

AUDIT OF LEGAL FEES PAID TO COMEY BOYD & LUSKIN

Audit Report No. 99-006

January 25, 1999



OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

January 25, 1999

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



FROM: David H. Loewenstein
Assistant Inspector General

SUBJECT: *Audit of Legal Fees Paid to Comey Boyd & Luskin*
(Audit Report No. 99-006)

This report presents the results of an audit of fees paid to Comey Boyd & Luskin, a law firm hired by the FDIC to provide legal services. The audit was conducted by the independent public accounting firm of Bert Smith & Company. 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 Comey Boyd & Luskin from March 1, 1997 through February 28, 1998, which included 25 fee bills totaling \$5,262,428.

The Legal Division issued a written response received January 5, 1999 (see Appendix II) to a draft of this report that provided the requisites for a management decision on each of the recommendations. In its response the Legal Division disallowed questioned costs totaling \$11,272. The OIG's evaluation of management's comments is presented in Appendix I.

If you have any questions, please call me at (202) 416-2412 or Allan H. Sherman, Deputy Assistant Inspector General, at (202) 416-2522.



INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED - UPON PROCEDURES

Office of the Inspector General
Federal Deposit Insurance Corporation

We have performed the 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 Comey Boyd & Luskin (firm) for the period of March 1, 1997 through February 28, 1998 were fair and reasonable, adequately supported, and consistent with the terms and conditions of the governing agreements. This agreed-upon procedures (Procedures) engagement was performed in the accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these Procedures was 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.

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 perform 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.

Bert Smith & Co.

November 2, 1998
Washington, DC

Member of the American Institute of Certified Public Accountants

**COMEY BOYD & LUSKIN
WASHINGTON, D.C.**

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 resides with the General Counsel and the Legal Division. The OIG performs audits of fee bills, similar to other contract audits, to ensure that claims are adequately supported and comply with cost limitations set forth by the FDIC.

OBJECTIVE, SCOPE AND METHODOLOGY

The objective of the audit was to determine whether the fee bills submitted by the firm 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 FDIC payments to Comey Boyd & Luskin from March 1, 1997 through February 28, 1998, which included 25 fee bills totaling \$5,262,428.

Audit fieldwork included interviews and tests of transactions in the law offices of Comey Boyd & Luskin in Washington, D.C. Our audit was conducted in accordance with the *Government Auditing Standards* and, thus, included such tests of the accounting records and other auditing procedures as we considered necessary under the circumstances. We reviewed the firm's billing system for purposes of obtaining an understanding of the controls in place and not to provide an opinion on the internal control structure.

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 (LSAs) in effect between the FDIC and the firm. To identify billed amounts disallowed by the Legal Division prior to our audit, we compared the amounts billed by Comey Boyd & Luskin to the amounts paid by the FDIC. We have adjusted the amounts in our report for costs previously disallowed to preclude duplicate demands.

This audit covered relevant source documents supporting legal fee bills. We reviewed fee bills in terms of two major components: fees for professional services (charges based on hourly rates) and claims for reimbursable expenses, such as travel, courier services, and document reproduction. We provided preliminary findings to Comey Boyd & Luskin and received their comments prior to issuing this report.

RESULTS OF AUDIT

We concluded that, except for \$11,272 in fees and expenses detailed in the Findings and Recommendations section of this report, the billings submitted by Comey Boyd & Luskin and paid by the FDIC from March 1, 1997 through February 28, 1998 were adequately supported and consistent with terms and conditions of the governing agreements. The audit identified questioned costs related to fees paid for professional services in the amount of \$7,170. These services included administrative charges and time billed during travel. In addition, we are questioning claims for expenses in the amount of \$4,102. The expenses consist of facsimile charges in excess of cost and per diem expenses over allowable rates. The following table presents a summary of questioned costs.

Summary of Questioned Costs		
Description	Finding Number	Questioned Costs
Administrative Charges	1	5,870
Time Billed During Travel	2	<u>1,300</u>
Subtotal Fees		\$7,170
Facsimile Charges in Excess of Cost	3	2,240
Per Diem Expenses over Allowable Rate	4	<u>1,862</u>
Subtotal Expenses		\$4,102
Total Fees and Expenses		<u>\$11,272</u>

FINDINGS AND RECOMMENDATIONS

Administrative Charges

The firm billed \$5,775 of paralegal time for tasks that are typically performed by administrative support staff. The *Guide for Outside Counsel* states that the FDIC will not pay for costs of doing business including administrative support. The types of tasks we are questioning include photocopying, transmitting documents via modem and facsimile, shipping documents, preparation of time sheets, and conversion of software files. The firm accepted \$187 of the questioned costs, related to the preparation of time sheets and conversion of software files. However, the firm disagrees with the remaining charges for the following reasons.

