

Barbara A. Schermerhorn  
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

IN RE CHARLES WESLEY CAIN and  
RUBY G. CAIN, also known as Jeanie  
Cain,

Debtors.

BAP No. EO-06-053  
BAP No. EO-06-058  
BAP No. EO-06-061

CHARLES WESLEY CAIN,

Plaintiff – Counter-  
Defendant – Counter-  
Claimant – Appellee –  
Cross-Appellant,

v.

SETTLEMENT CAPITAL  
CORPORATION,

Defendant – Third-Party-  
Plaintiff – Counter-  
Defendant – Cross-  
Claimant – Appellant –  
Cross-Appellee.

Bankr. No. 04-73131  
Adv. No. 04-7112  
Chapter 13

ORDER AND JUDGMENT\*

Appeal from the United States Bankruptcy Court  
for the Eastern District of Oklahoma

Before McFEELEY, Chief Judge, NUGENT, and BROWN, Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

The controversies in this appeal and cross-appeal arise out of four

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

assignments made by debtor Charles Wesley Cain of certain portions of his share of an annuity received as a tort settlement for the wrongful death of his mother. After making the assignments and receiving cash from the assignee, Settlement Capital Corporation (“SCC”), Cain diverted a portion of the assigned payments to himself. SCC then took legal action against Cain and he eventually filed a Chapter 13 case in the Eastern District of Oklahoma. SCC appeals from that court’s orders (1) determining that two of its security interests in the payment streams were unperfected; (2) directing only a partial disbursement of registry funds to SCC; and (3) limiting its attorney’s fees and expenses. Cain cross-appeals, asserting that the bankruptcy court erred when it determined that Oklahoma law and not California law should have been applied (that determination would have the desirable result, at least to Cain, that one of the four assignments would be deemed void as against public policy under California law). After oral argument and careful review of the record before us, the bankruptcy court’s orders appealed from should be AFFIRMED IN PART, REVERSED IN PART, and REMANDED to the bankruptcy court for proceedings consistent with this Order and Judgment.

I.     Standards of Review

We review the bankruptcy court’s legal determinations (1) that SCC’s security interests were unperfected; (2) that Oklahoma law applied; and (3) how the registry funds should have been disbursed de novo.<sup>1</sup> We review the bankruptcy court’s order on SCC’s motion for reconsideration and the court’s award of attorney’s fees and expenses for abuse of discretion, being mindful that

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<sup>1</sup>     *See Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71 (10th Cir. BAP 2004) (legal issue of whether bankruptcy court erred in concluding that creditor’s security interest was properly perfected reviewed de novo); *Doering v. Copper Mountain, Inc.* 259 F.3d 1202, 1209 (10th Cir. 2001) (choice of law determinations are reviewed de novo); *Haldeman v. State of Wyo. Farm Loan Bd.*, 32 F3d 469, 471 (10th Cir. 1994) (court’s determination of ownership of [asset] transferred is legal issue reviewed de novo).

any factual findings made therein are reviewed for clear error.<sup>2</sup>

II. Factual Background

Prior to 1998, Cain settled a lawsuit concerning the wrongful death of his mother and entered into a written agreement with the tortfeasor, Wal-Mart (the Settlement Agreement). The payment duties under the Settlement Agreement were assumed by Transamerica Annuity Service Corporation (Transamerica Annuity) which, in turn, purchased a single payment annuity from Transamerica Occidental Life Insurance Company (Transamerica Life) with the settlement funds. Under this series of agreements, Transamerica Life was to pay Cain \$3,140 monthly for the rest of his life.

