Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

STATE OF MINNESOTA | DISTRICT COURT
PROBATE DIVISION
COUNTY OF CARVER | FIRST JUDICIAL DISTRICT

In Re: | Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,
Decedent. | Order on Remanded Fee Issues

The above matter has been referred to the undersigned as a Master pursuant to Rule 53 of the Minnesota Rules of Civil Procedure and this Court's order of June 5, 2018. Attorneys for heirs Omarr Baker, namely the Cozen O'Connor law firm ("Cozen"), and for Alfred Jackson, namely Wheaton Law Group ("Wheaton") and Justin Bruntjen's law office ("Bruntjen"), made applications for an award of attorney fees and costs against the above Estate. The applications of Cozen, Wheaton and Bruntjen (hereafter "Applicants"), were the subject of an earlier order of this Court, which order was the subject of an appeal and a Court of Appeals decision to remand such attorney fee issues (hereafter "Remanded Fee Issues").

This Court's Rule 53 Order for Reference has provided that the undersigned hear and decide the Remanded Fee Issues, and to that end the undersigned issued a Procedural Order dated July 15, 2018, held a hearing on August 25, 2018, and received affidavits and other submissions pursuant to the Procedural Order and further inquiry addressed to counsel.[1] Appearing at the August 25, 2018 hearing were the following: Thomas Kane and Steven Silton for Applicant Cozen, as former counsel to Omarr Baker, Applicants Justin Bruntjen and Frank Wheaton (Mr. Wheaton by telephone), as former counsel to Alfred Jackson, and Joseph Cassioppi and Emily Unger as counsel to Comerica as Personal Representative of the Estate. Also appearing by telephone were Charles Spicer, Lee Hutton, Tyka Nelson and Sharon Nelson. Present and reporting the hearing was court reporter Julie Brooks.

Applicants took the position that this Court's earlier award of fees was not diminished by the decision of the Court of Appeals, that the Remanded Fee Issues do not include the fees which earlier were allowed by this Court, and that the time entries about which the earlier awards were allowed have been omitted from their applications (and spreadsheets)

[1] The Applicants suggested that they each categorize the work about which they contend fees should be awarded into certain "buckets" and each provide to the undersigned a spreadsheet of all the time entries for such work divided into such categories or "buckets," along with an affidavit pursuant to the July 15, 2018 Procedural Order. Each Applicant has affirmed that the entries provided in each of their spreadsheets omit time entries about which this Court had made earlier awards. The July 15, 2018 Procedural Order, the above described spreadsheets and affidavits, the record of the August 25, 2018 hearing and counsels' responses to additional post-hearing inquiries constitute the record before the undersigned.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

submitted here.[2] While the undersigned is not sure that this position is clear from the Court of Appeals decision, he has assumed that this Court's earlier awards remain and/or have been paid, and that the below awards are not in respect to any time entries about which this Court made earlier awards, and are therefore in addition to such earlier awards.

Pursuant to the record described in note 1, supra, and the files and proceedings before this Court and herein, the undersigned makes the following:

ORDER

1. The firm of Cozen O'Connor is awarded against the Estate fees in the amount of $236,362 for work done from June 2016 through January 2017, which amount is in addition to this Court's earlier award in respect to such work.

2. Attorney Justin Bruntjen is awarded against the Estate fees and costs in the amount of $37,387 for work done from June 2016 through January 2017, which amount is in addition to this Court's earlier award in respect to such work.

3. Attorney Wheaton is awarded against the Estate fees and costs in the amount of $69,120 for work done from June 2016 through January 2017, which amount is in addition to this Court's earlier award in respect to such work.

4. The following Memorandum consisting of findings and conclusions is made a part of this Order.

Dated: October 3, 2018

Richard B. Solum
Master

[2] Originally Applicant Wheaton provided a spreadsheet which had not omitted time entries for which he had already been awarded fees by this Court, he then submitting a revised spreadsheet. However, his revised spreadsheet, in respect to the four categories for which he had earlier been awarded fees, failed to remove time entries in amounts comparable to those amounts he was previously awarded.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

MEMORANDUM

INTRODUCTION:

A. Discussion of the Court of Appeals decision, and the controlling statutory provisions concerning the "Benefit" and "Commensurate" Elements.

In many settings, the attorney fee submissions of the Applicants would be more routine than here. However, in respect to seeking an award of fees from an estate, counsel for interested parties, as opposed to counsel for the estate, generally have a burden of showing (1) the extent to which the services contributed to the benefit of the estate, and (2) that the amount of the sought compensation in respect to such services is commensurate with the benefit. In many respects the Applicants here seek to meet these statutory requirements with nothing more than generalized conclusions that the subject legal services were for the benefit of the Prince Estate, without the showing of any tangible or even intangible benefit. While not clear from the record, one presumes that this Court earlier found that the Applicants did not make the requisite "benefit" related showings in respect to some of the categories of services for which compensation was sought but not allowed.[3]

Admittedly the Court of Appeals provided that on remand this Court focus on *"key concepts"* to allow further determinations based on *"somewhat broader strokes rather than with a more granular analysis,"* and to "*consider the big picture."* But the Court of Appeals also asked this Court to make certain *"findings,"* particularly in respect to the extent "*the estate benefitted from the services . . . quantified in monetary terms with whatever level of specificity the district court deems appropriate*." And the Court of

