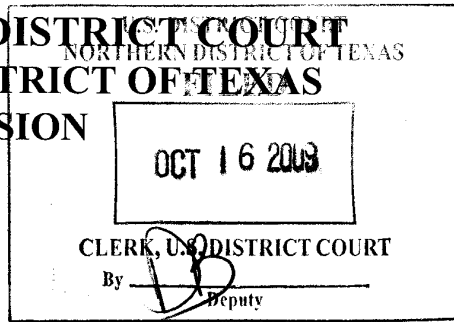


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



ESTATE OF JOHNNY FISHER, #
Deceased, #
Plaintiff #

v. #

JP MORGAN CHASE BANK, N.A., #
GLENN MILTON, JAY SANDLIN, #
LUCY NORRIS, RN, and NANCY #
ARGO, RN, #
Defendants. #

Civil Action No. 3:09-cv-00748-B

**PLAINTIFF'S MOTION FOR COSTS, EXPENSES, AND ATTORNEY'S FEES
with supporting affidavit, UNDER 28 U.S.C. §1447(c)**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE, JANE BOYLE:

Plaintiff, THE ESTATE OF JOHNNY FISHER, DECEASED ("Plaintiff"), files this Motion for Costs, Expenses, and Attorney's Fees, with supporting affidavit, under 28 U.S.C. §1447(c) against Defendant, JP Morgan Chase Bank, N.C. ("Chase Bank") with respect to Defendant's improper removal of the underlying state court case and would respectfully show this Court as follows:

1. **Procedural History and Fact Statement.**

Motion for Attorney Fees and Expenses

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a. On February 11, 2005, the Debtor, Fort Worth Osteopathic Hospital, Inc., filed its Chapter 7 voluntary petition in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, Case No. 05-41513-DML-7.

b. On October 2, 2008, Plaintiff initiated a state court action (the “State Court Action”) against Chase Bank, a citizen of Ohio, and four individual Texas citizens in Probate Court No. 2 of Johnson County, Texas. On October 3, 2008, the State Court Action was transferred to the 413th State District Court of Johnson County, Texas. The 413th District Court accepted the transfer on October 9, 2008.

c. Chase Bank admits that both Plaintiff and the four individual defendants are residents of Texas. Thus, on the face of Plaintiff’s original petition in state court, there is no complete diversity of the parties to support federal diversity jurisdiction under 28 U.S.C. §1332(a)(1).

d. On October 9, 2008, Chase Bank filed its Notice of Removal with the clerk of the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, to remove the State Court Action to the bankruptcy court. The State Court Action, thus, became an adversary proceeding in the bankruptcy court under Adversary No. 08-04168-DML in the bankruptcy case of the bankrupt Fort Worth Osteopathic

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Hospital, Inc.¹.

e. In its Notice of Removal, Chase Bank essentially asserted two (2) bases for federal court jurisdiction: (1) the bankruptcy court's "related to" jurisdiction under 28 U.S.C. §1334(b) and (2) the district court's diversity jurisdiction under 28 U.S.C. §1332(a)(1).²

f. Plaintiff filed its Motion to Remand on January 20, 2009. The bankruptcy court, by Memorandum Opinion dated April 15, 2009, elected to permissively abstain under 28 U.S.C. §1334(c)(1). In regard to diversity jurisdiction, the bankruptcy court noted that it lacked jurisdiction to determine diversity jurisdiction and transferred the adversary to the United States District Court for the Northern District of Texas. This case was first transferred to Judge Means in the Fort Worth Division, under Case No. 4:09-cv-00219-Y. Ultimately, the case was transferred to this court on April 23, 2009, and assigned Civil Action No. 3:09-cv-00748-B, as herein above shown.

g. On September 23, 2009, this Court entered its Memorandum Order, granting Plaintiff's Motion to Remand, remanding this case to the state court from which

¹ In re: Fort Worth Osteopathic Hospital, Inc. d/b/a Osteopathic Medical Center of Texas, Bankruptcy Case No. 05-41513-DML-7, under assigned Adversary Case No. 08-4168-DML.

² Chase Bank's Notice of Removal, at Page 6

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it was removed. Chase Bank, then, filed its Motion for Reconsideration of Memorandum Order on October 1, 2009.

h. Plaintiff incorporates herein by reference Plaintiff's Response to Defendant JP Morgan Chase Bank, N.A.'s Motion for Reconsideration of Memorandum Order ("Plaintiff's Response"), which response is being filed contemporaneously with this motion.