Photocopying - \$3,382.50

The firm replied that as far as possible, mailing and reproduction is handled by the firm's copy room attendant. If the attendant is otherwise occupied on another task, there are three options. The first is to wait for attendant's time; the second is to proceed with the job on another machine; and the third is to send the material to an outside reproduction center. Unless there is a critical need to proceed, the team would generally wait for the attendant to be free. There are, however times when the firm is instructed to proceed as soon as possible or when deadlines necessitate that they move with all deliberate speed. In that event the firm uses option two or option three. The magnitude of the case and the delays often caused by opposing counsel and the experts unfortunately at times has forced the firm to use option two to get the job done.

Shipping Documents - \$1,462.50

Paralegals performed these tasks because of time constraints and unavailability of the mailroom clerk and secretaries.

Transmission of Document via Modem and Facsimile - \$742.50

During the period in question, the firm's paralegals were trained in several transmission software packages, the secretaries were not trained and did not have modems at their desks. Further, the local counsel was not well-trained in computer technology and had significant difficulties in receiving transmission.

We also identified one instance in which an attorney billed for finding names and addresses which could have been performed by a paralegal at a lesser rate. This resulted in a \$95 overcharge. The firm agreed that this task could have been performed by a paralegal in their response to our preliminary findings.

Recommendation 1: The Assistant General Counsel, Legal Operations Section, should disallow \$5,870 for time incurred performing administrative tasks.

Time Billed During Travel

In three instances the firm billed for travel time that was not in accordance with the Legal Services Agreement (LSA). The firm billed for an attorney and a paralegal while traveling. The LSA does not allow for any travel time to be billed. As a result, the FDIC over paid \$1,300. The firm accepted this finding in their preliminary audit response.

Recommendation 2: The Assistant General Counsel, Legal Operations Section, should disallow \$1,300 for time billed during travel.

Facsimile Charges in Excess of Cost

The firm billed \$2,240 for facsimiles at a rate of \$.50 per page in addition to applicable long distance charges. The *Guide for Outside Counsel* states that “Markups on any supplies or services procured by outside counsel for the Legal Division shall not be charged to the FDIC.” As a result of the firm billing a flat rate of \$.50 for facsimiles, the FDIC was overcharged \$2,240. The firm accepted this finding in their preliminary audit response.

Recommendation 3: The Assistant General Counsel, Legal Operations Section, should disallow \$2,240 for facsimile charges in excess of cost.

Per Diem Expenses over Allowable Rate

The firm billed \$1,862 for hotel and meals in excess of the maximum allowable per diem. The *Guide for Outside Counsel* states that “Outside counsel must conform its travel and expenses to applicable procedures and rules as set forth in the *FDIC General Travel Regulations*, and other FDIC memoranda.” The Guide further states that it expects outside counsel to make every reasonable effort to minimize costs to the FDIC. The firm accepted this finding in their preliminary audit response.

Recommendation 4: The Assistant General Counsel, Legal Operations Section, should disallow \$1,862 for hotel and meal costs in excess of the maximum allowable per diem.

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WASHINGTON, DC**

PROCEDURES

General

1. Obtained a listing of the population of legal fee invoices to be reviewed for FDIC payments from March 1, 1997 through February 28, 1998.
2. Obtained and reviewed copies of the FDIC Legal Service Agreements (LSAs) issued to the firm for the period March 1, 1997 through February 28, 1998, as well as the Firm's responses to the FDIC law firm questionnaire.
3. Requested a summary of the firm's usage of the FDIC Legal Research Bank including the matters referenced.
4. Obtained annotated copies of legal fee invoices from the firm, showing exceptions taken to firm's bills by case managing attorneys and fee bill review technicians.
5. Requested a completed management representation letter from the firm.

Electronic Billing System

6. Determined whether the billing system has adequate internal control features or audit trails.

Fitness and Integrity

7. Determined whether the firm requested and/or received any conditional waiver of a conflict of interest from OIG/FDIC.
8. Reviewed the firm's malpractice insurance policy to determine the extent and duration of the firm's coverage.

Quantitative Review of Legal Fee Bills

9. For the sample of 25 FDIC invoices (the Sample) selected by FDIC, we performed quantities test work, validated the mathematical accuracy of all 25 sample invoices.
10. Compared the names and billing rates used on all sampled invoices with the names and rates indicated on the LSA.
11. Selected a sample of attorneys who had devoted substantial time to FDIC related matters.