[3] Applicants contend that because their position before the Court of Appeals contested the District Court's denials of an award of fees in respect to certain categories of work, that the Court of Appeals remand was an implicit disagreement with such denials. This contention is not supported by either the Court of Appeals' decision or the expressions of the controlling statute. The Court of Appeals' stated reason for the remand was that there were insufficient explanations for this Court's allowance of some but not other of the requested fees in the categories about which fees were allowed. The Court of Appeals never expressed a view that this Court erred in not awarding fees in respect to any particular category of work. Indeed, Applicants' position to the Court of Appeals that their fee applications should be adjudged on the same basis as the fee application of counsel to the estate (about which the element of "benefit" is largely not required), was not sustained by the Court of Appeals, and such position would be contrary to the express provisions of the statute. Moreover, the Court of Appeals expressly cited the required "benefits" and "commensurate" elements, citing cases in which fees were denied where the work "might have benefitted" the estate but in the end did not. (See note 2 and accompanying text of Court of Appeals decision.) Finally, it is unlikely that the Court of Appeals meant to diminish the express requirements of the statute relative to the "benefit" and "commensurate" elements—the Court of Appeals guidance being that on remand this Court make findings in respect to such elements. In short, it cannot be assumed that the Court of Appeals implicitly reversed this Court's determination as to whether certain categories of work were attendant a required showing of the "benefit" or "commensurate" elements. Nonetheless, while one could argue that those earlier determinations of this Court which were not disturbed on appeal constitute the law of the case, I examined the issues anew to assure full deliberation of the Applicants' position, leaving to this Court any need to reject my determinations.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

Appeals acknowledged that the governing statute required that awarded fees must be *"just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services."* The undersigned has asked counsel to comment on much of the Court of Appeals' guidance, which guidance and counsels' comments have been considered here.

Of course, we start with the Court of Appeals' guidance in the context of the governing statutory provisions, namely Minnesota Statute sections 524.3-720 and 721, which provide:

> ***524.3-720 EXPENSES IN ESTATE LITIGATION.***
>
> *Any personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith,* ***whether successful or not****, or any interested person who successfully opposes the allowance of a will, is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred. When* ***after demand the personal representative refuses*** *to prosecute or pursue a claim or asset of the estate or a claim is made against the personal representative on behalf of the estate and any interested person shall then by a separate attorney prosecute or pursue and recover such fund or asset for the benefit of the estate,*[4] ***or when, and to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate****, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate as the court* ***shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.***
>
> **524.3-721 PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL *REPRESENTATIVES AND EMPLOYEES OF ESTATE.***
>
> *After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the* ***reasonableness of the compensation*** *of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered* ***may be ordered to make appropriate refunds****.*

[4] With respect to awarding fees to counsel of an interested party when the personal representative fails to prosecute or pursue a claim or asset of the estate, there was no showing that there was ever a "demand" of the estate's fiduciary to do so followed by a "refusal" of such a demand. Nonetheless, given the complexity and size of the Estate, any want of activity by the Estate's fiduciary or its counsel was not ignored, but considered in the undersigned's analysis of whether the Applicants' work contributed to a "benefit".

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

As a result of the Court of Appeals guidance and the above statutory provisions, there remained a number of related concerns which impacted the undersigned's findings and the above awards:

1. Duplication: As noted in the above section 524.3-720, attorney compensation from an estate must be *"just and reasonable and commensurate with the benefit to the estate,"* and Minnesota Statute section 525.515--noted as helpful by the Court of Appeals, provides:

> ***525.515 BASIS FOR ATTORNEY'S FEES.***
> *(a) Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, guardian or conservator shall have such compensation therefor out of the estate* ***as shall be just and reasonable****. This section shall apply to all probate proceedings.*
> *(b) In determining what is a fair and reasonable attorney's fee effect shall be given to a prior agreement in writing by a testator concerning attorney fees. Where there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:*
> *(1) the time and labor required;*
> *(2) the experience and knowledge of the attorney;*
> *(3) the complexity and novelty of problems involved;*
> *(4) the extent of the responsibilities assumed and the results obtained; and*
> *(5) the* ***sufficiency of assets properly available to pay for the services****.*
> *(c) An interested person who desires that the court review attorney fees shall seek review of attorney fees in the manner provided in section 524.3-721. In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause* ***(b) and the value of the estate shall not be the controlling factor.***

Thus, in respect to all of the statutory provisions, those controlling or merely helpful, the work and time charges must be *"just and reasonable,"* and issues such as the time and labor required, the experience and knowledge of the attorney, the complexity of the problem, the results obtained and the sufficiency of the assets available to pay for the services are helpful considerations in assessing whether fees are "reasonable."

Here much of the subject work and time entries involved essentially comparable objectives of each of the three Applicant law offices. In fact, the Bruntjen affidavit piggy-backs on the affidavit of Cozen's Mr. Kane, stating that the work of Bruntjen's law office was "almost identical" to that of the Cozen firm. Moreover, the Applicants' time entries are so general that it is difficult to appreciate the nature or reasonable value of the work, and in many cases much of the work of the three Applicants appear to be communicating with, or reviewing the communications of, one another. In short, in many instances there is little ability to discern the degree to which there was any value added from three law offices pursuing the same objectives and apparently doing comparable (at times "almost identical") work, raising a concern about whether there has been a showing that the related fees are just and reasonable, or whether the work of three law offices resulted in any benefit not achievable by the work of just one.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

Moreover, in these regards, the statute provides not only that fees be "just and reasonable," but also *"**commensurate with the benefit** . . . **from** **such services***." Thus, if the benefit to an estate is $10,000 and a lawyer whose services contributed to such benefit applied for fees of $4,000, such fee may be regarded as "commensurate with the benefit . . . "from" such services. However, if three law firms performed comparable services with the same objective and each sought an award of a $4,000 fee, an altogether different "commensurate" analysis is required, as the estate (rather than the client heirs) is asked to pay $12,000 for largely comparable services in respect to the $10,000 benefit. Seemingly both the mandate and the estate protective goals of the statutory focus on "benefit" and "commensurate" come into play when multiple heirs each hire lawyers who all work toward the same objective, multiplying the requested fees and changing the "commensurate" calculus, particularly where no one applicant can show that the benefit, particularly any incremental benefit, resulted "from" such services (any benefit or incremental benefit beyond that "from" the services of the others).[5] Otherwise, a "just and reasonable" attorney fee award would vary wildly depending on whether there were two heirs each having counsel, or twenty.[6] In short, all of these duplication related issues

