AUDIT OF LEGAL FEES PAID TO MULLIN, HOARD & BROWN, L.L.P.

Audit Report No. 99-026
June 7, 1999

OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

Material has been redacted from this document to protect personal privacy, confidential or privileged information.

FDIC
Federal Deposit Insurance Corporation | Office of Audits
Washington, D.C. 20434 | Office of Inspector General

DATE: June 7, 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 Mullin, Hoard & Brown, L.L.P.*
(Audit Report No. 99-026)

This report presents the results of an audit of fees paid to Mullin, Hoard & Brown, L.L.P., a law firm hired by the FDIC to provide legal services. The audit was conducted by the independent public accounting firm of Owusu & 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 Mullin, Hoard & Brown, L.L.P. from March 1, 1997 through March 31, 1998 which included 150 fee bills totaling $3,000,863.

The Legal Division provided a written response on June 2, 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 $597. 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.

Owusu & Company
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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 Inspector General (OIG), Federal Deposit Insurance Corporation (FDIC), solely to assist OIG in determining whether the fee bills submitted by Mullin, Hoard & Brown (firm) and paid by the FDIC from March 1, 1997 through March 31, 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 the Government Auditing Standards. 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 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.

Owusu & Company

October 9, 1998
Washington, DC

MULLIN, HOARD & BROWN
AMARILLO, TX

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 Mullin, Hoard & Brown from March 1, 1997 through March 31, 1998, which included 150 fee bills totaling $3,000,863.

Audit fieldwork included interviews and tests of transactions in the law offices of Mullin, Hoard & Brown in Amarillo, Texas. The 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. 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. We assessed control risk in order to determine our auditing procedures and to evaluate the fees and expenses billed to the FDIC 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 Mullin, Hoard & Brown to the amounts paid by the FDIC. We have adjusted the questioned costs in our report for costs previously disallowed to preclude duplication.

The 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 Mullin, Hoard & Brown and received their comments prior to issuing this report.

RESULTS OF AUDIT

Based on the agreed-upon procedures performed, we concluded that except for $3,584 in fees and expenses detailed in the Findings and Recommendations section of this report, billings submitted by Mullin, Hoard and Brown and paid by the FDIC from March 1, 1997 through March 31, 1998, were supported by source documentation, prepared in accordance with applicable agreements, and were representative of the cost of services and litigation which was approved in advance by the Legal Division. The audit questioned $2,210 in fees billed for administrative tasks. In addition, we are questioning $1,374 in expenses billed. These consist of excessive lodging costs, mark-up on telephone charges, overhead expenses and unsupported expenses. The questioned costs are summarized in the following chart.

Summary of Questioned Costs		
Description	**Recommendation Number**	**Questioned Costs**
Administrative Tasks	1	2,210
Subtotal Fees		$ 2,210
Excessive Lodging Costs	2	$ 957
Mark-Up on Telephone Charges	3	219
Overhead Expenses	4	101
Unsupported Expenses	5	97
Subtotal Expenses		$ 1,374
Total Fees and Expenses		$ 3,584

FINDINGS AND RECOMMENDATIONS

Administrative Tasks

Mullin, Hoard & Brown billed the FDIC $2,210, at rates ranging from $120 to $155 per hour, for 17.4 hours of attorney time spent preparing facsimiles, reviewing billings, organizing and copying files, working on travel plans and vouchers and preparing Federal Express packages. These activities are administrative tasks that should not be billed to the FDIC. The Guide states that the FDIC will not pay for administrative support. According to the Guide, each outside counsel is required to include in its “fees and rates for legal services provided to the FDIC its costs of doing business, including all ‘overhead’, general and administrative costs, fringe benefits, and profit.”

Recommendation

(1) The Assistant General Counsel, Legal Operations Section, should disallow $2,210 for administrative tasks.

