

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Case Type: Special Administration

Court File No: 10-PR-16-46

Estate of Prince Rogers Nelson,

Judge: Kevin W. Eide

Decedent. **REPLY IN SUPPORT OF SNJ, L.
LONDELL MCMILLAN AND
CHARLES SPICER'S OBJECTIONS
TO COMERICA'S FEES AND COSTS
FROM FEB. 2021 THROUGH MAY
2021**

Sharon Nelson, Norrine Nelson and Johnny Nelson (collectively, "SNJ"), L. Londell McMillan ("McMillan") and Charles Spicer ("Spicer") (all parties collectively, "PRN Parties"), as heirs and interested persons in the Estate of Prince Rogers Nelson ("Estate") submit this Reply in Support of their Objections to Comerica's Fees and Costs from Feb. 2021 through May 2021.

INTRODUCTION

It has been more than five years since the death of Prince Rogers Nelson, and his Estate should now be proceeding quickly towards a date where Comerica will be discharged and management of the Estate's assets will be taken over by the Heirs and Interested Persons. Astoundingly, even at this late date, Comerica is still generating legal fees and expenses at a rate of nearly \$1 million over a period of a few months (in some instances, greater than the amount the Estate earns). Comerica does not pay these legal bills itself. Instead, it charges them to the Estate. While Comerica claims to oversee the legal work performed on behalf of the Estate, it has no incentive to closely monitor and ensure that the legal work is billed reasonably and performed efficiently, through frugality and the judicious use of lower-cost associates and streamlined staffing

Absent the customary oversight that a client paying its own legal bills would provide, there exists an environment where legal work has been performed inefficiently and expensively, with no immediate consequences. This has resulted in, among other things, over-lawyering and over-litigating of estate matters, a failure to closely review fees incurred by foreign counsel, submission of billing entries that are insufficient to determine whether the fees have been properly incurred, and the performance of administrative work that should properly be performed by Comerica itself.

The PRN Parties vehemently reject the notion that they are raising bare accusations. As set forth below, these objections are documented in the record and supported with relevant authority, where applicable. The excessive generation of Estate legal fees must be addressed now, and not after additional millions of dollars have been charged to the Estate. The PRN Parties expect Comerica's counsel to raise a bellicose post-hoc defense of their own billing practices. But if Comerica itself will not take a more active role in ensuring that the legal fees billed on its behalf are reasonable and for the benefit of the Estate, then the PRN Parties seek such intervention from the Court.

DISCUSSION

I. FEES INCURRED IN FREDRIKSON'S LITIGATION OF SHARON NELSON'S CLAIM ARE EXCESSIVE AND UNREASONABLE.

The PRN Parties' primary objection to the fees incurred in the Sharon Nelson litigation is that it was not necessary or reasonable for her claim to be litigated primarily by a high-rate Fredrikson shareholder. (Objections of SNJLC to Comerica's Fees and Costs from Feb. 2021) through May 2021) (hereinafter, "SNJLC Objections") at 6). A competent Fredrikson litigation associate is fully capable of handling the majority of the work in this matter, which is based on a single claim of civil assault arising from a single, discrete factual circumstance. During this period, Fredrikson billed \$71,549 to the Sharon Nelson litigation, the second most expensive legal matter

billed to the Estate after the Estate Tax Audit. (Greiner Decl., Ex. A at 33; Ex. B at 152; Ex. C at 280; Ex. D at 405). Of this, a shareholder, Joseph Cassioppi, billed 90.6 hours, for a total of \$45,753. This matter should have been primarily handled by an associate billing at several hundred dollars less per hour, instead of running up the bill for a simple litigation matter at a shareholder's \$505/hour rate.

Comerica avoids addressing this issue directly, and resorts to mischaracterizing the PRN Parties' arguments. The PRN Parties never objected, as Comerica wrongly claims, to having an associate work on the matter. Their objection is that, based on the substantial and overlapping billing entries recorded in connection with Comerica's summary judgment motion, Cassioppi's heavy involvement in all aspects of the motion, in addition to work done by an associate, was duplicative. (SNJLC Objections, at 7). In turn, it raises the question why Cassioppi insisted on being so heavily involved, even when an associate was working on the same issues, and why he was not willing to allow an associate to take a lead role in litigating the case from the beginning.