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[5] One notes that the Court of Appeals seemed to deal with precisely this issue, when it discussed the need for the benefit to be shown monetarily, saying: "*The district court also should make findings concerning the relative proportions of the quantified benefits for which each law firm or attorney is responsible. Cf. Minn. Stat. § 525.515(b)(4)".* In the example of a $10,000 benefit with three law offices seeking $4,000 in fees, if we assume each law office contributed equally to the benefit, the above Court of Appeals guidance would suggest that the "proportion of the quantified benefit for which each law firm is responsible" would be $3,333, against which each law office's $4,000 application obviously would offend the "commensurate" requirement. Here there has been no showing of responsibility for benefits of any one Applicant beyond that of the others, with the exception of a showing (1) that Cozen took the lead role and was the preparer of submissions as to most of the matters, and (2) that Wheaton had entertainment law expertise and acted as an advisor in respect thereto. (It was of some interest that in respect to legal issues—the basis for legal fees generally—there were many Cozen time entries devoted to legal research and other legal activities, with far fewer comparable entries of Bruntjen and virtually no such entries of Wheaton—"legal" work presumably being the underpinning for high hourly rates for lawyers' services.)

[6] Treating fee applications in this manner motivates multiple counsel to either look to their heir client (rather than the estate) for payment, or to divide rather than duplicate their work if expecting ultimately to be compensated by the Estate. To do otherwise would not encourage such duplicative inefficiencies. These problems were particularly noteworthy here where Applicant Wheaton initially provided submissions including his sworn affidavit claiming that he engaged Applicant Bruntjen merely to act as his local counsel, and Wheaton claimed that Bruntjen did not add value and unnecessarily engaged in substantive activities--expending excessive hours at unduly high rates. While Wheaton and Bruntjen sought to reconcile their differences, Wheaton's affirmations remain a part of the record here. And the time entries of both are in respect to common objectives, largely without any showing of related incremental value. Finally, the time entries of both Wheaton and Bruntjen are in addition to those of the Cozen firm about which everyone agreed took the lead and laboring oar on most of the subject objectives. (With respect to objectives where entertainment expertise appeared useful, Wheaton's expertise was taken into

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

have been accounted for here, as the statute, and any common sense respecting reasonableness, seems to require. Reductions from the requested fees of each applicant have been made to fairly and justly assure that the fees awarded for services to each and all the Applicants against the estate are commensurate with the benefit "from" such services. As discussed below, the reductions, admittedly somewhat subjective in nature, were materially less for Cozen than for Wheaton and Bruntjen, as Cozen largely took the lead and laboring oar on the issues about which fees have been awarded, and prepared virtually all the submissions to the Court. Moreover, Wheaton and Bruntjen were essentially co-counsel, Bruntjen serving as local counsel for Wheaton.

Understandably, it may be that an assumption about the size of the Prince Estate and the potential for competing heirship claims, have resulted in many of those with an interest engaging lawyers who were willing to represent such parties--perhaps based on the ultimate capacity and expectations for related fees to be paid from either the Estate or from their client's likely substantial distribution from the Estate. This raises the somewhat interesting proposition that, as an equitable matter, if each of the heirs had lawyers doing essentially comparable work at essentially comparable rates, in the end it may not matter whether the related fees are paid by the Estate or paid from each client's distribution from the Estate,[7] as in either event the burden in the payment of fees as between the heirs would be comparable. This reality may support the view, seemingly required by the statute and the Court of Appeals' guidance, that Applicants must show (and this Court should make findings) a "benefit" to the estate, which benefit is "from" the subject services, and that the sought compensation is in respect to services which contributed to, and are commensurate with, the benefits--such a showing again promoting lawyer efficiency and fairness in apportioning the burden of fees among heirs. Moreover, these statutory requirements protect those heirs who for whatever reason do not engage counsel and should not have their interests in the estate burdened by other heirs' counsel fees which yield no benefit to the estate or any of the heirs. In any event, the controlling statute, in almost all instances, requires that fees awarded to an interested party's counsel (as opposed to the estate's counsel) be

> "*just and reasonable and* ***commensurate with the benefit to the estate from the recovery so made or from such services***."

All of these requirements are implicated in considering the three Applicants' work comparably directed toward the same objectives or benefits. Again, in respect to most of the categories or "buckets," there was no dispute in the evidence before the undersigned that essentially all of the pleadings or submissions were drafted by Cozen, and that Cozen took the laboring oar in respect thereto, there also being no dispute that Wheaton and Bruntjen, in respect to the joint submissions, provided useful comment or input in respect

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account in the above awards, and appears to have been taken into account in the relatively sizable earlier award of this Court.)

[7] Presumably counsel to an estate heir may have an attorney lien on the heir's distribution, so payment of fees for services in furtherance of the heir client's interest would be assured.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

to such pleadings or submissions.[8] And Wheaton did occupy, along with another lawyer, a judicially recognized value-added role relative to entertainment experience. Given the "duplication" and related concerns discussed above, it was clear that a just and reasonable award of fees commensurate with the benefit, required material reductions in the allowance of time entries in each of the categories or "buckets" of services from which there was a benefit, as to not do so would result in multiples of just and reasonable time entries chargeable against the Estate based on the number of law offices doing comparable work in respect to the same benefit. While I have accounted generally for some value added associated with multiple law offices working on the same issue, apart from the laboring oar work of Cozen there was little showing of value added, so as to permit anything close to a full allowance of any of the Applicants' time entries.

