

FILED

MAR 31 2006

UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re

LOGAN T. JOHNSTON III,

Debtor.

Chapter 11

Case No. 01-06221-PHX-SSC

Adv. 01-885

LOGAN T. JOHNSTON III,

Plaintiff,

MEMORANDUM DECISION AS TO
DEFENDANT STERNBERG ONLY
(Opinion to Post)

vs.

PAULA PARKER, et al.,

Defendants.

I. INTRODUCTION

Logan T. Johnston III, the Plaintiff in this adversary, and the Debtor-in-Possession, commenced this proceeding against Paula Parker, his ex-spouse, and Melvin Sternberg, her divorce attorney, and another individual on July 23, 2001. After various pretrial matters were considered,¹ the Plaintiff presented his case to the Court over several days. When the Plaintiff

1. Early in these proceedings, certain Defendants filed a Motion to Dismiss the Complaint, which was denied, and various Motions for Reconsideration, which were also denied. Because the Defendants appealed the various orders denying their motions, the pretrial matters were not resolved for an extended period of time. Various discovery issues also delayed the start

1 rested, the Defendants Parker and Sternberg moved that the Complaint be dismissed because the
2 Plaintiff had failed to show a violation of the stay by the remaining Defendants; or, in the
3 alternative, if the stay violation had been shown, the remaining Defendants did not act willfully,
4 and no damages had been proven by the Plaintiff.

5 The Court issued its Memorandum Decision on the Defendants' request that the
6 complaint be dismissed on August 8, 2003.² The Order incorporating the Decision was entered
7 on August 28, 2003.³ The parties appealed the Decision and Order, and on September 30, 2004,
8 the Arizona Federal District Court entered its Decision, affirming this Court, in part, setting aside
9 the Court's ruling that the complaint be dismissed, and remanding the matter for further
10 consideration by this Court. The Court conducted further proceedings consistent with the
11 remand order.⁴ Ultimately the remanded issues were tried, at an evidentiary hearing which lasted
12 several days.⁵ Thereafter the Court took the matter under advisement.

13 The Court was recently advised that the Plaintiff has settled his various claims against the
14 Defendant Paula Parker.⁶ Therefore, this ruling only considers the issues raised by the Plaintiff

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17 of the trial. The Plaintiff had also included a judge of the Arizona Trial Court (the Maricopa
18 County Superior Court) who had presided over the Plaintiff's and Parker's divorce proceedings as
19 one of the Defendants. However, as the proceedings progressed in this Court, the Plaintiff
20 determined not to seek any relief against the Judge, since the Minute Entry Order previously
21 entered by the State Court Judge had already been vacated by this Court.

22 2. Docket Entry No. 129.

23 3. Docket Entry No. 132.

24 4. For instance, the Court conducted a hearing on the Defendant Sternberg's Motion in
25 Limine, which was fully briefed by all parties and on which this Court conducted a hearing on
26 May 19, 2005. At the conclusion of the hearing, the Court determined that the Plaintiff could
27 present evidence on the issue of emotional distress, with some limitations, which are discussed
28 more completely in this Decision.

29 5. The trial was conducted on June 12 and August 29, 2005.

30 6. See Notice to the Court, Docket Entry No. 196, filed on March 10, 2006.

1 against the Defendant Sternberg.

2 In this Memorandum Decision, the Court has set forth its findings of fact and conclusions
3 of law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure. The issues addressed herein
4 constitute a core proceeding over which this Court has jurisdiction. 28 U.S.C. §§ 1334(b) and
5 157(b) (West 2005).⁷

6 7 II. FACTUAL BACKGROUND

8 On May 14, 2001, the Debtor filed his Chapter 11 petition for relief with the Court, and,
9 as previously noted, filed this adversary proceeding on July 23, 2001. In the Complaint, the
10 Debtor alleged that the Defendant Sternberg proceeded with a series of State Court actions, in
11 violation of the automatic stay, after he and/or his firm were aware that the Debtor had filed his
12 bankruptcy petition.

13 With the filing of this adversary proceeding, the Debtor simultaneously filed an
14 "Emergency Motion for Ruling That State Court's Minute Entry Violate[d] the Automatic Stay."
15 An expedited hearing on the Emergency Motion was held in this Court on July 31, 2001. At the
16 conclusion of the hearing, this Court vacated the Minute Entry Order of the Maricopa County
17 Superior Court, dated June 26, 2001, but entered on the docket and sent to the Debtor and the
18 Defendant Sternberg on July 13, 2001. The Debtor's counsel also proceeded with this adversary,
19 because he believed that Defendant Sternberg had willfully violated the stay and that
20 compensatory and punitive damages should flow from his actions.

21 However, prior to the hearing in this Court on July 31, 2001, a number of proceedings
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23 ⁷ All references in this Decision are to the Bankruptcy Reform Act of 1978, as amended,
24 and to the Rules of Bankruptcy Procedure ("RBP") unless otherwise indicated. The Bankruptcy
25 Abuse Prevention and Consumer Protection Act of 2005 ("Act") is not applicable. Pursuant to
26 Section 1501, except as otherwise provided by the Act, the amendments made by the Act would
27 not apply with respect to cases commenced under title 11, United States Code, before the
28 effective date of the Act; that is, October 17, 2005. The Debtor filed his Chapter 11 petition on
May 14, 2001.

1 had occurred in the Maricopa County Superior Court. The Maricopa County Superior Court
2 entered a Decree of Dissolution of Marriage on January 2, 1996, dissolving the marriage of the
3 Debtor and Ms. Parker. As a part of the Decree, the Debtor was ordered to pay to Ms. Parker the
4 sum of \$366,948.45, as well as \$2,000 per month in support obligations. On January 22, 2001,
5 Ms. Parker and Defendant Sternberg filed, in the Superior Court, a request that the Debtor be
6 held in contempt regarding the nonpayment of spousal maintenance or support. At all relevant
7 times, Ms. Parker was represented in the Superior Court by Defendant Sternberg.

8 On May 17, 2001, the State Court held a hearing on the request that the Debtor be held in
9 contempt. The parties have presented this Court with a transcript of those proceedings.⁸ The
10 Debtor represented himself before the State Court.⁹ It was not until, perhaps, ten to fifteen
11 minutes into the hearing that the Debtor advised the State Court Judge that he had just filed a
12 Chapter 11 proceeding a few days earlier on May 14, 2001. Moreover, the Debtor's bankruptcy
13 attorney did not file any notification of the commencement of the bankruptcy proceedings with
14 the State Court until May 17, the date of the hearing.¹⁰ Ms. Parker, Defendant Sternberg, and the
15 State Court did not have the benefit of the Notice of Chapter 11 Filing when the May 17 hearing
16 commenced. It is clear from the transcript that the State Court Judge struggled with how and
17 whether to proceed.

18 After being advised of the positions of the parties, including the Debtor, the State Court
19 Judge concluded that she should proceed with the hearing to determine whether the Debtor was
20 in contempt of Court for failure to comply with the Divorce Decree or a State Court Order, but
21 that there would be no execution on any judgment until the issue of whether the automatic stay
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23 8. Exhibit A.

24 9. The Debtor is an attorney admitted to practice in Arizona.

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26 10. Exhibit 2. The Notice of Filing Chapter 11 Bankruptcy is also attached as Exhibits B
27 and C to the Debtor's July 23, 2001 Emergency Motion for Ruling That State Court's Minute
Entry Violates Automatic Stay, Docket Entry No. 2.

1 applied to the collection of the unpaid support obligations could be clarified in the Bankruptcy
2 Court.¹¹ At the conclusion of the contempt proceedings, the State Court took the matter under
3 advisement.

4 The May 17, 2001 Notice filed by the Debtor in the State Court proceedings stated as
5 follows:

6 Please take notice that . . . [the Debtor] has filed a Chapter 11 Bankruptcy Petition
7 with the U. S. Bankruptcy Court on May 14, 2001. Accordingly, this action is
8 stayed except those portions that relate to § 362(b). [The Debtor] will be
proposing a plan under Chapter 11 to cure any arrears on pre-bankruptcy
maintenance payments owed to Ms. Parker.¹²

9 This very notice may have created confusion. It left open the possibility that the State Court
10 could proceed under one of the exceptions to the automatic stay.

11 In a Minute Entry dated June 22, 2001, and filed in the State Court on July 13, 2001
12 ("July 13, 2001 Minute Entry," "Minute Entry" or Minute Entry Order"), the State Court found
13 that the Debtor was in violation of the Divorce Decree. Specifically, the Debtor had made no
14 support payments since October, 1998, leaving an arrearage in the amount of \$87,525.60. The
15 Minute Entry also stated that the Debtor was in contempt of court and ordered that he pay the full
16 amount, of the then \$87,515.60 Judgment, by August 1, 2001. If the Debtor failed to pay the
17 Judgment by that date, he would be "incarcerated in the Maricopa County Jail for an indefinite
18 period of time until the full amount of arrearages was paid in full."¹³

19 It may not be gainsaid that all parties to the State Court litigation were surprised by the
20 Minute Entry Order. The evidence presented before this Court reflected that the Defendant
21 Sternberg had expected further proceedings before the Judge would order the Debtor to pay a
22 sum certain or face any consequences. The Debtor, still representing himself in the State Court
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25 11. Exhibit A at page 29.

26 12. Exhibit 2.

27 13. Exhibit B at page 2.

1 proceedings, filed a Motion for Stay and Telephonic Hearing in the State Court.¹⁴ However, the
2 State Court Judge did not set a hearing until August 2, 2001, the day after he was to pay the
3 amount of \$87,525.60 or face incarceration. The Debtor's bankruptcy counsel meanwhile
4 attempted to contact the State Court Judge (on July 16, 2001 by facsimile) and Defendant
5 Sternberg and Ms. Parker's recently retained bankruptcy counsel on July 17, 2001.¹⁵

6 Because the Debtor wanted to proceed simultaneously in the State Court and the
7 Bankruptcy Court, the Debtor immediately sought appellate review of the State Court's July 13,
8 2001 Minute Entry Order. However, the evidence reflects that Defendant Sternberg left town on
9 July 23, 2001, shortly after receipt of the July 13, 2001 Minute Entry Order, and that it was a
10 partner at his firm who filed the responsive brief in the State appellate proceedings. In the State
11 appellate proceedings, Defendant Sternberg's firm presented the position that the State Court had
12 only proceeded within an exception to the automatic stay. This Court has reviewed the cases
13 cited in the appellate brief, some of which will be discussed later in this Decision, and concludes
14 that the brief was appropriately researched and the arguments presented were not frivolous.

15 By July 23, 2001, the Debtor and his bankruptcy counsel had filed the Complaint in this
16 adversary, and their Emergency Motion to set aside the July 13, 2001 Minute Entry Order. On
17 July 31, 2001, this Court conducted a hearing on the Debtor's Emergency Motion and concluded
18 that the automatic stay had been violated and vacated the July 13, 2001 Minute Entry Order. At
19 approximately the same time, the State Appellate Court issued a stay of the July 13, 2001 Minute
20 Entry, awaiting this Court's determination of the matter. This Court must emphasize that
21 although it vacated the State Court's Minute Entry Order, it left for future proceedings whether
22 the Defendant Sternberg had willfully violated the automatic stay and whether compensatory and
23 punitive damages would flow from the violation.

24 The parties have subsequently debated at great length what this Court relied on at the July

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26 14. Exhibit C.

27 15. See the Debtor's Emergency Motion filed with this Court, Docket Entry No. 2.

1 31, 2001 hearing. Although the July 31 hearing consisted primarily of oral argument, the
2 Debtor's Emergency Motion did contain Schedule I from the Debtor's Schedules, filed under
3 penalty of perjury, and an Affidavit of Ms. Parker dated March 8, 2001, filed in the State Court
4 proceedings.¹⁶ The Debtor did not list his current spouse's income on the Schedule, but the law
5 firm distribution to him was listed at \$6,500 per month. The Schedule also reflected that within a
6 year of filing his petition, the Debtor expected his compensation to increase to \$16,000 per
7 month.¹⁷ Ms. Parker's Affidavit listed net monthly income of \$2,369.82, \$85,000 in a money
8 market account, and \$1,400,000 in "stocks, bonds, securities."¹⁸

9 At the July 31, 2001 hearing, Debtor's counsel argued that the Debtor's Schedules and
10 Statement of Affairs reflected that he had no assets to pay the \$87,525.60 obligation by August 1,
11 2001, that his compensation, the only potential property that he had that was not property of the
12 bankruptcy estate, was clearly insufficient to pay the obligation, and that as a result, the State
13 Court Judge's overly broad Minute Entry Order violated the stay, because it required that
14 property of the estate be utilized to pay the obligation.

15 If the State Court had qualified its Order to reflect only the amount of the arrearages, or if
16 the State Court had been advised of what constituted non-estate property, so that the Minute
17 Entry Order could be tailored only to the collection of the arrearages from such non-estate
18 property, then the State Court arguably would have been acting within an exception to the
19 automatic stay. However, the Minute Entry dictated that the Debtor immediately satisfy a large
20 Judgment or face incarceration; all without the State Court focusing on the non-estate property to
21 pay such a Judgment or requesting the Bankruptcy Court's prior determination of whether the
22 automatic stay applied to the property from which the Judgment would have been satisfied.

23 After the July 13, 2001 Minute Entry Order was entered, Ms. Parker and Defendant
24

25 16. Docket Entry No. 2, Exhibits E and F thereto.

26 17. Id., Exhibit E, Schedule I.

27 18. Id., Exhibit F.

1 Sternberg defended their legal position in the State Courts and the Bankruptcy Court. The
2 Plaintiff could provide no evidence that Defendant Sternberg attempted to execute on or control
3 any of the Debtor's assets. The Defendant Sternberg did not file any motion or petition seeking
4 to enforce the Minute Entry Order, but either he or his firm did respond to the pleadings filed by
5 the Debtor in the State and Federal Courts. Although Defendant Sternberg was essentially out of
6 the country from July 3 to July 16 and out of town from July 23 through July 31, 2000, the
7 Debtor and his bankruptcy counsel expected the Defendant or Defendant Sternberg's firm to take
8 affirmative action to vacate the Minute Entry Order. The evidence reflects that the Defendant
9 did not file a pleading, motion, or petition which would constitute such affirmative action.