2. Chase Bank's Removal was Improper.

a. Plaintiff asserts that Chase Bank did not act in good faith by attempting to remove the case to federal court. While applicable federal law permits the removal of state court cases under certain circumstances, the tenuous nature of Chase Bank's removal allegations confirm that Chase Bank was obviously forum shopping in order to avoid trying this case in state court. In addition, in its attempted removal, Chase Bank failed to comply with one or more of the applicable filing requirements for removal. Finally, Chase Bank knew or should have known that it had a "heavy burden" to sustain removal on the grounds that Plaintiff had "fraudulently joined" the four Texas citizens in order to defeat diversity of the parties and to keep the case in state court. As a result of Chase Bank's failure to (i) comply with the applicable removal procedures, (ii) recognize well established Texas law regarding the propriety of Plaintiff's cause of action against

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the individual defendants, (iii) correctly relate applicable and controlling state law, and, (iv) offer any competent evidence supporting its “fraudulent joinder” allegation, Plaintiff asserts that Chase Bank’s removal was improper, thus entitling Plaintiff to recover its costs, expenses, and attorney’s fees in defending against the removal and seeking a remand as authorized by 28 U.S.C. §1447(c)

b. Chase Bank’s apparent lack of good faith, its improper removal procedures and its lack of candor and honesty with the courts is evidenced by the following actions taken by Chase Bank in attempting the removal.

i. **Failure to File the Notice of Removal in the Proper Court.** Chase Bank removed the underlying State Court Action to the United States Bankruptcy Court for the Northern District of Texas, *Fort Worth Division*, in an attempt to invoke the bankruptcy court’s “related to” jurisdiction. In the same Notice of Removal, Chase Bank also asserted diversity jurisdiction. However, 28 U.S.C. §1441(a) required Chase Bank to file its diversity removal to “the district court of the United States for the district and division embracing the place where such action is pending”. In this instance, the State Court Action was pending in Johnson County, Texas, which is located in the Dallas Division of the Northern District. Therefore, Chase Bank filed its Notice of Removal (*vis a vis* diversity jurisdiction) in the wrong court. What is even more surprising is that

Motion for Attorney Fees and Expenses

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Chase Bank *admitted* that it was filing its Notice of Removal in the *wrong court*.³ This fact, alone, gave Judge Lynn pause in footnote 13 of his opinion to abstain when he wrote “[b]ecause removal of a case under 28 U.S.C. §1441 must be ‘to the district court of the United States for the district [and division]...where [the] action is pending,’ it is not clear that removal has actually been accomplished by Defendant under section 1441”.⁴ Even if it resulted in redundancy, Chase Bank should have filed a separate Notice of Removal in the United States District Court for the Northern District of Texas, Dallas Division, if it sought to remove the case on the basis of diversity jurisdiction.

ii. **Failure to File Notice of Removal in State Court.** As detailed in Plaintiff’s Response, on a recent review of the clerk’s records for the two underlying state court cases, Plaintiff’s attorneys discovered that Chase Bank’s Notice of Removal was not filed in either the Probate Court or District Court of Johnson County, Texas, contrary to Chase Bank’s counsel’s representation, notices and certificate.⁵ This conduct further

³ See, Chase “Bank’s Notice of Removal, at Page 3, footnote 2

⁴ Bankruptcy Court Memorandum Order, dated April 15, 2009.

⁵ See, Notice of Removal with accompanying Certificate and Notice to State Court of Notice of Removal; Exhibit “2” to Plaintiff’s Response (Affidavits of Sherri Porter, Deputy District Clerk, Johnson County, Texas and Lina Jones, Clerk of the Probate Court of Johnson County, Texas).

Motion for Attorney Fees and Expenses

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reflects the impropriety of the removal and serves as another ground for an award of costs, attorney fees, and expenses, pursuant to 28 U.S.C. §1447(c). Although the Notice of Removal was filed more than one year ago, Chase Bank and its attorneys never attempted to correct this error, or acknowledge their mistakes to the courts.

iii. **Failure to Remove Case from Proper State Court.** Chase Bank removed the State Court Action from the Johnson County Probate Court, attached the probate court docket sheet to the Notice of Removal and represented that there was no docket sheet in the District Court files, in explanation of its actions.⁶ This representation was, also false.⁷

iv. **Chase Bank's Meritless Fraudulent Joinder Allegation.** Chase Bank concedes that the four individual defendants are citizens of Texas. However, Chase Bank nonetheless claims that they were fraudulently named in the State Court Action by Plaintiff for the specific purpose of defeating a potential removal to federal court based on diversity. It is important to note that Judge Lynn, in arriving at his decision to abstain, concluded that Chase Bank's [diversity jurisdiction] claim is "hardly flawless - and it

⁶ Notice of Removal, at page 11, footnote 9

⁷ see, affidavit of Sherri Porter, Johnson County Asst. District Clerk, with attached docket sheet from the District Court lawsuit (Exhibit "2", to Plaintiff's Response).