2. "Benefit" and "Commensurate": Again, Minnesota Statute section 524.3-720 generally requires that fees awarded to an interested party's counsel (as opposed to the estate's counsel) be "to the extent" of services contributing to, and from which there was, a benefit to the estate. Some of the work and time charges subject to the Remanded Fee Issues here are in respect to work which was done for the benefit of the Estate and/or all (as opposed to less than all) the heirs, but most often there was no showing of any tangible benefit, at least not in the form described by the Court of Appeals—such as an increase in assets or reduction of liabilities, or an increase of revenue or reduction of expenses.[9] But again, the key statutory provision relates to the "extent" of services which "contribute" to a benefit, which language does not seem to require a proximate or direct cause analysis. Also noteworthy is that the statute does not require a benefit which is monetarily quantifiable, although the undersigned is influenced by the guidance of the Court of Appeals which heightens the importance of a benefit which is monetarily quantifiable. And of course the notion that "compensation" to counsel—such compensation by definition monetary--be "commensurate with the benefit," makes somewhat challenging the "commensurate" analysis respecting benefits which are not monetarily quantifiable.[10] All of these benefit-measuring difficulties

[8] I requested, received and studied a chart showing the number of pages of submissions to the Court related to the services of the Applicants, which chart was undisputed and showed 652 pages virtually all of which were prepared by Cozen.

[9] Applicants argue that the benefit can be measured by the amount of the fees. This position, perhaps taken because of the difficulty in showing tangible benefits for much of the services involved here, cannot be sustained without erasing from the statute the "benefit" and "commensurate" elements entirely, leaving the rights of interested parties to attorney fee awards against an estate solely dependent upon the reasonableness of a lodestar. This would ignore the "benefit" or "commensurate" requirement and result in the above-described unfairness among beneficiaries in respect to fees for services from which there is no benefit, unfairness dependent upon whether a beneficiary did or did not engage counsel. Moreover, this analysis may more arguable in a case in which a single lawyer created a non-quantifiable benefit and claimed that the benefit should be measured by the lawyer's fee. As discussed above, the analysis fails in respect to measuring the benefit by the fees of three lawyers doing substantially comparable work in respect to the same benefit.

[10] The Court of Appeals apparently did not conclude that the subject benefit must be precisely quantifiable—although suggesting quantifiable criteria at least to some degree, as the Court said:

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

are compounded by the nature of the Estate, its value being materially measured by the value of intangible rights to music and related contractual undertakings—about which benefits can derive from efforts to make contractual terms more favorable to the estate, by efforts to minimize potential losses or future expenses in respect to contractual arrangements, and the like, such benefits largely not being susceptible of monetary quantification.

This is an important discussion, as plainly there have been time charges here which did not result in monetarily quantifiable benefits, but which nonetheless *"contributed"* benefits to the estate, as described below. The services most troublesome in regard to the "benefit" requirement were those significant services associated with challenges to the positions and/or challenges to significant fees of Special Administrator (Bremer Bank) and its counsel. Such services include those associated with Bremer's positions which the heirs claim were harmful to the Estate—a claim which perhaps in hindsight may have been on the mark. This raises a difficult question seemingly unanswered in the caselaw, namely if work and time charges for challenging the positions or fees of a Special Administrator or its counsel cannot be the subject of an award unless the challenge is successful, does the law dis-incent any challenge to estate-harmful positions or excessive fees of fiduciaries, as neither special administrators nor their counsel are likely to challenge their own positions or fee applications. And as a corollary, do such challenges by definition benefit an estate—particularly a large and complex estate as here, by providing the necessary adversarial process so important to judicial management of the estate and related judicial decision-making. Thus, it is important to consider whether there is a benefit to the Estate (and in turn all of the heirs) inherent (i) in the therapeutic consequences (respecting a genuine issue necessitating judicial determinations as well as future work and fees) from such challenges themselves, whether or not successful, and (ii) in the preservation of a future challenge, whether before a trial court or on appeal. This concern, seemingly at work in the Court of Appeals guidance relative to the "big picture," has been taken into account as discussed below.[11]

"*Benefits should be quantified in monetary terms, with whatever level of specificity the district court deems appropriate. Benefits may be measured, for example, in terms of an increase in the estate's assets or income or a decrease in the estate's liabilities or expenses. The district court also should make findings concerning the relative proportions of the quantified benefits for which each law firm or attorney is responsible. Cf. Minn. Stat. § 525.515(b)(4). For these purposes, the district court need not employ a line-by-line method of determining compensation unless the district court, in its discretion, deems such a method to be helpful or appropriate.* For most of the work the subject of fee requests here, there has been little showing of benefits *"quantified in monetary terms."*

[11] This question was dealt with in the unpublished opinion of *In re the Estate of Kane*, 2016 WL 1619248, where attorney fees of counsel to a contesting party who succeeded in the trial court but lost the issue on appeal, were nonetheless sustained, the Court of Appeals concluding that counsel's participation in bringing a "genuine controversy" to a fully-examined judicial conclusion was of benefit to the estate.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

