converted
7 to chapter 7. The Law Firm's uncollected fees, thus, remained
8 pending as an unpaid chapter 11 administrative expense in the
9 corporate case.

10 Contentious disputes ensued with respect to Dr. Waksberg's
11 exemption claims and Mrs. Waksberg's claims against the
12 estates. The parties later came to a compromise, and the
13 Trustee moved for approval of the settlement agreement.

14 Concurrently, the Trustee moved to substantively
15 consolidate the two bankruptcy estates. Seeking to protect its
16 claim to payment in the corporate case, the Law Firm filed a
17 single opposition to both of the motions; its focus, however,
18 was against substantive consolidation. The bankruptcy court
19 granted both motions, and the Law Firm appealed. On appeal,
20 the Panel concluded that the circumstances did not meet the
21 Ninth Circuit's standard for substantive consolidation, as it
22 resulted in inequity to the Law Firm.

23 Back before the bankruptcy court, the Law Firm filed a
24 motion seeking to allow its fees and costs incurred in opposing
25 the consolidation and appealing the consolidation order as a
26 chapter 7 administrative expense under § 503(b)(1)(A) (the
27 "§ 503(b) Motion"). It attached Ms. March's declaration and a
28 billing record of the Law Firm's services rendered in

1 connection with the consolidation dispute. Eventually, the Law
2 Firm's post-conversion administrative expense request increased
3 to \$202,580.²

4 The Law Firm asserted that it successfully blocked the
5 Trustee's "illegal attempt" to use \$2.6 million dollars
6 belonging to the corporate estate to pay claims of the
7 individual estate. As its efforts necessarily preserved the
8 corporate estate, the Law Firm asserted that it was entitled to
9 administrative payment of its fees and costs, based on two
10 theories of recovery: first, the plain language of § 503(b);
11 and second, the "fundamental fairness" doctrine announced in
12 Reading Co. v. Brown, 391 U.S. 471 (1968). Reading provides
13 for the allowance of damages resulting from a postpetition tort
14 claim as an administrative expense, even in the absence of a
15 benefit conferred to the bankruptcy estate. According to the
16 Law Firm, the Trustee breached his fiduciary duty to the
17 corporate estate and its claimants (including the Law Firm)
18 when he successfully petitioned for substantive consolidation.

19 The Trustee opposed. He argued that § 503(b)(1)(A) did
20 not support the Law Firm's request, as the nature of the fees
21 requested did not fall within that particular Code provision.
22 And he contested that the Reading exception applied.

23
24 ² This amount is not in the record, but taken from the Law
25 Firm's briefs on appeal. At the hearing on the § 503(b)
26 Motion, the Law Firm clarified that it sought an additional
27 \$30,000 in fees and \$77 in costs in connection with its reply
28 to the Trustee's opposition. It does not appear, however, that
the Law Firm filed a supplemental billing record with respect
to the additional work performed.

1 But to the extent the bankruptcy court was inclined to
2 grant the request, the Trustee argued that the Law Firm's
3 requested fees and costs were grossly inflated. He challenged
4 the nature and quantity of the time entries and provided
5 approximately 60 examples of tasks administrative in nature
6 billed at either \$800 an hour, for Ms. March, or \$400 an hour
7 for the Law Firm's single associate ("Associate"). The Trustee
8 also challenged Ms. March's \$800 billing rate, asserting that
9 the rate was higher than other esteemed bankruptcy
10 practitioners within the judicial district.

11 Pursuant to a bankruptcy court order, the Law Firm filed a
12 revised billing record (the "Billing Record"). As Ms. March
13 stated in an accompanying declaration, the revised document
14 responded to the bankruptcy court's instruction for a "more
15 detailed itemization" of the fees incurred and billing in one-
16 tenths of an hour.

17 At the hearing, the bankruptcy court rejected a number of
18 the Law Firm's theories for allowance of administrative expense
19 treatment, including application of the Reading exception and
20 protection of the integrity of the bankruptcy system. Turning
21 to § 503(b), it read portions of its tentative ruling into the
22 record and determined that, as a result of the Law Firm's
23 efforts, a substantial benefit to the corporate estate inured.
24 It noted, however, that it was still required to find that the
25 requested fees and costs were an actual and necessary cost.

