AUDIT OF LEGAL FEES PAID TO ROY, KIESEL & TUCKER

Audit Report No. 99-031
July 27, 1999

OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

FDIC
Federal Deposit Insurance Corporation
Washington, D.C. 20434

Office of Audits
Office of Inspector General

DATE: July 27, 1999

MEMORANDUM TO: James T. Lantelme
Assistant General Counsel
Legal Operations Section
Legal Division

FROM: Steven A. Switzer
Deputy Inspector General

SUBJECT: *Audit of Legal Fees Paid to Roy, Kiesel & Tucker*
(Audit Report No. 99-031)

This report presents the results of an audit of fees paid to Roy, Kiesel & Tucker, a law firm hired by the FDIC to provide legal services. The independent public accounting firm of Mir-Fox & Rodriguez conducted the audit. The objective of the audit was to determine whether the law firm's legal bills were: (1) adequately supported by source documentation, (2) prepared in accordance with applicable agreements, and (3) representative of the cost of services and litigation that had been approved in advance by the Legal Division. The audit covered all payments to Roy, Kiesel & Tucker from December 1, 1997 through November 30, 1998 which included 86 fee bills totaling $1,144,660.

The Legal Division provided a written response on June 28, 1999 (see Appendix II) to a draft of this report that furnished the requisites for a management decision on each of the recommendations. In its response the Legal Division disallowed questioned costs totaling $201. However, the Legal division will not disallow $106 for LSA rate not substantially discounted because the approved LSA rate was utilized. The OIG's evaluation of management's comments is presented in Appendix I.

If you have any questions, please call me at (202) 416-2543 or Allan H. Sherman, Deputy Assistant Inspector General, at (202) 416-2522.

MIR•FOX & RODRIGUEZ, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

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INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

Office of the Inspector General
Federal Deposit Insurance Corporation:

We have performed the procedures (Procedures) enumerated in the Appendix, which were agreed to by the Office of the Inspector General (OIG), Federal Deposit Insurance Corporation (FDIC), solely to assist OIG in determining whether the fee bills submitted by Roy, Kiesel & Tucker and paid by the FDIC from December 1, 1997 through November 30, 1998, were adequately supported, consistent with the terms and conditions of the governing agreements and were representative of the cost of services and litigation which was approved in advance. This agreed-upon procedures engagement was performed in accordance with standards established by the American Institute of Certified Public Accountants and with applicable Government Auditing Standards. The sufficiency of these Procedures is solely the responsibility of the specified users of the report.

Consequently, we make no representations regarding the sufficiency of the Procedures described in the Appendix either for the purpose for which this report has been requested or for any other purpose.

The Procedures and Findings of this engagement are included in the accompanying pages 2 through 4 of this report.

We were not engaged to, and did not, perform an examination, with the objective of expressing an opinion on whether the fee bills present fairly the expenses and activities of the cases for which they were submitted. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of OIG and FDIC, and should not be used by those who have not agreed to the Procedures and taken responsibility for the sufficiency of the Procedures for their purposes.

Mir Fox & Rodriguez

February 5, 1999
Houston, Texas

ROY, KIESEL & TUCKER
BATON ROUGE, LOUISIANA

BACKGROUND

The FDIC incurs legal fees when attorneys and law firms are retained to assist the FDIC in litigation and other legal services. The authority and responsibility for the retention of outside counsel, oversight of services rendered, and approval of fee bills reside with the General Counsel and the Legal Division. The OIG performs audits of fee bills, similar to other contract audits, to ensure that such claims are adequately supported and comply with cost limitations set forth by the FDIC.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of the engagement was to determine whether the fee bills submitted by the firm were: (1) adequately supported by source documentation, (2) prepared in accordance with the applicable agreements, and (3) representative of the cost of services and litigation which was approved in advance by the Legal Division. The engagement scope covered all FDIC payments made to the firm from December 1, 1997 through November 30, 1998, which included 86 fee bills totaling $1,144,660.