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PROCEDURES

12. For the attorneys selected in the sample, reviewed time sheets for mathematical accuracy and scheduled total hours on a daily basis for one billing month. Reviewed schedules for reasonableness and obtained explanations for attorneys and other law firm employees that had billed more than 12 hours per day.
13. Determined the firm's standard billing rates and compared them to the rates billed on the invoices in the Sample.
14. Determined whether any charges exist for direct contact with any FDIC officials. For such charges, determined whether firm received prior approval from the FDIC Managing Attorney.
15. Reviewed selected Sample of invoices to determine if there had been any inefficiency indicated by excessive time spent reading background information, reviewing research and or case law, and reviewing files.
16. Reviewed for selected Sample of invoices to determine if there had been excessive research time charged, and to determine if the firm obtained prior approval from FDIC, and whether the firm used the FDIC's "Research Bank".
17. Reviewed selected Sample of invoices to determine whether attorneys billed for duties typically associated with paralegals or secretaries.
18. Determined whether the firm billed for an excessive number of hours related to conference, meetings, and phone calls.
19. Reviewed selected Sample of invoices to determine the firm's whether the firm did not bill charge the FDIC for:
 - Preparation of invoices
 - traveling
 - researching the firm's own conflicts of interest
20. Reviewed a sample of deposition transcripts for:
 - amount of time spent and charged by the court reporters and the attorneys, and
 - unauthorized attorneys who attended the depositions.

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PROCEDURES

21. Reviewed selected Sample of invoices and identified tasks that appeared administrative in nature.

Review of Expenses Paid

22. 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 listed below.

- document reproduction
- telephone/fax
- outside database services
- internal database services
- process services
- out of town travel
- courier service, express mail
- deposition and hearing transcripts, court/filing fees
- miscellaneous
- expert witness and consultant fees

23. Verified that expenses billed are related to FDIC matters.

24. Evaluated the adequacy of supporting document to substantiate charges.

25. 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,
- telephone/fax
- outside database services,
- internal database services,
- deposition and hearing transcripts, court/filing fees,
- courier service and express mail

26. Examined expenses to determine that the FDIC was not billed for facsimiles transmitted between offices of the firm.

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PROCEDURES

27. Examined expenses to determine that the FDIC was not billed for local telephone calls.
28. For out-of-town travel, verified that coach fares were billed for airline and train fares, 120% of the government per diem allowances were charged, and that the travel charges represent law firm activity solely related to FDIC matters.
29. Determined whether FDIC approval was obtained by the firm to retain the services of experts witnesses and consultants, and to bill the FDIC through the legal fee bills.

MANAGEMENT COMMENTS AND OIG EVALUATION

On January 5, 1999, the General Counsel provided a written response to the draft report. The response is presented in Appendix II to this report.

The General Counsel disallowed the recommended questioned costs for each of the recommendations in the draft report.

Management's response to the draft report provided the elements necessary for management decisions on the report's recommendations. 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 additional information provided by the firm and management's response to the draft report, we will report questioned costs of \$11,272 in our *Semiannual Report to the Congress*.

FDIC

Federal Deposit Insurance Corporation

Washington, D.C. 20429

Legal Division

December 14, 1998

MEMORANDUM TO: David H. Loewenstein
Assistant Inspector General
Office of Inspector General

THROUGH: William F. Kroener, III
General Counsel



William S. Jones
Supervisory Counsel
Outside Counsel Unit



FROM: Paul Mitchell
Counsel
Outside Counsel Unit



SUBJECT: Legal Division Response to the FDIC Inspector General's
Audit of Comey Boyd & Luskin, P.C. (Washington, D.C.)

This memorandum constitutes the Legal Division's response to the Office of Inspector General's ("OIG") draft audit report dated November 16, 1998, *Legal Fees Paid to Comey Boyd & Luskin* ("Report"). The OIG Report, with enclosures, is included herein as Exhibit A. The Firm's letter, dated December 7, 1998, to Allan H. Sherman and William S. Jones, which constitutes the Firm's response ("Response"), is included as Exhibit B.

The Report pertains to work performed for the FDIC and was a result of audit work conducted at the Firm's offices in Washington, D.C. The Report questions \$11,272 of the \$5,262,428 paid to the Firm from March 1, 1997 through February 28, 1998. The audit covered all 25 fee bills submitted by the Firm during that period of time. **In response to the OIG's Report and the Firm's Response, the Legal Division will disallow \$11,272.**

The Legal Division's position regarding each audit finding is explained below in the same order in which it appears in the Report. For ease of reference, the Report's recommendations are indented and have been placed in bold type.

Recommendation No. 1: That the FDIC disallow \$5,870 in billings for work that was administrative in nature.