26 The bankruptcy court found that the Billing Record
27 reflected several issues, including numerous entries for
28 associate attorney, paralegal, or administrative-level work

1 billed by Ms. March at \$800 an hour. It also found that \$800
2 was not a reasonable hourly fee for Ms. March for the services
3 rendered in connection with the consolidation dispute. Stating
4 that it was required to determine how much it would have cost
5 to obtain the substantive consolidation reversal, the
6 bankruptcy court estimated the number of hours it believed that
7 an experienced practitioner would have reasonably expended in
8 opposing consolidation, prosecuting the appeal, and filing the
9 motions for stay pending an appeal before the bankruptcy court
10 and the BAP.

11 The Law Firm disagreed with the bankruptcy court's
12 analysis. Ms. March argued that nothing in the Billing Record
13 was unnecessary to obtaining vacatur of the consolidation
14 order. She also argued that her \$800 hourly rate was justified
15 based on her qualifications and experience including her tenure
16 as a former bankruptcy judge and her triple certification as a
17 bankruptcy specialist. The rhetoric apparently escalated, as
18 the bankruptcy court stopped Ms. March and instructed her to
19 change the tone of her voice. Ms. March apologized but
20 continued to assert that the result obtained by the Law Firm
21 "was stupendous." Ms. March did not mince words in her belief
22 that the bankruptcy court was wrong:

23 So frankly, Your Honor, it is reversible error if you
24 go there. And my firm will appeal again if
25 necessary. . . . So not only is this error of law
26 and you have no facts to support where Your Honor is
27 going, but it's extremely dysfunctional because until
28 my firm is paid and out of the case there's not going
to be the substantive consolidation that -

27 Hr'g Tr. (Apr. 1, 2015) at 34:10-11, 15-19.

28 The bankruptcy court determined that it would grant in

1 part the § 503(b) Motion and allow \$26,000 in fees and \$3,237
2 in costs. Immediately following the hearing, the Law Firm
3 filed a timely notice of appeal.

4 The Law Firm also opposed the proposed order lodged by the
5 Trustee. It asserted that the lodged order did not comport
6 with the bankruptcy court's ruling at the hearing and requested
7 that the bankruptcy court enter its tentative ruling into the
8 record.

9 The bankruptcy court disagreed and entered the order
10 granting in part the § 503(b) Motion. It also issued a
11 memorandum decision.

12 **JURISDICTION**

13 The bankruptcy court had jurisdiction pursuant to 28
14 U.S.C. §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28
15 U.S.C. § 158.

16 **ISSUE**

17 Whether the bankruptcy court abused its discretion in
18 reducing the amount of the Law Firm's requested fees and costs.

19 **STANDARDS OF REVIEW**

20 We review the bankruptcy court's decision to reduce fees
21 pursuant to an administrative expense allowance for an abuse of
22 discretion. See Burlington N.R.R. Co. v. Dant & Russell, Inc.
23 (In re Dant & Russell, Inc.), 853 F.2d 700, 707 (9th Cir.
24 1988); Gonzalez v. Gottlieb (In re Metro Fulfillment, Inc.),
25 294 B.R. 306, 309 (9th Cir. BAP 2003). A bankruptcy court
26 abuses its discretion if it applies the wrong legal standard,
27 misapplies the correct legal standard, or if its factual
28 findings are illogical, implausible, or without support in

1 inferences that may be drawn from the facts in the record. See
2 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
3 Cir. 2011). And, if the bankruptcy court's "findings are
4 plausible in light of the record viewed in its entirety, the
5 [Panel] cannot reverse even if it is convinced it would have
6 found differently." Husain v. Olympic Airways, 316 F.3d 829,
7 835 (9th Cir. 2002), aff'd, 540 U.S. 644 (2004).

8 DISCUSSION

9 A. Scope of appeal

10 This case presents an anomalous situation, for the reason
11 that it does not involve a traditional fee application or legal
12 fees incurred by a law firm retained by the estate. This case,
13 instead, involves the unusual allowance of a creditor's legal
14 fees and costs as an administrative expense under
15 § 503(b) (1) (A).³ Unusual, because a creditor's legal fees are
16 typically allowed as an administrative expense under
17 § 503(b) (4), to the extent the creditor's expense is allowable
18 under § 503(b) (3). But see The Law Offices of Neil Vincent
19 Wake v. Sedona Inst. (In re Sedona Inst.), 220 B.R. 74, 81 (9th
20 Cir. BAP 1998) ("[W]here a creditor makes a substantial
21 contribution in a case, reasonable professional fees and costs
22 may be awarded under § 503(b) (4) regardless of whether the
23 creditor has an independent allowable expense under

24
25 ³ No cross-appeal was taken from the allowance of the
26 administrative expense and that determination is now final.
27 The Trustee argues in his brief that § 503(b) did not support
28 any award of fees to the Law Firm. This does not, however,
qualify as a notice of cross-appeal. See generally Fed. R.
Bankr. P. 8002, 8003.