Motion for Attorney Fees and Expenses

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seems to the court that the mere diversity of citizenship of the parties provides less compelling support for retaining jurisdiction than would the existence of a federal question”.⁸ As a general rule, statutes conferring removal jurisdiction are strictly construed against removal.⁹ A defendant who removes an action to federal court and alleges fraudulent joinder of a non-diverse defendant as the basis for removal bears the heavy burden of proving the alleged fraudulent joinder by *clear and convincing evidence*.¹⁰ Moreover, the removing party must prove that there is absolutely no possibility that the plaintiff will be able to establish a cause of action against the in-state defendant in state court, or that there has been outright fraud in the plaintiff’s pleading of jurisdictional fact.¹¹ Even though Chase Bank knew that it had a heavy burden, it nonetheless attempted to remove this case to federal court and provided little or no

⁸ Bankruptcy Court’s Memorandum Opinion, April 15, 2009 (copy attached to Plaintiff’s Response)

⁹ *Leffall v. Dallas Indep. Sch. Dist.*, 28 F. 3d 521, 524 (5th Cir. 1994); *Brown v. Demco, Inc.*, 792 F. 2d 478, 482 (5th Cir. 1986)

¹⁰ *Parks v. New York Times Co.*, 308 F. 2d 474, 478 (5th Cir. 1962), *cert. denied*, 376 U.S. 949, 11 L. Ed. 969, 84 S. Ct. 964 (1964); “Preponderance” means that it is more likely than not. “Clear and convincing” is a higher standard and requires a high probability of success. *Aetna Insurance Co. v. Paddock*, 30 F. 2d 807 (5th Cir. 1962)

¹¹ *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F. 3d 256, 259 (5th Cir. 1995) (quoting *Green v. Amerada Hess Corp.*, 707 F. 2d 201, 205 (5th Cir. 1983), *cert. denied*, 464 U.S. 1039, 79 L. Ed. 166, 104 S. Ct. 701 (1984) [emphasis added])

Motion for Attorney Fees and Expenses

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supportive evidence therefor.

3. Award of Costs, Expenses and Fees Pursuant to 28 U.S.C. §1447(c).

a. Plaintiff requests that Plaintiff be awarded its costs, expenses, and attorney's fees pursuant to 28 U.S.C. §1447(c). When granting a motion for remand, a district court may order the removing party to pay the opposing party its "just costs and any actual expenses, including attorney's fees, incurred as a result of the removal".¹² An award of attorney's fees under §1447(c) is entirely within the district court's discretion.¹³ As the Fifth Circuit has noted, the commentary to §1441(c) states that the central question in determining whether to impose fees on remand to state court is the "propriety of the removal".¹⁴ In applying §1447(c), the court must consider "whether the defendant had objectively reasonable grounds to believe the removal was legally proper."¹⁵

b. The misconduct and procedural errors committed by Chase Bank and its attorneys in these removal proceedings, as shown herein and in Plaintiff Response, reflect

¹² 28 U.S.C. §1447(c)

¹³ See, *Valdes v. Wal-Mart Stores, Inc.*, 199 F. 3d 290, 292 (5th Cir. 2000); *Miranti v. Lee*, 3 F. 3d 925, 928 (5th Cir. 1993)

¹⁴ See, *Miranti*, 3 F. 3d at 928 (citing David D. Siegel, Commentary on 1988 Revision of 28 U.S.C.A. §1447 (West Supp. 1993))

¹⁵ *Valdes v. Wal-Mart Stores, Inc.*, 199 F. 3d 290, 293 (5th Cir. 2000)

Motion for Attorney Fees and Expenses

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the questionable purpose behind Chase Bank's efforts to remove this case to federal court. If nothing else, Chase Bank has successfully delayed this case for more than one year due to its futile and disingenuous removal efforts. Chase Bank knowingly removed this case to the wrong court, made misrepresentations in its removal documents regarding compliance with the appropriate removal requirements, and has offered strained, if not wholly incorrect and erroneous interpretations of well-established law. Chase Bank's flawed attempts to remove this case from state court has caused Plaintiff to incur significant attorney fees and expenses. For these reasons and those stated in Plaintiff's Response, Chase Bank did not have "objectively reasonable grounds to believe that its removal was legally proper", thus entitling Plaintiff to an award of its costs, expenses and attorney's fees under 28 U.S.C. §1447(c).