10 At the initial trial, the Debtor provided confusing, sometimes conflicting, testimony as to
11 any injury he might have suffered as a result of his having to file the pleadings in the State and
12 Appellate Court to stay the July 13, 2001 Minute Entry Order.¹⁹ At the trial on remand, the
13 Debtor did provide some evidence that his gross income did vary during the July 2001 time
14 period. For instance, for the July 16-31, 2001 time period, the Debtor decreased the hours that he
15 was able to bill to his primary client.²⁰ In reviewing his monthly interim reports, once he filed his
16 bankruptcy proceeding, the Debtor's gross revenues for the months of June, July, and August,

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19 19. The Debtor's testimony was confusing or conflicting at times. The Debtor stated that
20 he drafted various pleadings for the State Court proceedings to obtain a stay which pulled him
21 away from his practice of law. However, he also testified that he typed the pleadings himself, so
22 it was difficult to discern what time he spent researching and analyzing legal issues and what
23 time he spent on the ministerial task of typing the documents. It was also impossible to
24 determine his skill as a typist. For instance, did he require 10 hours or more just to type the
25 documents? He presented no written evidence which broke out his time on the various matters;
26 such as researching, analyzing, drafting, typing, etc. Moreover, given the wide fluctuation in his
27 monthly gross and net income, it was impossible to determine whether he had lost any business
28 from proceeding in the State Court on his own behalf.

26 20. Exhibit H. The Debtor did not focus on any change in his activities for July 13, 14,
27 or 15, 2001. It is unclear from the record whether this was over the weekend or there were other
28 unrelated events which precluded the Plaintiff from billing over these few days.

1 2001, were compared.²¹ Based upon the evidence presented, the Court concludes that the Debtor
2 did credibly testify that he was unable to expend the usual time, at his standard billing rate, that
3 he had previously or subsequently billed to his major client. However, the State Court issued its
4 Minute Entry Order on July 13, 2001, and this Court vacated said Order by July 31, 2001.
5 Therefore, the Debtor focused on the amount of time that he was able to bill during the aforesaid
6 brief period of time and how it differed from his usual daily billing practices.²² The Court is
7 able to determine that for July 16 through July 19 and for July 24 and July 25, the Debtor did not
8 bill a six-hour day, which appears to be fairly typical for the time period. Using a six-hour day as
9 a typical day, the Debtor would have billed thirty-six hours over the critical six days in question.
10 Instead he billed 19.04 hours. If one subtracts 19.04 from 36, that is a loss in billable hours of
11 16.96. The Debtor testified that his hourly rate at the time was \$170. Thus, the Debtor suffered
12 compensatory damages of 16.96 times \$170 or \$2,883.20.

13 Because of a change in Ninth Circuit law, the Debtor was also able to testify, at the
14 remand trial, that during this time period from July 16 to July 31, 2001, he was distressed, upset,
15 and unable to work efficiently because of the threat that he might be incarcerated on August 1,
16 2001. The Debtor testified that he believed that his legal career was over. He was distraught
17 during this albeit relatively brief period of time. The Debtor conceded that he did not seek
18 medical treatment and did not take any medication for his distress. The Court does conclude that
19 his testimony of the extreme distress that he was suffering from July 16 to July 31, 2001 was
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21 **21.** Exhibit J. The monthly interim report for July 2001, which set forth income and
22 expenses for June 2001, reflected gross revenues for the Debtor of \$28,099. The monthly report
23 for August 2001 (capturing the income and expenses for July 2001) did show a marked decrease
24 in revenues of \$18,578. Finally, the monthly report for September 2001 (for the August time
25 period) reflected gross revenues for the Debtor of \$22,464. The Debtor's testimony was that only
26 the threat of incarceration and his attempt to prepare pleadings for the State Courts were the only
27 variance causing the marked decrease in income in July 2001.

28 **22.** Exhibit H. See the entries for July 16, 17, 18, 19, 24, and 25. By July 31, 2001, the
Minute Entry Order was vacated, and he was able to bill his major client for a normal day of
work.

1 credible and palpable. The Debtor did establish at the first trial in this matter that he was unable
2 to comply with the July 31, 2001 Minute Entry Order of the State Court even if he were to have
3 liquidated estate property.

4 At the remand hearing, counsel for the Plaintiff presented evidence as to the attorneys'
5 fees and costs incurred on behalf of the Plaintiff as to the willful violation of the stay. The Court
6 has considered this testimony, as well as the Exhibits admitted into evidence by counsel. As a
7 part of the process in determining to what extent these fees and costs shall be part of the actual
8 damages that must be paid by Defendant Sternberg, the Court has reviewed the Applications to
9 determine if the fees and costs are reasonable, the hourly rate is reasonable, that the fees and
10 costs do relate to the litigation concerning the willful violation of the stay, and any appeal
11 thereof, and that the time expended by counsel for Defendant Parker, who has settled with the
12 Plaintiff, has not been included in the damages to be paid by Defendant Sternberg. However,
13 there is one exception. To the extent that counsel for the Plaintiff expended time as to both
14 Defendants, Defendant Sternberg shall be responsible for those fees and costs. He may have a
15 claim against Defendant Parker, but that is for the Court to determine another day.

16 Exhibit 30 contains, inter alia, an Amended Fee Application of Plaintiff's counsel, dated
17 August 13, 2002. The first concern is that counsel billed time on August 2, 2001, pertaining to
18 whether Defendant Sternberg should be liable for punitive damages to the Plaintiff. The Court
19 had just vacated the Minute Entry Order of the State Court and Plaintiff's counsel had done no
20 investigation of whether such damages would be warranted. Indeed the evidence presented
21 reflects that as of this date, counsel for the Plaintiff had sent a fax to Defendant Sternberg. The
22 other action involved the filing of a pleading with the State Appellate Court. Given the facts of
23 this case, the Court concludes that the billing under such factual circumstances was unreasonable.

24 The following entries will be disallowed by this Court:

25 Date	Attorney	Time billed	Amount Requested
26 8/2/01	JSV	.2 hours	\$ 25.00

1	8/2/01	JSV	1.3 hours	\$ 162.50
2	8/2/01	RJE	.5 hours	147.50
3	8/2/01	JSV	.5 hours	62.50
4	Subtotal: \$397.50			

5 The next area of concern is the Reply filed by the Plaintiff counsel in the State Appellate
6 Court. The actual brief filed with the Court was presented as an Exhibit.²³ The Court has
7 reviewed this Reply; it is no more than a couple of paragraphs. Although counsel is entitled to be
8 compensated for the time expended, the amount listed in the Amended Fee Application is
9 excessive as to the time billed. The Court will allow the time billed on August 9, 2001 to
10 retrieve the Bankruptcy Court Minute Entry (8/9/01; JSV; .25 hours; \$31.25) and the time by the
11 associate to draft the brief Reply (8/9/01; JSV .5 hours; \$62.50). The following entries shall be
12 disallowed for the reasons articulated above.

13	8/8/01	RJE	.2 hours	\$ 59.00
14	8/8/01	JSV	.2 hours	25.00
15	8/8/01	JSV	.5 hours	62.50
16	8/9/01	JSV	1.5 hours	187.50
17	8/9/01	JSV	.2 hours	25.00
18	8/10/01	RJE	.3 hours	82.50 ²⁴
19	8/10/01	RJE	.2 hours	55.00
20	8/10/01	RJE	.3 hours	88.50
21	8/10/01	JSV	.3 hours	37.50
22	8/10/01	JSV	.1 hours	12.50
23	8/10/01	JSV	.25 hours	31.50
24	8/10/01	RJE	.2 hours	59.00

25 _____

26 **23.** Exhibit L.

27 **24.** This entry refers to Smith v. Smith which is irrelevant to this case.

1	8/10/01	JSV	.2 hours	25.00
2	8/10/01	JSV	.2 hours	25.00
3	8/13/01	RJE	.2 hours	55.00
4	8/16/01	RJE	.2 hours	82.50 ²⁵
5	Subtotal: \$912.50			

6 The next area of concern includes the numerous entries in the remaining portion of
7 Exhibit 30, which have been highlighted, and the highlighted entries in Exhibits 31, 44, and 45.²⁶
8 Many of the entries related to discovery disputes, motions to compel, motions in limine, or
9 settlement discussions that Plaintiff's counsel was embroiled in or resolving that related
10 exclusively or almost exclusively to Defendant Parker. Given the unique factual and legal issues
11 that Plaintiff's counsel needed to resolve as to Defendant Parker, it would be inappropriate to
12 charge Defendant Sternberg with this time. Therefore, such time has been discussed or
13 highlighted, and the time has been excluded or disallowed as damages to paid by Defendant
14 Sternberg. However, if the Court, in reviewing the entry, believed that Defendant Sternberg had
15 joined in an issue and should be charged for at least one-half of the time, that has been noted by
16 the Court as well. To make the analysis easier to review, the Court has set forth below, or in the
17 highlighted entries on the attached Exhibits A through D to this Decision, the compensation that
18 should be disallowed as damages.²⁷ As the Court discusses the invoices, it has provided a

19
20 **25.** This entry referred to a review of the JMG&P capital account order, which does not
21 relate to the other matters in this task category.

22 **26.** The bulk of the highlighted entries focus on this area of concern. However, there are
23 certain entries which have been excluded because they do not pertain to this litigation. For
24 instance, when Plaintiff's counsel contacted an attorney with the United States Trustee, that entry
25 would be properly chargeable against, and paid by, the bankruptcy estate as an administrative
expense, but not as actual damages in this lift stay litigation. The Court has excluded this and
similar entries. They have also been highlighted on the attached Exhibits.

26 **27.** Exhibit 30 is Exhibit A to this Decision; Exhibit 31, Exhibit B; Exhibit 44, Exhibit C;
27 and Exhibit 45, Exhibit D. The Court has not attached to this Decision the entire Exhibits 30, 31,
28 44, and 45 admitted at trial, since the Plaintiff's counsel may have attached the entire Fee

1 summary of what compensation was requested as damages, what has been disallowed, and what
2 is the net compensation is to be paid to Plaintiff's counsel as damages by Defendant Sternberg.

3 Turning to the August 13, 2002 invoice, which was a part of Exhibit 30, but is not
4 attached to this Decision, the Court will disallow the following entries related to the litigation by
5 Plaintiff's counsel of issues that relate exclusively, almost exclusively, to Defendant Parker.

6	9/12/01	RJE	.2 hours	59.00
7	9/12/01	JSV	.1 hours	12.50
8	9/12/01	RJE	.5 hours	147.50
9	9/12/01	JSV	.2 hours	25.00
10	9/12/01	RJE	.2 hours	29.50 ²⁸
11	9/12/01	JSV	.2 hours	12.50 ²⁹
12	10/5/01	JSV	.2 hours	12.50 ³⁰
13	10/8/01	RJE	.1 hours	13.75 ³¹
14	10/8/01	JSV	.5 hours	62.50
15	10/8/01	JSV	1.4 hours	87.50 ³²

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18 Application for a time period, but the Firm is only seeking to be reimbursed, as actual damages in
19 this case, for that portion of the task-based billing and Application which pertain to this lift stay
20 litigation and any appeals related thereto. Moreover, as to Exhibit 30, the Court has only
21 attached the lift stay litigation from 3/14/2003 forward as Exhibit A, because the earlier invoices
22 are too voluminous to attach to this Decision. The time entries from the 8/13/2002 invoice
23 concerning the stay litigation are analyzed as part of the text in the next six or seven pages of this
24 Decision.

25 28. Actual amount is \$59 but the amount is divided in half.

26 29. Actual amount is \$25 but the amount is divided in half.

27 30. Actual amount is \$25 but the amount is divided in half.

28 31. Actual amount is \$27.50 but the amount is divided in half.

32. Actual amount is \$175 but the amount is divided in half.

1	10/8/01	JSV	1.2 hours	75.00 ³³
2	10/8/01	JSV	.2 hours	12.50 ³⁴
3	10/9/01	JSV	.8 hours	50.00 ³⁵
4	10/9/01	RJE	.1 hours	29.50
5	10/9/01	JSV	.1 hours	12.50
6	10/11/01	JSV	.3 hours	37.50
7	10/12/01	JSV	.4 hours	50.00
8	10/19/01	RJE	.5 hours	137.50
9	10/19/01	RJE	.2 hours	55.00
10	10/31/01	JSV	.1 hours	12.50
11	11/15/01	RJE	.1 hours	27.50
12	11/16/01	RJE	1.0 hours	275.00
13	12/1/01	RJE	.1 hours	29.50
14	12/4 -1/2/02	RJE/JSV	3.3 hours	555.00 ³⁶
15	1/2 -1/14/02	RJE/JSV	3.7 hours	279.25 ³⁷
16	1/14/02	RJE	.1 hours	29.50
17	1/14/02	RJE	.3 hours	88.50
18	2/8/02	RJE	.2 hours	55.00
19	2/8/02	RJE	.1 hours	27.50
20	2/14/02	RJE	.1 hours	27.50

21 _____
22 33. Actual amount is \$150 but the amount is divided in half.

23 34. Actual amount is \$25 but the amount is divided in half.

24 35. Actual amount is \$100 but the amount is divided in half.

25 36. See Page 13 of 8/13/02 Ellett Law Firm Invoice.

26 37. Actual amount is \$558.50 but the amount is divided in half. See Page 14 of 8/13/02
27 Ellet Law Firm Invoice.