1 § 503(b) (3).”).

2 Notwithstanding the peculiarities here, there is no
3 question that the bankruptcy court was required to consider the
4 reasonableness of the Law Firm’s requested fees and costs,
5 given the effect of administrative expense treatment. See
6 generally In re Dant & Russell, Inc., 853 F.2d at 706
7 (“‘[A]ctual’ and ‘necessary’ are construed narrowly so as ‘to
8 keep fees and administrative costs at a minimum.’”) (citation
9 omitted). In doing so, the bankruptcy court had “wide
10 discretion in determining the reasonableness of fees”
11 The Margulies Law Firm v. Placide (In re Placide), 459 B.R. 64,
12 73 (9th Cir. BAP 2011).

13 Here, after finding that the Law Firm conferred a
14 substantial benefit to the corporate estate, the bankruptcy
15 court proceeded to examine the requested fees and costs for
16 reasonableness. In doing so, it found that some of the fees
17 were unreasonable and, thus, it reduced the amount of fees it
18 deemed allowed as an administrative expense.

19 In this respect, the Law Firm’s arguments as to the
20 Reading exception are irrelevant. Whether the Law Firm’s fees
21 were allowed under § 503(b) (1) (A) or under the Reading
22 exception, the fees were always subject to a reasonableness
23 analysis. Contrary to the Law Firm’s belief, neither scenario
24 presented it with carte blanche to obtain payment of fees and
25 costs in whatever amount it deemed appropriate.

26 ///

27 ///

28 ///

1 **B. The bankruptcy court did not abuse its discretion in**
2 **reducing the amount of fees and costs allowed as an**
3 **administrative expense.**

4 The Law Firm argues that the bankruptcy court ignored the
5 three possible methods for calculating reasonable fees and
6 erred by arbitrarily cutting fees. According to the Law Firm,
7 these three methods are: (1) the plain language of
8 § 503(b) (1) (A), which allows fees that are "actual" and
9 "necessary" to preserving the estate; (2) the 12 "lodestar"
10 factors set forth in Kerr v. Screen Extras Guild, Inc., 526
11 F.2d 67 (9th Cir. 1975); and (3) the "common fund" doctrine.
12 This last argument, regarding the common fund doctrine, is
13 raised for the first time on appeal; thus, we do not address
14 it. See Samson v. W. Capital Partners, LLC (In re Blixseth),
15 684 F.3d 865, 872 n.12 (9th Cir. 2012) (appellate court may
16 decline to address argument not raised before bankruptcy
17 court).

18 The overlap between the Law Firm's other arguments is
19 significant and much of it is based on the "uncontroverted"
20 evidence presented to the bankruptcy court, e.g., the Billing
21 Record and Ms. March's declaration. According to the Law Firm,
22 the uncontroverted evidence showed that it actually incurred
23 the fees and that these fees were necessary to recover the
24 2.6 million dollars for the corporate estate.

25 Under either "method," we conclude that the bankruptcy
26 court did not abuse its discretion in assessing reasonableness
27 and in concluding that a reduction in the amount of the allowed
28 administrative expense was warranted.

1 **1. Reasonableness of fees requested**

2 The lodestar method is the customary method for assessing
3 fees in bankruptcy, “under which ‘the number of hours
4 reasonably expended’ is multiplied by ‘a reasonable hourly
5 rate’ for the person providing the services.” Law Offices of
6 David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 598
7 (9th Cir. 2006). The lodestar method, however, is not
8 mandatory in all bankruptcy cases. Id.

9 In applying the lodestar, the court must consider “some or
10 all of twelve relevant criteria” set forth in Kerr. Carter v.
11 Caleb Brett LLC, 757 F.3d 866, 868-69 (9th Cir. 2014). But see
12 Brown v. Baden (In re Yagman), 796 F.2d 1165, 1184 (9th Cir.
13 1986) (“There is no need to rigidly apply the factors set forth
14 in Kerr . . . but the court must make some evaluation of the
15 fee breakdown submitted by counsel.”), opinion amended on
16 denial of reh’g sub nom., In re Yagman, 803 F.2d 1085 (9th Cir.
17 1986)). In any event, the loadstar method subsumes many of the
18 Kerr factors. See Gonzalez v. City of Maywood, 729 F.3d 1196,
19 1204 n.3 & 1209 n.11 (9th Cir. 2013).