Beginning June 10, 1998, Cain entered into a series of four partial assignments of his payment rights under the Settlement Agreement and the annuity with SCC, each in exchange for lump sums of cash. Each assignment was memorialized by a Purchase and Sale Agreement (“Purchase Agreement”), along with numerous collateral documents. The four assignments were as follows:

a. a June 10, 1998 assignment of \$600 per month of the payment to SCC from July 10, 1998 until August 31, 2007 in exchange for a cash payment to Cain of \$31,244 (“the First Purchase Agreement”);

b. an August 13, 1998 assignment of \$400 per month of the payment to SCC from September 10, 1998 until August 31, 2007 in exchange for a cash payment to Cain of \$21,412 (the “Second Purchase Agreement”);

c. a June 17, 1999 assignment of \$450 per month of the payment to

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<sup>2</sup> See *Matosantos Commercial Corp. v. Applebee’s Int’l, Inc.*, 245 F.3d 1203, 1213 (10th Cir. 2001) (court’s denial of motion for reconsideration is reviewed for an abuse of discretion); *In re Albrecht*, 245 B.R. 666, 669 (10th Cir. BAP), *aff’d*, 233 F.3d 1258 (10th Cir. 2000) (a bankruptcy court’s award of attorney’s fees will not be disturbed on appeal absent an abuse of discretion or erroneous application of the law); *In re Commercial Fin. Servs., Inc.*, 427 F.3d 804, 810 (10th Cir. 2005) (review of the bankruptcy court’s factual determination in connection with a fee award is highly deferential and reviewed for clear error).

SCC from July 10, 1999 until August 31, 2007 in exchange for a cash payment to Cain of \$24,000 (the “Third Purchase Agreement”); and

d.     an August 2, 2000 assignment of \$600 per month of the payment to SCC from September 10, 2000 until August 31, 2007 in exchange for a cash payment to Cain of \$27,071 (the “Fourth Purchase Agreement”).

In sum, Cain assigned \$2,050 per month of his annuity payments in exchange for SCC’s cash payments to him totaling \$103,727.

Each assignment was documented in similar manner. The organic document in each transaction was the Purchase and Sale Agreement which clearly provides that the transaction is a sale of the assigned payment stream and not a loan transaction. In each Purchase Agreement, Cain warrants that he has title to the annuity payments, that the Settlement Agreement and annuity agreements are valid and enforceable as against the payors, and that his transfer of the payment rights violates no laws. Moreover, each Purchase Agreement recites that Cain has an affirmative duty to cooperate in allowing the assigned portions of the payments to be made to SCC as well as a duty to hold any payments he receives in trust for the benefit of SCC. Each also contains a guaranty by Cain of his obligations under the Purchase Agreement and a provision that he will indemnify SCC against any loss of payments resulting from his conduct.

Of importance here is another provision of the Purchase Agreements, the security agreement. Each of the four Purchase Agreements contains a security agreement provision that reads as follows:

It is the intention of the parties hereto that the provisions of this Agreement constitute a purchase and sale of all [Cain’s] right, title, and interest in and to the Periodic Payments. Nonetheless, in order to protect against any conceivable determination that the conveyance was not effective, and as additional assurance that all of the Periodic Payments and all proceeds thereof will be timely paid and delivered to [SCC], [Cain] HEREBY GRANTS TO [SCC] A FIRST PRIORITY SECURITY INTEREST IN ALL OF THE RIGHTS, TITLE AND INTEREST OF [CAIN] IN OR TO ALL OF THE FOLLOWING . . . :

- (i) . . . in any and all money due or to become due under the Settlement Agreement and/or the Annuity;
- (ii) any and all cash, money, checks, deposit accounts, securities, proceeds, dividends, distributions and other property of any kind at any time and from time to time receivable or otherwise distributed in respect of or in exchange for the Periodic Payments or any portion thereof . . . .

. . . .

In this context, [SCC] shall have all of the rights of [sic] secured party under the Uniform Commercial Code of the relevant state and other applicable law . . . .<sup>3</sup>

This security agreement not only secures Cain's repayment obligation in the event the Sale is later determined to be a lending transaction of some kind instead of an absolute assignment, but it also secures all of SCC's rights to recover against Cain should he fail in his duties under the Purchase Agreement. By its terms, the security interest it creates attached to *all* of Cain's payments, not merely the portions he assigned. Thus, when Cain caused some of the payments SCC was entitled to receive to be diverted, SCC could rely on the balance of Cain's payment entitlements to recover whatever damages it sustained as a result of his actions.