1	2/14/02	RJE	.1 hours	27.50
2	2/18/02	RJE	.2 hours	55.00
3	2/18/02	RJE	.1 hours	27.50
4	2/18/02	RJE	.3 hours	82.50
5	2/18/02	RJE	1.0 hours	275.00
6	2/19/02	RJE	1.0 hours	275.00
7	2/19/02	RJE	.6 hours	165.00
8	2/19/02	RJE	.1 hours	27.50
9	2/19/02	RJE	.2 hours	55.00
10	2/19/02	RJE	.5 hours	137.50
11	2/19/02	RJE	.1 hours	27.50
12	2/19/02	JSV	.3 hours	37.50
13	2/19/02	JSV	3.7 hours	462.50
14	2/19/02	JSV	.3 hours	37.50
15	2/20/02	RJE	.1 hours	27.50
16	2/20/02	RJE	.1 hours	27.50
17	2/20/02	RJE	.2 hours	55.00
18	2/20/02	JSV	.2 hours	25.00
19	2/27/02	RJE	.1 hours	27.50
20	2/27/02	RJE	.1 hours	27.50
21	2/28 -3/6/02	RJE/JSV	10.4 hours	2488.00 ³⁸
22	4/15/02	JSV	.2 hours	29.00
23	4/15/02	JSV	.4 hours	58.00
24	4/17/02	JSV	.3 hours	43.50
25	4/18/02	RJE	.3 hours	88.50

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27 38. See Page 19 of 8/13/02 Ellett Law Firm Invoice.

28

1	4/18/02	RJE	.2 hours	59.00
2	4/18/02	JSV	.7 hours	101.50
3	4/18/02	JSV	.4 hours	58.00
4	4/21/02	RJE	.3 hours	88.50
5	5/8/02	JSV	.6 hours	87.00
6	5/9/02	RJE	.5 hours	147.50
7	5/9/02	RJE	1.0 hours	295.00
8	7/10/02	RJE	.2 hours	59.00
9	7/10/02	RJE	.2 hours	59.00
10	7/10/02	RJE	.2 hours	59.00
11	9/4/02 -1/8/03	RJE/JSV	19.6 hours	4,131.00 ³⁹
12	Subtotal: \$12,062.50			

13

14 The Court next turns to the March 14, 2003, and the April 16, 2003 invoices that are a
15 part of Exhibit 30 at the remand trial and are also attached to this Decision as Exhibit A. Thus,
16 the parties may review this text and also turn to Exhibit A of this Decision to review the entries
17 which have been disallowed. Again, the entries which are being disallowed relate to time
18 expended by Plaintiff's counsel on matters relating exclusive, almost exclusively, to Defendant
19 Parker and, hence, should not be chargeable as damages against Defendant Sternberg.

20	1/21/03	RJE	1.7 hours	501.50
21	1/21/03	RJE	.2 hours	59.00
22	1/22/03	RJE	.2 hours	59.00

23

24

25 39. This is the last entry from the 8/13/2002 invoice which is a part of Exhibit 30. The
26 Court did not attach said invoice, as noted previously, because it is voluminous. The total fees
27 requested in the 8/13/2002 invoice for this task are \$41,213.50. The sum of \$12,062.50 is set
28 forth above as being disallowed. Therefore, the sum of \$29,151.00 from the 8/13/2002 invoice
as to the stay lift litigation shall be allowed.

28

1	1/22/03	RJE	.2 hours	59.00
2	1/22/03	RJE	.2 hours	59.00
3	1/22/03	RJE	.2 hours	59.00
4	1/23/03	RJE	1.0 hours	295.00
5	1/23/03	RJE	.2 hours	59.00
6	1/23/03	RJE	.4 hours	118.00
7	1/23/03	RJE	.2 hours	59.00
8	1/28/03	RJE	.3 hours	44.25 ⁴⁰
9	2/3/03	RJE	.3 hours	88.50
10	2/12/03	RJE	.2 hours	29.50 ⁴¹
11	2/14/03	JSV	.3 hours	43.50
12	2/14/03	JSV	.3 hours	72.50
13	2/14/03	JSV	.8 hours	116.00
14	2/14/03	RJE	1.2 hours	354.00
15	2/14/03	RJE	.8 hours	236.00
16	2/14/03	RJE	.6 hours	177.00
17	2/17/03	JSV	1.3 hours	188.50
18	2/17/03	JSV	.3 hours	43.50
19	2/17/03	RJE	.2 hours	59.00
20	2/17/03	RJE	.3 hours	88.50
21	2/17/03	RJE	.2 hours	59.00
22	2/17/03	RJE	.2 hours	59.00
23	2/17/03	RJE	.1 hours	29.50
24	2/17/03	RJE	.1 hours	29.50

25

26 40. Actual amount is \$88.50 but the amount is divided in half.

27 41. Actual amount is \$59 but the amount is divided in half.

28

1	2/18/03	RJE	.1 hours	29.50
2	2/18/03	RJE	.2 hours	59.00
3	2/18/03	RJE	.1 hours	29.50
4	2/18/03	RJE	.3 hours	88.50
5	2/18/03	RJE	.2 hours	59.00
6	2/18/03	JSV	.9 hours	130.50
7	2/19/03	RJE	.8 hours	236.00
8	2/20/03	RJE	.3 hours	88.50
9	2/24/03	RJE	.2 hours	59.00
10	2/24/03	RJE	.3 hours	88.50
11	2/24/03	RJE	.2 hours	59.00
12	2/25/03	RJE	.3 hours	88.50
13	2/25/03	RJE	.3 hours	88.50
14	2/26/03	RJE	.2 hours	59.00
15	2/26/03	RJE	.1 hours	29.50
16	2/27/03	JSV	.3 hours	43.50
17	2/27/03	RJE	.3 hours	88.50
18	2/27/03	RJE	.9 hours	265.50
19	2/28/03	RJE	1.2 hours	354.00
20	2/28/03	RJE	2.6 hours	767.00
21	2/28/03	RJE	.2 hours	59.00
22	2/28/03	RJE	.1 hours	29.50
23	2/28/03	RJE	.1 hours	29.50
24	3/3/03	JSV	1.0 hours	145.00
25	3/3/03	JSV	.3 hours	43.50
26	3/3/03	RJE	.1 hours	27.50

27
28

1	3/3/03	RJE	.2 hours	55.00
2	3/3/03	RJE	1.5 hours	412.50
3	3/3/03	RJE	.2 hours	55.00
4	3/3/03	RJE	.1 hours	27.50
5	3/4/03	RJE	.2 hours	55.00
6	3/4/03	RJE	.2 hours	55.00
7	3/5/03	RJE	.2 hours	55.00
8	3/5/03	RJE	.2 hours	55.00
9	3/5/03	RJE	.2 hours	55.00
10	3/6/03	RJE	.1 hours	27.50
11	3/12/03	RJE	.3 hours	82.50
12	3/13/03	RJE	.2 hours	55.00
13	3/13/03	RJE	.2 hours	55.00
14	3/14/03	RJE	.6 hours	165.00
15	3/14/03	RJE	.2 hours	55.00
16	3/19/03	RJE	.3 hours	82.50
17	3/19/03	JSV	.4 hours	25.00 ⁴²
18	3/20/03	RJE	.2 hours	55.00
19	3/20/03	RJE	.5 hours	137.00
20	3/20/03	RJE	.4 hours	110.00
21	3/20/03	RJE	.2 hours	55.00
22	3/20/03	JSV	.3 hours	18.75 ⁴³
23	3/21/03	RJE	.1 hours	27.50
24	3/21/03	RJE	.1 hours	27.50

42. Actual amount is \$50 but the amount is divided in half.

43. Actual amount is \$37.50 but the amount is divided in half.

1	3/24/03	RJE	1.5 hours	412.50
2	3/24/03	JSV	.2 hours	25.00
3	3/27/03	JSV	.2 hours	25.00 ⁴²
4	Subtotal: \$8,356.00			

5
6 The Court now turns to Exhibit 31, at the remand trial, and disallows the following
7 entries. The reason for the disallowance again pertains to services rendered to Defendant Parker
8 that should not be charged to Defendant Sternberg. The detailed invoice is attached hereto as
9 Exhibit B, if the parties would like to review the entries which are allowed, as well as disallowed.

11	9/2/03	RJE	.1 hours	31.50 ⁴⁵
12	9/17/03	RJE	.2 hours	63.00
13	9/17/03	RJE	.2 hours	63.00
14	9/18/03	RJE	.1 hours	31.50
15	9/24/03	RJE	1.0 hours	315.00
16	9/24/03	RJE	.8 hours	252.00
17	9/29/03	RJE	.3 hours	94.50
18	9/29/03	RJE	.2 hours	63.00
19	10/10/03	RJE	.1 hours	31.50
20	12/29/03	RJE	.2 hours	63.00
21	9/23/03	JSV	.2 hours	35.00

22

23 **44.** This is last entry from Exhibit 30 presented at trial. See Exhibit A of this Decision for
24 the itemized listing of services as set forth in the invoices dated 3/14/2003 and 4/16/2003. The
25 fees set forth in the 3/14/2003 and the 4/16/2003 invoices are equal to the sum of \$11,203.50
26 plus \$10,522.50 or a total of \$21,726.00. The sum of \$8,356 has been disallowed, for a net
27 compensation amount of \$13,370.

28 **45.** The entries shown hereinafter are from Exhibit 31 at the trial. Refer to Exhibit B of
this Decision.

1	9/25/03	JSV	.7 hours	122.50
2	9/26/03	JSV	.4 hours	70.00
3	9/27/03	JSV	3.5 hours	612.50
4	9/27/03	JSV	.2 hours	35.00
5	9/27/03	JSV	.4 hours	70.00
6	9/27/03	JSV	.3 hours	52.50
7	9/27/03	JSV	.3 hours	52.50
8	9/27/03	JSV	.2 hours	35.00
9	10/7/03	JSV	.1 hours	17.50
10	10/27/03	JSV	.1 hours	17.50
11	12/31/03	JSV	.2 hours	35.00 ⁴⁶
12	Subtotal: \$2,163.00			

13

14 Following the same thought process, the Court next reviews Exhibit 44 from the remand
15 trial. The parties also referred to Exhibit C to this Decision.

16	5/17/05	RJE	.5 hours	157.50 ⁴⁷
17	5/17/05	RJE	.2 hours	63.00
18	6/1/05	RJE	.1 hours	31.50
19	6/1/05	RJE	.1 hours	15.75 ⁴⁸
20	6/7/05	RJE	.1 hours	15.75 ⁴⁹

21

22 46. This is the last entry disallowed from Exhibit 31, which is attached as Exhibit B to
23 this Decision. The total fees requested were \$21,002. If the disallowed fees of \$2,163.00 are
subtracted, the net amount of \$18,839.00 shall be allowed.

24 47. The following entries listed on this page and hereinafter are from Exhibit 44 at trial.
25 See Exhibit C to this Decision.

26 48. Actual amount is \$31.50 but the amount is divided in half.

27 49. Actual amount is \$31.50 but the amount is divided in half.

28

1 6/8/05 RJE .1 hours 31.50⁵⁰

2 Subtotal: \$315.00

3

4 The Court has now set forth below those entries from Exhibit 45, at the remand trial,
5 which should be disallowed as to Defendant Sternberg.

6 6/21/05 RJE .1 hours 31.50⁵¹

7 8/5/05 RJE .1 hours 31.50

8 8/22/05 RJE .1 hours 31.50

9 8/22/05 RJE .2 hours 63.00

10 8/23/05 RJE .1 hours 31.50

11 8/26/05 RJE .1 hours 31.50

12 8/26/05 RJE .1 hours 31.50

13 8/26/05 RJE .1 hours 31.50⁵²

14 Subtotal: \$283.50

15

16 Based upon this Court's analysis of all the fees requested by the Plaintiff's counsel for the
17 lift stay litigation and any appeal related thereto, the Court must exclude total fees in the amount
18 of \$24,490.00.

19 As noted previously, there are certain entries which have not been discussed from
20 Exhibits 30, 31, 44, or 45, or highlighted on the attached Exhibits A through D that relate to the
21

22

23 **50.** This is last entry from Exhibit 44, which is set forth, in relevant part, as Exhibit C to
24 this Decision. The total fees requested are \$5,580, of which \$315 has been disallowed, for a net
25 amount of \$5,265.00 as compensation to be allowed to Plaintiff's counsel.

26 **51.** The following entries are from Exhibit 45 at trial. See Exhibit D to this Decision.

27 **52.** The total fees requested in Exhibit D are \$4,954.50 of which the sum of \$283.50 is
28 disallowed, leaving a net amount of \$4,671.00 as compensation for Plaintiff's counsel related to
this matter.

28

1 general discovery and trial preparation of Plaintiff's counsel for the stay lift litigation. These
2 charges have remained as allowed charges or damages against Defendant Sternberg. Defendant
3 Sternberg should be charged for this time as a part of the actual damages, since, in essence, he is
4 like a joint tortfeasor who should be jointly and severally liable for the time and effort expended
5 by Plaintiff's counsel. Defendant Sternberg may have a claim against Defendant Parker for the
6 payment of her portion of these damages, but the Defendants will need to present their position
7 separately on that matter if they are unable to resolve the issue.

8 Based upon this Court's review of the Exhibits presented by Plaintiff's counsel, this
9 Court concludes that Plaintiff's attorneys fees' and costs in the amount of \$69,986 shall be
10 allowed as actual damages against Defendant Sternberg. The attorneys' fees and costs in the
11 amount of \$24,490 shall be excluded as damages for the reasons stated in this Decision.