20 Contrary to the Law Firm’s arguments, to the extent the
21 bankruptcy court was required to apply the lodestar method, the
22 record here reflects that it did so. As discussed further
23 below, it determined a reasonable hourly rate for Ms. March and
24 the Associate in rendering these particular services. It next
25 determined the number of hours reasonably necessary to complete
26 the services. And, finally, it calculated the lodestar
27 recovery by multiplying these figures, without further
28 adjustment. Under these circumstances, that the bankruptcy

1 court did not identify the Kerr factors by name is of no
2 moment. See Gonzalez, 729 F.3d at 1204 n.3 & 1209 n.11.

3 The bankruptcy court's determination of unreasonableness
4 was based on the following findings: (1) the hourly rates for
5 Ms. March and the Associate were excessively high; (2) some of
6 the services rendered by Ms. March and the Associate were
7 administrative in nature or otherwise noncompensable; and
8 (3) some of the fees were redundant or otherwise unnecessary.
9 After eliminating fees it considered "excessive, redundant,
10 unnecessary, or otherwise not compensable," the bankruptcy
11 court adjusted the hourly rates and number of hours expended to
12 that it deemed reasonable. In doing so, it utilized a single,
13 hourly rate of \$400 and approved only the following services
14 and time:

- 15 • Preparing and arguing the objection to the substantive
16 consolidation portions of the Trustee's motions: 15 hours;
- 17 • Preparing and arguing the Waksberg I appeal: 30 hours; and
- 18 • Preparing and arguing the motions for stay pending appeal:
19 20 hours.

20 On this record, the bankruptcy court's determinations were
21 not erroneous.

22 **2. Reasonable hourly rates**

23 A reasonable hourly rate for the purposes of computing the
24 lodestar amount is the "prevailing market rates in the relevant
25 community." Gonzalez, 729 F.3d at 1205-06 (citation omitted).
26 "[T]he relevant community is the forum in which the [] court
27 sits." Id. (citation omitted). Then, "[w]ithin this
28 geographic community," the court considers "the experience,

1 skill, and reputation of the attorney." Id. (citation
2 omitted). And, "the fee applicant has the burden of producing
3 'satisfactory evidence' that the rates he [or she] requests
4 meet these standards." Id. (citation omitted).

5 The Billing Record reflects billing only by Ms. March and
6 the Associate. We address them in the inverse.

7 **a. The Associate's hourly rate**

8 The bankruptcy court expressed doubt as to whether the
9 Associate's \$400 hourly rate was warranted; it noted that the
10 attorney was only four years out of law school and a graduate
11 of an unaccredited law school. The record shows, however, that
12 it did not reduce the Associate's hourly rate; instead, it
13 utilized a blended hourly rate for both the Associate and Ms.
14 March. On this record, this was not inappropriate or
15 disfavorable to the Law Firm.

16 Save for a few entries generically identified as "Westlaw
17 research" in connection with the appeal, it does not appear
18 that the Associate performed any services requiring her skills
19 as an attorney. Other than preparing several proofs of service
20 and the bill of costs, the Associate did not draft any of the
21 Law Firm's papers. Instead, she spent her time assembling
22 documents, tables and appendices, preparing forms,
23 electronically filing and downloading documents, and cite
24 checking. Although these tasks were undoubtedly required from
25 a practical standpoint, they were not compensable at \$400 an
26 hour.

27 **b. Ms. March's hourly rate**

28 The bankruptcy court next found that although she was well

1 educated, Ms. March's \$800 hourly rate for the services
2 rendered in connection with the consolidation litigation was
3 excessively high. In doing so, it made several findings⁴ as to
4 Ms. March's experience, skill, and reputation as a bankruptcy
5 attorney.

6 The bankruptcy court was entitled to consider these
7 factors. With 14 years of judicial experience in the Central
8 District of California, the bankruptcy judge has extensive,
9 particularized knowledge of the local bankruptcy bar. And, the
10 bankruptcy judge was entitled to rely on personal knowledge of
11 the prevailing market rates for bankruptcy practitioners in the
12 Central District of California in determining a reasonable
13 hourly rate for the services provided in opposing
14 consolidation. As bankruptcy courts frequently adjudicate fee
15 applications, there is no doubt that the bankruptcy judge's
16 knowledge extended to local billing rates for attorneys across
17 the spectrum. At the hearing, the bankruptcy court, in fact,
18 referred to other attorneys by name who billed at \$800 an hour
19 and higher and concluded that Ms. March was not of their
20 caliber. On this record, its findings were not clearly
21 erroneous.