SCC attempted to perfect the security interests created by these four security agreements by filing UCC-1 financing statements with the Oklahoma County Clerk in Oklahoma City.<sup>4</sup> SCC filed a financing statement on July 17, 1998 concerning the First Purchase Agreement. This financing statement lapsed on July 17, 2003 when no extension document was filed. Not until April 22, 2004 did SCC file another UCC-1 financing statement concerning the First Purchase

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<sup>3</sup> See First Purchase Agreement, Section 4.6(a), in Appendix in Support of Brief of Appellant Settlement Capital Corporation, Vol. II ("SCC's App."), at 459-460; Second Purchase Agreement, Section 4.6(a), in SCC's App. at 524-525; Third Purchase Agreement, Section 4.6(a), in SCC's App. at 588-589; and Fourth Purchase Agreement, Section 4.6(a) in SCC's App. at 653-654.

<sup>4</sup> Under Oklahoma law, the Oklahoma County Clerk is the central filing office for financing statements. Okla. Stat. tit. 12A, § 1-9-501(a)(2) (2001).

Agreement.

SCC filed a financing statement on August 13, 1998 concerning the Second Purchase Agreement. This financing statement lapsed on August 13, 2003 after no extension was filed. Not until April 22, 2004 did SCC file another UCC-1 financing statement concerning the Second Purchase Agreement.

SCC filed financing statements concerning the Third and Fourth Purchase Agreements on June 17, 1999 and August 2, 2000 respectively. The June 17, 1999 financing statement was continued by a timely UCC-3 continuation statement being filed on April 22, 2004. The August 2, 2000 financing statement was continued by a timely UCC-3 continuation statement being filed on May 5, 2005.

Cain executed all four purchase agreements in the state of Oklahoma and received his payments there. SCC executed the Purchase Agreements in Texas. The Purchase Agreements each contain a choice of venue clause by which the parties agree that any litigation under the Purchase Agreements will transpire in the Texas courts. The Purchase Agreements do not contain a choice of law clause.

In June of 2003, acting on the advice of counsel, Cain directed Aegon Structured Settlements, formerly known as Transamerica Annuity, to send all annuity payments to his home address. In July of 2004, SCC contacted Aegon and demanded that Aegon resume direct payment to SCC. Aegon thereafter withheld the checks from both Cain and SCC until their dispute could be resolved. Cain filed this Chapter 13 bankruptcy case on August 19, 2004.

Cain commenced this adversary proceeding in November 2004, seeking turnover of the annuity payments by SCC to him. After the December 13, 2005 trial, the bankruptcy court entered an order on February 10, 2006 (the "First Order") in which the court entered a declaratory judgment that SCC was the rightful owner of the assigned payments. SCC received judgment granting its

counterclaim against Cain for breach of the Purchase Agreements, but held that SCC's security interests established under the First and Second Purchase Agreements were not perfected. It also overruled Cain's objection to SCC's proofs of claim and ordered that any payments held in the court's registry be paid to SCC. Finally, the court ordered that SCC would be entitled to receive all future annuity payments.

Thereafter, on Cain's timely motion for reconsideration, the court entered its May 8, 2006 order (the "Reconsideration Order") in which it held that only \$2,050 per month was ever assigned to SCC and that SCC should therefore receive no more than \$41,000 of the registry funds (20 months times \$2,050) with the remaining balance of the registry funds paid to the Chapter 13 trustee. The Reconsideration Order also modified the First Order by limiting SCC to receiving payments from April of 2006 until August 31, 2007, the original duration of the assignments under the Purchase Agreements, and directing that all subsequent payments be sent to Cain.

Finally, on May 26, 2006, the court entered an order (the "Fee Order") allowing SCC attorney's fees and expenses for prosecuting various aspects of the case and the adversary proceeding, but, in doing so, limited SCC's fees to \$50,000, instead of the \$141,000 it requested, and granted reimbursement of SCC's expenses in the amount of \$10,397.75.

SCC timely appealed from the Reconsideration Order and the Fee Order. Cain timely cross-appealed from the First Order's determination that Oklahoma law applied and that the assignments of payment were not void.

