

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20th JUDICIAL DISTRICT, PART III**

CHLORA A. LINDLEY-MYERS, Special)	
Deputy Commissioner of the Tennessee)	
Department of Commerce and Insurance,)	
)	
Petitioner,)	No. 10-507-III
)	
v.)	“Petition for Contempt v.
)	Posey, Bachman and others”
SMART DATA SOLUTIONS, LLC, and others,)	
)	
Respondents.)	

OBJECTION TO LIQUIDATOR’S FEE REQUEST

Respondents Evans Petree, P.C. and William Hendricks, Russell Hensley, and Theodore Kitai respectfully submit this objection to the fee request filed by the Liquidator. In support of the Objection, the Respondents would show as follows:

One of the main complaints that the Respondents have with the Liquidator’s fee request is the apparent substantial duplication of efforts by the three lawyers who worked on the case. Without detailed billing, it is difficult to pin-point all duplication, but at times two (and, in at least one instance, three) lawyers appeared for the proceedings where one would do. Attorneys Mr. Garfinkle and Mr. Young both attended the CITM depositions in Florida on December 14-16, 2011, although they apparently did not charge for their travel time. Mr. Garfinkle and Mr. Young also attended the Evans Petree depositions in Nashville on January 24-25, 2012 (as did Mr. Zade, although he did not charge for his time). Mr. Garfinkle, Mr. Young, and Mr. Zade all attended the trial, and all billed for that time. Over all, the Liquidator’s legal team billed for 1,279 hours of lawyer time, more than twice the number of hours billed by Respondents’ counsel in this case.

Respondents acknowledge the result the Liquidator's counsel obtained for their client. But it should be pointed out that, even at the hourly rates the Liquidator's counsel agreed to, the total attorneys' fees requested equal one-third of the amount awarded, and this was not a contingency case. A contributing factor are the fees charged by Mr. Zade, who began working on this case as a \$60/hour clerk and later raised his rate to \$120/hour when he became an attorney.

Attached to this Objection is a printout of the requested fees for Mr. Zade. It reveals that he began the bulk of his work going through email to determine "which are responsive to discovery requests." From August 3, 2011 until November 10, 2011, he appears to have spent over 250 hours reviewing emails to determine responsiveness. (See Exhibit 1 attached). Beginning October 24, 2011, he continued to do the same work and started billing twice as much for it because he had become an attorney. But Mr. Zade was doing the same work for which he had previously billed as a clerk, and there is no apparent change in his responsibilities. His rate for similar work, even when he was an attorney, should be limited to \$60/hour. These hours are labeled "A" on Exhibit 1. As indicated on Exhibits 2 and 3 attached to this Objection, the total number of hours spent on this activity after Mr. Zade became an attorney was 93.5 hours. That number times \$60/hour, the difference between his rate as an attorney and his rate as a clerk, is \$5,610. This does not even take into consideration the extraordinary number of hours spent on this task.

From November 11, 2011 until February 10, 2012, Mr. Zade engaged in an activity described as "conversion and organization of discovery documentation into PDF format for contempt case." The description of services rendered (see the entries labeled "B" on Exhibit 1) suggests a clerical conversion of documents involving 140.3 billed hours, which could have been

reasonably done by a clerk at no more than \$25/hour or outsourced to a copying company at the same or even lower cost. There is no suggestion that any legal complexity was involved in this process. The Respondents suggest that Mr. Zade's hourly rate of \$120 should be reduced to \$25 for this truly clerical work. The difference between the rate charged and a reasonable rate is \$95/hour. Multiplying that amount times 140.3 hours equals \$13,328.50, which the Court should determine to be excessive. Once again, this does not even take into consideration the huge number of hours spent on this repetitive exercise.

From December 6, 2011, through December 14, 2011, Mr. Zade spent 31 hours on "development of evidentiary notebook for CITM depositions; preparation of discovery documents to be turned over to Alex Fardon for contempt case." (See Exhibit 1, entries labeled "C"). Once again, this appears to be work that was done that was primarily clerical in nature and should be approved at the rate of \$60/hour. The difference between the fees charged and a reasonable rate is \$1,860. (See Exhibits 2 and 3).