22 The Law Firm contends that the bankruptcy court abused its
23 discretion in reducing Ms. March's hourly rate to her billing
24 rate in 2006, and that the antiquated hourly rate was not
25 commensurate with Ms. March's experience and qualifications
26 eight years later.

27
28 ⁴ See Appendix A.

1 The record shows, however, that the bankruptcy court did
2 not reduce Ms. March's hourly rate to her 2006 billing rate.
3 It merely observed that, in its opinion, Ms. March's hourly
4 rate significantly increased between 2006 and 2014, and that
5 the \$800 hourly rate was not a rate approved by any client or
6 court. The bankruptcy court did not use Ms. March's 2006
7 hourly rate as a benchmark in setting a reasonable hourly rate.
8 Rather, as stated, the reduction was based on its judgment of
9 the market value of Ms. March's services in opposing and
10 appealing the consolidation, including the complexity of legal
11 work involved.

12 The Law Firm also argues that its uncontroverted evidence
13 - Ms. March's declaration and the Billing Record - established
14 that Ms. March billed at \$800 an hour. That may be so, but the
15 declaration was not dispositive on the question of whether the
16 rate was reasonable. That was a question committed solely to
17 the discretion of the bankruptcy court.

18 And, the movant, the Law Firm - not the Trustee and
19 certainly not the bankruptcy court - bore the burden of
20 producing satisfactory evidence that Ms. March's \$800 hourly
21 rate was the prevailing market rate in the Central District of
22 California, based on her experience, skill, and reputation in
23 the community. The Law Firm did not submit evidence showing,
24 for example, that in 2014, Ms. March billed at \$800 an hour in
25 a bankruptcy case in the Central District of California and
26 that the hourly rate was approved by a client or the bankruptcy
27 court in any other case. Nor did the Law Firm produce expert
28 testimony or market data. Other evidence beyond the Law Firm's

1 self-selected evidence may have existed; but the Law Firm did
2 not present it to the bankruptcy court.

3 **3. Nature of services rendered**

4 The bankruptcy court found that a number of entries in the
5 Billing Record related to services that were noncompensable,
6 either because they were administrative in nature or part of an
7 attorney's overhead. In support of this finding, it identified
8 a partial list of 33 time entries containing such services. It
9 highlighted such tasks that Ms. March billed at \$800 an hour⁵
10 and tasks that the Associate billed at \$400 an hour.⁶

11 The record supports the bankruptcy court's findings. The
12 Billing Record is replete with entries involving tasks that
13 were administrative or paraprofessional in nature. Billing
14 these services at \$800 or \$400 an hour was not appropriate.

15 Perhaps the Law Firm does not have adequate secretarial or
16 paraprofessional support, leaving these types of tasks to
17 Ms. March and the Associate. Even if that were the case, the
18 Law Firm is expected to discount the rates or forgo collection,
19 commensurate with the level of skill required for the task at
20 hand.

21 The Law Firm contends that of the foregoing, only \$896 was
22 clerical in nature; the remaining tasks, totaling \$17,316, were
23 tasks that required an attorney's knowledge and skill. We
24 disagree that only an attorney may prepare a form notice of
25 appeal or a proof of service, assemble the body of an appellate

26
27 ⁵ See Appendix B.

28 ⁶ See Appendix C.

1 brief, or attach exhibits. Many paraprofessionals do so, under
2 the supervision of an attorney; none of these activities
3 require a law degree or bar membership. The attorney, in any
4 event, cannot expect compensation for these types of tasks at
5 her typical hourly rate.⁷

6 **4. Reasonable number of hours**

7 In computing the lodestar amount, the court "must [also]
8 determine a reasonable number of hours for which the prevailing
9 party should be compensated." Gonzalez, 729 F.3d at 1202. In
10 this context, "reasonable" means "[t]he number of hours . . .
11 [which] could reasonably have been billed to a private client."
12 Id. (citation omitted). Billing records, of course, may
13 include hours that could not reasonably be billed to a private
14 client, e.g., entries for hours that are "excessive, redundant,
15 or otherwise unnecessary." Id. In such instances, the court
16 may exclude these hours under one of two methods: (1)
17 conducting an "hour-by-hour analysis of the fee request"; or
18 (2) making an across-the-board percentage cut[] either in the
19 number of hours claimed or in the final lodestar figure . . .
20 ." Id. (citation omitted). If the latter and the reduction is
21 greater than ten percent, the court must "set forth a concise
22

