TULLY RINCKEY PLLC
YOUR LAWYERS FOR LIFE - 1888LAW4LIFE.COM

Watchdog Report: Kodak's Bankruptcy Tab $125 Million and Counting

Eastman Kodak Co. retirees are taking a pounding in the company's bankruptcy, as their medical benefits and insurance coverage came to an end Jan. 1.

Between a pay freeze and big layoffs, Kodak workers similarly have been whacked hard.

But since Kodak filed for bankruptcy a year ago this week, legions of accountants, lawyers and consultants have made out pretty well.

To date, more than two dozen separate law firms, accounting firms and other outfits associated with Kodak's bankruptcy have submitted billing statements totaling nearly $125 million, according to a Democrat and Chronicle

analysis.

That would buy you 150,000 Kodak M580 point-and-shoot cameras, plus 300,000 Kodak PlaySport Zx5 pocket digital video cameras, and more than 400,000 Kodak Hero 7.1 desktop digital printer/scanner/fax machine/printer units bundled with a color and black ink cartridge each.

“That doesn't shock me,” said Martha L. Salzman, assistant professor of accounting and law at the State University of New York at Buffalo. “Bankruptcy's expensive.”

When it comes to major American corporations and their bankruptcies, “expensive” can take on whole new connotations. Enron spent more than $1 billion on attorneys, financial advisers and other professionals for its bankruptcy. Lehman Brothers Holdings Inc., which filed for bankruptcy protection in 2008, ultimately paid its attorneys and advisers in excess of $850 million.

And the American Airlines bankruptcy has to date topped $200 million in various bills and expenses.

“A modern Chapter 11 case is just hugely expensive,” said Robert Rock, senior counsel with the bankruptcy practice at Albany law firm Tully Rinckey PLLC. “It goes in proportion to the size of the company and the complexity of the debt structure.”

Given Kodak being a large international collection of interrelated companies, the mounting bills come as no surprise, Rock said.

The meter continues to run on Kodak's bankruptcy legal bills. The monthly billing statements submitted to U.S. Bankruptcy Court to date generally run through November. Kodak has said it expects to emerge from bankruptcy in the first half of 2013, meaning there could be several more months of multimillion-dollar billing statements.

Every dollar Kodak spends on bankruptcy professionals is a dollar less that otherwise could have been used on shoring up its operations, repaying creditors or enriching shareholders.

However, such a trained legal team also is key to trying to turn a bankrupt company around and negotiate settlements, said MaryAnn Monforte, clinical assistant professor of accounting at Syracuse University's Whitman School of Management.

"You can't have the internal management do it," Monforte said. "Theoretically that's how Kodak got where it is today."

In a statement, Kodak said its bankruptcy is "a large and complex case that requires skilled professionals to not only represent the company, but its creditors as well.

"Chapter 11 has also, of course, provided an opportunity to streamline the company's organization and reduce its cost structure, positioning it for emergence as a strong and sustainable enterprise."

Nearly a quarter of the professional bills to date, or roughly $22 million, come from New York City firm Sullivan & Cromwell LLP, the primary law firm representing Kodak in the bankruptcy. And a firm like Sullivan & Cromwell does not come cheap.

In November alone, its most recent monthly statement, the firm billed Kodak a total of $3.9 million in fees. That includes 21 separate law partners, billing at $1,150 an hour, working more than 900 hours on the case, as well as dozens of associates and non-legal personnel — billing anywhere from $110 to $850 an hour — doing a total of close to 4,000 hours.

Jim Mesterharm, Kodak's chief restructuring officer, is provided byAlixPartners, a consulting firm that specializes in business turnarounds. As of the end of September, Mesterharm had billed Kodak $1.5 million, at a rate of $880 an hour.

The committees representing creditors' and retirees' interests also racked up sizable bills — expenses that have to be borne by Kodak. That $3.2 million bill includes legal services from Arent Fox LLP andHaskell, Slaughter, Young & Rediker LLC; financial advising fromZolfo Cooper LLC and actuarial services from Segal Co.

A fee examiner also has been appointed to oversee all those various fees. That fee examiner, Luskin Stern & Eisler LLP, so far has submitted roughly $225,000 worth of bills as well in the Chapter 11.

All the professional bills have to be approved by a bankruptcy judge. In Kodak's case — as often happens in such bankruptcies — there's a 20 percent hold back, meaning many of those monthly bills are paid 80 cents on the dollar for now, with the judge at the end of the case then reviewing the billing before releasing the remaining 20 percent.

While the bankruptcy has generated legions of billable hours for law firms and other professional services providers from Manhattan to Washington to Alabama, western New York firms are notably absent. That's in large part because the Sullivan & Cromwells and Ernst & Youngs of the world (accounting giant Ernst & Young having billed Kodak more than $13 million so far in the bankruptcy for financial consulting services) have both the expertise and the reputations for having the expertise in such big, complex cases, said Monforte.

"Think about the creditors, the Bank of Americas, the Citigroups, whoever else is involved as major creditors," Monforte said. "They're not going to be so comfortable with a (Rochester firm). Bankruptcy law is as much an art as it is a science. The expertise comes from performing the legal work multiple times with multiple organizations over various scenarios. I wouldn't be surprised if there are some local Ernst & Young personnel involved. But a local law firm doesn't necessarily carry that same credibility."

All those legal bills might be the tip of the iceberg, said Joel D. Applebaum, a lawyer with the corporate restructuring and bankruptcy practice group at Clark Hill PLC.

The legal bills of secured lenders, such as the financiers behind the debtor-in-possession financing, typically also are paid by the debtors, and those bills don’t need to be submitted to a bankruptcy court, Applebaum said. “That can be huge dollars,” he said.