### III. Analysis

#### a. Choice of Law

Cain argues on cross-appeal that California law should apply to this dispute because Transamerica's principal place of business is in that state. Cain presses this point because under California statute, assignees of structured settlements

must follow certain procedures or these assignments are deemed void.<sup>5</sup> We note that these statutes did not become effective until January 1, 2000, so even if California law applied here, only the Fourth Purchase Agreement would be affected. Cain relies on the situs of the issue of the Annuity as a basis to apply California law. But, as SCC's claims and rights flow from the Purchase Agreements, not the annuity itself, we need not determine what law applies to the interpretation of the annuity.

We start with the fundamental rule that a federal court is to apply the choice of law rules of the forum in which it presides.<sup>6</sup> Oklahoma choice of law rules concerning the interpretation of a contract provide that a contract is to be interpreted under the laws of the place it is to be performed or, if no place of performance is indicated, according to the law of the place it is made.<sup>7</sup> We agree with the bankruptcy court's conclusion that the Purchase Agreement was to be performed in Oklahoma and was executed by the assignor of the payment rights in Oklahoma. Accordingly, the bankruptcy court's conclusions as to choice of law to interpret the Purchase Agreements should be affirmed.<sup>8</sup>

b.     Attachment, Scope and Perfection of SCC's Security Interests; Lapse and Refiling

As noted above, each of the four Purchase Agreements contains a security agreement by which Cain, as the assignor of these payments, grants a security interest in "all of [Cain's] right, title and interest *in any and all money due or to*

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<sup>5</sup> Cal. Ins. Code §§ 10136(a) and 10137 (West 2007).

<sup>6</sup> *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941); *Dang v. UNUM Life Ins. Co.*, 175 F.3d 1186, 1190 (10th Cir. 1999).

<sup>7</sup> *Dang*, 175 F.3d at 1190; *see also* Okla. Stat. Ann. tit. 15, §162 (West 2006).

<sup>8</sup> SCC's Motion to Dismiss Cain's Cross-Appeal, filed August 11, 2006, for Cain's purported failure to file a separate brief in support of the cross-appeal is DENIED. *See* Fed. R. Bankr. P. 8009(a).

*become due* under the Settlement Agreement and/or the Annuity.”<sup>9</sup> It also attaches any cash or cash equivalent, any credits, any proceeds or other collateral received in exchange for the “Periodic Payments.”<sup>10</sup> The term “Periodic Payments” refers to the payments assigned under the Purchase Agreements.<sup>11</sup> The use of the words “any and all money due or to become due” just a few lines before must refer to exactly that: all of Cain’s payment rights under the Settlement Agreement or the Annuity. A security interest becomes enforceable only if value has been given, the debtor has rights in the collateral, and the debtor has authenticated a security agreement that describes the collateral.<sup>12</sup> A security interest attaches when it becomes enforceable.<sup>13</sup> Thus, the bankruptcy court correctly determined in the First Order that SCC’s security interest in the four Purchase Agreements attached to all of the debtor’s payment rights under those Purchase Agreements.

We differ, however, with the bankruptcy court’s conclusion in the First Order that SCC was unperfected with respect to the First and Second Purchase Agreements. It is true that the two 1998 financing statements lapsed. Financing

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<sup>9</sup> See First Purchase Agreement, Section 4.6(a)(i), *in* SCC’s App. at 459; Second Purchase Agreement, Section 4.6(a)(i), *in* SCC’s App. at 524; Third Purchase Agreement, Section 4.6(a)(i), *in* SCC’s App. at 588; and Fourth Purchase Agreement, Section 4.6(a)(i), *in* SCC’s App. at 653 (emphasis added).

<sup>10</sup> See First Purchase Agreement, Section 4.6(a)(ii), *in* SCC’s App. at 459-460; Second Purchase Agreement, Section 4.6(a)(ii), *in* SCC’s App. at 524-525; Third Purchase Agreement, Section 4.6(a)(ii), *in* SCC’s App. at 588-589; and Fourth Purchase Agreement, Section 4.6(a)(ii), *in* SCC’s App. at 653-654.

<sup>11</sup> See First Purchase Agreement *in* SCC’s App. at 453; Second Purchase Agreement *in* SCC’s App. at 518; Third Purchase Agreement *in* SCC’s App. at 582; and Fourth Purchase Agreement *in* SCC’s App. at 647.

<sup>12</sup> Okla. Stat. tit. 12A, § 1-9-203(b) (2006).