3. "Big Picture:" The Court of Appeals guidance relative to the *"big picture,"* including the estimated size of the estate and the fees of counsel to the estate (special administrator, personal representative, etc.), has been taken into account, particularly (1) in respect to the role or need of Applicants' efforts by reason related deferrals or opposing positions by counsel to the estate,[12] (2) in respect to the needs expressed by the Court, and (3) in respect to the concepts of "benefit," and the like. The estimated value of the Prince Estate, while somewhat speculative and materially dependent upon intangible rights to music—some of which music being largely unheard, appears to be substantial, and the fees requested here are a small fraction of any such value. Moreover, the fees of the Special Administrator and its counsel, during the times in question, also dwarf the fees requested here, the former approximating six million dollars.[13] Finally, there were many instances in which the Court, presumably because of the size and complexity of the estate and the complicated monetization of Estate assets, sought input from the heirs' counsel so as (1) to have a wider input of interests and expertise as to matters concerning intangible values and related contractual rights about which any court would have limited expertise, and (2) to seek input and potential consensus among the heirs so as to avoid litigation costly to the Estate. The mere fact that counsel to the heirs was invited by the Court to make submissions presupposes some benefit to the Estate and its judicial management, as well as some likely reduction in fees by the corporate fiduciaries and their counsel in limiting what otherwise could be expensive contests unnecessarily depleting of the Estate's assets. A dictionary definition of the "*big picture*" is "the entire perspective of a situation," and these "*big picture"* issues have been taken into account, as discussed above and below.

4. Time Entries and "Broader Strokes": Courts face particular difficulty in making fee awards given the common practice of generalized and block time-keeping. Virtually all of the Applicants' time entries here provide little ability to appreciate the value of the time, whether more than "reasonable" time was expended on the task and the degree to which any benefit derived "from" the time or related work. So many of the entries were "emails with . . ." or "conference call with . . ." or "prepare for call with . . ." or "review . . .," etc. There is simply no way for courts to precisely evaluate the value or reasonableness of such time, let alone measure it in relationship to ("commensurate with") any benefit—particularly benefits which are not monetarily quantifiable.

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[12] The Court of Appeals noted that the statute, in respect to the lack of effort by counsel to the Estate, states that counsel to an interested person is entitled to fees, "*When after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against the personal representative on behalf of the estate and any interested person shall then by a separate attorney prosecute or pursue and recover such fund or asset for the benefit of the estate . . . ."* While the *"demand"* and *"refusal"* components of this statutory phrase were not present in respect to the Applicants' request for fees, the Court of Appeals nonetheless seemed to endorse the understandable assumption of a "benefit" in respect to fees associated with work about which the Estate's counsel (in whatever manner) deferred. This analysis could be particularly apt when the Estate or its counsel took positions arguably adverse to the Estate's interest.

[13] Nonetheless, there is still the above described concern about fairness to all the heirs relative to awarding fees against the estate if dealing with duplicative fees yielding no or little articulable incremental benefit.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

The Court of Appeals observed that an award of fees here should involve a "*somewhat broader strokes rather than with a more granular analysis*," noting:

> *The district court also should make findings concerning the relative proportions of the quantified benefits for which each law firm or attorney is responsible. Cf. Minn. Stat. § 525.515(b)(4). For these purposes, the district court need not employ a line-by-line method of determining compensation unless the district court, in its discretion, deems such a method to be helpful or appropriate.*

Given the lack of any meaningful way to discern the relationship between any benefit and the very general time entries on the submitted spreadsheets, I have taken the Court of Appeals guidance to heart and have not attempted to do a line-by-line (up or down) analysis of such time entries. Rather, in respect to each category of work set out below and about which , I have:

1. Carefully reviewed the Applicants' affidavits relative to benefit, reviewed this Court's related files and proceedings in respect to the categories of work advanced by the Applicants, reflected on the discussions at the day-long August 25th hearing, and thereby tried to assess the nature and relative importance of the benefit to the Estate "from" such work; and

2. Reviewed the time entries of each Applicant in respect to each category of work, assessing the number of time-keepers and related need, the degree of actual legal work compared to mere communication between co-counsel, the extent of the amount of time charged on any given activity and related need; and the extent of duplication of the nature of work and objectives as between the time entries of the three applicants; and

3. Reviewed the affidavits and submissions at the hearing as to evidence from which one could discern any value-added or incremental value associated with the work of three law offices as compared to that yielded by the work of one.

After the above (admittedly subjective) effort, as to each category of work I found legally compensable, I divided the requested dollar amount by the number of hours to assess the hourly rate being sought by each Applicant.[14] Then, based on the three assessments

[14] In respect to Bruntjen and Wheaton, the hourly compensation sought was their individual hourly rate, namely $485 and $720 respectively. As to Cozen, the hourly compensation sought varied between the categories, as there were a number of timekeepers and different timekeepers with different hourly rates—the hourly compensation used here being the product of dividing the dollars sought as to each category by the total hours of work claimed in respect to such category.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

above and as to each Applicant and each category, I made my best judgment as to the amount of time (number of hours) which reasonably contributed to a benefit, considering the nature and value of the benefit (much of which was not monetarily quantifiable), which judgment accounted for the duplication, time spent, number of time-keepers, related needs and the issues described in the above Introduction. This resulted in my best and admittedly subjective judgment[15] to arrive at the number of hours of each Applicant which should be subject to compensation which was reasonable and just and commensurate with the benefit from such work. As to each category of work, such number of hours were multiplied by the average hourly rate (described above) being sought by each Applicant, the dollar result constituting the awarded compensation for each category of work about which I found a benefit. The arithmetic sum of the awarded compensation for each category constituted the total award in the above order.

We turn now to the particular categories of work for which Applicants seek an award, appreciating that the below awards are in respect to time entries apart from and in addition to those as to which this Court made his earlier awards.