12 Defendant Sternberg did not testify at the remand trial. Instead his counsel relied on the
13 evidence previously presented to the Court. The Court wishes to emphasize that
14 Defendant Sternberg previously credibly testified before this Court that he was initially surprised
15 by the July 13, 2001 Minute Entry Order; that he was subsequently out of the country from
16 July 3 to July 16, 2001, and out of town for the period from July 23, 2001 through August 1,
17 2001; that based upon the research done at his firm, he believed that he was within an exception
18 to the automatic stay and simply responded to the various pleadings filed by the Debtor; and that
19 he took no affirmative action to execute on or control bankruptcy estate or non-estate assets or to
20 collect on the obligation.⁵³

21
22

53. At the remand trial, Plaintiff's counsel relied on Exhibit N to reflect that Defendant
23 Sternberg was aware of the Minute Entry Order around July 17, 2001, and took independent
24 action to uphold said Order in the State Appellate Court which was an ongoing willful violation
25 of the stay. However, a review of the entire transcript, including Pages 53-58, reflects that
26 Defendant Sternberg had just returned from a trip out of the country on July 17, so that his
27 review of the Minute Entry Order on that day was limited by his jet lag. Defendant Sternberg
28 also spent two hours on one day and one-half hour on another day in conference on the matter
with his partner or determining how he might proceed before Defendant Sternberg left town
again. Given the extensive amount of time expended by Plaintiff's counsel and the Plaintiff on

1 III. ISSUES.

2 As a result of the Arizona District Court's Decision, on appeal, the Court must narrow the
3 issues to be considered at this time. The District Court has already concluded that the State
4 Court initially acted on its own in issuing the July 31, Minute Entry Order. However, the District
5 Court also concluded that Defendant Sternberg willfully violated the automatic stay through his
6 failure to act affirmatively to rescind or expunge the July 31, 2001 State Court Minute Entry
7 Order, or to request a stay of the State Court proceedings. The Arizona District Court classified
8 this failure to act as an ongoing willful violation of the stay. On remand, this Court was initially
9 to consider whether the Defendant had any affirmative defenses, which, if proven, would vitiate
10 any claim of damages to be recovered by the Plaintiff. If the Court determined that there were no
11 affirmative defenses which would assist Defendant Sternberg, the Court was also to consider the
12 issue of damages incurred by the Plaintiff.

13 However, at the time of the remand, the Ninth Circuit issued a new published opinion in
14 the Dawson case.⁵⁴ This Court conducted a hearing on the Defendant Sternberg's Motion in
15 Limine to determine to what extent Dawson applied to the issues to be determined by this Court.
16 At the end of the hearing, the Court concluded that since the Court had not entered a final
17 decision in this adversary and the matter had been remanded to this Court to allow Defendant
18 Sternberg to present any affirmative defenses that he might have, the Court must allow in the
19 evidence of any emotional distress that the Plaintiff may have suffered and any damages that
20 might have resulted therefrom. However, the Court also agreed with Defendant Sternberg that
21 since, as a part of pretrial proceedings, the Plaintiff had conceded that he had never sought
22 medical attention, or taken any medication, during the relevant time period in July 2001, the

23 _____
24 these matters in both the State and this Court, the Court concludes that when Defendant
25 Sternberg stated he did not recall reviewing the Minute Entry Order or spending a lot of time on
26 it, that testimony was credible.

27 ⁵⁴. Dawson v. Washington Mutual Bank (In re Dawson), 390 F.3d 1139 (9th Cir. 2004).

1 Plaintiff should be limited in the evidence that he would be allowed to present of any emotional
2 distress. The Plaintiff agreed to be bound by his prior admissions and agreed not to present any
3 medical evidence on the issue of emotional distress.

4 The issues on remand may be summarized as follows.

5 A. Whether the Plaintiff is entitled to damages for being unable to expend the usual
6 billable hours on his major client.

7 B. Whether the Plaintiff is entitled to his attorneys' fees for Defendant's Sternberg's
8 willful violation of the automatic stay.

9 C. Whether the Plaintiff suffered any emotional distress as a result of Defendant
10 Sternberg's violation of the stay. If so, what damages should be accorded the Plaintiff.

11 IV. DISCUSSION.

12 Pursuant to § 362(a), the automatic stay acts as a broad injunction against creditors
13 attempting to "collect, assess, or recover a claim against the debtor that arose before the
14 commencement of the case under this title." 11 U.S.C. § 362(a)(6) (West 2005). The purpose of
15 the automatic stay is to give the debtor a breathing spell from the collection efforts of his or her
16 creditors, prevent a veritable "race to the courthouse," and possibly to aid in an effective
17 reorganization of the Debtor's obligations while providing for an orderly distribution to creditors
18 of the estate. In re MacDonald, 755 F.2d 715, 717 (9th Cir. 1985).

19 The broad injunctive relief granted by § 362(a) does have its limits. Particularly germane
20 to the discussion in this case are the various exceptions involving domestic relations actions.
21 The Code exempts from the automatic stay's reach those actions involving the establishment of
22 paternity,⁵⁵ commencing or continuing an action to establish alimony, maintenance, or support,⁵⁶

23
24 **55.** 11 U.S.C. § 362(b)(2)(A)(i) (West 2005) provides:

25 The filing of a petition under section 301, 302 or 303 of this title, or of an application
26 under section 5(a)(3) of the Securities Investor Protection Act of 1970 does not operate as
27 a stay--

28 (2) under subsection (a) of this section--

1 and the collection of alimony, maintenance or support from non-estate property.⁵⁷ While these
2 are clearly delineated as exceptions to the automatic stay, the Bankruptcy Court, not the State
3 Court where the domestic relations action is pending, remains the final arbiter with regard to
4 questions regarding the scope and applicability of the automatic stay. In re Gruntz, 202 F.3d
5 1074 (9th Cir. 2000) ("A state court does not have the power to modify or dissolve the automatic
6 stay . . . if it proceeds without bankruptcy court permission, a state court risks having its final
7 judgment declared void.") Id. at 1087.⁵⁸

8 The Ninth Circuit next turned to the application of the particular exception to the
9 automatic stay; namely, § 362(b)(1). Subsection (b)(1) specifically exempts from the reach of
10 the automatic stay any "commencement or continuation of a criminal action or proceeding
11 against the debtor[.]" Id. at 1085; 11 U.S.C. § 362(b)(1) (West 2005). Finding that the clear
12 language of § 362(b)(1) as well as a traditional federal deference to state criminal actions
13

14 (A) of the commencement or continuation of an action or proceeding for--
15 (i) the establishment of paternity; or

16 **56.** 11 U.S.C. § 362(b)(2)(A)(ii) (West 2005) provides:

17 (ii) . . .the establishment or modification of an order for alimony, maintenance, or support;
18 or

19 **57.** 11 U.S.C. § 362(b)(2)(B) (West 2005) provides:

20 (B) of the collection of alimony, maintenance, or support from property that is not
21 property of the estate.

22 **58.** The view that the State Court lacks subject matter jurisdiction to determine the
23 scope of the stay has not been uniformly accepted. In the 2nd, 5th and 6th Circuits, the State
24 Courts have concurrent jurisdiction with the bankruptcy courts to determine whether the
25 automatic stay, or an exception, applies. In re Baldwin-United Corporation Litigation (Erti v.
Paine Webber Jackson & Curtis), 765 F.2d 343, 347 (2nd Cir. 1985); NLRB v. Edward Cooper
Painting, Inc., 804 F.2d 934 (6th Cir. 1986); In re Bona, 110 B.R. 1012 (Bankr. S.D.N.Y. 1990),
26 aff'd 124 B.R. 11; Cisneros v. Cost Control Marketing an Sales Management of Virginia, Inc.,
27 862 F.Supp. 1531 (W.D.Va. 1994), aff'd 64 F.3d 920, cert denied 116 S.Ct.1673, 517 U.S. 1187,
134 L.Ed.2D 777; Picco v. Global Marine Drilling Co., 900 F.2d 846 (5th Cir. 1990).

1 controlled, the Ninth Circuit concluded that the state court could proceed with the criminal
2 prosecution without violating the automatic stay. In doing so, the Court expressly overruled
3 Hucke v. Oregon, 992 F.2d 950 (9th Cir. 1993), which had held that if the underlying purpose of
4 a state's criminal action was the collection of a debt, § 362(a)(6) applied, and the state could not
5 proceed without violating the automatic stay. Id. at 1085.

6 Thus, it appears that Gruntz allows a state court to proceed and enter final judgments or
7 orders, if the state court is within an exception to the automatic stay. Ultimately a party may
8 request that the bankruptcy court review the matter to determine whether the state court has
9 proceeded within an exception.

10 What is a tragedy to this Court is that so much time, effort, and expense have been
11 devoted to a matter that this Court essentially set for hearing on an expedited basis as soon as it
12 learned of the July 13, 2001 Minute Entry Order and which was resolved by this Court in a week.
13 Appeals have followed, and this Decision will only result in further appeals. The Plaintiff and
14 Defendant Sternberg have incurred presumably substantial attorneys' fees and costs on a matter
15 resolved in a week. At this point, the parties have so much invested in this matter, they will not
16 stop.

17 The parties to this dispute profoundly disagree as to whether Defendant Sternberg
18 violated or willfully violated the automatic stay. Because of this disagreement, Defendant
19 Sternberg chose not to present any evidence at the time of the remand trial. His counsel took the
20 position that Defendant Sternberg acted within an exception to the automatic stay, that this Court
21 was incorrect to conclude that any violation of the automatic stay had occurred even if that
22 conclusion was that only the State Court had acted, and that the Arizona District Court was
23 incorrect to conclude that Defendant Sternberg's failure to act affirmatively to rescind the July
24 13, 2001 Minute Entry Order or to stay the State Court proceedings was a willful violation of the
25 automatic stay by Defendant Sternberg. Defendant Sternberg did not present any evidence on
26 any affirmative defense such as estoppel or waiver. Defendant Sternberg did argue that this
27
28

1 Court should not reach certain issues outlined herein, because of a law of the case argument or
2 that the Plaintiff was barred from an evidentiary standpoint from presenting certain evidence.
3 The Court will consider these issues in its Decision.

4
5 **A. Whether the Plaintiff is entitled to damages for being unable to expend the usual
6 billable hours for his major client.**

7 As noted previously, Johnston has shown damages in the amount of \$2,883.20, which
8 related to his inability to practice law for his major client for the limited period of time from July
9 16 through July 19 and for July 24 and July 25. Defendant Sternberg argues that the presentation
10 of such evidence at a trial on remand is improper, since the Plaintiff had rested his case at the
11 first trial.

12 At the first trial, this Court concluded that the Plaintiff's testimony was ambiguous or
13 confusing on the issue of what damages, if any, he had incurred because of his inability to
14 practice law. At the remand trial, the Plaintiff did review his time records, and they were
15 compared with his billable hours after he filed his bankruptcy petition. The Plaintiff argues that
16 since this matter was remanded, the Plaintiff is entitled to revisit all evidence presented or not
17 presented on the issue of damages. This Court granted Defendant Sternberg a directed verdict on
18 the issue whether he had violated the stay at the first trial. Although the Plaintiff had chosen to
19 present some evidence on the damages incurred by the Plaintiff at the first trial, this Court did not
20 focus on damages at that time. Since the District Court concluded that Defendant Sternberg had
21 committed a willful violation of the stay and remanded this matter for this Court to consider any
22 affirmative defenses that Defendant Sternberg might have and to consider the damages incurred
23 by the Plaintiff, the Court believes that it must reopen the evidence and allow the Plaintiff's
24 testimony as to the loss of compensation for the limited period of time in July 2001.

25 Moreover, the Plaintiff would not have lost these billable hours but for the inaction of
26 Defendant Sternberg. The District Court has concluded that Defendant Sternberg was required to
27 take some affirmative action, such as vacating the Minute Entry Order of the State Court or
28

1 requesting a stay of the State Court proceedings. Since Defendant Sternberg did not take any
2 affirmative action, the Plaintiff was required to cease billing his major client and devote his time
3 to preparing pleadings for a special action to the Arizona Appellate Court. Defendant Sternberg's
4 inaction was the proximate cause of the Plaintiff's inability to bill his major client at the usual
5 hourly rate for a reasonable number of hours. Thus, the Plaintiff has now shown damages in the
6 amount of \$2,883.20 for his inability to work for a limited period of time, which were caused by
7 Defendant Sternberg's willful violation of the stay.

8
9 **B. Whether the Plaintiff is entitled to an award of his attorneys' fees.**

10 At the initial trial, the Plaintiff failed to list his counsel as a witness and counsel's fee
11 applications as an exhibit or exhibits in the joint pretrial statement. Defendant Sternberg
12 objected to the admission of such evidence, noting that he had been unable to do any discovery
13 on the matter. This Court agreed that exploring such evidence at the time would be prejudicial to
14 Defendant Sternberg. This Court also determined that the Plaintiff had shown no willful
15 violation of the stay, as a part of its prima facie case; therefore, attorneys' fees were not
16 warranted under Section 362(h). As noted, the District Court has concluded that Defendant
17 Sternberg committed a willful violation of the stay by his failure to take affirmative action.
18 Given such a determination, this Court believes that it must now consider the attorneys' fees and
19 costs incurred by the Plaintiff's counsel.

20 11 U.S.C. §362(h)(West 2005)²⁰ provides, in pertinent part, "An individual injured by
21 any willful violation of a stay provided by this section shall recover actual damages, including
22 costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."
23 The Ninth Circuit Decision of In re Bloom, 875 F.2d 224 (9th Cir. 1989) is also illustrative on
24 this point. The Court held that for purposes of 362(h):

25
26 _____
27 20. This section has been redesignated under the new Act. It is now currently set forth at
28 11 U.S.C. § 362 (k)(1).

1 A "willful violation" does not require a specific intent to violate the automatic stay.
2 Rather, the statute provides for damages upon a finding that the defendant knew of the
automatic stay and that the defendant's actions which violated the stay were intentional.

3 Id. at 227.

4 The Ninth Circuit Decision of Dawson v. Washington Mutual Bank (In re Dawson), 390
5 F.3rd 1139 (9th Cir. 2004), allows this Court to determine whether the time expended by
6 Plaintiff's counsel was reasonable and whether the hourly rate was reasonable. Id. at 1152.²¹
7 However, Dawson also noted that a recalculation of fees might be appropriate, since certain
8 matters had been remanded. Id. Based upon the guidance provided by Dawson, this Court
9 believes that it must consider the time expended by the Plaintiff's counsel during the time period
10 from July 13, 2001 through July 31, 2001, when the Plaintiff's counsel was attempting to have,
11 inter alia, Defendant Sternberg vacate the Minute Entry Order, and the time incurred on appeal,
12 since the District Court has concluded that Defendant Sternberg willfully violated the stay. This
13 Court may consider whether the Plaintiff's counsel expended a reasonable amount of time on the
14 matters and whether counsel's hourly rate is reasonable.