<sup>13</sup> Okla. Stat. tit. 12A, § 1-9-203(a) (2006).

statements are effective for a period of five years from their filing.<sup>14</sup> They lapse five years after filing unless a continuation statement is filed according to § 1-9-515(d).<sup>15</sup> Here, SCC's financing statements lapsed in 2003. They filed nothing for the First and Second Purchase Agreements until April 22, 2004, at which time they filed UCC-1 financing statements and not UCC-3 continuation statements. We conclude that with the filing of the new statements in April of 2004, SCC reperfected its security interests as of that date.<sup>16</sup> While there is no dispute that a gap in the period of perfection occurred, there is no legal basis on which to conclude that the belated filing of the new financing statements did not serve to perfect the security interests, albeit from a later date. As no other competing creditor claimed an interest in the payments during the gap, and as the debtor did not file his bankruptcy case until August of 2004, well after the new statements had been filed, SCC retains a perfected first security interest in support of its rights to the debtor's performance under the First and Second Purchase Agreements. The bankruptcy court erred when it ruled otherwise. Accordingly, SCC has a valid and perfected security interest in all of Cain's payment rights

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<sup>14</sup> Okla. Stat. Ann. tit. 12A, § 1-9-515(a) (West 2001).

<sup>15</sup> Okla. Stat. Ann. tit. 12A, § 1-9-515(c). (West 2001)

<sup>16</sup> The UCC was revised in 2000, with a July 1, 2001 effective date. Although the agreements were executed before the UCC revision, pursuant to §9-702, the revised code applies to transactions or liens within its scope, even if the transaction or lien was entered into or created before the revised code took effect. Okla. St. Ann. tit. 12A, §1-9-702 (West 2001). Both the old and revised UCC, however, permit reperfecting of a security interest by the filing of a second financing statement after the lapse of the first financing statement. *See* Okla. Stat. Ann. tit. 12A, §1-9-702(2)(c) (West 2001) (A financing statement [] is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in collateral as to which the filing has lapsed.); Okla. St. Ann. tit. 12A, §1-9-509, cmt. 4 (West 2006) ([T]he authentication of a security agreement *ipso facto* constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization.). *See also In re Aliquippa Mach. Co.*, 343 B.R. 145, 149 (Bankr. W.D. Pa. 2006) (creditor could reperfect its security interest by filing second financing statement after initial financing statement lapsed).

under the Settlement Agreement and the Annuity.

c.     SCC's Recovery Rights

Determining the degree and extent of what SCC is entitled to recover, both as a remedy for Cain's diversion of the twenty payments, as well as in the future, is the most confusing aspect of this case. In the First Order, the bankruptcy court determined that SCC was entitled to recover all of the funds paid into the registry, some \$61,258, and to receive *all* of the payments to which Cain would be entitled under the Settlement Agreement in apparent perpetuity. In the Reconsideration Order, Cain convinced the bankruptcy court to hold that SCC was only entitled to a payment of 20 times \$2,050, or \$41,000, from the registry and, in addition, to receive only \$2,050 per month of Cain's payment entitlement until August 31, 2007, the original term of the Purchase Agreements.

We begin with the factual premise that, when he entered into the Purchase Agreements, Cain traded portions of his Annuity payment rights to SCC in exchange for immediate cash. SCC bargained for, and received the right to receive a certain portion of a certain number of payments, ending with the August, 2007 payments. Cain then diverted twenty payments from SCC, beginning in January of 2003. From January of 2003 until August of 2004, Aegon paid Cain directly, rather than SCC, in violation of SCC's rights under the Purchase Agreements. Then, after receiving SCC's demand, Aegon froze the payments as of August 2004 and has, since that time, paid them into the registry of the bankruptcy court. Thus, from January of 2003 until at least the date of the First Order, February 10, 2006, if not later, SCC has received nothing by virtue of the Purchase Agreements. SCC filed a proof of secured claim in this case for \$41,000, representing the twenty pre-petition diverted payments.<sup>17</sup> In the First

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<sup>17</sup> The debtors scheduled SCC as having an unsecured claim of \$116,850, or 57 payments of \$2,050.