On January 2 and 3, 2012, Mr. Zade billed for "preparation of duplication of CITM deposition DVDs and discovery documents produced by Alex Fardon." (See Exhibit 1, entries labeled "D"). Once again, this appears to be not only a clerical duty but one that could have been easily outsourced to a copying company for no more than \$25/hour, rather than using an attorney at the rate of \$120/hour. The Plaintiff suggests that the excessive fees billed for this service were \$1,282.50. (See Exhibits 2 and 3).

Mr. Zade attended all three days of the trial, and billed 20 hours for that attendance. (See Exhibit 1, entries labeled "E"). Respondents contend that his presence at trial was unnecessary, given the fact that two excellent and experienced lawyers were already appearing for the

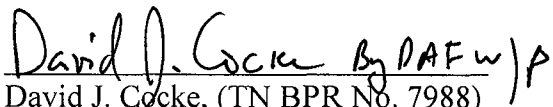
Liquidator in that matter. (Respondents had one lawyer at trial.) Fees charged for that time were \$2,400.

Finally, following the trial, Mr. Zade billed at least 10 hours of time for “preparation of exhibit notebooks.” (See Exhibit 1, entries labeled “F”). Given that the trial was over, this appears to be no more than an effort to organize the files and should be charged at a clerical rate, not at a rate for counsel. Accordingly, Respondents suggest that these fees should be approved at \$60/hour and that a credit of \$600 be given. (See Exhibits 2 and 3).

The fees that Respondents consider to be clearly excessive are summarized on Exhibit 3 to this Objection and total \$25,081. In addition, the Court should also look at the number of hours spent by Mr. Zade on routine review of documents, as well as the total number of lawyer hours billed by the Liquidator’s counsel as a group, which was more than twice the total of the Respondents’ own lawyers.

WHEREFORE, Respondents respectfully request that the Court adjust the fee amount requested by \$25,081, plus whatever additional amount the Court believes warranted by what appears to be the excessive number of hours billed in this case.

Respectfully submitted by,

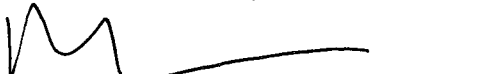
 David J. Cocke By DAF w/p

David J. Cocke, (TN BPR No. 7988)
EVANS|PETREE, P.C.
1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120
PH: 901.525.6781 / FAX: 901.374.7545
Email: dcocke@evanspetree.com

Attorneys for Evans Petree, P.C.

and

HARWELL HOWARD HYNE
GABBERT & MANNER, P.C.

By: 
Craig V. Gabbert, Jr. (Tenn. 4702)
D. Alexander Fardon (Tenn. 13787)
333 Commerce Street, Suite 1500
Nashville, Tennessee 37201
Telephone: 615-256-0500
cvg@h3gm.com; daf@h3gm.com

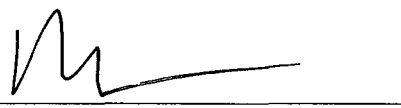
*Attorneys for Evans Petree, P.C.; William L. Hendricks, Jr;
Russell Hensley; and Theodore Kitai*

Certificate of Service

On May 25, 2012, I caused this document to be sent by email and by U.S. Mail to:

Robert M. Garfinkle
Garfinkle, McLemore & Young, PLLC
2000 Richard Jones Road, Suite 250
Nashville, Tennessee 37215

Sarah H. Hiestand
Lyndsay F. Sanders
Office of the Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207


D. Alexander Fardon

G. Zade Time



Date	Staff	Description	Hours	Rate
4/25/2011	Zade	Meeting with B. Garfinkle and P. Young regarding contempt action	1.00	60.00
5/19/2011	Zade	Meeting with B. Garfinkle about brief in contempt case and formation of appendix for brief	0.50	60.00
5/20/2011	Zade	Prepare appendix of contemptuous acts for brief	3.00	60.00
5/21/2011	Zade	Prepare appendix of contemptuous acts for brief	3.00	60.00
5/24/2011	Zade	Prepare appendix of contemptuous acts for brief; meet with B. Garfinkle about formation of appendix chart for contempt brief	5.50	60.00
5/26/2011	Zade	Prepare appendix of contemptuous acts for brief	0.50	60.00
8/1/2011	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt case. Phone call with Phillip Young to discuss ATA production requests	5.30	60.00
8/2/2011	Zade	Meet with Phillip Young to discuss how to proceed with production requests in contempt case; analysis of e-mails to determine which are responsive to discovery requests	5.80	60.00
8/3/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	8.70	60.00
8/4/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	1.20	60.00
8/5/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	2.00	60.00
8/8/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	6.00	60.00
8/9/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	4.50	60.00
8/11/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	7.00	60.00