PAISLEY PARK:

I have found that the work and time entries of the applicants in respect to Paisley Park did contribute to the benefit the estate, as the work was in furtherance of assisting in the Estate identifying and engaging management capabilities to transform the Paisley Park building/residence into a museum providing revenue streams to the Estate. However, the evidence was that the Paisley Park time entries among the three Applicants involved work that was relatively comparable and largely in furtherance of the same objective. And there was no showing of any material incremental value of any of the three law offices' work compared to that of one—dictating that any full award of all of the fees sought by each of the Applicants would offend the statute's "commensurate" requirement, and offend the guidance of the Court of Appeals, as discussed above.

In examining the time entries, one notes that much of the Wheaton entries recite calls or emails between the Applicants, and much of the time of Wheaton and Bruntjen consisted of calls or emails to each other when the latter was engaged by Wheaton to be local counsel—Wheaton not being admitted in Minnesota.[16] It did appear, however, that Wheaton may have provided some independent benefit in respect to his familiarity with certain persons in the entertainment industry and the useful input derived from such familiarity. On the other hand, much of Wheaton's "Paisley Park" time appears to be in respect to the "concert," and not "Paisley Park," and the time entries appear far greater than that of Cozen and beyond what would be expected for the described work—the descriptions again being so general as to be insusceptible of assessing value.

[15] This judgment was in respect to a 50-year career as a trial lawyer, trial judge, and/or neutral having applied for, objected to and adjudicated fee awards on countless occasions.

[16] I am mindful of Bruntjen's assertions that he was "on the ground" relative to Wheaton being out of state, which has been taken into account.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

Finally, in respect to Cozen, there were three timekeepers, two of which were Cozen partners, charging time to what appears to be a limited and not particularly legal-oriented or legally complex activity. I have examined the time entries and charges involved, and given the duplication, multiple timekeepers and other concerns expressed here, I have found that the following represents the fees that were "just and reasonable and commensurate" to the benefit from the services:

Cozen:	$5,071
Wheaton:	$7,560
Bruntjen:	$3,152

HEIRSHIP

The services of the Applicants did contribute to the benefit of the Estate. And although such benefit is difficult to quantify monetarily, it is possible to assess generally how the requested fees are commensurate with such benefit. This Court was faced with a number of heirship claims which were not sustained. In respect to these claims, this Court sought input from all counsel, and the Applicants did provide beneficial input in respect to protocols for determining the validity or invalidity of such claims—which protocols were utilized by this Court in related proceedings. Moreover, there was some degree of deferral by counsel to the Estate in respect to contesting heirship claims, the Cozen firm playing a significant role in related challenges. Of some interest, counsel to the Estate was fully paid in respect to its work involving heirship claims. Here the guidance of the Court of Appeals (1) relative to the *"big picture*" concerning the size of the Estate and the fees of counsel to the Estate, (2) relative to the statutory guidance concerning counsel for estates deferring to counsel to interested parties and the related savings in attorney fees to counsel for the Estate and (3) relative to the benefit to the Court's management of the Estate derived from the heirs' submissions, have all been taken into account—as discussed generally above.

The work evidenced by the Applicants' time entries resulted in successful challenges to invalid heirship claims, and thus provided a material benefit to all qualified heirs (as opposed to any one of the qualified heirs in whose behalf such time work was expended), and to the effective judicial management of the Estate. Given the estimated size of the Estate, if even a few of the many invalid claims had been allowed, the claims against the estate by such heirs and the dilution of the Estate value available to the qualified heirs, would have been many millions of dollars. Applicants are entitled to fees in respect to this work—the fees awarded being commensurate with the benefit to the Estate and its judicial management, and in turn to all (not just some) of the qualified heirs.

However, once again there was concern about the material duplication between the Applicants, the nature of the Bruntjen and Wheaton co-counsel efforts largely following the lead of the Cozen firm (and its experienced trial lawyers), as was clear from the undisputed representations at the hearing. Moreover, apart from the lead taken by Cozen, there was no showing of any material incremental value associated with three law

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

offices objecting to the heirship claims beyond that associated with one. Accordingly, the undersigned cannot find that awarding the total time charges sought by the Applicants (largely consisting of reviewing work or documents of, and communicating with, the others), would be reasonable or commensurate with the singular benefit. Also, Wheaton's time entries contained a large number of entries which on their face did not appear to relate to heirship issues (compared to other objectives). Having examined the entries with some care, comparing the time charges of co-counsel Bruntjen and Wheaton as compared to Cozen, having concern about the duplication issues described above, whether Wheaton and Bruntjen provided any significant services contributing to the benefit which would not have been yielded by the efforts of Cozen's lead, and a large number of Wheaton entries unrelated to heirship, the undersigned has concluded that the following awards are just and reasonable and commensurate to the benefit:

Cozen:	$50,985
Wheaton:	$8,280
Bruntjen:	$11,397

ENTERTAINMENT:

The evidence was that the Applicants did general work in furtherance of procedures by which the Estate would enter into entertainment deals and the involvement of heirs in enhancing the deals--such deals being a, if not the, material values of the Estate. While the Applicants were unable to quantify the benefit to the Estate in respect to this general category of time entries and charges, the work did contribute to the benefit associated with improved deal terms. Moreover, this Court found that time entries respecting "Entertainment" were deserving of some award, a finding which was not disturbed on appeal. Once again, however, there was concern about the duplication associated with three law offices engaged in comparable efforts, some entries of Bruntjen and Wheaton being on other matters (e.g. Roc Nation, Paisley Park, Tribute, etc.), the material number of time entries of counsel conferring with one another, no showing of any incremental value or benefit from the work of any Applicant beyond the others (although I assumed some enhanced benefit from Wheaton given his entertainment experience), etc. I have concluded that just and reasonable fees commensurate with this benefit are:

