

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

	*
	*
IN RE:	* NO. 1:08-bk-10249
	*
PROPEX, INC., et al.,	* CHAPTER 11
	*
Debtors.	* JOINTLY ADMINISTERED
	*

BE IT REMEMBERED, that the above-styled
cause came on to be heard on the 27th day of February, 2008,
before the Honorable John C. Cook, Judge of said Court, when
all parties announced ready to proceed, and the following
proceeding was had, to wit:)

* * *

Donna F. Segars, CCR
Freelance Court Reporting Service
6255 Dayton Boulevard
Chattanooga, Tennessee 37343-2710
(423) 843-3114

1 APPEARANCES:

2 FOR THE DEBTORS:

3 SHELLEY D. RUCKER, ESQUIRE
4 Miller & Martin, PLLC
5 832 Georgia Avenue, Suite 1000
6 Chattanooga, Tennessee 37402

7 FOR THE CREDITORS:

8 IRA S. DIZENGOFF, ESQUIRE
9 -and-

10 SHAYA ROCHESTER, ESQUIRE
11 Akin Gump Strauss Hauer
& Feld, LLP
12 590 Madison Avenue
13 New York, NY 10022-2524

14 RICHARD B. GOSSETT, ESQUIRE
15 Baker Donelson Bearman Caldwell
& Berkowitz, PC
16 1800 Republic Centre
17 633 Chestnut Street
18 Chattanooga, Tennessee 37450

19 EDWARD C. MEADE, ESQUIRE
20 Bass, Berry & Sims, PLC
21 1700 Riverview Tower
22 900 S. Gay Street
23 Knoxville, Tennessee 37902

24 FOR THE UNITED STATES TRUSTEE:

25 KIMBERLY C. SWAFFORD, ESQUIRE
Historic U.S. Courthouse
31 East 11th Street, 4th Floor
Chattanooga, Tennessee 37402

* * *

1 THE COURT: Clerk, call the case.

2 THE CLERK: In the Chapter 11 case of
3 Propex, Inc., motion for agreed order of stipulation between
4 the debtors and official committee of unsecured creditors
5 regarding confidential information.

6 THE COURT: All right. I believe we all
7 have the application that we will take up after this.

8 MS. RUCKER: Your Honor, Shelley Rucker
9 here for the debtors. This is -- excuse me, Your Honor.
10 Our motion today was, basically, filed out of an abundance
11 of caution. We wanted to disclose to the Court and to the
12 U.S. Trustee's office the stipulation that we've reached
13 with the creditors' committee regarding furnishing them the
14 confidential financial information. We believe the
15 committee is in agreement with it. Also, it's been
16 previewed with the U.S. Trustee and we don't know of anyone
17 who is objecting to it.

18 THE COURT: Yes, I have read it and that
19 motion will be approved, although I have noticed it was set
20 less than ten days, but since it is something that,
21 probably, would have been approved ex parte anyway --

22 MS. RUCKER: Your Honor, that was our
23 concern, that we thought it would be ex parte, but thought
24 it better to, at least, put it out there publicly for people
25 to look at.

1 THE COURT: Yes. All right.

2 MS. RUCKER: Thank you, Your Honor.

3 THE COURT: All right. The other matter is
4 the application to appoint counsel for the unsecured
5 creditors' committee. I know at the last hearing I
6 mentioned that I would approve that, although our practice
7 is, usually, to hold such applications for a reasonable
8 period of time, seven days typically, to give the U.S.
9 Trustee a chance to respond, and when I looked at the
10 application, I noticed that had, actually, put a hearing
11 date up in the corner of the application, so I thought it
12 would be better simply to wait until the hearing date to
13 bring it up.

14 By the way, Mr. Gossett, under our local
15 rules, we have a hearing notice form --

16 MR. GOSSETT: Yes, Your Honor.

17 THE COURT: -- that needs to be used, and
18 any hearings need to be set by the attorney utilizing
19 electronic case filing.