23 ⁷ And, that fees are not compensable for services clerical
24 in nature should be of no surprise to Ms. March or the Law
25 Firm. In In re Stewart, 2008 WL 8462960, at *3 (9th Cir. BAP
26 Mar. 14, 2008), aff'd, 334 F. App'x 854 (9th Cir. 2009), the
27 Law Firm appealed from the bankruptcy court's reduction of fees
28 that the Law Firm incurred as chapter 13 counsel. Among other
things, the bankruptcy court's reduction included fees incurred
for clerical/secretarial tasks. This Panel affirmed the
bankruptcy court; and the Ninth Circuit affirmed the Panel.

1 but clear explanation of its reasons for choosing a given
2 percentage reduction." Id. at 1203.

3 Here, the bankruptcy court found that the Billing Record
4 contained entries that were "excessive, redundant, or otherwise
5 unnecessary." It then stated that it calculated the reasonable
6 number of hours "[a]fter reviewing the charges reflected on
7 [the Billing Record], and assessing the tasks that were
8 actually necessarily performed for the benefit of creditors,
9 and eliminating any charges that the Court considered
10 excessive, redundant, unnecessary or otherwise not compensable
11" Thus, it appears that the bankruptcy court engaged in
12 an hour-by-hour analysis of the requested fees. This was
13 within the bankruptcy court's discretion. See Gonzalez,
14 729 F.3d at 1203.

15 The Law Firm argues that the bankruptcy court "fail[ed] to
16 identify any task done by [it] which was unnecessary to
17 preserve the estate." It asserts "everything that [it] did
18 opposing the [consolidation] was necessary to obtain the result
19 of preserving that \$2.6 million of corporation estate money."
20 Id. at 14.

21 Noting that it had "extensive knowledge of the issues in
22 dispute in this case and [was] in an excellent position to
23 evaluate how long it should have taken [the Law Firm] to
24 perform the services," the bankruptcy court found that the
25 Billing Record contained "entries for services rendered that
26 were not necessary to the benefit conferred and entries for
27 excessive amounts of time spent on services that would
28 otherwise be compensable." In doing so, it pointed out the

1 specific examples of extraneous and excessive time entries.⁸

2 The Billing Record confirms the bankruptcy court's
3 findings. There are entries in which both Ms. March and the
4 Associate conducted legal research on the same date; the nature
5 of that research, however, is not detailed in relation to the
6 Associate. We also note other questionable entries, "lumped"
7 together with legitimate tasks, such as Ms. March: reviewing
8 the final fee order in the chapter 11 case; searching the
9 Waksberg individual bankruptcy case for the compromise motion;
10 and calendaring deadlines. And, each time that a motion,
11 opposition, brief, order, and even the memorandum decision in
12 Waksberg I was filed or entered on the docket, Ms. March - at
13 \$800 an hour - downloaded the document. We do not doubt that
14 the Law Firm actually spent the amount of time reflected in the
15 Billing Record. But, that there was a tangential connection to
16 the consolidation dispute did not render each and every time
17 entry "necessary" within the meaning of § 503(b)(1)(A).

18 What becomes apparent is the Law Firm's all or nothing
19 approach to the fees requested. As plainly stated in its brief
20 and reiterated at oral argument, it seems to believe that once
21 the bankruptcy court determined that its efforts conferred a
22 benefit to the corporate estate and it filed an adequate
23 billing record, the bankruptcy court's scrutiny should end.
24 This line of thinking, however, ignores the additional
25 considerations that the bankruptcy court was required to
26 undertake, including an evaluation of reasonableness and the

27

28 ⁸ See Appendix D.

1 necessity of fees incurred.