15 The Court has set forth in detail in this Decision which attorneys' fees of the Plaintiff's
16 counsel may be properly charged against Defendant Sternberg. Based upon the analysis and
17 Exhibits A through D attached hereto, Plaintiff's counsel shall be entitled to an award of
18 \$69,986. (Total fees of \$41,213.50 set out in FN39 minus disallowed fees of \$12,062.50 =
19 \$29,151; Exhibit A - total fees of \$21,726 minus disallowed fees of \$8,356 = \$13,370; Exhibit B
20 - total fees of \$21,002 minus disallowed fees of \$2,163 = \$18,839; Exhibit C - total fees of
21 \$5,580 minus disallowed fees of \$315 = \$5265; Exhibit D - total fees of \$4,954.50 minus
22 disallowed fees of \$283.50= \$4671; Plus other disallowed fees of \$ 397.50 from Pages 10 and 11
23

24
25 21. The Bankruptcy Court in Dawson reduced the fees to be awarded to debtor's counsel,
26 noting that counsel's request was "grossly disproportionate to the cost of litigating the issue in
27 question." Id. The Bankruptcy Court reduced the fees of debtor's counsel by 1/20, stating that
the debtor and counsel had only been successful on one of twenty issues presented. Id.

1 of the Decision and \$912.50 from Pages 11 and 12 of the Decision.){\$29,151 + \$13,370 +
2 \$18,839 + \$5265 + 4671 minus \$397.50 minus \$912.50 equals \$69,986.)

3
4 **C. Whether the Plaintiff may recover against Defendant Sternberg for emotional
5 distress. If so, what are the amount of the damages that Plaintiff may recover?**

6 Defendant Sternberg advances the argument that the law of the case or some type of
7 estoppel argument should preclude this Court from considering this claim. The Court has already
8 addressed this issue as a part of the pre-trial and trial proceedings on the remand issue. However,
9 during the course of these proceedings, while the parties were appealing this Court's Decision on
10 Defendant Sternberg's request for a directed verdict, the law of the Ninth Circuit changed on the
11 issue of emotional distress damages. A review of Ninth Circuit law requires that upon remand,
12 this Court must consider the change in law as a part of the remand process. When a case has
13 been decided by an appellate court and remanded, the court to which it is remanded must proceed
14 in accordance with the mandate and such law of the case as was established by the appellate
15 court, unless the first decision is clearly erroneous and would result in manifest injustice, there
16 has been an intervening change in the law, or the evidence on remand is substantially different.
17 Waggoner v. Dallaire, 767 F.2d 589 (9th Cir. 1985); Odima v. Westin Tucson Hotel, 53 F.3d
18 1484 (9th Cir. 1995); U.S. v. Lummi Indian Tribe, 235 F.3d 443 (9th Cir. 2000).

19 In excluding the evidence on the issue of emotional distress, this Court relied on a
20 decision which has since been rescinded by the Ninth Circuit and is of no force and effect. In
21 essence, the foundation for this Court's ruling was changed by the new published opinion in the
22 Dawson case. An intervening change in the law requires that this Court reexamine its prior
23 ruling and now allow the Plaintiff to assert a claim for emotional distress. Having determined
24 this preliminary matter, this Court will now turn to the substance of the issues presented for such
25 a claim.

26 The Ninth Circuit Decision of Dawson determined that a debtor's claim for emotional
27 distress was a cognizable claim to be considered by the Bankruptcy Court, stating

1 Reading the legislative history as a whole, we are convinced that Congress was concerned
2 not only with financial loss, but also – at least in part – with the emotional and
3 psychological toll that a violation of a stay can exact from an individual. Because
4 Congress meant for the automatic stay to protect more than financial interests, it makes
5 sense to conclude that harm done to those non-financial interest by a violation are
6 cognizable as ‘actual damages’ that may be recovered by an individual who is injured by
7 a willful violation of the automatic stay, 11 U.S.C. §362(h), include damages for
8 emotional distress.

9 Id. at 1148. The Circuit also concluded that there was a possibility of “frivolous claims,” and
10 wanted to limit the foregoing. Therefore, to be entitled to damages for an emotional distress
11 claim, the debtor must “(1) suffer significant harm, (2) clearly establish the significant harm, and
12 (3) demonstrate a causal connection between that significant harm, and the violation of the
13 automatic stay. . .” Id. at 1149. “Fleeting or trivial anxiety or distress does not suffice to support
14 an award; instead, an individual must suffer significant emotional harm. (Citation omitted.)” Id.
15 The Ninth Circuit concluded that there were a number of ways, from an evidentiary standpoint,
16 to show such harm. The debtor could (1) present corroborating medical evidence,²² (2) have non-
17 experts, such as family members, friends, or co-workers, testify as to the “manifestations of
18 mental anguish and clearly establish that significant emotional harm occurred,”²³ or
19 (3) simply rely on the fact that the emotional distress was readily apparent.²⁴ Id. at 1149-50.
20 Under the third prong as to the presentation of evidence, the Ninth Circuit opined that even if the
21 violation of the stay were not egregious, the very circumstances might make it obvious that a
22 reasonable person would suffer significant harm.²⁵ Id. at 1150. Even if significant harm had
23 been clearly established, the debtor must also show that there was a nexus between the claimed
24 damages and the violation of the stay. Such a causal connection must be clearly established or
25 readily apparent. Id.

26 This Court concludes that Defendant Sternberg’s failure to take affirmative action, given

27 22. In re Briggs, 143 B.R. 438, 463 (Bankr.E.D.Mich.1992).

28 23. Varela v. Ocasio (In re Ocasio), 272 B.R. 815, 821-22 (1st Cir. BAP 2002).

23. Wagner v. Ivory (In re Wagner), 74 B.R. 898, 905 (Bankr.E.D.Pa.1987).

24. United States v. Flynn (In re Flynn), 185 B.R. 89, 93 (S.D.Ga.1995).

1 the unique facts of this case, was not egregious. Defendant Sternberg was essentially out of the
2 office when the Plaintiff filed his special action with the State Appellate Court. The position
3 advanced by his firm, while he was away, was not frivolous. Indeed there was support for
4 Defendant Sternberg's actions which this Court has extensively reviewed and discussed in its
5 prior Decision on Defendant Sternberg's request for a directed verdict. Moreover, the time
6 period involved concerning the failure to take affirmative action was brief. The Minute Entry
7 Order was entered by the State Court on July 13, 2001, which was a surprise to all parties,
8 including Defendant Sternberg. By July 31, 2001, this Court had noticed, conducted a hearing
9 on, and vacated the Minute Entry Order as a violation of the automatic stay. Any damages
10 incurred after that date have been by Plaintiff's counsel, mostly attorneys' fees incurred by him
11 on appeal, to vindicate Plaintiff's position that Defendant Sternberg willfully violated the stay by
12 his failure to take affirmative action to rescind the Minute Entry Order or to request a stay of the
13 State Court proceedings.

14 Although Defendant's Sternberg's action, or inaction, was not an egregious violation of
15 the stay, this Court concludes that the Plaintiff has clearly shown a significant harm to himself.
16 The threat of the Plaintiff being incarcerated by August 1, 2001, since he did not have bankruptcy
17 estate or non-estate assets to pay a substantial arrearage to his ex-wife as ordered in the State
18 Court Minute Entry Order, the concomitant with the fear that he would lose his major client and
19 his law practice if he were incarcerated, would obviously cause even a reasonable person to
20 suffer significant emotional harm. Given that the District Court has concluded that Defendant
21 Sternberg willfully violated the stay by his failure to take affirmative action, this Court must
22 conclude that the Plaintiff has established a claim for emotional distress damages.

23 It is also clear that Defendant Sternberg's failure to take affirmative action, based upon
24 the facts of this case, led to the Plaintiff's injury. The causal link between Defendant Sternberg's
25 failure to have the Minute Entry Order rescinded, or to request that the State Court action be
26 stayed, and the harm to the Plaintiff is readily apparent. Hence, the Plaintiff is entitled to
27 damages for the emotional distress that he suffered.

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DATED this 31th day of March, 2006.

Sarah Sharer Curley

Honorable Sarah Sharer Curley
U. S. Bankruptcy Judge

Exhibits A through D attached.
BNC to Notice

EXHIBIT A

Exhibit 30

(Part)

Invoice for Legal Service

Ellett Law Offices, P.C.

2345 East Thomas Road

Suite 410

Phoenix, AZ 85016

DATE	INVOICE #
3/14/2003	LTJ STAY II

BILL TO
Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
1/18/2003	Review of Motion in Limine by Carmel	0.2	RJE	59.00
1/18/2003	Review of file & work on response	0.5	RJE	147.50
1/20/2003	Conference with JSV & work on joint pretrial	0.7	RJE	206.50
1/20/2003	Conference with JSV re: Motion in Limine working on chart for Judge Curley	0.3	RJE	88.50
1/21/2003	Attend hearing on P.Parker's Motion to compel	1.7	RJE	501.50
1/21/2003	Review of latest version of pretrial and revise	0.5	RJE	147.50
1/21/2003	Telephone call with M. Carmel in attempt to resolve his motion	0.2	RJE	59.00
1/21/2003	Telephone call with C.Bolton re: completing joint pretrial	0.2	RJE	59.00
1/21/2003	Telephone call with client re: stay testing & Carmel's motion	0.3	RJE	88.50
1/22/2003	Review of Bolton's suggestions on joint pretrial	0.2	RJE	59.00
1/22/2003	Telephone call with M. Carmel re: hearing set for Friday	0.2	RJE	59.00
1/22/2003	Telephone call with C. Bolton re resolving his concerns on stay case	0.2	RJE	59.00
1/22/2003	Review of motion in Limine by Bolton	0.2	RJE	59.00
1/22/2003	Telephone call with client re: Motion in Limine	0.2	RJE	59.00
1/22/2003	Conference with JSV re: letter for responding to Motions in Limine & getting Carmel's email	0.2	RJE	59.00
1/22/2003	2nd Conference with JSV re: Carmel's email nowhere to be found	0.2	RJE	59.00
1/22/2003	Telephone call with Client re: witnesses availability etc.	0.3	RJE	88.50
1/23/2003	Review of file work on draft response to Motion in Limine	1	RJE	295.00
1/23/2003	Telephone conference with C.Bolton re: settlement of dismissing issue in stay case	0.2	RJE	59.00

TOTAL

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3/14/2003	LTJ STAY II

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*refers to
Parker v. ...
out*

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
1/23/2003	Telephone conference with M. Carmel re: possible settlement in stay case.	0.2	RJE	59.00
1/23/2003	Review of Carmel's fax on joint pretrial	0.2	RJE	59.00
1/23/2003	Draft response to Carmel's motion in limine	0.4	RJE	118.00
1/23/2003	Draft response to Bolton's joinder	0.4	RJE	118.00
1/23/2003	Review of file & conference with JSV on response to Carmel's fax on joint pretrial	0.3	RJE	88.50
1/23/2003	2nd Telephone conference with C. Bolton re: discovery issues in stay	0.2	RJE	59.00
1/23/2002	2nd Telephone call with M. Carmel re: settlement of his motion in limine and disclosures	0.2	RJE	59.00
2/23/2003	Telephone Call with client re: dismissing issues on stay & witness testimony	0.3	RJE	88.50
1/24/2003	attend hearing on stay dismissing dispute	1	RJE	295.00
1/28/2003	Review of file re: Carmel's allegations of waiver of emotional distress	0.3	RJE	88.50
1/28/2003	Telephone call with C. Bolton & M. Carmel re: stay violain witnesses	0.3	RJE	88.50
1/28/2003	Review of Depo of M. Sternberg re: Carmel's arguments that Melvin was out of town for all of July	0.8	RJE	236.00
1/30/2003	Review of proposed changes to joint pretrial by M. Carmel	0.3	RJE	88.50
1/30/2003	Made additional changes & Memo to JV on finding joint pretrial	0.2	RJE	59.00
1/31/2003	Draft motion in Limine against Sternberg	0.9	RJE	265.50
2/3/2003	Supplement and amend Motion in Limine per RJE's instruction	1.4	JSV	203.00
2/3/2003	LR Re" Penalty for refusing to answer Questions at Depo	0.5	JSV	72.50
2/3/2003	Review of Motion in limine by Carmel	0.2	RJE	59.00

TOTAL

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DATE	INVOICE #
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MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
2/3/2003	Review of Melvin's Depo to include quote in Motion in Limine	0.3	RJE	88.50
2/3/2003	Revise Motion in Limine	0.2	RJE	59.00
2/3/2003	Review of case to support position	0.3	RJE	88.50
2/3/2003	2nd revision to motion in limine to include caselaw	0.3	RJE	88.50
2/3/2003	Review of Motion in Limine by Bolton	<i>out</i> 0.3	RJE	88.50
2/6/2003	Review of protective order & Memo from client	0.2	RJE	59.00
2/10/2003	Telephone call with client re: witness issues	0.4	RJE	118.00
2/10/2003	Conference with RJE re: due date of appraisal motion in limine	0.2	JSV	29.00
2/12/2003	Review of memo from Johnston on Motion in Limines	<i>1/2 out</i> 0.2	RJE	59.00
2/12/2003	Review of file regarding allegations	0.5	RJE	147.50
2/14/2003	Legal research re: state of mind/punis	0.8	JSV	116.00
2/14/2003	Legal research re: notice pleading / punitive	0.8	JSV	116.00
2/14/2003	Review of Depo of P. Parker re: Punis	<i>out</i> 0.3	JSV	43.50
2/14/2003	Review of correspondence file re: punis, discussion of BKC	<i>out</i> 0.5	JSV	72.50
2/14/2003	Supplement and amend response to Sternbergs motion in limine	1.2	JSV	174.00
2/14/2003	Supplement and Amend response to Parker's Motion in Limine	<i>out</i> 0.8	JSV	116.00
2/14/2003	Review of file & draft response to Carmel's Motion in Limine	0.9	RJE	265.50
2/14/2003	Review of file & draft response to Bolton's Motion in Limine	<i>out</i> 1.2	RJE	354.00
2/14/2003	Revise response to Carmel's Motion in Limine	0.3	RJE	88.50
2/14/2003	Revise response to Bolton's Motion in Limine	<i>out</i> 0.8	RJE	236.00
2/14/2003	2nd revision to Bolton's Motion in Limine	<i>out</i> 0.6	RJE	177.00
2/14/2003	2nd revision to Carmel's Motion in Limine	0.1	RJE	29.50