20 MR. GOSSETT: Yes, Your Honor.

21 THE COURT: Are you aware of that?

22 MR. GOSSETT: I'm aware of that,
23 Your Honor, but since I knew you would do it on a seven to
24 eight notice, generally, I didn't know we had to go
25 through it. In fact, I had talked with the clerk's office

1 after we filed it, and she said, No. I called to say, Do we
2 need to file a hearing notice on the standard form? And
3 then she called, she said, I checked with Chambers and, no,
4 you do not have to do that, so.

5 THE COURT: All right, sir. I have
6 noticed, though, there was another application filed just
7 recently.

8 MR. GOSSETT: Financial advisor.

9 THE COURT: Yeah, and it's got the same --

10 MR. GOSSETT: Well, and that's what she
11 told me about that as well, that's where the confusion came
12 up, is because that was prepared by the financial advisor,
13 they inserted that date in there.

14 THE COURT: I see.

15 MR. GOSSETT: And I filed it for them. And
16 then, I talked with Cindy. I can't remember her last -- it
17 was the case manager in the clerk's office.

18 THE COURT: Yes.

19 MR. GOSSETT: And she told -- and we talked
20 about that, and she says, No, in this case, you will not
21 need to file a hearing notice.

22 THE COURT: All right. So you are aware of
23 the hearing notice form?

24 MR. GOSSETT: Oh, sure. Sure, oh, yes.

25 THE COURT: All right.

1 MR. GOSSETT: And we have that on -- before
2 us already prepared, but after going back and forth with the
3 case manager, that's why we did not do it in these
4 instances.

5 THE COURT: All right. All right. I have
6 noticed that the U.S. Trustee has filed a response.

7 MS. SWAFFORD: Judge, it is not an
8 objection, it is just a response.

9 THE COURT: All right. Well, okay, do you
10 want to reserve the right to object to the hourly rate?

11 Any problem with that?

12 MR. DIZENGOFF: Can I address, Your Honor,
13 a few comments about that?

14 THE COURT: Yes.

15 MR. DIZENGOFF: First, Ira Dizengoff with
16 Akin Gump on behalf of -- proposed counsel for the
17 creditors' committee.

18 Your Honor, it's kind of -- you know, I'm
19 kind of torn between this. I understand the U.S. Trustee
20 has the right to reserve her rights about her hourly rates,
21 et cetera, but from our prospective, it's almost not fair
22 game to ask the committee's counsel to go down the path and
23 say do X, Y, and Z work. Unfortunately, this all focuses in
24 on me as the senior member of the firm for this particular
25 case --

1 THE COURT: Right.

2 MR. DIZENGOFF: -- because my hourly rate
3 exceeds what King & Spalding had agreed to as their cap. So
4 we discussed -- a couple of points I want to make. One is
5 the committee selected us after what I consider a highly
6 competitive process. They interviewed five different law
7 firms, all national firms, all with similar rates to mine
8 and the others that are going to be working on that. The
9 committee asked about our hourly rates, they were told about
10 our hourly rates, and they deliberated on them. I assume I
11 wasn't a part of the discussion when we were selected.

12 Subsequently, we had a committee meeting, a
13 conference call last week, this week, I don't remember when
14 it was, to discuss the fact that King & Spalding had agreed
15 to cap their hourly rates, and we raised this issue with the
16 committee. No one on the committee said, well, we want a
17 similar cap from Akin Gump or we have an issue with Akin
18 Gump's hourly rates. So the clients themselves, Your Honor,
19 are fully aware of this.

20 We think, Your Honor, that we are fairly
21 efficient, and I think it's totally fair game to say at the
22 end of the day when a fee application comes on to say too
23 many people, too much time, et cetera. What I don't think
24 is fair game to us, as the professional, is to say, well, go
25 down the path, do all of the work for the committee, and

1 then, you know, of the -- I'll just make numbers up -- of
2 the hundred thousand dollars you build, you should only
3 collect eighty because -- or seventy-five because your
4 hourly wage were too high, they were in excess of the
5 six-seventy-five that King & Spalding agreed to cap it on.
6 I don't think it's fair to our clients. I don't think it's
7 fair to the committee. I don't think it's fair to our firm.