Fieldwork included interviews and tests of transactions in the law offices of Roy, Kiesel & Tucker in Baton Rouge, Louisiana. The engagement was conducted in accordance with standards established by the American Institute of Certified Public Accountants and with applicable Government Auditing Standards and, thus, included such tests of the accounting records and other procedures as we considered necessary under the circumstances. We obtained an understanding of the internal control structure related to the firm's billing process. With respect to the internal control structure, we obtained an understanding of the design of the firm's billing policies and procedures and whether they have been placed in operation. In addition, we reviewed the adequacy of the physical access to the electronic billing system and the related transaction trails. We assessed control risk in order to determine our Procedures and for the purpose of evaluating the fees and expenses billed to the FDIC and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

The fee bills were tested for adequacy of source documentation, compliance with the cost provisions of the agreements in effect, and the appropriateness of the charges. The fee bills were tested for compliance with the FDIC's policies and procedures for submitting fee bills as included in the *Guide for Outside Counsel* and the Legal Services Agreements (LSA's) in effect between the FDIC and the firm.

In order to identify billed amounts disallowed by the Legal Division prior to our engagement, we compared the amounts billed by the firm to the amounts paid by the FDIC. We have adjusted the questioned costs in our report for costs previously disallowed to preclude duplication.

The Procedures tested covered relevant source documents supporting legal fee bills. The sampled fee bills were reviewed in terms of two major components: fees for professional services (charges based on hourly rates) and claims for reimbursable expenses such as consultants. An exit conference was held with firm representatives to discuss the preliminary conditions at the end of on-site fieldwork.

RESULTS OF AUDIT

We concluded that except for $307 in fees, the invoices submitted by Roy, Kiesel & Tucker, and paid by the FDIC from December 1, 1997 through November 30, 1998, were supported by source documentation, prepared in accordance with applicable agreements, and representative of the cost of services and litigation which was approved in advance by the Legal Division. The questioned fee amount relates to travel time billed at 100% of hourly rate and an LSA rate not substantially discounted.

FINDINGS AND RECOMMENDATIONS

Travel Time Billed At 100% Of Hourly Rate

During our review of the fee bills submitted by Roy, Keisel & Tucker and the timesheets supporting them, we noted one instance where an attorney billed travel time at 100% of his hourly rate. The *Guide for Outside Counsel* requires that outside counsel reduce the hourly rate charged for travel time to 50% while an attorney is in travel status.

Recommendation 1 :

The Assistant General Counsel, Legal Operations Section, should disallow $201 relating to travel time being billed at 100% of the hourly rate.

LSA Rate Not Substantially Discounted

Roy, Kiesel & Tucker billed the FDIC at an hourly rate that did not reflect a substantial discount from the firm's usual rate structure. The *Guide for Outside Counsel* states that the Legal Division expects to receive substantial discounts form outside counsel's usual rate structures. One invoice that was paid in January 1998, did not reflect a discounted hourly rate. As a result, a total of $106 was billed in excess of the discounted rate.

Recommendation 2 :

The Assistant General Counsel, Legal Operations Section, should disallow $106 for LSA rate not substantially discounted.

ROY, KIESEL & TUCKER
BATON ROUGE, LOUISIANA

PROCEDURES

Preliminary Field Work

1. Obtained a listing of the population of legal fee invoices to be reviewed for FDIC payments from December 1, 1997 through November 30, 1998 (the "Scope").

2. Obtained and reviewed copies of the FDIC Legal Services Agreements issued to the firm for the period of December 1, 1997 through November 30, 1998, as well as, the firm's responses to the FDIC law firm questionnaire.

3. Obtained a summary of the firm's usage of the FDIC Legal Research Bank (LRB), including the matters referenced.

4. Obtained annotated copies of legal fee invoices from the FDIC, showing exceptions taken to the firm's bills by case managing attorneys and fee bill review technicians.

5. Obtained a completed management representation letter from the firm.

Evaluation of Electronic Billing System

6. Determined that the firm had received the FDIC Legal Division's letter regarding special requirements dated December 31, 1997.