TOTAL

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MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
2/17/2003	continue supplement and amend response to Parker's Motion in Limine	out 1.3	JSV	188.50
2/17/2003	Supplement and Amend Motion in Limine (parker)	out 0.3	JSV	43.50
2/17/2003	Revise response to P. Parker's Motion in Limine	0.2	RJE	59.00
2/17/2003	Review of Appraisal on Parker's real property	0.3	RJE	88.50
2/17/2003	Telephone call with L. Johnston re: Stay trial issue	0.2	RJE	59.00
2/17/2003	Draft letter to Bolton with appraisal	0.2	RJE	59.00
2/17/2003	Revise appraisal letter to Bolton	0.1	RJE	29.50
2/17/2003	Telephone call to Paul Randolph	out - not chargeable 0.1	RJE	29.50
2/18/2003	Telephone call to Bolton & leave message	0.1	RJE	29.50
2/18/2003	Revise response to P. Parker's Motion in Limine	out 0.2	RJE	59.00
2/18/2003	review of letter from Bolton re: market value	0.1	RJE	29.50
2/18/2003	Telephone call with C. Bolton re: stay dismissing issues & other concerns of Paula	0.3	RJE	88.50
2/18/2003	Review of January operating reports	out - not chargeable 0.2	RJE	59.00
2/18/2003	Review of Sternberg's response to Motion in Limine	OK 0.2	RJE	59.00
2/18/2003	Supplement and Amend finalize response to Parker's Motion in Limine	out 0.9	JSV	130.50
2/18/2003	Supplement and amend finalize response to Stenberg's Motion in Limine	0.7	JSV	101.50
2/18/2003	Review of Defendant Sternbergs response to Motion in Limine	0.2	JSV	29.00
2/19/2003	Review of letter from C. Bolton re: stay exhibits	out 0.1	RJE	29.50
2/19/2003	Review of letter from C. Bolton to LTJ re: Bolton's insults	out 0.1	RJE	29.50
2/19/2003	Review of reply letter by LTJ to C. Bolton requesting Craig refrain	0.1	RJE	29.50
2/19/2003	Draft reply letter to C. Bolton	out 0.3	RJE	88.50
2/19/2003	Revise & sign reply letter	0.1	RJE	29.50
2/19/2003	Review of letter from C. Bolton to LTJ	0.1	RJE	29.50

TOTAL

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Ellett Law Offices, P.C.
 2345 East Thomas Road
 Suite 410
 Phoenix, AZ 85016

DATE	INVOICE #
3/14/2003	LTJ STAY II

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MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
2/20/2003	Review fax from Craig & telephone call to same left message	0.2	RJE	59.00
2/20/2003	Review of letter from C. Bolton	0.1	RJE	29.50
2/24/2003	Draft letter to Bolton re: documents	0.2	RJE	59.00
2/24/2003	Review of Carmel's reply	0.1	RJE	29.50
2/24/2003	Review of Bolton's reply & review of file	0.3	RJE	88.50
2/25/2003	Draft letter to client re: Bolton's reply re: Limine	0.2	RJE	59.00
2/25/2003	Telephone call with C. Bolton re; resolving discovery disputes	0.3	RJE	88.50
2/25/2003	Telephone call with client re: Bolton's discovery issues	0.3	RJE	88.50
2/26/2003	review of package from client in responding to Bolton's Motion in Limine	0.2	RJE	59.00
2/26/2003	Telephone call to client & left message	0.1	RJE	29.50
2/27/2003	Assemble exhibits for reply to Motion in limine	0.3	JSV	43.50
2/27/2003	Legal research re: admissibility to depo transcripts	1	JSV	145.00
2/27/2003	Prep for tomorrow's hearing; assemble exhibits, motions, etc supplement and assemble motion, finalize, file	1.9	JSV	275.50
2/27/2003	Review of LTJ's fax on issues and facts in stay case	0.2	RJE	59.00
2/27/2003	Review of P.Parker's depositions	0.3	RJE	88.50
2/27/2003	Draft supplemental response to Motion in limine	0.9	RJE	265.50
2/28/2003	prepare for hearing on Motion in Limine	1.2	RJE	354.00
2/28/2003	attend hearing on Motion in Limine	2.6	RJE	767.00
2/28/2003	Conference with client after hearing	0.2	RJE	59.00
2/28/2003	Telephone call with client re: stay evidence issue	0.1	RJE	29.50
2/28/2003	2nd Telephone call with client re: stay evidence issue	0.1	RJE	29.50
3/3/2003	Review of files, docs for transmission of joint pretrial statement	1	JSV	145.00
3/6/2003	Legal Research Daubert, Review of same	0.3	JSV	43.50

TOTAL	\$11,203.50
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2345 East Thomas Road

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DATE	INVOICE #
4/16/2003	LTJStayIII

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Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
3/3/2003	Listen to message from client on 98 Order.	0.1	RJE2	27.50
3/3/2003	Review of letter from Bolton.	0.2	RJE2	55.00
3/3/2003	Work on Joint Pre-Trial in light of Judge Curley's rulings.	1.5	RJE2	412.50
3/3/2003	Review of file and draft reply letter to Bolton regarding 98 Order.	0.2	RJE2	55.00
3/3/2003	Revise letter to Bolton on 98 Order.	0.1	RJE2	27.50
3/4/2003	Review of letter from C. Bolton on stay exhibits.	0.2	RJE2	55.00
3/4/2003	Review of file and draft reply letter to Bolton on exhibits.	0.2	RJE2	55.00
3/5/2003	Revise letter to C. Bolton regarding his stay exhibits concerns.	0.2	RJE2	55.00
3/5/2003	Review of response letter from C. Bolton on his threats of sanctions.	0.2	RJE2	55.00
3/5/2003	Draft response letter to C. Bolton's threat of sanctions.	0.2	RJE2	55.00
3/6/2003	Review of Counsel's Form of Order.	0.1	RJE2	27.50
3/6/2003	Review of file and telephone conference with M. Carmel regarding his Form of Order.	0.2	RJE2	55.00
3/6/2003	Draft objection to Carmel's Order.	0.2	RJE2	55.00
3/12/2003	Telephone conference with C. Bolton regarding Stay Pre-Trial.	0.3	RJE2	82.50
3/13/2003	Review of transcripts of 2/28 hearing.	0.2	RJE2	55.00
3/13/2003	Draft letter to client regarding same.	0.2	RJE2	55.00
3/14/2003	Revise Joint Pre-Trial in light of J. Curley's rulings.	0.6	RJE2	165.00
3/14/2003	Review of letter from C. Bolton threatening more litigation.	0.2	RJE2	55.00
3/14/2003	Draft Motion for Clarification or Reconsideration.	0.2	RJE2	55.00
3/14/2003	Conference with RJE.	0.2	JSV1	25.00
3/14/2003	Supplement and amend JPS.	2	JSV1	250.00
3/14/2003	Review of documents for trial book.	0.6	JSV1	75.00

TOTAL

Invoice for Legal Services

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2345 East Thomas Road

Suite 410

Phoenix, AZ 85016

DATE	INVOICE #
4/16/2003	LTJStayIII

BILL TO
Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
3/14/2003	Supplement and amend motion for reconsideration.	0.4	JSV1	50.00
3/17/2003	Review of Trial Notebooks and interest corrections.	0.5	RJE2	137.50
3/17/2003	Telephone call from Nancy Forty regarding fax.	0.1	JSV1	12.50
3/17/2003	Review of stipulation, exhibits; conference with CAS regarding trial book.	0.4	JSV1	50.00
3/17/2003	Create index to trial book.	0.3	JSV1	37.50
3/18/2003	Supplement and amend trial books, finalize and transmit.	0.6	JSV1	75.00
3/18/2003	Conference with RJE regarding drafting subpoenas.	0.1	JSV1	12.50
3/18/2003	Draft four subpoenas.	0.4	JSV1	50.00
3/19/2003	Review of and revise trial subpoenas.	0.2	RJE2	55.00
3/19/2003	Telephone conference with A. Cook regarding his testimony.	0.2	RJE2	55.00
3/19/2003	Telephone conference with client regarding Cook's statements and position on privilege.	0.2	RJE2	55.00
3/19/2003	Review of Attorney General's Motion to Quash.	0.2	RJE2	55.00
3/19/2003	Draft joinder in Motion to Quash.	0.2	RJE2	55.00
3/19/2003	Review of transcript of deposition of P. Parker.	0.3	RJE2	82.50
3/19/2003	Second telephone conference with client regarding Cook's deposition testimony.	0.2	RJE2	55.00
3/19/2003	Draft subpoenas to Parker, Sternberg.	0.4	JSV1	50.00
3/19/2003	Conference with RJE regarding sbpoenas, trial.	0.2	JSV1	25.00
3/19/2003	Telephone conference with A. Cook regarding his testimony.	0.2	JSV1	25.00
3/19/2003	Telephone conference with client regarding Cook's testimony.	0.3	JSV1	37.50
3/19/2003	Conference with RJE regarding transcripts faxed from client; instructed to create waiver of privilege from malpractice action.	0.4	JSV1	50.00

TOTAL

Invoice for Legal Services

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2345 East Thomas Road
Suite 410
Phoenix, AZ 85016

DATE	INVOICE #
4/16/2003	LTJStayIII

BILL TO
Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
3/19/2003	Draft letter to Cook and Wood regarding trial subpoena.	0.2	JSV1	25.00
3/19/2003	Draft letter to Nach and Siegel trial subpoena.	0.2	JSV1	25.00
3/20/2003	Review of letter from M. Carmel regarding joint pre-trial.	0.1	RJE2	27.50
3/20/2003	Review of file prior to calling Carmel.	0.2	RJE2	55.00
3/20/2003	Telephone conference with M. Carmel and get his changes to Joint Pre-Trial.	0.2	RJE2	55.00
3/20/2003	Conference with JSV regarding Pre-Trial changes by Carmel.	0.2	RJE2	55.00
3/20/2003	Review of Bolton's letter regarding pre-trial.	0.2	RJE2	55.00
3/20/2003	Review of file regarding Bolton's allegations.	0.5	RJE2	137.50
3/20/2003	Telephone conference with Bolton regarding resolving his concerns.	0.4	RJE2	110.00
3/20/2003	Conference with JSV regarding making revisions requested by Bolton.	0.2	RJE2	55.00
3/20/2003	Conference with RJE regarding Siegel's testimony; instructed to draft letter to Bolton and Carmel.	0.3	JSV1	37.50
3/20/2003	Draft letter to Bolton and Carmel on Siegel's testimony.	0.2	JSV1	25.00
3/21/2003	Telephone conference with C. Bolton regarding getting his final approval.	0.1	RJE2	27.50
3/21/2003	Telephone conference with M. Carmel regarding getting his final approval.	0.2	RJE2	55.00
3/21/2003	Review of letter from C. Bolton regarding final revisions.	0.1	RJE2	27.50
3/21/2003	Review of final JPS and sign.	0.2	RJE2	55.00
3/21/2003	Supplement and amend, finalize JPS and file.	0.4	JSV1	50.00
3/24/2003	Attend hearing on quashing subpoena of Judge.	0.8	RJE2	220.00

TOTAL

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2345 East Thomas Road
Suite 410
Phoenix, AZ 85016

DATE	INVOICE #
4/16/2003	LTJStayIII

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Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
3/24/2003	Telephone conference with client regarding trial testimony and settlement.	0.5	RJE2	137.50
3/24/2003	Review of Parker transcripts and depositions.	<i>out</i> 1.5	RJE2	412.50
3/24/2003	Draft letter to client regarding exhibits and witnesses, fax same.	0.2	JSV1	25.00
3/24/2003	Conference with RJE regarding Parker deposition testimony; instructed to revise and reply back.	<i>out</i> 0.2	JSV1	25.00
3/25/2003	Review of pleadings and designate areas to be copied.	0.8	RJE2	220.00
3/26/2003	Telephopne conference with A. Cook regarding testimony scheduling.	0.2	RJE2	55.00
3/26/2003	Review of depositions of parties and exhibits.	2	RJE2	550.00
3/26/2003	Attend trial (a.m.).	2.5	RJE2	687.50
3/26/2003	Conference with client regarding status of trial.	0.3	RJE2	82.50
3/26/2003	Attend trial (p.m.).	4	RJE2	1,100.00
3/26/2003	Prepare documents, exhibits, etc.	2.5	JSV1	312.50
3/26/2003	Conference with RJE, instructed to create trial book of transcripts.	0.1	JSV1	12.50
3/26/2003	Further prepare documents for trial.	1	JSV1	125.00
3/26/2003	Conference with RJE.	0.3	JSV1	37.50
3/26/2003	Conference with RJE regarding morning trial; discuss admissibility of invoices (A/F); legal research regarding statement of A/F.	0.8	JSV1	100.00
3/26/2003	Conference with RJE regarding billing statement/invoice.	0.1	JSV1	12.50
3/26/2003	Deliver invoices, attend trial (JSV 2.5 hours).		N/C	0.00
3/27/2003	Draft objection to proposed questions.	1	RJE2	275.00
3/27/2003	Revise objection and proposed questions.	0.5	RJE2	137.50
3/27/2003	Telephone conference with RJE regtrding questions to Judge O'Connor.	0.1	JSV1	12.50
3/27/2003	Review of draft questions by Bolton.	<i>out</i> 0.2	JSV1	25.00

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.
2345 East Thomas Road
Suite 410
Phoenix, AZ 85016

DATE	INVOICE #
4/16/2003	LTJStayIII

BILL TO
Logan Johnson

MATTERS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
3/27/2003	Supplement and amend questions filing per RJE's instructions.	0.3	JSV1	37.50
3/29/2003	Telephone conference with client regarding upcoming trial issues.	0.3	RJE2	82.50
3/29/2003	Draft provisional motion to modify joint pre-trial.	1.8	RJE2	495.00
3/31/2003	Revise provisional motion.	0.5	RJE2	137.50
3/31/2003	Telephone call to client regarding same.	0.1	RJE2	27.50
3/31/2003	Second revision to provisional motion.	0.3	RJE2	82.50
4/1/2003	Prepare documents for trial tomorrow.	0.4	JSV1	50.00
4/2/2003	Prepare for stay violation trial.	0.4	RJE2	110.00
4/2/2003	Attend stay violation trial, part II.	3.6	RJE2	990.00
4/2/2003	Conference with client following trial.	0.4	RJE2	110.00
4/2/2003	Prepare documents for trial.	1	JSV1	125.00
4/2/2003	Attend trial (JSV 3.6 hours).		N/C	0.00