Order, the court overruled the Cains' objection to SCC's claim, allowing it in the amount of \$41,000. We note that this is for Cain's pre-petition liability only and does not consider the liability to SCC that Cain has accrued post-petition. To the extent SCC has received no payment from Aegon as provided in the four Purchase Agreements, SCC is entitled to recover not only the \$41,000 it did not receive pre-petition, but also any payments accrued after August of 2004 when Aegon began to pay into the court registry.

It seems to us that SCC is entitled to recover (a) the \$41,000 in payments diverted by Cain pre-petition; (b) the payments SCC did not receive once all payments were diverted to the registry; (c) a sufficient number of additional future payments of \$2,050 (including, no doubt, payments that become due to Cain after August of 2007) to assure that SCC receives the number of payments it bargained for in the Purchase Agreements; and (d) whatever reasonable fees and expenses SCC has incurred in enforcing its rights under the Purchase Agreements.

As noted above, SCC's security interest in the entire payment stream under the Settlement Agreement is perfected. SCC therefore has a secured claim of \$41,000 that should have been awarded from the registry, along with a continually accruing secured post-petition obligation of \$2,050 per month for every month after the filing date that it did not receive a payment from Aegon. By limiting SCC's registry recovery to \$41,000, the Reconsideration Order essentially ignored the fact that SCC continued to be deprived of its payment stream post-petition, in violation of the Purchase Agreements. This is clear factual and legal error. Because of SCC's secured status in all of the registry funds, it should have received all of the registry funds in order to recover its pre-petition claim and Cain's post-petition obligations.

Similarly, the bankruptcy court's limitation of the payment duration to August of 2007 is error because SCC is improperly deprived of the right to collect the payments it was deprived of by virtue of Cain's actions, along with its

attorney's fees and expenses, from its collateral, i.e., the payments. In addition, SCC should be allowed to recover the balance of the payments it expected to receive under the Purchase Agreements without the August, 2007 temporal limitation. Therefore, the bankruptcy court should have allowed SCC to continue to recover from the payment stream whatever it did not recover from the registry.

In summary, SCC's claim should be allowed as secured in the amount of \$41,000, the twenty payments diverted pre-petition. SCC has a perfected security interest in each payment made into the registry, as well as all of Cain's payment rights under the Settlement Agreement. SCC should be permitted to enforce its lien by recovering from the registry and, to the extent there is a shortfall, from subsequent payments payable to the debtor (a) its \$41,000 secured claim; (b) an amount equal to whatever Periodic Payments it did not receive during the time payments were made into the registry; (c) a sufficient number of future Periodic Payments to enable SCC to realize the benefit of its bargain; and (d) its reasonable fees and expenses incurred in enforcing its rights under the Purchase Agreements. In short, SCC is entitled to an effective realization of the benefit of Cain's assignments to it, not merely what Cain withheld from it pre-petition. On remand, the bankruptcy court should make those calculations and enter judgment for SCC accordingly.

d.    Attorney's Fees

Because the bankruptcy court could not divine from the many redacted entries in the SCC fee application what its counsel spent its time doing, it pared the fee application down from \$141,000 to \$50,000. It based this conclusion on evidence received from a lawyer who practices consumer bankruptcy law in Eastern Oklahoma. While we fully understand the court's frustration with the submissions it received on the very day of the hearing, we believe the bankruptcy court should have reviewed the unredacted time statements that were offered by SCC under seal in order to make the appropriate findings and apply the factors set

out in *Ramos v. Lamm*<sup>18</sup> and § 330(a).<sup>19</sup>

Section 330 of the Bankruptcy Code provides for “reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney . . . .”<sup>20</sup> By restricting compensation to actual and necessary service, § 330 imposes a mandatory duty on bankruptcy courts to exercise billing judgment in the award of fees. As articulated by a leading bankruptcy treatise, under § 330, the court has a duty to scrutinize the time records and evaluate the propriety of the compensation requested.<sup>21</sup>

Although a court has wide discretion in exercising its judgment on the appropriate fee based on its own expertise, that discretion is not without limits. A conclusory statement that a fee is reasonable or unreasonable is generally insufficient.<sup>22</sup> The court must “provide a concise but clear explanation of its reasons for the fee award.”<sup>23</sup> The court’s order on attorney’s fees must allow meaningful review and it must articulate the decisions it made, give principled reasons for those decisions, and show its calculation.<sup>24</sup> Meaningful review is frustrated, if not impossible, when the lower court does not explain why it

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<sup>18</sup> 713 F.2d 546 (10th Cir. 1983).