8 Now, I assume, the U.S. Trustee has that
9 right and she can say it at any point in time, but, you
10 know, I'm kind of looking for a little guidance and it kind
11 of puts us in a weird spot.

12 THE COURT: Yeah. And the problem that I
13 have is I have never seen hourly rates that high.

14 MR. DIZENGOFF: I understand that.

15 THE COURT: Because if I were in New York
16 perhaps I would be used to that.

17 MR. DIZENGOFF: Right.

18 THE COURT: But, you know if there is any
19 challenge to hourly rates, we usually have an evidentiary
20 hearing on that and I hear what is reasonable.

21 MR. DIZENGOFF: Right.

22 THE COURT: And I don't know how I can,
23 actually, pass upon that question without some evidence
24 about what a reasonable hourly rate is. I know this is an
25 extremely large case --

1 MR. DIZENGOFF: Right.

2 THE COURT: -- and a very complicated case,
3 and I don't hold, you know, attorneys to the typical hourly
4 rate in Chattanooga when we have a case this complex and
5 this large. I mean I don't subscribe to that philosophy.
6 But, on the other hand, it is like any other case, if
7 someone comes in and says, well, this is a large case, but
8 it's still too high a rate for this kind of case. And, you
9 know, how am I to pass upon that without some indication of
10 what is typically charged in the case?

11 MR. DIZENGOFF: And that is fair,
12 Your Honor. I am happy when that comes up as the retention
13 in connection with either paid fee apps or a final fee app
14 to tell you that we, at Akin Gump, operate in the national
15 marketplace, particularly us on the creditors' committee
16 side. I mean, knock on wood, this is what I like to do and
17 this is what we are pretty good at and this is what we have
18 a national reputation for.

19 And then we've done the ginormous cases,
20 that's one of the words my kids make up, the ginormous cases
21 from Calpine to Worldcom and played very significant roles
22 in Delta Airlines on the creditors' committee side. So this
23 is the rate that we charge our clients. And I'm happy to
24 give you -- either I can sign that and give you affidavits,
25 if that helps, to show you that that's the rates that we

1 charge in all of those other large kinds of cases, or, you
2 know, some kind of evidentiary burden to satisfy you that
3 this is what we charge our financial restructuring clients.
4 It doesn't differ. We don't -- I don't give discounts at
5 all on the financial restructuring side.

6 So I am happy to give that evidence to you
7 so that when the fee applications, themselves, is before
8 you, you would have that and you could satisfy yourself that
9 this is the national rate. I don't -- there's no issue with
10 that because I think you will be satisfied with that
11 evidence.

12 THE COURT: All right. And you are
13 representing the unsecured creditors?

14 MR. DIZENGOFF: Absolutely.

15 THE COURT: So to the extent that the
16 administrative expenses eat into anything, it's really the
17 unsecured creditors who --

18 MR. DIZENGOFF: Exactly, that's exactly my
19 point.

20 THE COURT: -- who are paying.

21 MR. DIZENGOFF: Those people, the people
22 who are -- our constituency who have weighed in on this and
23 know what our rates are and know that they're carrying that
24 freight, so at the end of the day -- unfortunately, they
25 have to carry the freight for every professional along the

1 line --

2 THE COURT: Yeah.

3 MR. DIZENGOFF: -- including the banks,
4 et cetera, but, you know, at the end of the day, that's what
5 they understand. I mean, you know, sometimes I'm shocked by
6 the rate as well, but a lot of my colleagues up in New York
7 have higher rates than me, which is, you know, whatever, but
8 it is a national marketplace, it is where we practice in,
9 and I'm -- now, if you think that a supplemental declaration
10 from me telling you what I have charged in other cases would
11 be helpful, I can provide that as well. But, you know, when
12 the fee app comes on, we'll give you that evidence as well.