TOTAL	\$10,522.50
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EXHIBIT B

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 North 44th Street

Suite 550

Phoenix, AZ 85018

Exhibit + 31
(Part of)

DATE	INVOICE #
10/28/2004	LTJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
5/8/2003	office conference w/ RJE re: decision from court on 362 action	0.1	JV	17.50
5/8/2003	review of docket for decision in 01-885	0.1	JV	17.50
5/13/2003	check docket for decision in 01-885	0.1	JV	17.50
5/16/2003	legal research re: process/std for obtaining fees	1.1	JV	192.50
8/13/2003	review of court's order	0.3	RJELLETT	94.50
8/13/2003	telephone conference w/ LTJ re: court's order & appeal	0.2	RJELLETT	63.00
8/28/2003	review of Bankruptcy Appellate Panel's Notice	0.2	RJELLETT	63.00
8/29/2003	conference w/ JSV re: transcripts for Appeal and portion needed	0.1	RJELLETT	31.50
8/29/2003	telephone call to LTJ; left message re: transcripts for appeal and portion needed	0.2	RJELLETT	63.00
8/29/2003	telephone conference w/ client re: same	0.1	RJELLETT	31.50
8/29/2003	review of objection to Bankruptcy Appellate Panel	0.2	RJELLETT	63.00
8/29/2003	review of rules re: trial limitations	0.2	RJELLETT	63.00
9/2/2003	conference w/ JSV re: ECF problems	0.2	RJELLETT	63.00
9/2/2003	telephone call to C. Bolton; left message re: 1 day extension	0.1	RJELLETT	31.50
9/2/2003	draft designation of issues for appeal	2.2	RJELLETT	693.00
9/2/2003	draft designation of items for appeal	0.7	RJELLETT	220.50
9/2/2003	revise designation of issues for appeal	0.4	RJELLETT	126.00
9/2/2003	telephone conference w/ LTJ re: same	0.2	RJELLETT	63.00
9/2/2003	review of fax from LTJ	0.1	RJELLETT	31.50
9/12/2003	review of Sternberg's designation of additional items	0.3	RJELLETT	94.50
9/17/2003	review of Motion to Strike by Bolton	0.2	RJELLETT	63.00
9/17/2003	draft letter to LTJ on Motion to Strike by Bolton	0.2	RJELLETT	63.00
9/18/2003	revise letter on Bolton's appeal tactics	0.1	RJELLETT	31.50
9/18/2003	review of order	0.1	RJELLETT	31.50
9/18/2003	letter to client on order	0.2	RJELLETT	63.00

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.
 2999 North 44th Street
 Suite 550
 Phoenix, AZ 85018

DATE	INVOICE #
10/28/2004	LTJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
9/18/2003	telephone conference w/ client re: status & strategy	0.2	RJELLETT	63.00
9/24/2003	review of file re: Bolton's Motion to Strike re: facts & history	1 <i>out</i>	RJELLETT	315.00
9/24/2003	draft response to Motion to Strike	0.8 <i>out</i>	RJELLETT	252.00
9/29/2003	revise Response to Parker's Motion to Strike	0.3 <i>out</i>	RJELLETT	94.50
9/29/2003	second revision to Response to Parkers Motion	0.2 <i>out</i>	RJELLETT	63.00
10/7/2003	review of record	0.3 <i>out</i>	RJELLETT	157.50
10/10/2003	review of order of Record of Bolton	0.1 <i>out</i>	RJELLETT	31.50
10/10/2003	draft letter to LTJ on record	0.1	RJELLETT	31.50
10/20/2003	review of file and prepare for hearing	0.5	RJELLETT	157.50
10/20/2003	travel to attend hearing on Motion to Limit Record on Appeal	2	RJELLETT	630.00
11/25/2003	draft brief	2.5	RJELLETT	787.50
11/25/2003	revision to brief	3.7	RJELLETT	1,165.50
11/25/2003	work on excerpt of revision	2.4	RJELLETT	756.00
12/29/2003	draft letter to Bolton re: where's the brief?	0.2 <i>out</i>	RJELLETT	63.00
12/29/2003	review of Carmel's brief and review of his excerpt of record	1	RJELLETT	315.00
12/29/2003	draft outline of points for Reply to Carmel's Brief	0.8	RJELLETT	252.00
8/13/2003	review of BK's opinion	0.4	JV	70.00
8/13/2003	office conference w/ RJE re: appeal, discuss opinion at length	0.7	JV	122.50
8/22/2003	office conference w/ RJE re: notice of appeal	0.1	JV	17.50
8/22/2003	file notice of appeal	0.2	JV	35.00
8/22/2003	draft notice of appeal	0.2	JV	35.00
8/27/2003	legal research re: trial exhibits on appeal	1	JV	175.00
8/27/2003	telephone call to court clerk re: trial exhibits	0.2	JV	35.00
8/27/2003	telephone call from client re: transcript	0.1	JV	17.50
8/27/2003	commence scanning exhibits into pdf format	0.4	JV	70.00

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 North 44th Street
 Suite 550
 Phoenix, AZ 85018

DATE	INVOICE #
10/28/2004	LTJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
8/27/2003	review of docket in preparation for office conference w/ RJE drafting notices on appeal	0.2	JV	35.00
8/27/2003	commence drafting issues, record transcripts	0.5	JV	87.50
8/27/2003	legal research re: standard of review for evidentiary issues	0.6	JV	105.00
8/29/2003	continue preparing exhibits	0.8	JV	140.00
8/29/2003	draft notice of filing proposed trial exhibits	0.2	JV	35.00
8/29/2003	attempt to finalize and file notice of filing; system problems	1.8	JV	315.00
9/2/2003	draft 9 sets of notice of submission	1	JV	175.00
9/2/2003	supplement and amend appeal-transcript-record-iss	1.2	JV	210.00
9/2/2003	format documents for filing	1.2	JV	210.00
9/15/2003	review of notice of receipt of appeal, docket	0.1	JV	17.50
9/18/2003	legal research for response time in district court.	0.2	JV	35.00
9/23/2003	review of notice of receipt of appeal	0.1	JV	17.50
9/23/2003	prepare documents for notice of filing copies of record on appeal	1.5	JV	262.50
9/23/2003	review of motion to strike	0.1	JV	17.50
9/23/2003	office conference w/ RJE; instructed to legal research: divestiture of jurisdiction offers of proof/ motion in limine; discuss at length	0.3	JV	52.50
9/23/2003	legal research re: case cited in Bolton's motion to strike	0.2	JV	35.00
9/23/2003	commence legal research re: offers of proof/motions in limine	0.4	JV	70.00
9/23/2003	commence legal research re: divestiture of jurisdiction	0.3	JV	52.50
9/24/2003	review of D.C. docket	0.2	JV	35.00
9/24/2003	legal research re: FRE 103	0.4	JV	70.00
9/24/2003	office conference w/ RJE re: response to motion to strike	0.3	JV	52.50

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 North 44th Street

Suite 550

Phoenix, AZ 85018

DATE	INVOICE #
10/28/2004	LTJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
9/25/2003	office conference w/ NAA; instructed to copy & transmit trial transcripts	0.1	JV	17.50
9/25/2003	commence drafting response to motion to strike	0.7 0.7	JV	122.50
9/26/2003	continue drafting response to motion to strike	0.4 0.4	JV	70.00
9/27/2003	continue drafting response to motion to strike	3.5 3.5	JV	612.50
9/27/2003	office conference w/ RJE; instructed to supplement and amend response	0.2	JV	35.00
9/27/2003	supplement and amend response	0.4 0.4	JV	70.00
9/27/2003	finalize & file response	0.3 0.3	JV	52.50
9/27/2003	supplement and amend response for filing w/ BK Court	0.3 0.3	JV	52.50
9/27/2003	finalize & file response for filing w/ BK Court	0.2 0.2	JV	35.00
10/1/2003	review of file	0.1	JV	17.50
10/1/2003	telephone call to client re: request for documents; settlement; left message	0.1	JV	17.50
10/6/2003	office conference w/ NAA re: creating attachments for notice of filing	0.2	JV	35.00
10/6/2003	draft notice of filing copies of record on appeal	0.2	JV	35.00
10/7/2003	telephone call to Judge Bolton's chambers re: # of copies, telephone call to clerk	0.2	JV	35.00
10/7/2003	telephone call to C. Bolton re: record on appeal	0.1 0.1	JV	17.50
10/7/2003	telephone call to M. Carmel re: record on appeal	0.1	JV	17.50
10/8/2003	prepare for pre-trial conference	0.2	JV	35.00
10/8/2003	finalize notice of filing record	2.5	JV	437.50
10/8/2003	draft index for notice of filing record	0.2	JV	35.00
10/17/2003	office conference w/ NAA; instructed to pull motion to strike & response in preparation for tomorrow's hearing	0.1	JV	17.50
10/21/2003	draft stipulation for extension	0.3	JV	52.50
10/27/2003	review of fax from C. Bolton	0.1 0.1	JV	17.50

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 North 44th Street
 Suite 550
 Phoenix, AZ 85018

DATE	INVOICE #
10/28/2004	LITJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
10/27/2003	office conference w/ RJE re: stipulation	0.1	JV	17.50
10/27/2003	supplement and amend stipulation	0.2	JV	35.00
10/27/2003	office conference w/ TMM; instructed to file	0.1	JV	17.50
11/24/2003	continue drafting brief II & III	5	JV	875.00
11/25/2003	continue drafting brief	5	JV	875.00
11/25/2003	create format of brief	2.3	JV	402.50
11/25/2003	office conference w/ RJE; supplement and amend brief	3	JV	525.00
11/25/2003	finalize & file brief	3	JV	525.00
12/16/2003	legal research on cases cited by Judge Curley re: remand	0.3	JV	52.50
12/17/2003	pull documents for exhibits w/ NAA	0.4	JV	70.00
12/30/2003	draft stipulation to extend time to file	0.4	JV	70.00
12/31/2003	review of Carmel's brief	0.3	JV	52.50
12/31/2003	review of C. Bolton's brief	0.2	JV	35.00
12/31/2003	legal research re: appellee's failure to address issues framed by appellant	1	JV	175.00
1/12/2004	draft response brief	1.2	RJELLETT	378.00
1/16/2004	work on drafting sections 2 & 3 to reply brief	3	RJELLETT	945.00
1/16/2004	revise brief	0.8	RJELLETT	252.00
1/16/2004	revise brief	0.6	RJELLETT	189.00
1/16/2004	work on table of contents	0.2	RJELLETT	63.00
1/16/2004	revise brief	0.5	RJELLETT	157.50
1/17/2004	review of final reply brief	0.2	RJELLETT	63.00
1/17/2004	letter to client on appeal status	0.1	RJELLETT	31.50
1/6/2004	review of docket	0.1	JV	17.50
1/6/2004	review of motion in limine, orders	0.2	JV	35.00
1/6/2004	review of 2/28/03 transcript	0.1	JV	17.50
1/8/2004	draft stipulated order	0.2	JV	35.00
1/8/2004	office conference w/ RJE re: order	0.1	JV	17.50

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 North 44th Street

Suite 550

Phoenix, AZ 85018

DATE	INVOICE #
10/28/2004	LTJ 4

BILL TO
Logan Johnston

MATTERS
Stay Appeal

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
1/13/2004	commence drafting reply brief	2	JV	350.00
1/14/2004	legal research re: failure to address issue on appeal	0.6	JV	105.00
1/14/2004	supplement and amend brief	1	JV	175.00
1/16/2004	continue drafting reply brief, cover, certs	0.4	JV	70.00
1/16/2004	office conference w/ RJE re: brief	0.3	JV	52.50
1/16/2004	supplement and amend brief per RJE's instruction	1.5	JV	262.50
1/16/2004	continued supplement and amend reply brief	3.9	JV	682.50
1/16/2004	finalize and file reply brief	1	JV	175.00
2/3/2004	office conference w/ RJE re: results of hearing	0.2	JV	35.00
2/3/2004	telephone call from client	0.1	JV	17.50
2/3/2004	review of file re: schedule hearing on motion in limine	1	RJELLETT	315.00
2/3/2004	attend hearing on motion in limine	0.8	RJELLETT	252.00
2/25/2004	office conference w/ RJE re: today's hearing	0.2	JV	35.00
2/25/2004	prepare documents for today's hearing	0.2	JV	35.00
7/9/2004	compile/organized file for hearing	0.5	JSVolquardsen	97.50
7/9/2004	office conference w/ RJE re: file for hearing	0.1	JSVolquardsen	19.50
7/9/2004	review of fax from LTJ	0.1	JSVolquardsen	19.50
8/24/2004	review of D.C. docket for ruling	0.2	JSVolquardsen	39.00
9/9/2004	office conference w/ RJE re: appellate brief	0.3	JSVolquardsen	58.50
10/4/2004	quickly review ruling (but not analysis)	0.3	RJELLETT	94.50
10/4/2004	telephone conference w/ LTJ re: court's ruling overturning and effect on various aspects of the case, especially confirmation	0.4	RJELLETT	126.00
10/5/2004	review of District Court's opinion	0.3	JSVolquardsen	58.50
10/22/2004	review Motion for Reconsideration in Johnston	0.2	RJELLETT	63.00
10/22/2004	draft letter to LTJ on Motion	0.2	RJELLETT	63.00

TOTAL	\$21,002.00
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EXHIBIT C

Invoice for Legal Services

Ellett Law Offices, P.C.
2999 N. 44TH STREET
SUITE 550
PHOENIX, AZ 85018

Entire
 Exhibit 44

DATE	INVOICE #
6/15/2005	LTJ 0505

(Part of
 envelope
 Fee Application)

