

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

IN RE:	)	CASE NO. 87-50123-INH
	)	
NEUHAUSER RANCH, INC.,	)	ADVERSARY NO. 88-5005-INH
a corporation,	)	
	)	CHAPTER 12
Debtor.	)	
	)	
NEUHAUSER RANCH, INC.,	)	
a South Dakota corporation,	)	
	)	MEMORANDUM OF DECISION
Plaintiff,	)	RE: MOTION FOR ALLOWANCE OF
vs.	)	ATTORNEY'S FEES
	)	
LONE STAR CATTLE LIMITED	)	
PARTNERSHIP, a/k/a LONE STAR	)	
CATTLE COMPANY, a South Dakota	)	
Limited Partnership, and its	)	
general partner, KEN JONES;	)	
and KENNETH JONES, a/k/a KEN	)	
JONES, individually; and	)	
DOUBLE K CATTLE COMPANY, a/k/a	)	
KK CATTLE COMPANY, a sole	)	
proprietorship of KENNETH	)	
JONES; and WESTERN GENERAL	)	
CORPORATION, a/k/a GENERAL	)	
WESTERN CORPORATION, a South	)	
Dakota Corporation; and	)	
BANKWEST, INC., formerly	)	
BANKWEST, N.A., Pierre, S.D.,	)	
	)	
Defendants.	)	

The matter before the Court is the Motion for Allowance of Attorney's Fees filed by Defendant Lone Star Cattle Company. This is a related proceeding under 28 U.S.C. § 157(c) in which all parties have consented to this Court's jurisdiction. This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

On April 19, 1989, Lone Star Cattle Company (Lone Star) filed a Motion for Allowance of Attorney's Fees for attorneys' fees and expenses incurred in the successful defense of a complaint filed by Debtor Neuhauser Ranch, Inc. By Order entered September 8, 1989, the Court recognized Lone Star's right to attorneys' fees based on a least provision between the parties. The Court ordered Lone Star's counsel, John S. Lovald, to file with the Court and serve on opposing counsel an itemized statement of fees and costs incurred plus any supporting documentation or memoranda. Debtor's counsel was given ten days from receipt of the itemized statement to respond.

Attorney Lovald filed an itemized statement on November 8, 1989. At Debtor's request and with Lone Star's consent, Debtor was given additional time to respond to the itemized statement due to the death of one of Lone Star's counsel. By Order entered October 23, 1990, Debtor was given 30 days to file objections to the itemized statement.

Debtor filed objections to the itemized statement on November 29, 1990 - - several days late. By letter dated December 3, 1996, Lone Star asked the Court to not consider the untimely Objections.

II.

This Court has recognized the "lode star" method for determining reasonable compensation for legal services rendered for the estate. See 11 U.S.C. §§ 330(a) and 506(b); In re Grimes, 115 B.R. 639, 642-43 (Bankr. D.S.D. 1990); In re Yankton College, 101 B.R. 151, 157

(Bankr. D.S.D. 1989). The "lode star" method and the related twelve factors<sup>1</sup> first espoused in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), are equally applicable here where the Court must determine whether the attorneys' fees requested by Lone Star are reasonable. See Grimes, 115 B.R. at 642-43.

### III.

The Court notes initially that much of Debtor's objection to Lone Star's fee request is a second attempt at convincing the Court that Lone Star is not entitled to any fees as the prevailing party in this adversary proceeding. That issue, however, has already been decided by Order entered September 8, 1989 and Debtor did not timely appeal that decision. The only remaining issue is the amount of fees and costs to be awarded.

Debtor's remaining objections, which specifically address the reasonableness of Lone Star's fee and cost request, have merit. Since these objections are essentially the same as the Court's, the Court need not decide whether Debtor's Objections should be overruled as untimely.

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The twelve factors are: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal services properly; 4) the preclusion of other employment due to the acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the experience, reputation, and ability of the attorneys; 10) the "undesirability" of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases Johnson, 488 F.2d at 717-19.

Lone Star's fee and cost request has several deficiencies: (1) compensation is sought for services rendered prior to the time the complaint was filed on March 1, 1988; (2) all services, including travel time, and expenses are not sufficiently itemized and described; (3) paraprofessional compensation for Paul Robbennolt has not been justified; and (4) double billing for intra-office conferences has not been justified. See In re Marolf Dakota Farms Cheese, Inc., Bankr. No. 89-50045-INH, slip op. (Bankr. D.S.D. October 17, 1990); Grimes, 115 B.R. at 643-647; In re Hansen, Bankr. No. 386-00136, slip op. (Bankr. D.S.D. March 8, 1989)

As counsel for Debtor will agree, this Court has on several occasions granted a fee applicant the opportunity to file an amended fee application when notable deficiencies in the original are found by the Court. Since some of this Court's more significant rulings on fee and expense applications were entered subsequent to Lone Star's filing of its itemization of services and costs, and since many of the deficiencies noted above and further detailed in Debtor's Objections may be cured by an amended itemization! the Court will give Lone Star's counsel the opportunity to submit an amended itemization of services rendered and expenses incurred in this adversary proceeding that better complies with the standards established by this Court, including the cases cited above. Counsel for Lone Star should promptly inform the Court by letter if it chooses to stand on its original itemization and not file an amended itemization.

Dated this 19th day of December, 1990.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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NEUHAUSER RANCH, INC.,	)	ADVERSARY NO. 88-5005-INH
a corporation,	)	
	)	CHAPTER 12
Debtor.	)	
	)	
NEUHAUSER RANCH, INC.,	)	
a South Dakota corporation,	)	
	)	ORDER
Plaintiff,	)	RE: MOTION FOR ALLOWANCE OF
vs.	)	ATTORNEY'S FEES
	)	
LONE STAR CATTLE LIMITED	)	
PARTNERSHIP, a/k/a LONE STAR	)	
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Limited Partnership, and its	)	
general partner, KEN JONES;	)	
and KENNETH JONES, a/k/a KEN	)	
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WESTERN CORPORATION, a South	)	
Dakota Corporation; and	)	
BANKWEST, INC., formerly	)	
BANKWEST, N.A., Pierre, S.D.,	)	
	)	
Defendants.	)	

In recognition of and compliance with the Memorandum of Decision Re:  
Motion for Allowance of Attorneys' fees entered this day,

IT IS HEREBY ORDERED that counsel for Defendant Lone Star Cattle  
Limited Partnership shall timely file an amended itemization of services  
rendered arid expenses incurred in defense of this adversary proceeding  
which complies with the fee application standards established by this Court

in In re Marolf Dakota Farms Cheese, Inc., Bankr. No. 89-50045-INH, slip op. (Bankr. D.S.D. October 17, 1990) ; In re Grimes, 115 B.R. 639 (Bankr. D.S.D. 1990); In re Hansen, Bankr. No. 386-00136, slip op. (Bankr. D.S.D. March 8, 1989) ; and

IT IS FURTHER ORDERED that counsel for Defendant shall promptly inform the Court by letter if it chooses to stand on its original itemization and not file an amended itemization.

So ordered this 19th day of December, 1990.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)