13 THE COURT: All right. Do you have any
14 problems with the fee application?

15 MS. RUCKER: Your Honor, the debtor has no
16 objection.

17 THE COURT: All right. And I assume no
18 objection then for me approving the order?

19 MS. SWAFFORD: Your Honor, if I can.

20 THE COURT: All right.

21 MS. SWAFFORD: Your Honor, I debated
22 whether to file a response when the application came on, but
23 I felt like it was part of my duty to point out the hourly
24 rates to the Court and to say I don't really want to concede
25 that this is reasonable when I objected to the employment

1 application, so that was the whole purpose. I understand
2 that I can raise any objections based on economies of scale
3 or whether it was reasonable based on the results, I'm fine
4 with that. I just felt like I needed to say something, to
5 say that I didn't really believe that 825 or whatever the
6 rate was -- 1,050, I think, was the highest rate -- might be
7 a reasonable rate in this case. I didn't want the Court
8 to --

9 THE COURT: Yeah, but that's not your rate,
10 is it?

11 MR. DIZENGOFF: No. No, mine is --

12 THE COURT: Yeah, I saw that too.

13 MR. DIZENGOFF: Yeah. Mine is 825, and I
14 can tell you the person at 1,050 will not be working in this
15 case.

16 THE COURT: Well, I didn't think that that
17 would be the case.

18 All right. Okay. With that understanding
19 then, you will have an opportunity to object, and if there
20 is an objection based on the reasonable hourly rate, you
21 would have an opportunity to present evidence about what
22 reasonable rates there are in cases such as this, and I have
23 already told you that I don't view Chattanooga rates as some
24 type of cap for a case this complex and this large, so you,
25 certainly, would have to contend with that. But, if the

1 rate is challenged, I might need some evidence --

2 MR. DIZENGOFF: That's fine, Your Honor.

3 THE COURT: -- at that time of the fee
4 application here.

5 MR. DIZENGOFF: Okay, no problem.

6 THE COURT: All right. The application
7 will be approved, and that leaves the other --

8 MR. GOSSETT: Okay. That was going to be
9 my point, Your Honor, the FTI application is still out
10 there, so far no one has filed any response to that.

11 THE COURT: I have forgotten when that was
12 filed.

13 MR. GOSSETT: Last Thursday.

14 THE COURT: Last Thursday.

15 MR. GOSSETT: And so I will do whatever you
16 choose with that.

17 THE COURT: Okay.

18 MR. DIZENGOFF: Let me just make one thing
19 clear. The debtor did ask us a couple of questions and we
20 have a meeting, actually, back in Atlanta this afternoon
21 with the company's management, so Mr. Kaim and I is supposed
22 to discuss that, so in fairness, they did bookmark an issue
23 which we'll discuss, so I don't want you to enter anything
24 until we kind of look through those issues.

25 THE COURT: Okay. All right. Now, the

1 notation was March 12th and not today, and I was aware of
2 that.

3 Well, what do you suggest I do? Should I
4 hold it until March 12th --

5 MR. DIZENGOFF: Yes.

6 THE COURT: -- and just call it up March
7 12?

8 MR. DIZENGOFF: Your Honor, I think that
9 would be fine, yeah. Actually, I think it will be fine.

10 THE COURT: Okay, let's just do that.

11 MR. DIZENGOFF: Yeah, that would work well.

12 THE COURT: And we will just set it for
13 hearing on March 12, okay?

14 MR. DIZENGOFF: Okay, perfect, yeah.

15 THE COURT: All right. If nothing further,
16 court is adjourned.

17 (Proceedings adjourned.)

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C E R T I F I C A T E

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2
3 STATE OF TENNESSEE)
4 : SS.
5 COUNTY OF HAMILTON)

6 I, DONNA F. SEGARS, Court Reporter and
7 Notary Public in and for the State of Tennessee at Large, do
8 hereby certify that I reported in machine shorthand the
9 proceedings had in the above-styled cause on the 27th day of
10 February, 2008;

11 That the attached pages, numbered 1 through
12 15, inclusive, were reduced to typewriting under my personal
13 supervision; and that the foregoing is a true and accurate
14 transcript of said proceedings.

15 This 5th day of March, 2008.
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17
18

19 _____
20 Donna F. Segars, Notary
21 Public in and for the
22 State of Tennessee at
23 Large. My commission
24 expires: March 5, 2008
25