7. Determined that the firm's computerized accounting system had a complete transaction trail through the Scope of the audit.

8. Determined the existence of controls pertaining to the computer system including assignment of unique user passwords, access to each application, access to the on-line information and on-line approval codes. Documented that this procedure was not applicable as the firm did not have a computerized on-line time entry system.

Evaluation of Fitness and Integrity

9. Determined whether the firm requested and/or received any conditional waiver of a conflict of interest from OIG/FDIC.

10. Reviewed the firm's malpractice insurance policy to determine the extent and duration of the firm's coverage.

Review of Fees Paid

11. For the sample of 86 FDIC invoices (the Sample) selected by FDIC, we performed quantitative test work and validated the mathematical accuracy of all 86 sample invoices.

12. Compared the names and billing rates used on all sampled invoices with the names and rates indicated on the LSA.

13. Selected a sample of attorneys who had devoted substantial time to FDIC related matters.

14. For the attorneys selected in the sample, reviewed timesheets for mathematical accuracy and scheduled total hours on a daily basis for one billing month. Reviewed schedules for reasonableness and obtained explanations for unusual entries.

15. Determined the firm's standard billing rates and compared them to the rates billed on the invoices in the sample.

Appendix, Continued

ROY, KIESEL & TUCKER
BATON ROUGE, LOUISIANA

PROCEDURES

16. Reviewed timesheets for selected sample of invoices to determine if there had been any inefficiency indicated by excessive rotation between projects.

17. Reviewed timesheets for selected sample of invoices to determine if there had been excessive research time, and to determine if the firm had used the FDIC's "Research Bank."

18. Reviewed selected sample of invoices for extent of use of paralegals and summer help.

19. Reviewed timesheets and selected sample of invoices to determine the firm's billing policy on time spent for:

    - preparation of invoices;
    - traveling;
    - researching the firm's own conflicts of interest; and
    - preparation of plans, budgets and status reports.

20. Reviewed a sample of deposition transcripts for:

    - amount of time spent and charged by the court reporters and the attorneys, and
    - unauthorized multiple attorneys who attended the depositions.

Review of Expenses Paid

21. For the Sample of invoices selected by the FDIC-OIG, performed an analysis of expenses charged; validated the mathematical accuracy of all invoices in the Sample; and determined the percentage of the total expenses charged for each expense category.

22. Compared amounts billed for expenses charged to amounts paid by the firm to outside contractors to determine if billing had occurred at cost for the following categories:

    - document reproduction charges;
    - outside database services;
    - deposition transcripts, hearing transcripts, court fees and filing fees; and
    - expert witness and consultant fees.

23. Evaluated the adequacy of supporting documentation for document reproduction charges, as well as the reasonableness of the quantities billed.

24. Verified that expenses billed were related to FDIC matters.

25. Examined expense charges to determine whether charges for outside database services were:

    - in compliance with the LSA and FDIC guidelines;
    - related to the applicable FDIC matters; and
    - adequately documented.

Other

26. Reviewed payments received from FDIC to determine whether any duplicate payments had been received by the firm.

27. Reviewed billing periods on invoices to determine whether the firm had double-billed FDIC for overlapping billing periods.

MANAGEMENT COMMENTS AND OIG EVALUATION

On June 28, 1999, the General Counsel provided a written response to the draft report. The response is presented in Appendix II to this report.

The Legal Division will disallow all the questioned costs in recommendation 1 totaling $201 for travel time billed at 100% of the hourly rate. On recommendation 2, the Legal Division will not disallow $106 for LSA rate not substantially discounted because the approved LSA rate was utilized by the firm. We will continue to question the $106 for LSA rate not substantially discounted. The *Guide for Outside Counsel* states that the Legal Division expects to receive substantial discounts from outside counsel's usual rate structures. One invoice did not reflect a discounted hourly rate.

Appendix III presents management's proposed action on our recommendations and shows that there is a management decision for each recommendation in this report. After considering information provided by the firm and management's response to the draft report, we will report questioned costs of $307 in our *Semiannual Report to the Congress*.