8/12/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	4.00	60.00
8/15/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	5.00	60.00
8/16/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	7.50	60.00
8/18/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	2.50	60.00
8/23/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	4.50	60.00
8/24/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	7.00	60.00
8/25/2011	Zade	Analysis of emails to determine which are responsive to discovery requests; meeting with paul Eggers and Robert Garfinkle to work on Petitioners Responses to Lawyer's first Set of Discovery Requests	5.00	60.00
8/26/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	2.30	60.00
8/29/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	3.50	60.00
8/30/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	2.50	60.00
8/31/2011	Zade	Analysis of emails to determine which are responsive to discovery requests	4.00	60.00
9/6/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	6.00	60.00
9/7/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.00	60.00
9/13/2011	Zade	Review of discs from Alex Fardon pertaining to contempt petition discovery	7.00	60.00
9/15/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.00	60.00
9/20/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	4.00	60.00

9/30/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.00	60.00	
10/3/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	6.00	60.00	
10/8/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	4.00	60.00	
10/10/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	4.00	60.00	
10/12/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	8.00	60.00	
10/13/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.00	60.00	
10/14/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	3.00	60.00	
10/17/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	9.00	60.00	
10/18/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	7.50	60.00	
10/24/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	4.50	120.00	A
10/27/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	7.50	120.00	A
10/28/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	3.50	120.00	A
11/1/2011 Zade	Meet with B. Garfinkle and P. young regarding discovery process for contempt	0.70	120.00	
11/3/2011 Zade	Phone call with Sarah Hiestand regarding the response to motion to dismiss malpractice complaint; analysis of emails to determine which are responsive to discovery requests in contempt case	6.50	120.00	A
11/4/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	3.00	120.00	A
11/7/2011 Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.50	120.00	A

11/8/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case; case law research regarding liquidator/receiver and statute of limitations	5.00	120.00	A
11/9/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	3.00	120.00	A
11/10/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	2.50	120.00	A
11/11/2011	Zade	Conversion of discovery documentation in contempt case into pdf format	5.00	120.00	B
11/14/2011	Zade	Analysis of emails to determine which are responsive to discovery requests in contempt case	5.00	120.00	B
11/15/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	7.00	120.00	B
11/16/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	6.00	120.00	B
11/17/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	6.00	120.00	B
11/18/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	2.00	120.00	B
11/21/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	5.50	120.00	B
11/22/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	7.00	120.00	B
11/23/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	6.00	120.00	B
11/28/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	6.00	120.00	B
11/29/2011	Zade	Conversion and organization of discovery documentation into .pdf format for contempt case	5.00	120.00	B
11/30/2011	Zade	Phone call with Sarah Hiestand regarding discovery documents; deliver discovery documents	0.80	120.00	
12/1/2011	Zade	Phone call with Sarah Hiestand regarding discovery documents in contempt matter	0.70	120.00	