c. If this Court finds that Plaintiff is entitled to its costs, expenses and attorney's fees pursuant to §1447(c), Plaintiff requests the award to be in the amount of \$45,505.64. This amount requested is supported by the affidavit of Plaintiff's attorney, E.L. Atkins, which affidavit is attached to and incorporated into this motion, the same as if set forth herein, verbatim and marked Exhibit "A". This amount requested is appropriate. It represents only the "fees and costs incurred in the [federal courts] that

Motion for Attorney Fees and Expenses

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would not have been incurred had the case remained in state court".¹⁶

PREMISES CONSIDERED, Plaintiff, the Estate of Johnny Fisher, Deceased, respectfully requests this court to award Plaintiff's costs, expenses and attorney's fees pursuant to 28 U.S.C. §1447(c), as herein requested, and for such further and other relief to which Plaintiff may show itself entitled.

LAW OFFICE OF E.L. ATKINS
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and
MACLEAN & BOULWARE
Attorneys at Law
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(817)645-3700
(817)645-3788 (FAX)

By: 

E. L. Atkins
TSB #01409000
John MacLean
TSB #12764000

¹⁶ *Avitts v. Amoco Prod. Co.*, 111 F. 3d 30, 32 (5th Cir. 1997)

Motion for Attorney Fees and Expenses

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ESTATE OF JOHNNY FISHER,	#	
Deceased,	#	
Plaintiff	#	
	#	
v.	#	Civil Action No. 3:09-cv-00748-B
	#	
JP MORGAN CHASE BANK, N.A.,	#	
GLENN MILTON, JAY SANDLIN,	#	
LUCY NORRIS, RN, and NANCY	#	
ARGO, RN,	#	
Defendants.	#	

AFFIDAVIT OF E.L. ATKINS

BEFORE ME, on this date, personally appeared E.L. ATKINS, who, upon his oath deposes and states, as follows:

My name is E.L. Atkins. I am an attorney licensed to practice law in Texas, TBN 01409000. My license to practice law was issued to me in 1966. My license is in good standing and has remained so for the forty-two (42) years that I have practiced law in Texas. I am over the age of twenty-one (21) and am of sound mind. I have personal knowledge of the matters contained in this affidavit, and the same are true and correct.

I am one of the attorneys of record for The Estate of Johnny Fisher, Deceased, ("Estate")

Affidavit of E.L. Atkins
Attorney Fees
Motion to Remand
Civil Action No. 3:09-cv-00748-B

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in the above-styled case, along with John MacLean. During the course of these removal proceedings, I retained St. Clair Newbern, attorney to assist me in these matters as were before the Bankruptcy Court in Fort Worth and William Wolf, attorney to assist me in the proceedings before this Federal District Court in Dallas. Their invoices are attached hereto, along with my time and charges.

I began representing Estate in November, 1999, when Mr. Fisher's widow, Jackie Fisher, now deceased, retained me to represent her in all matters surrounding and in connection with Johnny Fisher's death in October, 1999 at Fort Worth Osteopathic Hospital, Inc.. I have continued to represent Estate in these matters through the current date. I filed papers to begin the administration of Mr. Fisher's estate in the probate court in Johnson County, Texas and have personally participated in all phases of the estate administration. I was also the lead counsel for Estate continuously throughout the malpractice case which Estate filed against the now bankrupt, Fort Worth Osteopathic Hospital, Inc..

I filed the claim for breach of fiduciary duty and conspiracy to breach a fiduciary duty against Chase Bank and named individuals, on behalf of Estate, in the Johnson County Probate Court and subsequently transferred to the 413th District Court, Johnson County, Texas in October, 2008. I have continuously represented Estate in this matter, after JP Morgan Chase Bank filed its Notice of Removal, removing that state court action to the United States

Affidavit of E.L. Atkins
Attorney Fees
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Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

I retained St. Clair Newbern, an attorney practicing in Fort Worth, who specializes in bankruptcy law, to assist and advise me in connection with obtaining an order lifting the stay so I could proceed against the bankrupt hospital and, then, in connection with the removal, when Chase Bank removed this case to the bankruptcy court in Fort Worth in October, 2008. After these removal proceedings were transferred to the federal district court in Dallas, I retained William Wolf, attorney in Dallas, to consult on the fraudulent joinder issues.

Attached to this affidavit is a summary of the time I have spent in representing Estate. As my attached summary reflects, my time spent only in response to Chase Bank's Notice of Removal is shown as 109.65 hours, or approximately two (2.07) hours per week, since the case was removed from state court more than one year ago. The related expenses I incurred and documented are \$553.30. Mr. Newbern's charges for his consultations are \$2,186.09, as shown by his invoice, dated August 25, 2009, attached hereto and Mr. Wolf's charges for his consultations are \$12,612.50, as shown by his invoice, dated October 16, 2009, also attached hereto. Therefore, my total expenses, including consultant fees, is \$15,351.89.