Fredrikson has apparently viewed this litigation as an opportunity to obtain information about other, unrelated issues regarding the Heirs and the Estate. For example, in Comerica's deposition of Ms. Nelson in her assault lawsuit, Cassioppi asked a number of questions directed to her expectancy interest transfer agreements with Mr. McMillan and Mr. Spicer, as well as her relationships with both men. (Comerica's Response to Motion to Amend Protocols, Cassioppi Decl., Ex. B at 30:1 – 32:12).¹ Both issues are entirely irrelevant to Ms. Nelson's civil assault claim, but reflect motivation for Cassioppi to keep the opportunity to depose the Heirs to himself

¹ There is currently a dispute pending before the Court regarding the confidential status of some portion of this Exhibit B, which was submitted by Comerica in support of its Response to SNJLC's Motion to Amend Protocols. By citing to this exhibit, the PRN Parties do not concede or waive any objection to any portion of this exhibit as being confidential.

when he should properly have delegated this work to an associate. The Estate should not be charged for fees incurred in gamesmanship regarding issues unrelated to Ms. Nelson's claim.

Over-lawyering of simple litigation matters has occurred before at Fredrikson. In *Walman Optical Co. v. Quest Optical, Inc.*, the court was “flabbergasted” to receive a request for fees from attorneys at Fredrikson for nearly a quarter of a million dollars where it had expected a request for around 10% of that amount. Case No. 11-CV-0096 (PSJ/JJG) at *23-24 (D. Minn. Aug. 9, 2012).

The Court wrote:

Under the circumstances, the Court expected that Fredrikson would delegate the lion's share of the work on the sales component of the contempt proceeding to a junior lawyer who billed at a relatively low rate. Yet it appears that Fredrikson chose to staff this entire contempt proceeding — including the drafting and answering of boilerplate interrogatories, requests for admissions, and requests for production — with high-priced partners. In fact, Schwiebert — the senior partner on the case, whose billing rate in 2012 was \$465 an hour — performed more than 80 percent of the work.

The rates charged by Schwiebert and Fairbairn were unreasonable for the work that they did on the sales component of the contempt proceeding. Although it was undoubtedly necessary that at least one of them supervise the work, the vast bulk of the work could easily have been done by a junior associate. The Court concludes that an average billing rate of \$250 per hour would have been reasonable for the work done by Fredrikson on the sales component of the contempt proceedings.

Id. at *25-26 (D. Minn. Aug. 9, 2012). Here too, the bulk of work that should have been more efficiently performed by an associate or by administrative staff was actually performed by a high-rate shareholder, including both substantive litigation work as well as other tasks like document review (Greiner Decl, Ex. A at 31, 2/17/21 entry); preparing deposition packets (*Id.*, Ex. A at 32, 2/19/21, 2/23/21 and 2/24/21 entries, Ex. B at 150, 3/16/21 and 3/17/21 entries); preparing deposition notices and subpoenas (*Id.*, Ex. B at 149, 3/7/21 entry); coordinating document production (*Id.*, Ex. C at 278, 4/2/21 and 4/5/21 entries); and preparing errata sheets (*Id.*, Ex. C at 278, 4/12/21 entry).

Ultimately, Ms. Nelson did not oppose Comerica's summary judgment motion. Comerica claims it was "forced" to file an expensive summary judgment motion, based entirely on the speculation that Ms. Nelson would have not have abandoned her damages claim even if Comerica had conferred with her ahead of time, which it concedes that it did not. (Response, at 7). Comerica misses the point entirely. Under Minn. R. Gen. Prac. § 115.10, Comerica is obligated, as the moving party, to initiate a conference regarding its motion, in an effort to reach resolution without involving the Court. *Hanson v. CBS Constr. Servs.*, A20-0157, at *7 (Minn. Ct. App. Jan. 11, 2021) (recognizing that § 115.10 "require[es] parties to confer to attempt to resolve an issue before bringing a motion").

