

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Chapter 9

City of Detroit, Michigan,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

COMMENT ON PROPOSED ORDER APPOINTING FEE EXAMINER

On July 23, 2013, the Court entered an order in this proceeding that, among other things, incorporated a “Proposed Order Appointing Fee Examiner” consistent with Chapter 9 and with the Court’s inherent authority. Godfrey & Kahn, S.C., by Carla O. Andres, Brady C. Williamson and Katherine Stadler, submits this comment to provide the Court with some context, from their perspective, for its fee review proposal and to express interest in it.

1. Brady Williamson, with Godfrey & Kahn as his counsel, served as the fee examiner in the General Motors Chapter 11 (*Motors Liquidation, Inc.*, Case No. 09-50026, Gerber, J.) in which the professional fees exceeded \$120.5 million.¹ Most recently, Godfrey & Kahn served as the court-appointed counsel to the Fee Committee in the *Lehman Brothers Holdings, Inc.* proceeding (Case No. 08-13555, Peck, J.) with professional fees exceeding \$1.18 billion. Both cases were heard in the Southern District of New York—*General Motors* for about 22 months; *Lehman* for more than four years.

2. If this Court proceeds with a fee examination process, the *General Motors* and *Lehman* proceedings may offer some suggestions for a fee review process that reflects both the

¹ The *Stipulation and Order with Respect to Appointment of a Fee Examiner* in the *General Motors* case is attached as Exhibit A for the Court’s reference.

public interest in this proceeding, the need for transparency, and the fiduciary interests of the taxpaying public, the estate, and the parties in interest.

3. The practices and procedures in one bankruptcy court, like its decisions, are not binding—or even necessarily desirable—in another bankruptcy court. However, to any extent this Court is not already aware of the fee examination process in these two cases, they might be instructive here.

4. The Court in *Lehman* used a Fee Committee approach with one representative from the Debtor (though not its counsel), one from the Creditors' Committee (though not its counsel), the U.S. Trustee and an independent chairman, Richard Gitlin, an experienced member of the bankruptcy bar with no affiliation with any firm or party in interest.² The Fee Committee retained counsel, which provided substantive and logistical support for the Fee Committee in analyzing each of the 364 interim and final fee applications submitted to the Court.³

5. In *General Motors*, the Court appointed the fee examiner, supported by Godfrey & Kahn as his counsel with Court-approval, providing the Court and the parties with interim and final reports based on a qualitative and quantitative analysis of each application.⁴

6. The two fee review processes—one through a four-member committee and the other through a single examiner—had differing advantages and disadvantages though both proved to be, based on the record statements of each Court, efficient and effective.

² The *Order Amending the Fee Protocol* and the accompanying *Amended Fee Protocol* in the *Lehman* cases are attached as Exhibit B.

³ The two final reports of the Fee Committee in the *Lehman* cases are attached as Exhibits C and D.

⁴ The *Fee Examiner's Final Report and Summary* in the *General Motors* case is attached as Exhibit E.

7. In those prior matters, specifically-developed protocols permitted a sophisticated fee review process that used specialized supporting technology—based on the raw time entries filed by the professionals—to analyze vast amounts of data (including daily time entries for, in *Lehman*, more than 4,900 timekeepers at more than 49 professional firms). The process Godfrey & Kahn developed for these large Chapter 11 cases has not only been quantitative, of course, but involves the application of judgment by experienced Chapter 11 counsel to the review of fee applications. The goal was to try to resolve disputes and to provide a perspective, in addition to that of interested parties, to assist the Court as it exercised its ultimate statutory responsibilities.

8. Presiding in *Lehman*, Judge Peck characterized the fee review process there as “a model of the kind of work that fee committees or fee examiners ... can do in all significant cases.” Nov. 14, 2012 Hearing Transcript, pp. 11-12.⁵

9. Both the U.S. Trustee program and the Debtor’s counsel are familiar with the process in the two Southern District of New York proceedings because they were directly involved in each. A copy of this comment is being sent overnight to the Debtor’s counsel here and to the Office of the U.S. Trustee and, in addition, filed of record.

10. Godfrey & Kahn plans to appear in person at the Court’s previously-scheduled initial status conference on Friday, August 2, 2013, at 10:00 a.m., to provide—if requested—a more detailed description of the processes used in the *Lehman* and *General Motors* proceedings, answer any questions and offer any appropriate assistance to the parties and the Court.

⁵ The hearing transcript is attached as Exhibit F.