Cozen:	$18,213
Wheaton:	$8,280
Bruntjen:	$6,804

WARNER BROTHERS AGREEMENT

The time entries and charges here were in respect to work on a given entertainment agreement, namely the Warner Brothers Agreement, and in particular the potential charge to the Estate associated with a $1.5M commission expense of an advisor, and in respect to the furtherance and/or preservation of related claims to be pursued or

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

now being pursued by a special administrator. The work, largely lead by Cozen, was successful and contributed to a benefit of the Estate. As to the time charges of all Applicants, however, there again was much duplication in furtherance of the same benefit--much of the time being the review and communication of the work of others. And other than the lead role of Cozen, there was no showing of any incremental value or benefit from the work of any Applicant beyond the other. Moreover, many Wheaton time entries expressly deal with other categories and not the Warner Brothers Agreement (such as Paisley Park and Tribute). On the other hand, it is presumed that the entertainment background of Wheaton (and perhaps in turn Bruntjen acting as Wheaton's local counsel) was of some independent value. After an examination of the subject time charges, the nature of the benefit and its (admittedly subjective and difficult) quantification, the fact that some of this work was not being performed by the Estate (which was in part being resisted in respect to the potential fee of the advisor), and other guidance of the Court of Appeals, the undersigned finds that the following fees are compatible with the statute and the guidance of the Court of Appeals discussed above, and are just and reasonable and commensurate with the benefit:

Cozen:	$4,518
Wheaton:	$5,760
Bruntjen:	$3,152

PROTOCOLS

The evidence was that Applicant Cozen submitted protocols in respect to how various contracts should be reviewed, judged and resolved. Counsel to the Estate was involved in such work, but additional beneficial approaches resulted from submissions by Applicants. While it is impossible to quantify in dollars the benefit to the estate of the work by Applicants, given the values associated with contracts between the Estate and third parties, the work of the Applicants undoubtedly "contributed to the benefit" of the Estate in achieving added value in respect to the Estate's contracting. Having examined the time entries of Applicant Cozen, and considering the "big picture" and "broader stroke" guidance of the Court of Appeals and as discussed above, the following amounts are found to be just and reasonable and commensurate with the benefit:

Cozen:	$7,275
Wheaton:	$6,840

(Bruntjen did not provide a spreadsheet in respect to "protocols," and Wheaton provided a spreadsheet under such label, but many of the entries related to other matters—most in respect to heirship. To the extent one was able to discern time entries related to deal assessments or deal protocols, there has been the above award to Wheaton—subject again to all of the duplication issues discussed earlier.)

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

TRIBUTE OR MEMORIAL CONCERT AND JOBU PRESENTS

Given that ultimately the revenue from the Tribute or Memorial Concert ("Concert"), went to the advisors or to the heirs directly, and not to the Estate, it was questionable whether there was any ultimate benefit to the Estate. However, whether there was any related benefit to the Estate associated with the work of the Applicants is mired in a host of issues, some of which are now the subject of efforts by the Second Special Administrator. Moreover, there were intangible benefits from the Concert in respect to the Prince brand and name—driving future values associated with music deals. Moreover, in ordered that no entertainment deal be agreed upon until the same had been provided to the Applicants for review and comment, this Court recognized the benefit to the estate of having a second set of eyes and input.

In respect to the Concert, the evidence was that there was an undertaking by Jobu Presents to promote the Concert and assure a $7 million advance, of which $2 million was actually paid to the Estate. This amount was later returned given a dispute between Jobu Presents and the Special Administrator, and whether the return of the $2 million was ill-advised or unwarranted, there nonetheless was a (somewhat fleeting) benefit to the Estate. The failure to make this benefit a lasting one may have been the fault of a number of parties other than the Applicants or their clients, as is evidenced in the lengthy findings and analysis of the Second Special Administrator who has identified claims of the Estate in respect to a number of issues surrounding relationships between Jobu Presents and the Estate's entertainment advisors. Importantly, there is evidence of the Cozen firm somewhat prophetic then-existing concern about both the appointment of the entertainment advisors and the engagement of Jobu Presents. And there was benefit from Cozen's lengthy submission underpinning in part the Second Special Administrator's report of May 15, 2018 in respect to related claims of the Estate. And the evidence shows that Wheaton (along with Bruntjen) spent considerable time working on promotions which ultimately, and perhaps unfortunately, were not chosen. While it is difficult, under the statute and caselaw, to credit time spent on an unsuccessful effort to enlist a concert promoter (the Court of Appeals expressly noting the denial of fees in respect to expected benefits which did not materialize), this effort has some modest lasting value in the overall mosaic surrounding the claims of the Second Special Administrator.

In short, I do find a benefit to the Estate, however un-quantifiable, in the work of the Applicants in pushing back against various aspects of the original Special Administrator's positions relative to the Concert, and the ongoing potential claims of the Estate. Again, however, a prominent amount of Bruntjen and Wheaton time entries being "calls with co-counsel," or calls with others on which both Wheaton and his local counsel participated, or in some instances entries between the two which do not correlate. Further, there has been no showing of incremental value by any of the Applicants, and as noted the vast majority of Wheaton's time (which was almost 10 times that of Cozen) was communicating with "consultant" apparently, as evidenced by Wheaton's affidavit, in respect to the unsuccessful effort as to a promoter never chosen. Taking all of this into consideration, including the "big picture" and "broader strokes" guidance of the Court of Appeals, this Court's requirement that entertainment deals be vetted for input by

