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JUSTICE DEPARTMENT ISSUES NEW GUIDELINES FOR PAYMENT OF ATTORNEYS' FEES, EXPENSES, IN LARGE CHAPTER 11 BANKRUPTCY CASES

New Guidelines Enhance Disclosure and Transparency in Bankruptcy Compensation Process and Ensure Attorneys' Fees are Based on Market Rates

WASHINGTON – The Department of Justice today announced new guidelines for the payment of attorneys' fees and expenses in large chapter 11 bankruptcy cases in order to enhance disclosure and transparency in the compensation process and to help ensure that attorneys' fees and expenses are based on market rates. The guidelines, which will go into effect on Nov. 1, 2013, were developed by the U.S. Trustee Program (USTP), the component of the department that protects the integrity of the bankruptcy system by overseeing case administration and litigating to enforce the bankruptcy laws.

"The costs of bankruptcy fall on the creditors and employees of the debtor companies," said Acting Associate Attorney General Tony West. "At a time when both the public and the most sophisticated participants in the bankruptcy process say bankruptcy attorneys' costs are rising too rapidly, these guidelines are designed to ensure that statutory requirements limiting bankruptcy fees to market rates – not premium rates – are followed."

The Bankruptcy Code allows professionals who provide services during a chapter 11 case to be compensated from funds of the debtor company if statutory requirements are met and the bankruptcy court approves payment. Reviewing and, where appropriate, objecting to professionals' applications for fees and expenses is a statutory duty of the USTP. The guidelines explain the criteria that U.S. Trustees use in reviewing and objecting to those applications. They do not supersede statutes, rules or court orders.

The update to the guidelines takes into account the significant changes that have occurred in the legal industry as well as the increasing complexity of business bankruptcy reorganization cases. The guidelines were originally issued in 1996 and are being updated in phases; the first phase, announced today, governs the USTP's review of fees and expenses requested by attorneys in chapter 11 cases with \$50 million or more in assets and \$50 million or more in liabilities. Although the guidelines are not subject to the notice and comment process of the Administrative Procedure Act, the USTP nevertheless modified earlier drafts of the guidelines after two public comment periods and a public meeting.

"We were pleased by the many helpful suggestions we received as we drafted the guidelines," said Clifford J. White III, Director of the Executive Office for U.S. Trustees. "The U.S. Trustee Program went to great lengths to solicit public input while developing the updated guidelines, reviewing and incorporating suggestions from academics, attorneys and other participants in the bankruptcy system."

The guidelines require a showing that the rates charged reflect market rates outside of bankruptcy. The guidelines also provide for the:

- Use of budgets and staffing plans;
- Disclosure of rate increases that occur during the representation;

- Use of rates that are based on the attorney's home office location;
- Submission of billing records in an open, searchable electronic format;
- Use of independent fee committees and fee examiners; and
- Use of model forms and templates for applications for compensation and expenses.

The updated guidelines apply to attorneys' fees and expenses in cases filed on or after Nov. 1, 2013, that meet the large case threshold. Until the USTP adopts additional superseding guidelines in the next phases of revisions, the 1996 guidelines will continue in effect for the review of fee applications filed in larger chapter 11 cases by professionals who are not attorneys; in all chapter 11 cases below the large case threshold; and in cases under other chapters of the Bankruptcy Code.

USTP attorneys in districts throughout the country will vigorously enforce the guidelines, defending them in bankruptcy court and through appeals as appropriate. The USTP also will educate bankruptcy attorneys regarding the guidelines and encourage bankruptcy courts to incorporate the guidelines in their local rules of bankruptcy procedure, as many have done with the 1996 guidelines.

The guidelines and explanatory materials are posted at www.justice.gov/ust.

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