	Meeting with Paul Eggars regarding CITM depositions and updated CITM communications; meeting with Bobby Garfinkle and Phillip Young including a conference call with Sarah Hiestand and Tony Greer to discuss discovery in contempt case and how to proceed forward; meeting with Bobby Garfinkle and Phillip Young to discuss CITM depositions in contempt case and creation of exhibits notebooks; conversion and organization of discovery documentation into PDF format for contempt case	7.70	120.00	
12/5/2011 Zade				
12/6/2011 Zade	Development of evidentiary notebook for CITM depositions	8.00	120.00	C
	Meeting with Phillip Young to discuss production of documents in contempt case; conversion and organization of discovery documents into PDF format for contempt case			
12/7/2011 Zade		6.00	120.00	
	Confer with Phillip Young regarding CITM depositions; production of exhibits; conversion and organization of discovery documentation into PDF format for contempt case; preparation of CITM documentation and exhibits to be turned over to Alex Fardon for CITM deposition			
12/8/2011 Zade		11.20	120.00	B
	Delivery of discovery documents to Sarah Hiestand and Tony Greer; confer with Bobby Garfinkle and Phillip Young regarding CITM depositions; production of exhibits; preparation of CITM documentation and exhibits to be turned over to Alex Fardon for CITM deposition			
12/9/2011 Zade		6.50	120.00	
	Development of evidentiary notebook for CITM depositions; preparation of discovery documents to be turned over to Alex Fardon for contempt case			
12/12/2011 Zade		8.00	120.00	C
	Development of evidentiary notebook for CITM depositions; preparation of discovery documents to be turned over to Alex Fardon for contempt case			
12/13/2011 Zade		7.00	120.00	C
	Development of evidentiary notebook for CITM depositions; preparation of discovery documents to be turned over to Alex Fardon for contempt case			
12/14/2011 Zade		8.00	120.00	C
	Preparation of discovery documentation to be turned over to Alex Fardon for contempt case			
12/15/2011 Zade		6.00	120.00	

12/16/2011	Zade	Preparation of discovery documentation to be turned over to Alex Fardon for contempt case	2.00	120.00	
12/19/2011	Zade	Preparation of discovery documentation to be turned over to Alex Fardon for contempt case	5.00	120.00	
12/20/2011	Zade	Confer with Phillip Young regarding production of discovery documentation for contempt case; preparation of discovery documentation to be turned over to Alex Fardon for contempt case	6.50	120.00	
12/22/2011	Zade	Preparation of discovery documentation to be turned over to Alex Fardon for contempt case	2.00	120.00	
12/27/2011	Zade	Preparation of discovery documentation to be turned over to Alex Fardon for contempt case	6.00	120.00	
12/28/2011	Zade	Review of discovery documents on CD-ROMS from EP lawyers in contempt case	5.00	120.00	
12/28/2011	Zade	Review of discovery documents on CD-ROMS from EP lawyers in contempt case	5.00	120.00	
12/30/2011	Zade	Review of discovery documents on CD-ROMS from EP lawyers in contempt case	2.00	120.00	
1/2/2012	Zade	Preparation of duplication of CITM deposition DVDs and discovery documents produced by Alex Fardon	7.00	120.00	D
1/3/2012	Zade	Preparation of duplication of CITM deposition DVDs and discovery documents produced by Alex Fardon	6.50	120.00	D
1/4/2012	Zade	Deliver DVDs and discovery documents provided by Alex Fardon; review discovery documents on CD-ROMs from Alex Fardon in contempt case	6.00	120.00	
1/5/2012	Zade	Review discovery documents on CD-ROMs from Alex Fardon in contempt case	6.00	120.00	
1/6/2012	Zade	Review discovery documents on CD-ROMs from Alex Fardon in contempt case	5.00	120.00	
1/9/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	6.00	120.00	A
1/10/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	6.00	120.00	A
1/11/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	7.00	120.00	A

1/12/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	8.00	120.00	A
1/13/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	6.00	120.00	A
1/16/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	6.00	120.00	A
1/17/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	7.00	120.00	A
1/18/2012	Zade	Analysis of e-mails to determine which are responsive to discovery requests in contempt matter	7.00	120.00	A
1/19/2012	Zade	Meeting to discuss deposition preparations with Robert Garfinkle, Paul Eggars, Sarah Hiestand and Tony Greer; prepare notebooks and exhibits for depositions of Evans Petree attorneys	6.50	120.00	
1/20/2012	Zade	Meeting with Robert Garfinkle and Phillip Young to discuss deposition preparation; prepare notebooks and exhibits for depositions of Evans Petree attorneys	6.50	120.00	
1/23/2012	Zade	Preparation of notebooks and exhibits for depositions of Evans Petree attorneys	11.00	120.00	
1/24/2012	Zade	attend Theodore Kitai and Russell Hensley depositions	7.30	-	
1/25/2012	Zade	Attend William Hendricks deposition	4.30	-	
1/26/2012	Zade	Conversion and organization of discovery documentation into PDF format for contempt case	4.00	120.00	B
1/27/2012	Zade	Conversion and organization of discovery documentation into PDF format for contempt case; conference call	6.00	120.00	B
1/31/2012	Zade	Conversion and organization of discovery documentation into PDF format for contempt case	6.00	120.00	B
2/1/2012	Zade	Conversion and organization of discovery documentation into PDF format for contempt case	6.00	120.00	B
2/2/2012	Zade	conversion and organization of discovery documentation into PDF format for contemp case; phone call with Sarah Hiestand regarding discovery; phone call with Phillip Young regarding discovery; delivery of documents	7.00	120.00	B