I have practiced law in Texas for more than forty (40) years. I am familiar with the reasonable and customary attorney fees for representing a client in this or similar cases. I represent that such reasonable and customary hourly fee is \$275.00. I am familiar with the State

Affidavit of E.L. Atkins
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Bar of Texas, Department of Research & Analysis, "Hourly Rates in 2005 Report", which was published by the state bar September 21, 2006. The hourly fee I charge for like services is consistent with the state bar poll, reflecting reasonable, hourly attorney fees in Texas, on and after 2006.

Accordingly, I here state under oath that the total charges of \$ 30,153.75 for my time and efforts as the Estate's attorney in responding to Chase Bank's Notice of Removal are reasonable and necessary and reflect the customary charges for like efforts and services. The expenses were expenses I actually incurred by me in these proceedings and they, also, are reasonable and were necessary. The consulting fees I incurred to Mr. Newbern and Mr. Wolf reflect work they actually did at my request and their fees and charges are reasonable and necessary in aiding me in responding to Chase Bank's removal efforts. The total charges (attorney fees, consultant fees, costs and expenses) are \$45,505.64.

Affidavit of E.L. Atkins
Attorney Fees
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Civil Action No. 3:09-cv-00748-B

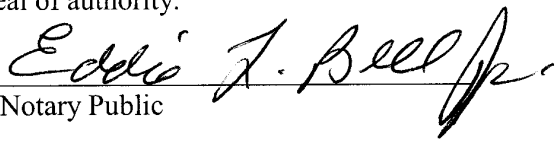
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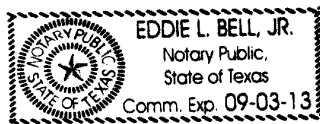
Therefore, I state, under oath, that Plaintiff's attorney fees, costs and expenses incurred in these proceedings are \$45,505.64, which amount is reasonable and I request that this amount of \$45,505.64 be awarded to Plaintiffs in this matter, pursuant to 28 U.S.C. §1447(c).

Further, Affiant sayeth not.


E.L. Atkins, Affiant

BEFORE ME, on this 16 day of October, 2009, personally appeared E.L. Atkins who, upon his oath, states that he has read the above and foregoing affidavit and that same is true and correct; to certify which, witness my hand and seal of authority.


Notary Public



Affidavit of E.L. Atkins
Attorney Fees
Motion to Remand
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Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Hourly rate

\$275.00

Date	Item	Time (hours)	Atty Fee	Expense	Payment
06/22/2007	Review Options, Trustee Brown officially advises there is no money in self-insured trust fund to satisfy judgment of \$975,000.00.00	0.25	\$68.75		
06/25/2007	Formal Demand on Trustee for payment of judgment	0.75	\$206.25		
06/25/2007	Formal Demand on Chase Bank, as trustee of self-insured trust for payment of judgment	0.00	\$0.00		
07/01/2007	telephone conference, St. Clair Newbern regarding Decision, discuss options regarding whether to intervene in adversary proceeding.	0.75	\$206.25		
07/27/2007	Correspondence	0.30	\$82.50		
08/06/2007	Conference, St. Clair N, Trustee and Trustee's attorney, discuss intervention into Adversary, Newbern's offices	2.50	\$687.50		
08/05/2007	research, motion to intervene-rights of intervenor, factors and conditions required to intervene	3.00	\$825.00		
08/07/2007	research, motion to intervene - pleading requirements, rights of trustee vs Estate, Trustee concerned with large, secured creditor, MBIA	3.00	\$825.00		
08/09/2007	conference, St. Clair, motion to intervene, Trustee's concerns	2.50	\$687.50		
08/24/2007	correspondence	0.50	\$137.50		
06/12/2007	rough draft, motion to intervene, discuss with Newbern	2.50	\$687.50		
	research, motion to intervene, cases, Colliers, e-mailed from Newbern	4.00	\$1,100.00		
08/25/2007	final draft, motion to intervene and file	6.00	\$1,650.00		
08/30/2007	Review Deposition Notices. Motions to quash deposition notices, Houston and other Fisher heirs	0.75	\$206.25		
	Attend Depositions, Jay Sandlin and Robert Lansford	0.00	\$0.00		
08/22/2007	Response to Chase Bank Request for Production, Objections	2.50	\$687.50		
08/22/2007	First Amended Motion to Intervene, rough	1.50	\$412.50		