2 Based on the foregoing, the bankruptcy court did not abuse
3 its discretion in the method undertaken to consider
4 reasonableness of the fees requested by the Law Firm. Nor, on
5 this record, can we find any basis for determining that it
6 abused its discretion in reducing those fees. We remain
7 mindful of the fact that this was not a typical fee application
8 for attorneys' fees or even a prevailing party fee award; there
9 was the overlay of § 503(b), which dictated restraint in the
10 amount of fees allowed. See Nat'l Labor Relations Bd. v. Walsh
11 (In re Palau Corp.), 139 B.R. 942, 944 (9th Cir. BAP 1992)
12 (Section 503(b) is construed narrowly to keep fees and costs to
13 a minimum and to preserve limited estate assets for the benefit
14 of creditors). And, here, bankruptcy court oversight was
15 particularly important where no external client was reviewing
16 the fees and where the Law Firm's efforts were on account of
17 its own administrative expense claim.

18 Given the clear inappropriateness of the Law Firm's
19 billings in some areas, such as the attempt to exact premium
20 payment for clerical or paralegal work, and given the Law
21 Firm's failure to support its fee request with evidence of
22 reasonableness beyond the bare facts of self-determined rate
23 and self-directed hours on task, the record provides no basis
24 for a conclusion that the bankruptcy court abused its
25 discretion.

26 **C. Whether the bankruptcy court harbored a "personal negative**
27 **opinion" of Ms. March such that it influenced the ruling.**

28 The Law Firm contends that the bankruptcy court improperly

1 injected its "personal negative opinion of Ms. March into its
2 decision." The bankruptcy court's statements at the hearing
3 and in its memorandum decision, while at times pointed, were
4 neither derisive nor personally hostile to Ms. March.

5 The Law Firm further asserts that the bankruptcy court's
6 statements were unsupported based on the uncontroverted
7 evidence before it; namely, Ms. March's declaration that, in
8 her opinion, she was "extremely highly qualified" as a Yale Law
9 School graduate, triple certified bankruptcy specialist, Rutter
10 author on California bankruptcy law, and a former bankruptcy
11 judge. It contends that the bankruptcy court's statements,
12 thus, constituted a "judge acting as a witness," in violation
13 of Federal Rule of Evidence 605.

14 The Law Firm is incorrect. Again, that Ms. March's
15 declaration - based on her subjective belief of the value of
16 her services in this case - was uncontroverted did not make its
17 contents established fact. The bankruptcy court was not
18 required to accept this assertion without question. A judge's
19 role fundamentally involves forming judgments and opinions;
20 that the bankruptcy court valued Ms. March's services in this
21 case lower than did Ms. March did not violate Federal Rule of
22 Evidence 605.

23 Moreover, as stated, the bankruptcy court's determination
24 here necessarily required an evaluation of Ms. March's
25 experience, skill, and reputation as an attorney. This was not
26 a situation involving a pure question of law where the
27 bankruptcy court's opinion on the value of Ms. March's services
28 in the case would be out of place or inappropriate. At the

1 time that the § 503(b) Motion was filed, the bankruptcy court
2 had presided over these bankruptcy cases for approximately
3 eight years. It possessed institutional knowledge of the cases
4 and of counsel; the basis for its opinion of the value of the
5 services rendered was not unfounded.

6 **D. Fees incurred in preparing and litigating the § 503(b)**
7 **Motion.**

8 Finally, the Law Firm argues that the bankruptcy court
9 abused its discretion in disregarding fees incurred in
10 preparing and litigating the § 503(b) Motion. It reiterates
11 that § 503(b) is a fee provision statute and, thus, it is
12 entitled to its fees in pursuing and defending the fee request.
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14 The bankruptcy court denied the Law Firm's request for
15 fees incurred in preparing and litigating the § 503(b) Motion.
16 In doing so, it asked the Law Firm whether it had case
17 authority to support the additional \$47,543.67 requested for
18 preparing the motion when it was a professional not employed by
19 the estate. After the Law Firm responded in the negative, the
20 bankruptcy court denied allowance of those fees.

21 The bankruptcy court did not abuse its discretion in
22 denying an allowance of these fees. No authority exists for
23 allowing as an administrative expense a creditor law firm's
24 fees in preparing a § 503(b) (1) (A) request. To the extent the
25 Law Firm relies on N. Sports, Inc. v. Knupfer (In re Wind N'
26 Wave), 509 F.3d 938 (9th Cir. 2007), that case involved a
27 request under § 503(b) (4) and, thus, it is distinguishable in
28 that regard. In any event, it appears that the holding in