Applicants before Court approval, the apparent justified adversity concerning the original Special Administrator's choice of entertainment advisors and the engagement of Jobu Presents, the failure of the Estate realizing any lasting benefit on the ultimate Concert but considering the $2 million advance albeit returned, and the existing claims in respect to such failure now being pursued by the Second Special Administrator about which the Cozen firm has contributed, I have concluded that just and reasonable awards of compensation commensurate with the benefits to the Estate are as follows:

Cozen:	$8,718
Wheaton:	$7,560
Bruntjen:	$5,092

SPECIAL ADMINISTRATOR:

This category largely relates to oppositions taken by Applicants to various positions of, or fees sought by, the first Special Administrator and its counsel. While there has been no showing that such work has yet successfully resulted in a quantifiable monetary benefit, it does seem that the oppositions have been of benefit to the potential claims of the Estate now being pursued by the Second Special Administrator, and the laboring oar on this work has been Cozen. Moreover, opposition to acts or positions of a special administrator, particularly when related submissions invited by and important to the Court, are beneficial to the judicial management of a large and complex estate, as without the same there often would be no "full picture" on which a trial court can make related determinations.

While Wheaton has submitted a large number of time entries, for the most part they facially fail to relate to oppositions to the special administrator,[17] and there is a material failure to show how Wheaton's "Special Administrator" entries have resulted in any benefit to the estate let alone how the material sought fees are in any way commensurate with any benefit. Wheaton's spreadsheet in this regard seems to be a collection of a large number of dis-jointed time entries without regard to the requirements of the statute relative to the "benefit" or "commensurate" elements. However, the evidence from the affidavits and the submissions at the hearing, as well as Wheaton's appointment as one of the two entertainment counsel for the heirs, accounts for some credit of the "Special Administrator" work shown on his spreadsheet as commensurate with the benefit from his expertise.

[17] Wheaton's spreadsheet time entries for "Special Administrator" seem to largely ignore the category, as they deal with parentage, heirship, estate assets, the tribute, genetic profile, appointment of personal administrator, real estate issues, estate tax, Roc Nation, Estate loans, Super Bowl licensing, etc., and the entries and his affidavit provide little showing of time spent in opposing the SA's positions or fees. Wheaton's spreadsheet fulfilled little of the Procedure Order requirements and failed to make the necessary showings for this category of work. Moreover, Wheaton's affidavit fails to even address this category. Accordingly, there is little showing on which to base a fee award to Wheaton in respect to "Special Administrator" work.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

Cozen's time entries along with Tom Kane's affidavit provide a link with some yet unquantifiable benefit to the Estate, although the number of timekeepers involved seem to be unreasonable given the description of these matters in such affidavit, and any allowance of such time entries must account for the fact that there has been no showing of any existing benefit other than (1) the relationship between the work and the Second Special Administrator's claims yet to materialize, and (2) the benefit to the judicial management of this large and complex Estate associated with reasonable (and judicially invited) opposition to Special Administrator's positions and fee.[18] Accordingly, the undersigned has found the following fees to be just and reasonable and commensurate with the benefit:

Cozen	$70.890
Wheaton	$18,360

(Bruntjen failed to present any time entries relative to "Special Administrator.")

PERSONAL REPRESENTATIVE

There is no question that the Applicants played a beneficial and judicially-invited role in the difficult process of assuring a capable Personal Representative agreeable to the heirs. This work involved a material amount of work identifying, interviewing and assessing Personal Representatives' qualifications, and related conferencing among the parties. Of course, there was no showing of any monetarily quantifiable benefit to the Estate, although work in furtherance of the avoidance of disputes and the selection of an appropriate Personal Representative certainly "contributed" to some benefit. The difficulty, of course, is the "extent" to which the work so contributed, valuing the benefit, and the amount of compensation that would be "just and reasonable and commensurate with" the benefit. Again, we find a number of law offices and a larger number of time-keepers working on the comparable objective respecting the succession of the Estate's governance from a Special Administrator to a Personal Representative, such that the duplication and commensurate concerns apply here. Considering all of these issues, the guidance of the Court of Appeals and an examination of all of the time entries of the Applicants' spreadsheet, the following amounts of compensation are just and reasonable and commensurate with the benefit associated with the engagement of this complex Estate's Personal Representative:

Cozen:	$70,692

[18] Here admittedly the award may be regarded as something of a stretch relative to the "benefit" and "commensurate" elements of the statute, but (1) given the Court of Appeals guidance as to the size of the Estate, (2) given the amount of fees of the Estate's counsel and (3) given the importance of some adversarial process assuring well-founded judicial management and decision-making—particularly respecting judicially-invited submissions in respect to an Estate of this size and complexity, the undersigned concludes that the awards are appropriate, particularly as to Cozen which took the laboring oar in respect to contesting positions and fees of the Special Administrator when there was no one else doing so.

Filed in District Court
State of Minnesota
10/4/2018 2:33 PM

Wheaton:	$6,480
Bruntjen:	$6,790

OTHER CATEGORIES

Applicants have made requests for compensation in categories other than those discussed above, such as Fee Petition, General, Short Form Agreements, UMG Agreement, Meetings with Clients, Bravado, Estate Investors, Travel, Cirque de Solei, Sirius, Court Appearance and Filings, Prince Act, Tidal, etc. In respect these categories not addressed above, the Applicants have failed to provide affidavit or other submissions adequately showing any benefit or other qualifying element of the statute. Also, there have been requests for costs without an adequate showing as to how the costs were tied to services about which a benefit was shown. In short, Applicants (1) have failed to adequately show how the services (and time entries) in these other categories or costs were to the extent of contributions to a benefit, and (2) have failed to adequately show, or provide any information as to, how the compensation associated with these services (and time entries) or costs were "commensurate" with any benefit "from" such services.

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