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Date	Item	Time (hours)	Atty Fee	Expense	Payment
08/24/2007	final draft, first amended motion to intervene and file hearing, motion to intervene	4.00	\$1,100.00		
	attend second deposition, Robert Lansford	3.00	\$825.00		
10/03/2007	correspondence	3.50	\$962.50		
10/10/2007	Prepare notes for hearing on plea in intervention	0.50	\$137.50		
	Hearing on plea in intervention	1.00	\$275.00		
	Hearing on plea in intervention	0.50	\$137.50		
10/10/2007	Prepare Order on Granting Intervention, limited appearance	0.75	\$206.25		
10/10/2007	Fax to Hamilton, Intervention Order	0.50	\$137.50		
	Preparation of heirs for deposition	2.00	\$550.00		
	Attend Deposition, Ms. Kim Spinks, on notice by Chase Bank	3.00	\$825.00		
01/31/2008	Requests for Production directed to Chase Bank	4.00	\$1,100.00		
04/21/2008	attend mediation, Chase Bank, Trustee Brown, Atkins, for Fisher and Barrett Stetson, for Ovalle family in Ovalle case	4.00	\$1,100.00		
05/01/2008	Research, filing claim in probate court, discuss procedure with John M.	3.00	\$825.00		
06/25/2008	rough draft, petition against Chase Bank, Probate Court	5.00	\$1,375.00		
	Draft petition, file probate court, transfer documents to District Court	2.00	\$550.00		
09/14/2008	Brief, Review the proposed settlement, Trustee and Chase	2.50	\$687.50		
10/10/2008	correspondence	0.50	\$137.50		
09/20/2008	objections to settlement, review, research	4.00	\$1,100.00		
10/03/2008	Prepare and file final draft, Objections to settlement	3.00	\$825.00		
	Hearing on Ojections	0.00	\$0.00		
10/10/2008	Review Notice of Removal	1.00	\$275.00		
11/10/2008	Research-Motion to Remand, conference with Mr. Newbern	9.00	\$2,475.00		
11/15/2008	Research - Motion to Remand, conspiracy laws	6.00	\$1,650.00		

Hourly rate \$275.00

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Hourly rate

\$275.00

Date	Item	Time (hours)	Atty Fee	Expense	Payment
12/02/2008	conference with Mr. Newbern, bankruptcy rules regarding attorney fees, . effects of filing in wrong division.	2.50	\$687.50		
12/04/2008	research, motion to remand, law library, bankruptcy court standards for removal	4.00	\$1,100.00		
12/04/2008	research, motion to remand	3.00	\$825.00		
01/08/2009	prepare rough draft motion to remand	5.00	\$1,375.00		
01/10/2009	Motion to Remand, Notes for hearing	4.00	\$1,100.00		
01/10/2009	prepare final motion to remand and file	3.00	\$825.00		
02/03/2009	Fax-Hamilton, Hearing, Motion to Remand	0.50	\$137.50		
02/18/2009	Hearing, Motion to Remand, Bankruptcy Court	3.00	\$825.00		
03/02/2009	Motion to Stay Proceedings, Defendant's Motion to Dismiss, S/J	1.50	\$412.50		
03/02/2009	Fax Hamilton, Motion to Stay Defendant's Proceedings	0.30	\$82.50		
03/18/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
03/18/2009	Conference, and fax - Hamilton, transcript on hearing	0.30	\$82.50		
04/01/2009	Cost of transcript, hearing on Motion to Remand, Bankruptcy Court		\$0.00	\$106.25	
04/21/2009	fax to John McLean, Cases and Ruling on Motion to Remand	0.40	\$110.00		
06/02/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
06/03/2009	Notice of Removal search, not found	2.50	\$687.50		
06/29/2009	fax-Sherri Porter, Affidavit for review	0.40	\$110.00		
06/02/2009	Conference, Judge Boyle's Clerk regarding status. Request to speak to law clerk assigned to case.	0.25	\$68.75		
06/05/2009	Received call from Judge Boyle's clerk. Advised to submit questions or comments through clerk and Law Clerk's would advise through Clerk.	0.25	\$68.75		
06/05/2009	Call from court clerk, Discussion regarding service of process in state court action. Stated I would check with Johnson County Clerk's office.	0.25	\$68.75		