Since Comerica never attempted to confer with Ms. Nelson and substantiate its damages position at any point following her deposition, it has no idea how she would have responded. The fact that she ultimately did not oppose the motion strongly suggests that the matter could have been resolved earlier if Comerica had made an attempt to confer and seek resolution. Instead, Comerica made no effort and proceeded to incur \$14,576 – nearly 20% of the total amount spent litigating the Sharon Nelson claim during this period – by filing a summary judgment motion. Considerable expense could have been avoided had Comerica first conferred with Ms. Nelson, consistent with Minn. R. Gen. Prac. § 115.10, to avoid excessive motion practice. Comerica's over-lawyering of this matter and its failure to properly confer regarding its summary judgment motion are unreasonable and have resulted in excessive fees being charged to the Estate.

The Sharon Nelson lawsuit is just one of many legal matters involving the Estate that are not overly novel or complex. Similar matters include, for example, "Employment," the "Madison Dube Litigation," "Enforcement" and "Trademark." However, despite the fact that these are routine matters, in many instances they are staffed with higher-rate shareholders where the work

involved would be appropriate for associates to primarily handle.² Comerica claims that the Estate's extensive trademark matters, which include approximately 50-60 prosecution matters and 10-15 oppositions and other disputes, are handled by a "lower-priced attorney." Tracy Deutmeyer, who Comerica has identified as handling all the Estate's worldwide trademark work, is a Fredrikson shareholder billing nearly \$400/hour.

II. FEES INCURRED IN THE ESTATE TAX AUDIT MATTER ARE EXCESSIVE AND UNREASONABLE.

The PRN Parties object to attorney's fees billed by Fredrikson under the heading "Estate Tax Audit" as unreasonable and excessive where such fees arose from three to four high-rate shareholders billing regularly and consistently, resulting in nearly a quarter of Fredrikson's total fees for the period being billed to this matter alone. Comerica claims that the PRN Parties would unreasonably seek to limit the staffing of estate tax matters to a "tax attorney" and an "associate." Of course, this misrepresents the PRN Parties' actual argument, which is that it is neither efficient nor reasonable to have three senior shareholders, at some of Fredrikson's highest billing rates, consistently billing time to this matter and duplicating effort, and another shareholder doing work that could be properly done by a more junior lawyer.

It is appropriate to scrutinize the legal fees billed to the "Estate Tax Audit" based on the work that has been performed to date. The PRN Parties' objections are not based on the fact that the process has been "moving slowly," but on the fact that the process has been unnecessarily prolonged based on a number of factors, including the failure to consult with the Heirs regarding valuation positions, the failure to resolve the IRS and state tax audits within the three year statute

² Greiner Decl, Ex. A at 26, Ex. B at 142, Ex. C at 272 (Employment); Greiner Decl., Ex. A at 34, Ex. B at 153, Ex. C at 281 (Madison Dube); Greiner Decl., Ex. A at 45-49, Ex. B at 163-169, Ex. C at 290 – 297, Ex. D at 417 – 421 (Enforcement).

of limitations and the failure to initiate settlement discussions prior to the issuance of the statutory notice or filing of petitions in Tax Court. (*See* 8/13/21 Motion to Institute Protocols to Facilitate the Closure of the Estate, Declaration of C. Wells Hall at ¶¶ 6-7). As discussed further below, Comerica's counsel have billed excessively and made no effort to limit the expenditure of fees on Estate tax matters, and this must be considered in light of the circumstances surrounding the timing of estate tax negotiations.