1 **Appendix A**

2 The bankruptcy court found that Ms. March:

- 3 • “[L]acked the judgment and advocacy skills” of an attorney
4 who billed at \$800 an hour;
- 5 • Only began practicing bankruptcy law in 2002, after her
6 request for reappointment to the bankruptcy bench was
7 denied;
- 8 • Lacked the benefit of a mentor in bankruptcy law prior to
9 taking the bench;
- 10 • Submitted papers that were long, argumentative, and
11 difficult to read;
- 12 • During hearings in the case, “insult[ed]” and
13 “threaten[ed] the trier of fact” at the podium during oral
14 argument;
- 15 • “[L]ack[ed] the judgment to know when it would be in her
16 client’s best interest not to advance a particular
17 argument, objection or position”; and
- 18 • Was neither a nationally recognized bankruptcy expert nor
19 highly regarded by her peers or “the bankruptcy community
20 at large.”
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1 **Appendix B**

2 The bankruptcy court identified the following tasks, which
3 Ms. March billed at \$800 an hour:

- 4 • Preparing a notice of appeal;
- 5 • Preparing the designation of record on appeal;
- 6 • Reviewing the table of contents, excerpts of record, and
7 the Law Firm's opening brief;
- 8 • Preparing cover pages to the excerpts of record;
- 9 • Preparing instructions for Federal Express retrieval and a
10 copy of the excerpts of record;
- 11 • Picking up documents and instructing the Associate on how
12 to file documents in the appeal; and
- 13 • Checking the excerpts of record cites in the Law Firm's
14 reply brief.

1 **Appendix C**

2 The bankruptcy court highlighted that the Associate billed \$400
3 an hour for the following tasks:

- 4 • Preparing tables of contents and authorities to the Law
5 Firm's opposition to consolidation;
- 6 • Efiling and serving the Law Firm's opposition;
- 7 • Efiling the notice of appeal;
- 8 • Preparing a transcript order form;
- 9 • Preparing the notice of transcript and proof of service,
10 and efileing those documents;
- 11 • Preparing tables of contents and authorities to the motion
12 for stay pending appeal;
- 13 • Preparing a proof of service and efileing the motion for
14 stay pending appeal;
- 15 • Assembling an appendix to the motion for stay pending
16 appeal;
- 17 • Preparing a proof of service and efileing the motion for
18 stay pending appeal to the BAP;
- 19 • Preparing a proof of service and efileing supplement to
20 motion for stay pending appeal with the BAP;
- 21 • Preparing a proof of service and efileing the statement of
22 issues on appeal;
- 23 • Preparing a proof of service and efileing the designation
24 of record on appeal;
- 25 • Preparing a proof of service and efileing the Law Firm's
26 reply to the motion for stay pending appeal;
- 27 • Assembling documents for the excerpts of record;
- 28 • Adding excerpt of record cites to the Law Firm's opening

- 1 brief;
- 2 • Cite checking the Law Firm's opening brief;
- 3 • Preparing tables of contents and authorities to the Law
- 4 Firm's opening brief;
- 5 • Preparing a proof of service and efileing the Law Firm's
- 6 opening brief;
- 7 • Adding excerpts of record cites to the Law Firm's reply
- 8 brief;
- 9 • Preparing a proof of service and efileing the Law Firm's
- 10 reply brief;
- 11 • Finalizing the Law Firm's bill of costs, and preparing a
- 12 proof of service and efileing the bill of costs; and
- 13 • Preparing a proof of service and efileing the Law Firm's
- 14 reply to the Trustee's opposition to the bill of costs.

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1 **Appendix D**

2 The bankruptcy court found that the following was extraneous or
3 excessive:

- 4 • 7 hours to prepare the motion for stay pending appeal to
5 the bankruptcy court, then an additional 5 hours to
6 prepare a substantively identical motion with the BAP;
 - 7 • 34 hours to prepare the opening brief on appeal, which
8 advanced identical arguments as its opposition, in a
9 somewhat modified fashion;
 - 10 • 22.5 hours to prepare the reply brief, which contained the
11 same arguments as the stay motion and opening brief;
 - 12 • Significant charges for researching issues such as the
13 procedures in the Central District of California for
14 filing emergency motions, when such procedures were
15 clearly spelled out in the bankruptcy court's local rules
16 and manual;
 - 17 • "Multiple charges for preparing for oral arguments, which
18 it argued the same issues repeatedly";
 - 19 • Charges for "advancing the argument that the [T]rustee's
20 conduct [could] be tortious, entitling it to compensation
21 under Reading v. Brown," which "border[ed] on the
22 frivolous and should never have been included"; and
 - 23 • Charges for preparation of a settlement offer to the
24 Trustee.
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