

# BANKRUPTCY COURT CASE STUDY



## STERLING ANALYTICS

Sterling Analytics Group, LLC  
135 Crossways Park Drive  
Woodbury, NY 11797  
(646) 863-9433  
info@sterlinganalytics.com

[www.sterlinganalytics.com](http://www.sterlinganalytics.com)

## Lehman Brothers Bankruptcy Racks Up Legal Fees Filled With “Improper” Charges

On September 15, 2008, Lehman Brothers filed for chapter 11 bankruptcy. With over \$600 billion in assets Lehman Brothers is the largest bankruptcy in United States history. The bankruptcy involved numerous law firms and racked up hundreds of millions in attorneys' fees. Many of these fees included improper billing practices that arguably should not have been compensated. Sterling Analytics, a legal cost consulting firm, audited a sample of the attorney's fees requested for compliance with legal precedent and ethical guidelines. \$349,258.57 in fees and expenses submitted by Special insurance coverage counsel for the debtor and by the bankruptcy examiner were reviewed. The audit determined that \$187,746.34, or 54%, of the charges were “improper”. The most significant objectionable charges related to multiple attorneys at meetings, block billing, billing for billing, billing at a high rate for attorneys overqualified for the task, and vague billing.

Multiple Attorneys at Meetings: Sterling Analytics' review of the legal bills found \$66,924.00 in objectionable charges related to multiple attorneys at depositions, intraoffice conferences, and hearings. This represents almost 20% of the reviewed charges. This billing practice is generally unfair to the client because it results in charging multiple times for work that could be performed by one attorney. See *In re New Boston Coke Corp.*, 299 B.R. 432, 445 (Bankr. E.D. Mich. 2003) (“[I]n situations where more than one attorney attends a hearing or conference, there must be a showing that each attorney contributed to the hearing or conference.”). Bankruptcy courts have held that one only attorney should be used in these situations. See *In re Dimas, LLC*, 357 B.R. 563, 579 (Bankr. N.D. Cal. 2006) (“Normally, it is appropriate for only one attorney from a firm to attend a meeting, conference, or hearing.”).

Block Billing: \$47,430.50 of the reviewed charges represented, in our opinion, impermissible block billing. Block billing is the practice of grouping charges together rather than listing each charge individually. Block Billing is disfavored for two reasons. First, it allows the attorney to claim compensation for rather minor tasks which, if listed separately, would not be compensable. Second, it prevents the court, or the client, from determining whether the individual task was performed in a reasonable amount of time. *In re Leonard Jed Co.*, 103 B.R. 706, 713 (Bankr.

D. Md. 1998). Bankruptcy courts often reduce attorney's fee requests due to block billing. See *In re Baker*, 374 B.R. 489 (E.D.N.Y. 2007) (reducing entire bill by 20% due to "improper" block billing); *In re Stewart*, 2008 WL 8462960, at \*6 (9th Cir. BAP 2008) (affirming disallowance of "lump billing" fees).

Billing for Billing: A client should not be billed for time spent maintaining or creating billing records, or for reviewing or discussing such records. \$29,913 of the audited bills consisted of seemingly improper charges for preparing and reviewing bills. Bankruptcy courts have held that these types of charges are not compensable. *In re Dimas, LLC*, 357 B.R. 563, 591 (Bankr. N.D. Cal. 2006) (finding the time applicant expended to review and edit its time records was not compensable).

Billing for Attorneys Overqualified for Task: Hourly rates should be appropriate to the task being performed, not who is performing the task. If an attorney bills for time spent performing a task for which he or she is overqualified, reimbursement will be determined by the rate appropriate to the task, not the normal rate charged by the attorney performing the task. Courts have held that is unethical for attorneys

to bill at their full rate for non-legal services. See *In re Towns*, 75 A.D.3d 93 (App. Div. 3<sup>rd</sup> Dep't 2010). Of the reviewed bills it was determined that \$22,816 in charges were billed at a rate where the attorney seemed overqualified for the task. Examples of these overqualified charges include charges for organizing files and uploading documents to discovery software.

Vague Billing Entries: A billing entry that is vague is arguably impermissible because it prevents the client from adequately understanding what work was performed by the attorney and whether the charges fairly reflect the work described. \$10,733.50 of the reviewed charges were found to be "overly vague". Examples of "vague" entries in the Lehman bankruptcy include "review recent correspondence", "prepare for telephone conference" and "worked on fee application issues". Billings containing vague entries are "routinely disallowed" by bankruptcy courts. *In re Hirsch*, 2008 WL 5234057, at \*7 (Bankr. E.D.N.Y. 2008).

\* *In re Lehman Brothers Holdings Inc., et al.*

By Nicholas Paslow

**Sterling Analytics** is a consulting and advisory firm that helps companies reduce their legal expenses. Our proven methodologies are based on legal precedent, guidelines and ethical standards that compel law firms to significantly modify improper billing practices. Although our clients come from a broad range of industries with different legal budgets, they share a concern about their legal expenses and are looking for solutions to manage outside counsel while maintaining the highest service level standards. We are able to audit legal fees based on our extensive database of proprietary benchmark data and our solid understanding of traditional legal practices. Our process is fair, independent, cost effective and maintains attorney-client privilege. We are able to measure the extent to which our clients' legal expenses exceed industry standards, and will manage the negotiation and recovery of excessive fees. To institutionalize cost controls, we assist clients by installing systems and protocols that monitor billing activity and catch improper practices.

Sterling Analytics Group, LLC  
135 Crossways Park Drive  
Woodbury, NY 11797  
(646) 863-9433  
info@sterlinganalytics.com

© 2011 Sterling Analytics Group, LLC.  
All Rights Reserved.

[www.sterlinganalytics.com](http://www.sterlinganalytics.com)