<sup>19</sup> 11 U.S.C. § 330(a)(1)(A). Although § 330 does not expressly state that it applies to creditor’s counsel, there is no reason to believe that it does not. Moreover, this section contains a concise articulation of the lodestar test, which is applicable in determining the amount of reasonable attorney’s fees.

<sup>20</sup> *Id.*

<sup>21</sup> 3 *Collier on Bankruptcy* ¶ 330.04[4][c] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2002).

<sup>22</sup> *Hensley v. Eckerhart*, 461 U.S. 424, 439, n.15 (1983).

<sup>23</sup> *Id.* at 437; *Ramos*, 713 F.2d at 552.

<sup>24</sup> *Adams v. Mathis*, 752 F.2d 553, 554 (11th Cir. 1985).

awarded compensation at that level.<sup>25</sup>

In the Fee Order, the bankruptcy court simply stated that attorney's fees should be reduced to \$50,000 based on the difficulty in examining the billing statement. Without an explanation for its deductions, this Court cannot meaningfully review the bankruptcy court's conclusions. Moreover, when the bankruptcy court declined to review the unredacted time statements, SCC was denied a meaningful opportunity to meet its burden of proving that its fee request was reasonable. When faced with inadequately documented fee applications, courts have adopted two general practices. Some courts reduce or deny the inadequately documented charges while others give applicants a chance to supplement or correct deficiencies in their fee applications.<sup>26</sup> Accordingly, on remand, the bankruptcy court should review the unredacted time statements and make the appropriate findings concerning SCC's fee applications.

IV. Conclusion, Order, and Instructions:

In light of the forgoing, we conclude that Cain's Cross-Appeal as to the choice of Oklahoma law should be DENIED and the bankruptcy court's holding in that connection should be AFFIRMED. The bankruptcy court's holding in the First Order that SCC's security interests in the assigned payments for the First and Second Purchase Agreements were unperfected should be REVERSED. The bankruptcy court's holding in the Reconsideration Order limiting SCC's recovery to \$41,000 from the funds in the registry and whatever payments Cain receives

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<sup>25</sup> We note that the bankruptcy court need not delineate each disallowance and reason for it. See *In re Metro Transp. Co.*, 107 B.R. 50, 54 (E.D. Pa. 1989).

<sup>26</sup> See *In re Coastal Equities, Inc.*, 39 B.R. 304, 311 (Bankr. S.D. Cal. 1984) (the court reduced the fee request by five percent, which represented the amount of the insufficient entries); *In re Boston and Maine Corp.*, 46 B.R. 990, 995-96 (D. Mass.), *vacated*, 776 F.2d 2 (1st Cir. 1985) (court totaled the exact number of hours inadequately documented and reduced the fee request accordingly); *In re Gianulias*, 111 B.R. 867, 869 (E. D. Cal.1989) (held not error to deny without prejudice all fees until the application was supplemented with evidence on reasonable hourly rates).

until August 31, 2007 is error and should be REVERSED AND REMANDED with instructions to enter an order allowing SCC to recover (a) the \$41,000 in payments diverted by Cain pre-petition; (b) the payments SCC did not receive once all payments were diverted to the registry; (c) a sufficient number of additional future payments of \$2,050 (including, no doubt, payments that become due to Cain after August of 2007) to assure that SCC receives the number of payments it bargained for in the Purchase Agreements; and (d) whatever reasonable fees and expenses SCC has incurred in enforcing its rights under the Purchase Agreements. In executing these instructions, the bankruptcy court should make any calculations necessary to effectuate this relief. Finally, we REVERSE AND REMAND the Fee Order with instructions to review the unredacted fee statements of SCC's counsel and to enter an order that allows appropriately documented and demonstrated fees and disallows those that are not justified by what SCC has submitted.