The Report recommends that the FDIC disallow \$5,870 in billings for activities that appear to be administrative in nature. According to the Report, the Firm billed \$5,775 in paralegal time for administrative tasks such as copying documents, transmitting documents via modem and facsimile, shipping documents, preparation of time sheets, and conversion of software files. In addition, the Report cites one instance where an attorney evidently billed \$95 for work that could have been performed by a paralegal. The types of billings questioned by the Report as administrative in nature are outlined below.

Photocopying - The Report questions a total of \$3,382.50 in billings for photocopying. According to the Report, there were 25 instances on 11 different invoices where paralegals billed for time spent photocopying various legal documents.

Shipping Documents - The Report questions a total of \$1,462.50 in billings for the shipping of documents. According to the Report, there were 22 instances on eight different invoices where paralegals billed for time spent preparing various types of legal documents for shipment.

Transmission of Documents via Modem and Facsimile - The Report questions \$742.50 in billings for the transmission of documents via modem and facsimile. According to the Report, there were four instances on two different invoices where paralegals billed for time spent transmitting various legal documents by means of modem or facsimile.

Attorney Performing Paralegal Work - The Report questions a total of \$95 for a billing by an attorney for work that could have been performed by a paralegal. According to the Report, there was one instance where an attorney billed for time spent finding the names and addresses of state insurance commissioners, something that a paralegal would normally do.

In its Response, the Firm states that it has reviewed this recommendation and accepts the proposed disallowance in its entirety.

In view of the fact that the Firm does not contest this Recommendation, the Legal Division will disallow \$5,870.

Recommendation No. 2: That the FDIC disallow \$1,300 for fees billed for travel time.

The Report recommends that the FDIC disallow a total of \$1,300 for fees billed for travel time. According to the Report, even though the Firm's LSA did not allow billing for travel time, there were three instances on two different invoices where an attorney and a paralegal billed for time spent travelling.

In its Response, the Firm states that it accepts the proposed disallowance in its entirety.

In view of the fact that the Firm does not contest this Recommendation, the Legal Division will disallow \$1,300.

Recommendation No 3: That the FDIC disallow \$2,240 for facsimile charges in excess of cost.

The Report recommends that the FDIC disallow \$2,240 for facsimile charges in excess of cost. According to the Report, there were 14 instances on nine different invoices where the Firm billed for facsimiles at a rate of \$.50 per page in addition to the applicable long distance charges.

In its Response, the Firm states that it accepts the proposed disallowance in its entirety.

In view of the fact that Firm does not contest this Recommendation, the Legal Division will disallow \$2,240.

Recommendation No. 4: That the FDIC disallow \$1,862 in per diem expenses in excess of the allowable rate.

The Report recommends that the FDIC disallow \$1,862 for hotel and meal charges that were in excess of the maximum allowable rate. According to the Report, on one particular invoice there were \$205.62 in meal charges and \$1,655.84 in hotel charges that exceed the allowed per diem rate.

In its Response, the Firm states that it accepts the proposed disallowance in its entirety.

In view of the Fact that the Firm does not contest this Recommendation, the Legal Division will disallow \$1,862.

Conclusion: The Legal Division will pursue a recovery of \$11,272 as summarized on the following page. In its Response, the Firm indicated its willingness to issue a check to the FDIC for this amount and a letter requesting payment will be sent to the Firm after the OIG issues its final audit report.

Recommendations and Questioned Costs

Disallowance

Recommendation No. 1: Billings for Administrative Tasks - \$5,870	\$5,870
Recommendation No. 2: Fees billed for Travel Time - \$1300	\$1,300
Recommendation No. 3: Facsimile Charges in excess of cost - \$2,240	\$2,240
Recommendation No. 4: Excess per diem Expenses - \$1,862	<u>\$1,862</u>
TOTAL:	\$11,272

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 the issuance of the final audit report by the OIG.

Exhibits:

- “A” – OIG Draft Audit Report
- “B” - Firm’s Response to the Draft Report

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, agreed to disallow \$5,870 for administrative charges.	90 days from final report	Law Firm Refund Check	\$5,870 disallowed costs	Yes
2	The Assistant General Counsel, Legal Operations Section, agreed to disallow \$1,300 for time billed during travel.	90 days from final report	Law Firm Refund Check	\$1,300 disallowed costs	Yes
3	The Assistant General Counsel, Legal Operations Section, agreed to disallow \$2,240 for facsimile charges in excess of cost.	90 days from final report	Law Firm Refund Check	\$2,240 disallowed costs	Yes
4	The Assistant General Counsel, Legal Operations Section, agreed to disallow \$1,862 for per diem over the allowable rate.	90 days from final report	Law Firm Refund Check	\$1,862 disallowed costs	Yes