The PRN Parties recognize the value of occasional consultation with attorneys with relevant background and experience – but that is not what happened here. Instead, multiple senior shareholders, at some of the firm's highest billing rates, remained constantly involved with this matter, reviewing and revising the same documents, as well conferring and meeting with other senior shareholders.^{3 4}

While Comerica seeks to downplay Mark Greiner's involvement by asserting that he billed less than other high-rate shareholders during the period, this assertion is misleading as to his actual

³ *See, e.g.*, Greiner Decl. Ex. A at 23-24, 2/12/21, 2/22/21 and 2/24/21 entries, Ex. B at 136-141, 3/1/21, 3/2/21, 3/4/21, 3/10/2, 3/11/21, 3/18/21 and 3/30/21 entries, Ex. C at 265-268, 4/1/21, 4/2/21, 4/6/21 and 4/23/21 entries, Ex. D at 395-397, 5/3/21, 5/12/21, 5/17/21 and 5/20/21 entries. In another instance, three high-rate shareholders each billed thousands of dollars for preparing for and attending an April 15, 2021 meeting with the Heirs. (Greiner Decl. Ex. C at 263 – 264). Comerica asserts that three shareholders were required in order to divide up the presentation of nine topics. (Response, at 15). Comerica explains that Fredrikson's normal policy is to limit participation at meetings to one or two attorneys. (*Id.*) In this instance, adding a third shareholder, at significant cost, would only alleviate the other two shareholders from having to present 1 or 2 topics. Given that insignificant burden, and in light of Fredrikson's stated policy, incurring additional fees by having a third shareholder attend the meeting was not reasonable.

⁴ Another instance occurred in connection with the Bergonzi litigation, where four different shareholders billing between \$555/hour and \$690/hour incurred many thousands of dollars in fees where they all billed time to conferring, researching and/or reviewing certain implications of the Bergonzi settlement agreement. (Greiner Decl., Ex. B at 145-147, 3/12/21 Entry, 3/16/21 Entry, 3/17/21 Entries (LF, MY), 3/18/21 Entries (LF, MY, KSS), 3/19/21 Entries (LF, MY, KSS), 3/20/21 Entry, 3/22/21 Entry). Again, this not an issue that required the involvement of four high-rate shareholders, and the total fees generated were not reasonably incurred.

involvement. Greiner billed the total amount of \$27,482, and was directly involved with this matter on a day-to-day basis. (Greiner Decl., Ex. B at 136-141; Ex. C at 265-268; Ex. D at 395-397). Additionally, Karen Sandler Steinert billed \$35,135.50 and Sue Ann Nelson billed \$50,358. Comerica has identified Nelson as the primary taxation and IRS expert, and her fees comprise approximately 38% of the total billed for this matter. However, Steinert and Greiner's fees together comprise approximately an additional 48% of that total. Based on the descriptions Comerica has provided, there was no need for both these attorneys to bill a combined total of \$85,493.50, comprising nearly 50% of the entire bill for this matter.

Comerica lists "research[ing] substantive questions of law" as necessary work for this matter during the period. Primarily, this research was performed by a Fredrikson shareholder billing at \$440/hour who Comerica claims was necessary because she had knowledge of the Estate's earlier property tax disputes. Additionally, further research related to the estate tax audit was performed by a different shareholder at the rate of \$660/hour. (Greiner Decl, Ex. A at 22, 2/1/21 Entry, 2/4/21 - 2/5/21 Entries, 2/8/21 Entry). This work should properly have been performed by an associate.

Shareholders typically have more knowledge of particular matters than associates who are asked to perform legal research, but that does not mean in every such instance the shareholder should perform that research herself. Associates traditionally perform legal research because it is time-consuming and therefore cost-effective at an associate's lower billing rate, and because associates are hired by prestigious firms like Fredrikson based on their ability to quickly grasp complicated issues and provide sound analysis. *Walman Optical* makes clear that a partner's supervision and/or knowledge of a matter does not justify that partner incurring fees for

performance of work properly performed by junior associates. Case No. 11-CV-0096 (PSJ/JJG) at *25-26.

III. FEES INCURRED IN THE BERGONZI LITIGATION HAVE BEEN RECORDED VAGUELY AND IMPRECISELY SUCH THAT THEIR RELEVANCE AND REASONABLENESS CANNOT BE DETERMINED.

