



Airline woes have bankruptcy lawyers flying high

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By Susan Carey, The Wall Street Journal

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When Northwest Airlines sought bankruptcy-court protection last month, it didn't scrimp on professional help, hiring no fewer than eight law firms and two restructuring consultants to help it navigate Chapter 11.

Delta Air Lines, which filed for bankruptcy protection the same day, retained seven law firms and four financial advisory firms.

Bankruptcy long has been lucrative for lawyers and consultants, but the airline industry is providing an unusual bonanza. This week's fourth annual forum on airline restructuring in New York, sponsored by the American Conference Institute think tank, serves as a summit about how lawyers can make money off the turmoil -- or, as they put it, "partnering with your clients to capitalize on opportunities in the distressed airline industry."

In the past five years, 22 airlines have sought bankruptcy-court protection, says the U.S. Government Accountability Office, not counting last week's filing by Mesaba Aviation, a regional Northwest Airlines partner. Most were small carriers, but the latest crop, which also includes UAL Corp.'s United Airlines and US Airways Group Inc., are among the largest U.S. corporate bankruptcies ever.

The fees aren't economy class. In its nearly three-year-old bankruptcy case, UAL spends \$10 million a month on legal, accounting, consulting and other professional fees for itself, its creditors committee and sometimes even its labor unions -- roughly \$350 million so far.

Partners at Northwest's longtime law firm and lead bankruptcy counsel, Cadwalader, Wickersham & Taft LLP, bill at \$590 to \$800 an hour. Groom Law Group is advising the airline on employee benefits at an hourly partner rate of \$455 to \$695. Boies, Schiller & Flexner LLP, which is helping Northwest deal with antitrust and regulatory matters and civil lawsuits, told the court its partners bill between \$350 and \$810 an hour.

"The cost of large Chapter 11 cases has gotten beyond breathtaking," says William Rochelle, a bankruptcy partner at Fulbright & Jaworski LLP who is representing creditors in the cases of UAL, Northwest and Delta. "To be bankrupt, you have to be rich."

The fees are subject to bankruptcy-court approval, and Mr. Rochelle says complaints about them tend to be rare. For one thing, \$350 million in legal and consulting fees is small potatoes for a company like UAL, with \$16 billion in annual revenue and an estimated \$28 billion in unsecured claims.

Moreover, creditor committees -- the folks most likely to complain -- themselves sometimes hire lots of professionals, which ultimately are paid by the debtor companies. Creditors in the UAL case engaged financial advisers Saybrook Capital LLC; tax and accounting advisers Mesirow Financial Consulting LLC; law firm Spering & Slater PC as special litigation counsel; and several industry consultants.

"This is a really complicated case," says Fruman Jacobson, a partner at Sonnenschein Nath & Rosenthal LLP, counsel to the UAL creditors committee. The UAL committee "has hired nowhere near the number of professionals United has hired."

The airlines defend their use of pricy hired guns, contending the lawyers and consultants allow executives to focus on running their businesses rather than steering through the court proceedings themselves, for which they have little in-house skill.

Airline bankruptcies are "exceedingly complex and require a lot of expert advice," says Jake Brace, UAL's chief financial officer and the lead executive on his company's restructuring. They involve union negotiations, pension-fund issues, real-estate leases, municipal-bond disputes, aircraft financing and lease restructuring and a host of other sticky problems. "Some other industries may have some of these things, but few have all," Mr. Brace says.

In past decades, one law firm was hired to handle most everything in a Chapter 11. The mushrooming number of professionals reflects airlines' fears that "they'll miss something," says Gregory Buhler, a partner at Schnader Harrison Segal & Lewis LLP who cut his teeth on the 1991 Pan American World Airways bankruptcy. Executives "are terrified of not doing what others have done" and the result is "a feeding frenzy," adds Mr. Buhler, who represents some creditors in the UAL and Northwest cases.

Northwest, the nation's fourth-largest airline, says in a statement that it's "very sensitive to the costs involved." Many of its law firms "have been working in specialized areas for Northwest for a number of years," and "the bankruptcy process requires us to, in effect, 'rehire' them."

For its part, No. 3 Delta says, "It's not unusual to retain a variety of professional firms with expertise in specific subject areas." Delta, which narrowly averted insolvency a year ago, has had Davis Polk & Wardwell, long one of its main outside law firms, on the bankruptcy job since June 2004, with its partners billing \$495 to \$785 an hour. It's also getting help from four restructuring consultants, including Blackstone Group LP.

Northwest and Delta, both of which filed in U.S. Bankruptcy Court in New York, even have hired "conflicts counsel." These law firms would step in if the primary firms' other clients presented conflicts of interest. And now that committees have been selected to represent unsecured creditors, the airlines must pay for professionals hired by those committees.

Familiar faces abound. Arnold & Porter LLP was tapped as Northwest's special litigation and labor counsel. Its attorney in charge, Brian Leitch, was the lead lawyer for US Airways in its second bankruptcy-court spin. Northwest's strategic and financial advisers, Seabury Group, filled the same role in both US Airways cases. Otterbourg, Steindler, Houston & Rosen PC, the firm representing Northwest's creditors committee, had the same job for creditors in the bankruptcy cases of US Airways and Hawaiian Airlines.

Bankruptcy proceedings tend to proceed at a glacial pace, so the hourly charges pile up. In August alone, Kirkland & Ellis LLP, UAL's lead bankruptcy firm, billed the airline \$2.28 million for "reasonable and necessary legal expenses" rendered by 68 attorneys and 31 paraprofessionals, plus \$126,000 in expenses.

James Sprayregen, the Kirkland partner who is United's chief bankruptcy lawyer, has an hourly rate of \$795 and billed 222 hours in August -- more than seven hours for every day of the month or almost 10 hours for every business day. The total: nearly \$177,000.

"An appropriate way to look at it is that it's an investment to pursue an incredibly difficult, complex transaction," Mr. Sprayregen says in a statement. "We believe there has been an excellent return on this significant investment."

In the United case, there's a fee-review committee to ensure no duplication of effort or overbilling. When professionals bill for workdays that exceed 14 hours, the committee will disallow some of the fees unless there is a good explanation, says Ira Bodenstein, the bankruptcy-court trustee on the committee. If more than 5 percent of the firm's time seems to be spent in interoffice conferences, that's deducted. "We monitor who shows up" at hearings, says Mr. Bodenstein. "If there are too many people in court, we ask the fees to be reduced."

Nathalie Martin, resident scholar at the American Bankruptcy Institute and a law professor at the University of New Mexico, says, "Lay people say, 'Gosh, why are they spending all this money?' But when the firm is at risk, you want the best lawyers."

(Evan Perez contributed to this article.)

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