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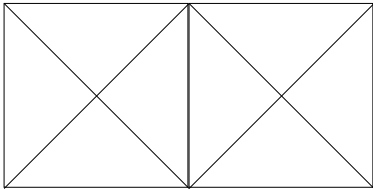
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September 8, 2009 5:45 AM

Chadbourne to Tribune Fee Examiner: We Want That \$13,639, Please

Posted by Zach Lowe

You have to hand it to the auditors from [Stuart Maue](#), the company serving as the court-appointed fee examiner in the Tribune Company bankruptcy case: they are unbelievably thorough. They chastised an employee at AlixPartners, the financial adviser to the Tribune creditors committee, for spending \$902.52 for a night and two meals at the Gramercy Park Hotel in New York--and got Alix to shell out \$487.52 from its own pockets to cover the bill. They discovered that [Jones Day](#) billed the Tribune estate 20 cents per photo copy instead of 10 cents, a finding that saved the estate \$8.10. They forced AlixPartners to explain why some of its employees were often spending more than \$50 on work-related dinners, and asked that Alvarez & Marshal (Tribune's restructuring adviser) retract a request for Tribune to pay \$22.68 for stamps, envelopes, and tape.

Stuart Maue is being so thorough, in fact, that [Chadbourne & Parke](#)--counsel for the creditors committee in the Tribune matter--has decided to take the rare step of challenging the fee examiner's call to cut \$13,639 from the firm's \$1.68 million fee request covering work done from December 2008 through February. Stuart Maue claims the Tribune estate shouldn't have to pay that bill, because much of the work is clerical in nature or--as in the case of late-night meals and cab rides--should be considered the cost of doing business. Chadbourne, of course, disagrees, and has filed a response claiming the \$13,639 as legitimate, reimbursable expenses.

The dispute highlights the growing importance of fee oversight in bankruptcy cases, a practice which is not outlined specifically in the federal bankruptcy code and varies wildly between courts and judges, according to fee examiners and bankruptcy experts. And then there is the overarching question: Do fee examiners--who also are paid from a debtor's estate--actually save the debtor's estate any money? The question is hard to answer, experts say, because the deterrent effect of having a strict fee examiner looking over everyone's shoulder is impossible to measure.

Take the Tribune case as an example. It would be easy to argue Stuart Maue has cost Tribune more than it has saved the bankrupt publisher. Since the [inception of the case in January](#) and through the end of August, the auditing firm has billed the Tribune estate a total of \$334,050, according to court records. The fee examiner's work has resulted in reductions in fees and expenses of \$51,525 from a total fee request of more than \$6.2 million submitted by the various law firms and financial advisers working on the case. That \$51,524.67 amounts to just 0.8 percent of the total requested fees.

Expect the savings to increase, says James Quinn, the president of Stuart Maue. The \$51,525 in savings came only from the first set of fee applications in the case, while the \$330,000-plus Stuart's auditors have billed has come from work on that first set of applications plus subsequent ones, Quinn says.

Also, experts say, there's no telling how much more law firms might bill if they didn't know Stuart Maue was analyzing every hotel breakfast and cab ride.

"Everybody knows there is some degree of fee padding going on in bankruptcy cases, but nobody has any incentive to protest it," says Todd Zywicki, a professor at the George Mason University School of Law who specializes in bankruptcy law. In other words, lawyers serving as lead counsel to debtors are unlikely to push back against lawyers charging for other work on the case; lawyers seldom challenge each other, knowing they may be on the other side of a fight someday, Zywicki says. Such a strategy would be "mutually assured destruction," he jokes.

That's one reason why a fee committee is essential, say Quinn and Andrew Dalton, a spokesman for Stuart Maue. "We get down and dirty in the details," Dalton says.

Still, Zywicki wonders whether fee examiners' charges outweigh the savings they create, and he's not alone. Lynn LoPucki, a bankruptcy expert who teaches at both Harvard Law School and the UCLA School of Law, studied 102 recent bankruptcy cases involving large public companies and found that fee monitors--used in 23 of those cases--saved an average of about 1.2 percent of all requested fees and expenses. In contrast, the money law firms and fee monitors billed just to prepare their fee reports amounted to 2.7 percent of total billings in the cases studied, LoPucki says. "The whole system spends more money fighting about fees and just documenting them than it saves by cutting them," LoPucki says.

That may be why some courts are reluctant to appoint fee examiners. Quinn singles out federal bankruptcy court in Manhattan as one such venue. "The Southern District of New York just doesn't seem all that concerned about [legal and other fees]," Quinn says. "They don't do much with examiners."

When Manhattan judges are concerned about fees, they are more likely to appoint a fee committee comprised of officials--often lawyers--chosen by various parties in the case. (The tactic landed on the map after judges appointed committees in the Enron and WorldCom bankruptcies, according to LoPucki, and Zywicki.) Fee committees tend to take a broader view of fees and expenses rather than issuing individual reports about each firm's work and billing, experts say.

In the Lehman Brothers case, for instance, Judge James Peck authorized a four-person fee committee headed by Kenneth Feinberg, the Obama administration's pay czar. Rather than scour every fee application one-by-one and suggest changes, the Feinberg committee reviewed all applications collectively, then produced a slim six-page filing in which it recommended \$298,376.18 in cuts--from a total of almost \$99 million. The cuts, accepted by the firms, amounted to just 0.3 of requested fees and expenses. It is unclear from court records how much the committee billed the Lehman estate.

Fee committees tend to take "a more holistic view" of fees instead of "going over things so microscopically," says Douglas Baird, a professor of bankruptcy law at the University of Chicago Law School and an admitted skeptic of fee examiners. "It costs a tremendous amount of money," he says of fee examiners, "and it results in lawyers focusing on the wrong things."

Case in point: the Chadbourne matter, says Baird. The firm is fighting--publicly now--over whether Tribune should pay for Chadbourne lawyers to take late-night cab rides and whether tracking the Tribune docket on Pacer should be billed as administrative- or paralegal-level work.

Howard Seife, head of Chadbourne's bankruptcy practice, declined to comment on the matter.

For the record: [Paul, Hastings, Janofsky & Walker](#), which is special counsel to Tribune, agreed to cut \$1,110 in administrative fees and \$38 in late-night cab

rides from its fee request after some finger wagging from Stuart Maue. That sort of oversight, say Quinn and Dalton, is a meaningful deterrent, regardless of how the costs versus savings numbers turn out. Says Dalton: "In the end, we are interested in doing our job--and the numbers fall where they may."

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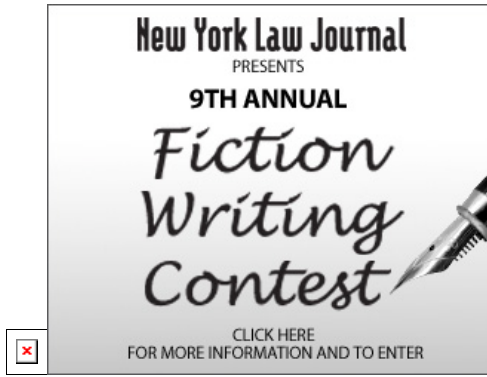
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