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3 JUDGE HERB ROSS (Recalled)

4 **UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA**  
5 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: [www.akb.uscourts.gov](http://www.akb.uscourts.gov))  
6 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

8 In re  
9 CHANNEL CONSTRUCTION, INC.,  
10 Debtor(s)

Case No. J14-00103-HAR  
In Chapter 11

11 **MEMORANDUM REGARDING MCGEE  
12 LAW OFFICES FEE APPLICATION [ECF  
13 No. 91]**

14 Before entering orders approving the fees of McGee Law Offices (MLO) and modifying the  
15 terms of MLO's retention the court requests some clarification.

16 The court has reviewed the joint fee application and application to modify the previous  
17 order approving retention of Terrence K. McGee of MLO as special counsel.<sup>1</sup> In general, I have  
18 no quarrel with the math and detail shown by MLO's five billing statements which are exhibits to  
19 the fee application.<sup>2</sup>

20 I want to point out to MLO, however, that it improperly collected \$15,000 from the debtor  
21 in August, prior to approval of its fees and expenses.<sup>3</sup> This should not happen again. The order  
22 authorizing MLO's retention specifically states that all payments are subject to prior court order.

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24 <sup>1</sup> The previous order for retention is at ECF No. 38, entered on May 23, 2014. The joint application for  
fees and modification of the terms of employment are filed at ECF Nos. 91 and 92.

25 <sup>2</sup> ECF No. 91, Exhibits A-E.

26 <sup>3</sup> Shown on Exhibit C, ECF No. 91.

1 Also, MLO started working post-petition on April 1, 2014, but did not get approval for  
2 employment until May 23, 2014, *nunc pro tunc*. No explanation for the delay in seeking approval  
3 of its retention has been offered as required by Ninth Circuit precedent.<sup>4</sup> Again, I will assume  
4 that this was due to inexperience in bankruptcy protocol and not press the point. No one else has  
5 raised the issue.

6 My sole concern is that the proposed Legal Representation Agreement can be fairly read to  
7 mean that if the court approves the retention agreement – i.e., granting a hybrid of reduced  
8 hourly rates and a contingency fee – the new reduced hourly rate would kick in for fees incurred  
9 after July 18, 2014. On the other hand, it might have been the intent of the parties that only fees  
10 subsequent to court approval are at the reduced rate. It is ambiguous to the court. Paragraph 8 of  
11 the agreement<sup>5</sup> reads:

12 8. No Effect on Terms Under Which Prior Services Were Rendered. Client  
13 and MLO acknowledge that MLO has, prior to the execution of this Legal  
14 Representation Agreement, represented Client in the investigation of the claims to  
15 be pursued under this Legal Representation Agreement and on other matters. This  
16 Legal Representation Agreement does not change the terms for fees earned,  
17 whether paid or still owing to MLO, *prior to the execution of this Legal  
Representation Agreement*, but MLO shall be compensated in accordance with this  
Legal Representation Agreement for all services provided on the claims described  
first above, including any assistance provided to Client in the pending Chapter 11  
proceeding, from and after the approval of this Legal Representation Agreement by  
the Bankruptcy Court. [emphasis added]

18 The motion for approval of the modification agreement was not filed until October 2,  
19 2014, almost two-and-a-half months after it was executed. So, the court needs clarification that  
20 the debtor and MLO are on the same page as to the starting date for the reduced fees. If the  
21 intention was for fees incurred after July 18, 2014 to be charged at the reduced rate, subject to the  
22 court approving the hybrid billing scheme, the billing statements would have to be redone to  
23 reflect that.

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25 <sup>4</sup> In re Weibel, Inc., 176 B.R. 209, 213 (9<sup>th</sup> Cir. BAP 1994) (court approval *nunc pro tunc* approval  
should be limited to exceptional circumstances).

26 <sup>5</sup> ECF 92, Exhibit H, ¶ 8.

1 Supplemental papers should be filed by the debtor and MLO to clarify the issue. Then the  
2 court will enter orders approving the fees and modification of the terms of retention.

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4 DATED: November 3, 2014

5 /s/ Herb Ross  
6 HERB ROSS  
7 U.S. Bankruptcy Judge

8 Serve :

9 Cabot Christianson, Esq., for debtor  
10 Terence McGee, Esq., special counsel for debtor  
11 Michael Mills, Esq., for the UCC  
12 Thomas Buford, Asst. US Trustee  
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