The PRN Parties appreciate the effort that Comerica has put into documenting the long-running history of the Bergonzi litigation, but their objections are focused on the fees submitted as part of the June 30, 2021 Declaration of Mark W. Greiner. The PRN Parties object on the basis that both of Comerica's foreign counsel, Russells and Trevisan & Cuonzo, have submitted vague and imprecise billing entries from which it is impossible to determine the relevance of the work done and whether the amount of hours billed are reasonable.

“[T]he fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).” Insufficient documentation may warrant a reduction in the fees requested because “incomplete or imprecise billing records preclude any meaningful review by the district court of the fee application” for “excessive, redundant, or otherwise unnecessary” hours and may make it impossible to attribute a particular attorney's specific time to a distinct issue or claim. *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991) (affirming the district court's 20% reduction in requested attorney fees for inadequate documentation); *see Hensley*, 461 U.S. at 433 (“[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly”)

Courts have frequently reduced requested attorney's fees where billing entries are vague such that courts cannot determine their relevance and whether the time was reasonably spent. *See, e.g., Flygt Corp.*, 925 F.2d at 260 (finding entries such as “legal research,” “trial prep,” and “met w/client” were impermissibly vague); *Kennedy v. Heritage of Edina, Inc.*, Civil No. 13-

71(DSD/HB), at *8 (D. Minn. June 22, 2015) (finding entries such as “Review ???,” “Status update,” and “Conf w/ Jerry re: case” were impermissibly vague); *Bores v. Domino's Pizza LLC*, Civ. No. 05-2498 (RHK/JSM), at *15 (D. Minn. Oct. 27, 2008) (finding entries such as “[i]dentify and prepare documents,” “correspondence,” “review memos,” “review documents and issues,” “review background materials,” and “document research” were impermissibly vague).

Comerica’s initial fee application attached invoices from the UK firm Russells in the amount of £118,299.90 (roughly USD \$162,290) in fees and expenses, but did not provide any detailed billing entries. (Greiner Decl., Ex. H). After the PRN Parties objected, Comerica apparently obtained billing entries from Russells and has attached them to its response as set forth in Exhibits A and B to the Declaration of Steven Mark Tregear (hereinafter, “Tregear Decl.”) (*See* Tregear Decl. at ¶ 2) (attaching detailed ledgers “underlying the invoices that were submitted” in the June 30, 2021 filing).

It is disconcerting that Comerica never previously asked for detailed billing entries from Russells, and merely sought to pass the fees along to the Estate without any review or analysis of billing entries. However, this is consistent with the fact that Comerica is not paying its own legal bills, and therefore has no incentive to provide customary and reasonable oversight as to the fees that are incurred and ultimately billed to the Estate.

A substantial portion of Russells’ newly-provided billing entries are vague and imprecise and prohibit any determination of their relevance or whether time was reasonably incurred. Exhibit A sets forth the fees billed by Mark Steven Tregear and two other solicitors at Russells from 12/14/2020 through 4/22/21. As an initial matter, none of the entries from 3/18/21 through 4/22/21 contain any narrative description at all, and are merely referenced by a general classification, *e.g.* “Telephone,” “Perusals,” “Drafting & Dictation (Other).” (*See* Tregear Decl., Ex. A at 6). There

are also an additional sixteen entries outside this time period where time has been billed but no narrative description has been provided. (*Id.* at 8-9). It is impossible to determine any further information about the work that was performed for each of these entries.

Although other entries contain some description, they are frequently vague and cursory. These include entries with descriptions such as “Letter client,” “Letter client re update,” “Letter Dorsey and Whitney,” “Telephone Lora F – left message,” “Letter counsel,” “Telephone junior counsel – left message,” “Email opus.” (Tregear Decl., Ex. A at 5, 7-10).

Exhibit B sets forth the fees billed by James Segan at Blackstone Chambers from 1/27/20 through 3/2/21, and Charlotte Thomas of Brickstone Chambers from 2/22/21 through 3/2/21. Again, the billing entries for Mr. Segan are vague and imprecise and prohibit determination of the relevance and reasonableness of the work performed. These include entries found throughout his records with descriptions such as “considering papers,” “telephone discussion,” “telephone discussion and email correspondence,” “preparation and telephone conversation,” “telephone discussion and amending documents,” “advising by email,” “Email correspondence,” “considering and commenting on drafts,” “considering papers,” and “research and advising by email.” *Id.* at 11-16.