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Date	Item	Time (hours)	Atty Fee	Expense	Payment
06/10/2009	Reviewed file in District Clerk's Office in Cleburne. Nothing in file regarding removal. Citations not issued.	1.50	\$412.50		
	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
06/12/2009	Returned to Cleburne to review Probate File, since all documents, docket sheet, court information attached to Notice of Removal was from Probate Court. Advised Notice of Removal not on file.	2.00	\$550.00		
06/12/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.25	\$68.75	\$34.04	
06/17/2009	Prepared corrected affidavit for probate court clerk and submitted to clerk for signing and notarizing	0.75	\$206.25		
06/17/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
06/20/2009	Picked up affidavit from probate clerk and filed with papers in state court.	0.50	\$137.50		
06/21/2009	Returned to Cleburne, follow-up to determine location of Notice of Removal. Both District Clerk and Probate Clerk stated they could not sign affidavit of non-filing until they searched all records, and not just specific files.	1.00	\$275.00		
06/21/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
06/25/2009	Prepared affidavits for both probate court clerk and district court clerk	2.50	\$687.50		
06/25/2009	submitted affidavits to clerks for review. A few changes were necessary. District Clerk stated they were still searching other records.	1.25	\$343.75		
	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	
06/30/2009	Received call from Barbara in John's office stating that District Court Clerk, assigned to task, stated that she was ready to sign affidavit.	0.25	\$68.75		
06/30/2009	prepared final draft affidavit for District Clerk. Barbara said she would get it signed and I could pick it up next week.	0.75	\$206.25		
06/30/2009	Travel to Cleburne, 92 miles @ \$0.37/mile	0.00	\$0.00	\$34.04	

Hourly rate

\$275.00

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
 FISHER ESTATE VS CHASE BANK, ET AL

Hourly rate \$275.00

Date	Item	Time (hours)	Atty Fee	Expense	Payment
07/15/2009	Picked up affidavit from District Clerk and filed copy of District Clerk affidavit and Probate Clerk affidavit, with papers in state courts.	0.50	\$137.50		
07/15/2009	Travel to Cleburne, 92 miles @ \$.37/mile	0.00	\$0.00	\$34.04	
08/03/2009	lunch conference, Bill Wolf, discuss nature of remand proceedings, procedures in Dallas Federal Courts, citation, remand, removal issues, request to represent in getting removal issues resolved.	2.75	\$756.25		
08/04/2009	Telephone conference, Bill Wolf, citations issues, motion to remand supplement. Discussed fraudulent joinder issues.	0.75	\$206.25		
08/07/2009	Telephone conference, Bill Wolf, lost contact and could not get back, phone problems NO CHARGE	0.00	\$0.00		
08/10/2009	Telephone conference, Bill Wolf, citations issues, motion to remand supplement and whether reply is advised. Decision made to prepare reply.	2.00	\$550.00	\$20.00	
08/13/2009	Copies, Bird's copies		\$0.00		
08/13/2009	Obtain summons from Federal District Clerk, Dallas	0.75	\$206.25		
08/13/2009	Travel, Dallas Federal Court 37 mi @ \$.37/mi		\$0.00	\$13.69	
08/10/2009	Fax documents to Bill Wolf	0.75	\$206.25		
08/15/2009	Conference with Bill Wolf, review cases sent by Mr. Wolf for supplement and reply to Chase Bank's Response to Motion to Remand, Discussion of Sanctions regarding false certificate of filing	1.50	\$412.50		
08/15/2009	Copy documents for Mr. Wolf's files		\$0.00	\$67.00	
08/20/2009	Research, Reply to Response to Motion to Remand	2.00	\$550.00		
08/20/2009	Prepare Rough Draft, Reply to Response to Motion to Remand	7.00	\$1,925.00		
08/21/2009	Revise Rough Draft, Reply to Response to Motion to Remand	5.00	\$1,375.00		
09/23/2009	Review Court's Memorandum Order of Remand	2.00	\$550.00		

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Date	Item	Time (hours)	Atty Fee	Expense	Payment
09/23/2009	Conference with Bill Wolf, re Court's Order of Remand. Discuss Bill Wolf's research; points suggested in response to reconsideration motion	0.50	\$137.50		
09/25/2009	Conference with St. Clair Newbern, re Court's Order of Remand	0.50	\$137.50		
09/26/2009	Prepare First Amended Petition, for filing in state court	3.00	\$825.00		
	File First Amended Petition in state court and obtain new citations for all defendants	1.00	\$275.00		
	Cost for new citations (5 defendants)		\$0.00	\$40.00	
10/02/2009	Review Chase Bank's Motion for Reconsideration of remand order	1.75	\$481.25		
10/02/2009	Conference with Bill Wolf	0.50	\$137.50		
10/04/2009	Research, Response to Motion for Reconsideration	2.00	\$550.00		
10/04/2009	Prepare Response to Motion for Reconsideration, rough drafts	5.00	\$1,375.00		
10/06/2009	Prepare Final Draft, Response to Motion for Reconsideration	2.00	\$550.00		
10/06/2009	File Response to Motion for Reconsideration, copy to all counsel	2.00	\$550.00		
10/06/2009	Time and Charges from Mr. Newbern, since Notice of Removal	8.50	\$2,337.50		
	Time and Charges from Mr. Wolf, since Notice of Removal	0.00	\$0.00		
10/10/2009	Prepare Response to Motion for Reconsideration, discuss with Mr. Wolf	2.50	\$687.50		
10/10/2009	St. Clair Newbern Consult invoice		\$0.00	\$2,186.09	
10/10/2009	William Wolf Consult invoice		\$0.00	\$12,612.50	
			\$0.00		
			\$0.00		
					\$275.00