	Phone call with S. Hiestand and Phillip Young regarding discovery in contempt case, meeting with Robert Garfinkle and Phillip Young regarding contempt trial; delivery of documents; conversion and organization of discovery			
2/3/2012	Zade documentation into PDF format for contempt case	5.80	120.00	B
2/4/2012	Zade Preparation of privilege log regarding contempt discovery	4.00	120.00	
	Phone call with Robert Garfinkle and Alex Fardon regarding contempt trial; delivery of documents; conversion and organization of discovery			
2/6/2012	Zade documentation into PDF format for contempt case	7.80	120.00	B
2/7/2012	Zade Preparation of privilege log regarding contempt discovery	6.50	120.00	
	Delivery of documents; conversion and organization of discovery			
2/8/2012	Zade documentation into PDF format for contempt case	6.00	120.00	B
	Conversion and organization of discovery documentation into PDF format for contempt case			
2/9/2012	Zade Delivery of documents; conversion and organization of discovery	6.00	120.00	B
2/10/2012	Zade documentation into PDF format for contempt case	4.00	120.00	B
2/13/2012	Zade preparation of exhibits for contempt trial	6.00	120.00	
2/14/2012	Zade preparation of exhibits for contempt trial	5.00	120.00	
	preparation of Paul Eggars direct testimony; meeting with Robert Garfinkle and Pual Eggars regarding contempt trial testimony			
2/15/2012	Zade and Pual Eggars regarding contempt trial testimony	7.50	120.00	
2/16/2012	Zade Delivery of documents; preparation of notebooks for contempt trial	8.00	120.00	
	Meeting with Robert Garfinkle and Pual Eggars regarding contempt trial			
2/17/2012	Zade testimony; preparation of exhibit notebooks for contempt trial	8.50	120.00	
	Preparation of exhibit notebooks for contempt trial; meeting with Phillip			
2/20/2012	Zade Young and Robert Garfinkle regarding contempt trial	11.00	120.00	
2/21/2012	Zade Contempt trial	6.50	120.00	E
2/22/2012	Zade Contempt trial	6.75	120.00	E
2/23/2012	Zade Contempt trial; Preparation of exhibit notebooks for Sarah Hiestand	6.75	120.00	E, F
2/24/2012	Zade Preparation of exhibit notebooks for Sarah Hiestand	3.00	120.00	F
2/27/2012	Zade Preparation of exhibit notebooks from contempt trial for S. Hiestand	3.00	120.00	F
2/29/2012	Zade Preparation of exhibit notebooks from contempt trial for S. Hiestand	4.00	120.00	f

EXHIBIT 2

CATEGORIES OF OBJECTION TO FEES

- A. Continuance of same work billed at \$60/hour as a clerk compared to \$120 as an attorney.
Recommended approval at \$60/hour

- B. Clerical conversion of documents to PDF at \$120/hour as an attorney that could have been routinely done by a clerk at no more than \$25/hour or outsourced to a copying company at less than that.
Recommended approval at \$25/hour

- C. Development of evidentiary notebook that appears to be clerical in nature.
Recommended approval at \$60/hour

- D. Preparation of or conversion to PDF of duplication of documents appears to be clerical in nature.
Recommended approval at \$25/hour

- E. Attendance at contempt trial. Duplication of efforts.
Recommended zero

- F. Preparation of exhibit notebooks after trial appears to be clerical in nature.
Recommended \$60/hour

