

Detroit bankruptcy judge to review attorney fees

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(Photo: Detroit News)

Attorneys and consultants have billed nearly \$141 million for services rendered in the largest Chapter 9 case in U.S. history. And more is coming.

The hefty costs have not gone unnoticed by U.S. Bankruptcy Judge Steven Rhodes, who on Friday stressed his "independent obligation" to examine and carve out a mediation strategy to determine the reasonableness of the fees that Detroit is obligated to pay.

During a nearly two-hour ruling confirming the city's debt-cutting plan, the judge noted that quarterly reports from a court-appointed fee examiner won't be enough, and that Rhodes cannot "outsource" the responsibility. Rather, the fees require further judicial review and he will be the final arbitrator, Rhodes said.

"The Court concludes that it has the obligation, as a condition of confirming the city's plan, to determine that the professional fees for which the city is obligated in connection with the case, whether paid or unpaid, are disclosed and reasonable," Rhodes said.

Detroit's most recent professional fee tally encompasses billing from more than 50 restructuring firms, lawyers and consultants in the city's bankruptcy case. The fees, obtained by The Detroit News, account for bills submitted through the end of September.

Bill Nowling, a spokesman for Emergency Manager Kevyn Orr, said the call for mediation is understandable.

"It's a tight plan," Nowling said Friday. "Any extra money counts, and we get that."

Nowling said the most recent figures do not include fees from October or additional costs anticipated in the coming months. The overall total could reach about \$150 million.

The professional costs exceeded initial estimates, but are about where officials anticipated, he said.

"Obviously, it's a lot of money, nobody questions that," Nowling said. "But we have to look at the value the city is going to realize for that."

The professionals, he said, have aided the city in restructuring \$18 billion in debt and freeing up \$140 million a year — or \$1.7 billion over the next decade — that will be pumped into city services.

"The total cost is small, in comparison to how much debt the city restructured," he said. "The amount that we spend on our fee services equals the amount that we're going to invest each year in the city over the next 10 years. We'll get a 10-fold return on investment."

The largest tab is from the city's lead bankruptcy firm Jones Day, which billed \$52.3 million, according to the report.

In addition, bills from Detroit's restructuring consultants have reached \$17.2 million for Conway MacKenzie; about \$20 million for Ernst & Young; and \$6.2 million for the investment banking firm, Miller Buckfire. Also, the city's actuarial consultant Milliman billed more than \$2 million.

Detroit's legal bills have already surpassed the cost of the General Motors' bankruptcy, in which fees topped out around \$120 million.

The majority of the fees in Detroit's case were driven by court preparation and appearances and mediation, Nowling said.

"We've had over 150 mediation days alone. That's half a year straight of mediation," he said. "That's a big driver of the cost right there."

Bingham Farms-based financial consultant Jim McTevia cautioned that the figures don't represent the true cost of the city's bankruptcy. Rather, they only reflect the professionals who have applied for bankruptcy court approval of fees and do not include fees that the city's creditors are paying to attorneys not subject to any court orders or approvals.

Those fees, being paid privately by creditors to their professionals, could easily be another \$50 million, McTevia says.

"Those are the hidden fees that nobody will ever know about," he said. "Those, I'm sure, are in the millions also."

McTevia has estimated that the collective fees in the city's Chapter 9 are going to be about \$250 million and still believes his projections are going to be "spot on."

In closing arguments at trial, Jones Day attorney Bruce Bennett told Rhodes that limiting the length of a Chapter 9 is "not a small thing." It was a priority early on for the city, Orr and entire professional team "that we were going to put this case on a fast track," he said.

"It was and still is a comprehensive effort to solve some really bad problems. It cost a lot of money," he told Rhodes. "Are fees going to be high in cases like this? Of course. Because they are high are they unreasonable? No."

Detroit City Council President Pro Tem George Cushingberry Jr. said the results have justified the cost.

"For the shedding of near \$8 billion in debt and giving us the best balance sheet, it was worth it," he said.

But bankruptcy attorney fees have been a source of contention among some union officials.

The city's firefighter union has criticized Rhodes for an "offensive and unfair" ruling preventing creditors from challenging fees charged by the city's bankruptcy lawyers.

Jeffrey Pegg, president of the Detroit Fire Fighters Association, accused the judge of having an agenda to drive the case to "a conclusion that he wants."

"The DFFA would like to do more to examine and object, where appropriate, to Jones Day's staggering fees," Pegg said.

The comments came after Rhodes barred creditors from filing any documents relating to the reasonableness of fees charged by Jones Day "until the further order of the Court."

Rhodes, from the bench Friday, said the DFFA claims were "premature, counterproductive and inaccurate."

Last year, Rhodes appointed a Chicago-based attorney as the fee examiner in the case to keep tabs on the billing.

Robert Fishman, of the firm Shaw Fishman Glantz and Towbin LLC, is paid \$600 an hour to examine legal bills and contest charges. The watchdog proposed rules to prohibit billing for "unreasonable" expenses including alcohol, hotel-room movies and first-class flights.

Fishman's firm has billed Detroit \$693,500 to-date, the report shows.

The city spent \$12.8 million on lawyers and other professionals weeks into its July 2013 bankruptcy filing. The fees and expenses climbed to \$36.6 million after the first six months, based on prior records.

Fishman has challenged some charges in the case, but in a Nov. 6 filing, he noted professional fee expenses incurred during his fourth quarterly report, "while substantial by any measure, are commensurate with the complexity and speed of the case, and the quality of the services that professionals have provided."

Fishman wrote, however, that he is reserving judgment on the adequacy and overall reasonableness of the expenses. Such determinations must be made at the conclusion of the case, he said.

Rhodes on Friday praised Fishman and his team for their "skilled assistance on the delicate responsibility that they took on and embraced."

Nowling said the current fee totals do not factor in \$5 million reduction in fee payments Orr established for the city's core restructuring professionals, including Jones Day, Pepper Hamilton LLP, Miller Buckfire, Ernst & Young and Conway MacKenzie.

He also stressed all vendors had already provided the city with a discount on hourly rates of between 10 and 15 percent. In addition, there have been voluntary write-offs and other reductions.

"We have, throughout this process, tried to keep a keen eye on the costs," he said. "And ... to drive the best value we can get for the taxpayer dollars we are spending."

Dickinson Wright attorneys representing Gov. Rick Snyder's office and the Treasury Department were paid \$1,841,979 from July 2013 through August 2014.

The firm had an initial contract "budget ceiling" of \$225,000, though the contract allowed for increases.

CFerretti@detroitnews.com

Staff writer Chad Livengood contributed.

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