FDIC
Federal Deposit Insurance Corporation
Washington, D.C. 20429

Appendix II

Legal Division-Legal Operations Section

June 28, 1999

MEMORANDUM TO: David H. Loewenstein
Assistant Inspector General

THROUGH: William F. Kroener, III
General Counsel

William S. Jones
Supervisory Counsel

Rose M. Harley

FROM: Rose M. Harley
Management Specialist

SUBJECT: Audit of Legal Fees Paid by FDIC to Roy, Kiesel & Tucker (Baton Rouge, Louisiana)

This memorandum constitutes the Legal Division's response to both the Office of Inspector General's draft audit report ("Report") dated May 26, 1999 (Exhibit A) and the law firm's response dated June 1, 1999 (Exhibit B). The audit was conducted by Mir-Fox Rodriguez, P.C., an independent public accounting firm ("IPA"). The scope of the audit covered all payments made by the FDIC to the firm from December 1, 1997 through November 30, 1998, which included 86 fee bills totaling $1,144,660. Questioned costs identified by the IPA were $307. After reviewing the Report and the firm's response, the Legal Division will disallow $201.

The Report contains two numbered recommendations. The Legal Division's position with respect to each recommendation is set forth below.

<u>Recommendation 1: That the Legal Division disallow $201 relating to travel time billed at 100% of the hourly rate</u>.

The Report noted one instance where an attorney billed at 100% of his hourly rate while in travel status, rather than at 50% as required by the *Guide for Outside Counsel*. The attorney in question billed at his LSA-approved hourly rate of $115 for 3.5 travel hours, or $402.50. He should have billed at 50% of this rate, or $57.50 per hour, for a total of $201.25. In its response, the firm concurred with this recommendation. Accordingly, $201.25 will be disallowed ($402.50 - $201.25 = $201.25).

The Legal Division will disallow $201 (rounded) for travel time billed at 100% of the hourly rate.

<u>Recommendation 2: That the Legal Division disallow $106 for LSA rate not substantially discounted</u>.

The Report found that the firm "billed the FDIC at an hourly rate that did not reflect a substantial discount from the firm's usual rate structure" (Report at p. 2). Specifically, Exhibit 2 of the Report lists two invoices where attorney billed at $110 per hour for 2.8 and 2.0 hours, respectively, rather than at a discounted hourly rate of $88. It is not clear from the Report how the IPA arrived at the $88 discounted rate. Although the firm agreed with this recommendation in its response, it is the conclusion of the Legal Division that the disallowance is not warranted because $110 is the hourly rate approved for in the applicable LSA between the firm and the FDIC which was accepted by the FDIC on June 29, 1996 (Exhibit C).

The Legal Division will not disallow $106 for LSA rate not substantially discounted as recommended in the Report.

In summary, the Legal Division will disallow $201.

The Assistant General Counsel is authorized to make such minor accounting corrections as may be recommended by the OIG, but which do not affect the substantive positions stated in this memorandum. Completion of all corrective actions is anticipated within 90 days of issuance of the final audit report by the OIG.

Exhibits:

A - OIG Draft Audit Report
B - Firm's Response to the Draft Report
C - LSA Accepted by FDIC on June 29, 1996

MANAGEMENT RESPONSES TO RECOMMENDATIONS

The Inspector General Act of 1978, as amended, requires the OIG to report the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC's responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, FDIC management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management's response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid. Second, the OIG must determine that management's descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management's written response to our report.

Rec. Number	Corrective Action: Taken or Planned/Status	Expected Completion Date	Documentation That Will Confirm Final Action	Monetary Benefits	Management Decision: Yes or No
1	The Assistant General Counsel, Legal Operations Section, disallowed $201 for travel time billed at 100% of the hourly rate.	90 days from issuance of Final Audit Report	Law Firm Refund Check	$201 disallowed costs	Yes
2	The Assistant General Counsel, Legal Operations Section, will not disallow $106 for LSA rate not substantially discounted because the approved LSA rate was utilized by the firm.	Completed	Management Response	$106	Yes