

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560  
FAX (605) 224-9020

May 16, 2001

John S. Lovald,  
Chapter 7 Trustee  
Post Office Box 66  
Pierre, South Dakota 57501

Bruce J. Gering,  
Assistant U.S. Trustee  
230 S. Phillips Ave., #502  
Sioux Falls, South Dakota 57102

James A. Craig, Esq.  
Counsel for Trustee Lovald  
714 West 41st Street  
Sioux Falls, South Dakota 57105

Subject: *In re Dorothy J. Wehde,*  
Chapter 7; Bankr. No. 98-40522

Dear Trustee and Counsel:

The matter before the Court is Trustee Lovald's Notice of Proposed Action: Settlement of Claim and Payment of Professional Fees filed April 16, 2001, the United States Trustee's objection filed May 1, 2001, and Attorney Craig's response to the objection (filed in the form of a motion) and brief filed May 3, 2001. As discussed below, the Court concludes that no further documentation of Attorney Craig's fees and costs are necessary and the settlement and payment of fees will be approved.

SUMMARY. Trustee Lovald employed Attorney Craig to represent the bankruptcy estate on a collection matter. Under the approved employment terms, Attorney Craig was to receive 33.33% of any recovery made through trial. Attorney Craig recovered \$30,000 for the estate through a settlement. Trustee Lovald sought approval of that settlement. He also sought authority to pay Attorney Craig \$9,999 in fees. The United States Trustee objected to payment of the fees because Attorney Craig had not filed an itemized fee application under Fed.R.Bankr.P. 2016. Attorney Craig responded that an itemization was not required because compensation had essentially already been "pre-approved" under 11 U.S.C. § 328 through the employment order. He cited the Court to a Court of Appeals decision from the Fifth Circuit that discusses the differences between compensation under § 328 versus compensation under § 330.

Re: Dorothy J. Wehde  
May 16, 2001  
Page 2

DISCUSSION. The Court need not determine whether there is in fact a distinction between compensation under §§ 328 and 330 in this case. The Court did not sign Attorney Craig's employment application with a conscious approval of compensation under § 328 instead of § 330. Indeed, were Attorney Craig seeking his contingent fee of 33 1/3% plus costs as he might have, an itemization of his costs would be required before they were approved, regardless of which Code section was deemed applicable. However, since Attorney Craig is seeking essentially only the contingent fee of \$9,999 and no additional costs and since the contingent fee comports with his employment terms, an itemization of the services rendered or the costs incurred will not be required in this case. An appropriate order will be entered.

As a side note, Assistant U.S. Trustee Gering also pointed out in his objection that a notice of proposed action was not the appropriate pleading for getting Attorney Craig's fees approved. He is correct. Approval of a settlement by a trustee is more appropriately sought by motion and a notice, as provided by Fed.R.Bankr.P. 9019(a). Payment of administrative costs, including professional fees, associated with the settlement may be included in the same motion. If that is done, however, and if an itemization of professional services or costs is appropriate, the motion should include that itemization as well.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies on parties in interest)

I hereby certify that a copy of this document  
was mailed, hand delivered, or faxed this date  
to the parties on the attached service list.

**MAY 16 2001**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By dm

**NOTICE OF ENTRY**  
Under F.R.Bankr.P. 9022(a)  
**Entered**

**MAY 16 2001**

**Charles L. Nail, Jr., Clerk**  
**U.S. Bankruptcy Court**  
**District of South Dakota**

Case: 98-40522 Form id: 122 Ntc Date: 05/16/2001 Off: 4 Page : 1

Total notices mailed: 5

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Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321