BILL TO
Johnston, Logan

MATTERS
Stay Violation

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
2/7/2005	review of M/E	0.1	JSVolquardsen	19.50
2/15/2005	review amended order	0.1	JSVolquardsen	19.50
2/15/2005	office conference w/ RJE re: amended order	0.2	JSVolquardsen	39.00
3/8/2005	telephone call to client re: emotional distress damages	0.1	JSVolquardsen	19.50
3/9/2005	review of Dawson (emot. distress)	0.2	JSVolquardsen	39.00
3/9/2005	draft L. Memo re: Dawson	0.5	JSVolquardsen	97.50
3/9/2005	office conference w/ RJE re: status hearing	0.5	JSVolquardsen	97.50
3/9/2005	office conference w/ RJE re: Hearing	0.3	JSVolquardsen	58.50
3/9/2005	Prepare for hearing	0.5	RJELLETT	157.50
3/9/2005	attend hearing re: Rule 16	3	RJELLETT	945.00
3/10/2005	calendar JPS, trial schedule	0.1	JSVolquardsen	19.50
3/14/2005	review of M/E from 3/9 hearing	0.1	JSVolquardsen	19.50
3/14/2005	commence drafting Supp JPS	0.8	JSVolquardsen	156.00
3/17/2005	office conference w/ RJE re: JPS	0.2	JSVolquardsen	39.00
3/17/2005	supplement and amend JPS	0.5	JSVolquardsen	97.50
3/17/2005	supplement and amend Pre-trial	1.1	RJELLETT	346.50
3/17/2005	revise Joint Pre-Trial	0.8	RJELLETT	252.00
3/17/2005	telephone conference w/ C. Bolton re: Pre-Trial issues	0.3	RJELLETT	94.50
4/1/2005	review of M. Carmel's additions	0.2	RJELLETT	63.00
4/1/2005	review of C. Bolton's additions	0.2	RJELLETT	63.00
4/22/2005	review of Motion in Limine	0.1	RJELLETT	31.50
5/11/2005	telephone call to client re: transcripts; lmm	0.1	JSVolquardsen	19.50
5/13/2005	telephone conference w/ C. Bolton re: his Motion in Limine & Merits	0.2	RJELLETT	63.00
5/17/2005	review of transcript of hearing	0.2	RJELLETT	63.00
5/17/2005	review of Carmel's Motion in Limine	0.2	RJELLETT	63.00
5/17/2005	review of Dawson	0.2	RJELLETT	63.00
5/17/2005	review of Daubert	0.2	RJELLETT	63.00
5/17/2005	draft response to Carmel's Motion in Limine	0.5	RJELLETT	157.50
5/17/2005	review of Bolton's Motion in Limine	0.2	RJELLETT	63.00

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

2999 N. 44TH STREET

SUITE 550

PHOENIX, AZ 85018

DATE	INVOICE #
6/15/2005	LTJ 0505

BILL TO
Johnston, Logan

MATTERS
Stay Violation

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
5/17/2005	conference w/ JSV re: cases on attorney testimony	0.2	RJELLETT	63.00
5/17/2005	draft response to Bolton's Motion in Limine	<i>out</i> 0.5	RJELLETT	157.50
5/17/2005	revise response to Carmel's Motion in Limine	0.2	RJELLETT	63.00
5/17/2005	revise response to Bolton's Motion in Limine	<i>out</i> 0.2	RJELLETT	63.00
5/19/2005	prepare for hearing on Motion in Limine, reading cases, & review of file	0.3	RJELLETT	94.50
5/19/2005	attend hearing on Motion in Limine	2	RJELLETT	630.00
6/1/2005	review of files & work on revising Supplemental JPS	0.7	RJELLETT	220.50
6/1/2005	telephone call to C. Bolton & left message re: same	<i>out</i> 0.1	RJELLETT	31.50
6/1/2005	draft letter to C. Bolton & M. Carmel	<i>1/2 out</i> 0.1	RJELLETT	31.50
6/1/2005	office conference w/ RJE re: Amended JPS, instructed to supplement & amend	0.3	JSVolquardsen	58.50
6/1/2005	supplement & amend Amended JPS, review of BAP, DC, BKC dockets	0.4	JSVolquardsen	78.00
6/7/2005	review of file & send follow-up fax reminding Mr. Bolton & Mr. Carmel of need to complete Amended Supplemental JPS	0.1	RJELLETT	31.50
6/8/2005	telephone conference w/ C. Bolton re: JPS amended & need for a response	<i>1/2 out</i> 0.1	RJELLETT	31.50
6/10/2005	telephone call to M. Carmel	0.1	RJELLETT	31.50
6/10/2005	telephone conference w/ M. Carmel on JPS	0.1	RJELLETT	31.50
6/10/2005	draft letter to M. Carmel confirming conversation on JPS	0.1	RJELLETT	31.50
6/14/2005	office conference w/ RJE; instructed to legal research stay violation continuum and prepare memo	0.2	JSVolquardsen	39.00
6/14/2005	legal research stay violation continuum and prepare memo	1	JSVolquardsen	195.00
6/15/2005	continue legal research re: stay violation continuum	1.5	JSVolquardsen	292.50

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

**2999 N. 44TH STREET
SUITE 550
PHOENIX, AZ 85018**

DATE	INVOICE #
6/15/2005	LTJ 0505

BILL TO
Johnston, Logan

MATTERS
Stay Violation

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
6/15/2005	office conference w/ RJE re: preliminary results of stay violation legal research; instructed to continue legal research	0.1	JSVolquardsen	19.50
6/15/2005	continue legal research re: stay violation continuum	0.5	JSVolquardsen	97.50
6/15/2005	draft memo re: stay violation continuum	0.3	JSVolquardsen	58.50

TOTAL	\$5,580.00
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EXHIBIT D

Exhibit 45

Affidavit of Ronald J. Ellett

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Ronald J. Ellett

STATE OF ARIZONA)
) ss.
County of Maricopa)

Ronald J. Ellett, upon his oath and personal knowledge states as follows:

1. I and my firm, Ellett Law Offices, P.C., are counsel of record for Logan T. Johnston, III in Administrative Bankruptcy Case No. 2:01-bk-6221-SSC and Adversary Proceeding Case No. 01-885.
2. I have a written agreement with Mr. Johnston that I was to be paid for my services in this case.
3. I am a custodian of record for my firm.
4. I have been practicing law for approximately sixteen (16) years.
5. The rates charged for my services in this case are commensurate with those rates charged by similarly experienced attorneys in Phoenix, Arizona.
6. I have reviewed the attached Invoices for Legal Services.
7. The time entries listed on the attached Invoices are true and correct to the best of my knowledge.

ELLETT LAW OFFICES, P.C.
2090 North 44th Street, Suite 550
Phoenix, Arizona 85018
(602) 255-9510

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8. The time spent in this case was reasonable and necessary under the circumstances.

Further affiant sayeth naught.

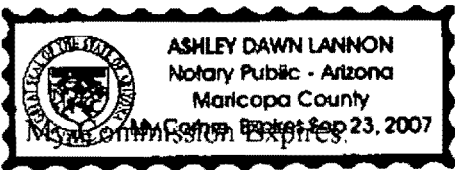
Dated this 27th day of August, 2005.

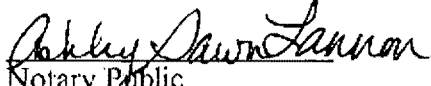


Ronald J. Ellett

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to me before me this 27th day of August, 2005.





Notary Public

ELLETT LAW OFFICES, P.C.
2999 North 44th Street, Suite 550
Phoenix, Arizona 85018
(602) 255-9510

Affidavit of Jay S. Volquardsen

Jay S. Volquardsen

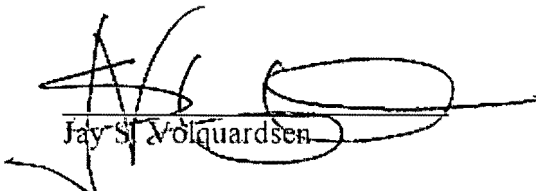
STATE OF ARIZONA)
County of Maricopa) ss.

Jay S. Volquardsen, upon his oath and personal knowledge states as follows:

1. I am employed by Ellett Law Offices, P.C., counsel of record for Logan T. Johnston, III in Administrative Bankruptcy Case No. 2:01-bk-6221-SSC and Adversary Proceeding Case No. 01-885.
2. I have been practicing law for approximately four (4) years.
3. The rates charged for my services in this case are commensurate with those rates charged by similarly experienced attorneys in Phoenix, Arizona.
4. I have reviewed the attached Invoices for Legal Services.
5. The time entries listed on the attached Invoices are true and correct to the best of my knowledge.
6. The time spent in this case was reasonable and necessary under the circumstances.

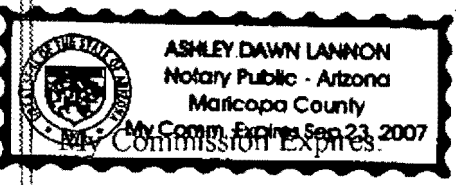
Further affiant sayeth naught.


Dated this 29th day of AUGUST, 2005.


Jay S. Volquardsen

STATE OF ARIZONA)
County of Maricopa) ss.

SUBSCRIBED AND SWORN to me before me this 29th day of August, 2005.




Notary Public

ELLETT LAW OFFICES P.C.
2996 North 44th Street, Suite 550
Phoenix, Arizona 85018
(602) 233-9510

Invoice for Legal Services

Ellett Law Offices, P.C.

**2999 N. 44TH STREET
SUITE 550
PHOENIX, AZ 85018**

DATE	INVOICE #
8/29/2005	LTJ 0805

BILL TO
Johnston, Logan

MATTERS
Stay Violation

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
6/16/2005	office conference w/ RJE re: trial books	0.1	JSVolquardsen	19.50
6/16/2005	commence preparation of trial books	0.5	JSVolquardsen	97.50
6/16/2005	continue preparation of trial notebooks	0.7	JSVolquardsen	136.50
6/17/2005	office conference w/ RJE re: invoices/prep for trial notebooks	0.5	JSVolquardsen	97.50
6/20/2005	draft direct exam of RJE	0.5	JSVolquardsen	97.50
6/20/2005	office conference w/ RJE re: direct exam questions	0.2	JSVolquardsen	39.00
6/21/2005	office conference w/ RJE ; instructed to draft bench memo	0.2	JSVolquardsen	39.00
6/21/2005	draft bench memo	1.2	JSVolquardsen	234.00
6/21/2005	office conference w/ RJE re: trial strategy	1	JSVolquardsen	195.00
6/21/2005	telephone conference w/ C. Bolton re: upcoming trial	0.1	RJELLETT	31.50
6/21/2005	telephone conference w/ LTJ re: upcoming trial	0.4	RJELLETT	126.00
6/21/2005	review of bench memorandum & cases	0.3	RJELLETT	94.50
6/21/2005	review of exhibits	1.2	RJELLETT	378.00
6/22/2005	meet w/ client, RJE at trial	0.5	JSVolquardsen	97.50
6/22/2005	travel to trial	0.4	RJELLETT	126.00
6/22/2005	conference w/ LTJ & JSV prior to trial	1	RJELLETT	315.00
6/22/2005	attend trial a.m. 10:30-12:15	1.7	RJELLETT	535.50
6/22/2005	conference w/ JV & LTJ re: trial status	0.4	RJELLETT	126.00
6/22/2005	attend trial p.m.	1.4	RJELLETT	441.00
6/22/2005	conference w/ client after trial	0.3	RJELLETT	94.50
6/22/2005	conference w/ JSV re: trial status & steps	0.2	RJELLETT	63.00
6/23/2005	review of fax from client on deposition	0.1	RJELLETT	31.50
6/23/2005	draft letter to Carmel on deposition dates	0.1	RJELLETT	31.50
8/5/2005	telephone conference w/ LTJ re: upcoming depo	0.2	RJELLETT	63.00
8/5/2005	telephone conference with C. Bolton re: depo	0.1	RJELLETT	31.50
8/8/2005	attend deposition	2.5	RJELLETT	787.50
8/8/2005	conference w/ client after deposition	0.3	RJELLETT	94.50
8/8/2005	review of memo to client on depo	0.1	RJELLETT	31.50

TOTAL

Invoice for Legal Services

Ellett Law Offices, P.C.

**2999 N. 44TH STREET
SUITE 550
PHOENIX, AZ 85018**

DATE	INVOICE #
8/29/2005	LTJ 0805

BILL TO
Johnston, Logan

MATTERS
Stay Violation

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
8/8/2005	draft reply to client on documents	0.1	RJELLETT	31.50
8/22/2005	telephone call to C. Bolton & leave message on document request	<i>out</i> 0.1	RJELLETT	31.50
8/22/2005	draft e-mail to C. Bolton	<i>out</i> 0.2	RJELLETT	63.00
8/23/2005	review of e-mail from C. Bolton & forward to LTJ	<i>out</i> 0.1	RJELLETT	31.50
8/24/2005	review of 01-885 docket re: transcript	0.1	JSVolquardsen	19.50
8/24/2005	draft letter to client re: transcript	0.1	JSVolquardsen	19.50
8/24/2005	office conference w/ RJE re: transcript	0.1	JSVolquardsen	19.50
8/26/2005	review of e-mail from LTJ on production	0.1	RJELLETT	31.50
8/26/2005	telephone call to LTJ re: documents requested	0.1	RJELLETT	31.50
8/26/2005	review of letter from C. Bolton on production/LTJ	<i>out</i> 0.1	RJELLETT	31.50
8/26/2005	telephone call to C. Bolton & leave message	<i>out</i> 0.1	RJELLETT	31.50
8/26/2005	telephone conference w/ C. Bolton on documents produced	<i>out</i> 0.1	RJELLETT	31.50
8/26/2005	review of e-mail from client on contents of documents	0.1	RJELLETT	31.50
8/26/2005	draft e-mail to client on his thoughts	0.1	RJELLETT	31.50
8/26/2005	review of documents produced	0.2	RJELLETT	63.00

TOTAL	\$4,954.50
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