Trevisan & Cuonzo, the Italian law firm retained in the Bergonzi matter, submitted invoices in the amount of €52,116.16 (roughly USD \$61,154), and also provided billing entries that contain numerous vague and insufficient descriptions. (Greiner Decl., Ex. I). Found throughout these records are entries that provide almost no information regarding the substance of the work performed, *e.g.* “Persual email from Laura and attached doccs [sic],” “Perusal email from Steve,” “Perusal email from Lora,” “Perusal email from client,” “Draft reply to Lora,” “Draft Memo,”

“Conference call with the client,” “Email exchange with the client,” and “email to client update.”
See generally, Greiner Decl. Ex. I.

Ultimately, it falls to the Heirs and Interested Persons to conduct oversight of the legal fees charged to the Estate. However, the Heirs and Interested Person have no relationship or contact with these foreign law firms and thus no way to assess their billing entries apart from the records that have been provided through Comerica. It is critical that these records are sufficiently detailed so that the Heirs and Interested Persons can assess the relevance and reasonableness of the work performed and substantial fees billed. Where this information is not available, as it is not here, then the Court should apply a reduction in the total amount of fees charged to the Estate. *Hensley*, 461 U.S. at 433; *Flygt Corp.*, 925 F.2d at 260.

IV. COMERICA’S DELEGATION OF ITS ACCOUNTING TO COUNSEL HAS RESULTED IN UNREASONABLE AND EXCESSIVE FEES.

The PRN Parties have raised objections based on Comerica’s delegation of administrative matters that it should be handling internally to high-rate outside counsel billing on an hourly basis, resulting in excessive and unnecessary fees. In particular, Comerica had delegated its counsel to prepare the Estate accounting, at substantial cost to the Estate. Regardless of whether Comerica may be “entitled” to use its legal counsel to “assist with the preparation” of its accountings, as it claims, this has no bearing on whether the fees incurred were unreasonable and excessive. (Comerica’s Response, at 17-18). Nor was Fredrikson merely “assisting” with the accounting (*e.g.*, by reviewing or revising or providing advice). Rather, Fredrikson’s billing entries indicate that accounting was prepared almost entirely by Fredrikson itself.

The billing entries show Fredrikson obtaining financial data from the Estate’s accountants; preparing the estate accounting; entering and reconciling transactions; corresponding frequently with the accountants to raise issues and receive additional information; correcting and balancing

all transactions; and engaging multiple attorneys to conduct a substantive review and revision of the accounting. (Greiner Decl., Ex. A at 13-16; Ex. B at 130-131; Ex. C at 259-260). Regardless of whether the accounting is ultimately filed in court, it is a financial disclosure based on transactions overseen by Comerica, and its preparation is an administrative task, not a legal task, and should properly be handled by Comerica.⁵ Comerica's delegation of this work to Fredrikson, to be performed by attorneys billing as much as \$555/hour, is unreasonable and the legal fees that have been incurred are excessive.

CONCLUSION

For the foregoing reasons, the PRN Parties respectfully request that the Court impose meaningful oversight on the attorneys' fees and costs incurred, by thoroughly reviewing Fredrikson's billing to determine the appropriateness and reasonableness of the substantial amounts of billed time. Specifically, the PRN Parties request that the Court review the fees submitted by Fredrikson and approve payment of a substantially reduced amount that accounts not only for the time incurred but also for the reasonableness and necessity of the work actually performed.

Dated: August 25, 2021

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⁵ The actual legal component of the accounting, the accompanying petition, was prepared in May 2021. (Greiner Decl. Ex. D, at 389-390). The PRN Parties are not objecting to fees incurred in the preparation and filing of the petition by Fredrikson.

By: /s/ Sharon Nelson
Sharon Nelson

By: /s/ Norrine Nelson
Norrine Nelson

By: /s/ John Nelson
John Nelson

By: /s/ Charles Spicer
Charles Spicer