Fisher General Ledger - Removal

LAW OFFICE OF E.L. ATKINS
ATTORNEYS
TIME AND CHARGES LEDGER
 Post-Judgment Activities
FISHER ESTATE VS CHASE BANK, ET AL

Date	Item	Time (hours)	Atty Fee	Expense	Payment
					\$275.00
	SUMMARY OF TIME, CHARGES AND EXPENSE				

Total Billable time (hours)	189.70				
Total attorney fees		\$52,167.50		\$15,351.89	
Total Expenses				\$67,519.39	
Total Attorney Fees plus Expenses				\$67,519.39	
Total Payments					\$0.00
Balance Due					
Time and Charges since Notice of Removal Filed by Chase Bank (on and after 10-10-08)					
Total Billable time (hours)	109.65				
Total attorney fees		\$30,153.75		\$15,351.89	
Total Expenses				\$45,505.64	
Total Attorney Fees plus Expenses				\$45,505.64	
Total Payments					\$0.00
Balance Due					

William L. Wolf, P.C.
(214) 750-1395
5949 Sherry Lane, Suite 550
Dallas, TX 7522

Invoice submitted to:
E. L. Atkins
325 South Mesquite St., Suite A
Arlington TX 76010

October 16, 2009

In Reference To:1702.0001
Bank Matter

Invoice #25765

Professional Services

	<u>Hours</u>
9/1/2009 WLW Legal analysis of emails; preparation of emails.	0.40
CPH Conference with WLW; reviewed Supplemental Motion to Remand.	1.00
9/8/2009 CPH Email/WLW; prepared motion for costs, legal research.	4.00
9/9/2009 CPH Q&A for WLW; research regarding jurisdiction/filing issue.	3.00
9/16/2009 CPH Conference with WLW regarding status.	0.30
9/17/2009 WLW Legal analysis of email.	0.40
9/19/2009 WLW Legal analysis of email.	0.50
9/23/2009 WLW Phone/client regarding remand; preparation of emails; legal analysis of email.	0.50
CPH Conference with WLW regarding issue; reviewed Boyle Order; email/WLW.	1.00
9/24/2009 WLW Legal analysis of email; conference with CPH.	0.30
CPH Conference with WLW regarding issues.	0.80
10/1/2009 WLW Legal analysis of emails; preparation of emails; legal analysis of issues.	0.70
CPH Conference with WLW	0.40
10/2/2009 CPH Research regarding stay.	1.00
WLW Legal analysis of emails; legal analysis of cases regarding remand.	0.60

E. L. Atkins

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	<u>Hours</u>	
10/3/2009 WLW Legal analysis of email; preparation of email.	0.20	
10/5/2009 WLW Legal analysis of email.	0.40	
10/6/2009 CPH Conference with WLW regarding issues.	0.50	
10/8/2009 CPH Conference with WLW; prepared/revised motion for costs; reviewed ELA brief.	3.00	
10/10/2009 CPH Email/WLW; obtained copy of order	0.50	
		<u>Amount</u>
Subtotal of charges		\$5,662.50
For professional services rendered	19.50	\$5,662.50
Previous balance		\$6,950.00
		<u>Balance due</u>
		\$12,612.50

LAW OFFICES OF ST CLAIR NEWBERN III

A Professional Corporation
1701 River Run, Suite 1000
Fort Worth, TX 76107
Phone: 817-870-2647 / Fax:
817-335-8

Invoice submitted to:

Fisher v. Payne, Osteopathic
Hospital, et al
c/o Mr. E. L. Atkins
P. O. Box 157
Arlington TX 76004

August 25, 2009

In Reference To: File No. 6086

	<u>Amount</u>
Previous balance	\$2,186.09
Balance due	<u>\$2,186.09</u>

When making payment, PLEASE include the file number on your check. Payment is due upon receipt of this statement. Any payments received or posted after the 25th of the month will be reflected in the next billing cycle.