Excessive Lodging Costs

Mullin, Hoard & Brown billed the FDIC for lodging costs incurred at rates that exceeded the maximum allowable per diem applicable to the location. We noted that the FDIC was over billed by $957 in 3 of the 6 lodging costs reviewed. Mullin, Hoard & Brown stated that the firm makes every effort to obtain the most reasonable lodging rates during travel but in certain instances, the timing of travel precludes the firm from obtaining allowable rates.

Recommendation

(2) The Assistant General Counsel, Legal Operations Section, should disallow $957 for lodging costs in excess of allowable rates.

Mark-Up on Telephone Charges

Mullin, Hoard & Brown over billed the FDIC $219 by marking-up telephone charges. Mullin, Hoard & Brown bills telephone charges based on costs contained in reports generated from the Equitrac system installed to track telephone usage by client and matter number. Mullin, Hoard & Brown stated that it was their intention to setup a system that would adequately track usage and cost in order to properly bill its clients. They further stated that they were under the impression the system's installer had designed the system to meet this need but will, however, take the necessary steps to ensure that they rectify the problem immediately.

Recommendation

(3) The Assistant General Counsel, Legal Operations Section, should disallow $219 for mark-up on telephone charges.

Overhead Expenses

Mullin, Hoard & Brown billed the FDIC $101 in overhead expenses including $87 for internal courier services and $14 for facsimiles transmitted locally and between its Lubbock and Amarillo offices. According to the Guide, each outside counsel is required to include in its "fees and rates for legal services provided to the FDIC its costs of doing business, including all 'overhead', general and administrative costs, fringe benefits, and profit."

Recommendation

(4) The Assistant General Counsel, Legal Operations Section, should disallow $101 for overhead expenses.

Unsupported Expenses

Mullin, Hoard & Brown was unable to provide supporting documentation for four of the document reproduction charges reviewed. As a result, the FDIC was billed $97 for charges which Mullin, Hoard & Brown could not substantiate including $77 in charges billed for 770 copies at $.10 per copy, which is $.02 more than the $.08 rate authorized by the Guide for Outside Counsel. Mullin, Hoard & Brown maintains that the charges are legitimate costs incurred but unfortunately cannot locate the supporting invoices.

Recommendation

(5) The Assistant General Counsel, Legal Operations Section, should disallow the $97 in unsupported expenses.

PROCEDURES

General

1. Obtained and reviewed copies of the FDIC Legal Services Agreements (LSA) in effect for the period March 1, 1997 through March 31, 1998.

2. Obtained a listing of the population of legal fee invoices paid by the FDIC from March 1, 1997 through March 31, 1998 and selected invoices equal to or greater than $10,000 for fees and expenses paid review.

3. Obtained a summary of the firms usage of the FDIC's Legal Research Bank.

4. Obtained a management representation letter from the firm.

Evaluation of Electronic Billing System

5. Obtained an understanding of the design of the firm's billing policies and procedures and evaluated the adequacy of internal controls in order to determine the reliability of fees and expenses billed to the FDIC.

Fitness and Integrity

6. Determined whether the firm requested and/or received any conditional waiver of conflict of interest from the FDIC Legal Division.

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

Review of Fees Paid

8. Compared the names and billing rates on the fee bills with the names and billing rates authorized per the LSA.

9. Reviewed fee bills and determined whether any of the timekeepers billed was not listed on the LSA.

10. Validated the mathematical accuracy of the fee bills by footing and comparing to the amounts actually paid.

11. Obtained the time sheets for the two highest billers and compared the time billed per the fee bill to the time recorded on the time sheets.

12. Verified that the FDIC was billed at substantially discounted rates by comparing the rates authorized by the LSA per attorney with the rates billed by the firm on a sample of commercial invoices obtained.

13. Reviewed fee bills to determine whether the FDIC was billed for administrative tasks performed by attorneys.

14. Reviewed time sheets and sampled invoices to ensure that the firm did not bill the FDIC for the following:

    - Researching its own conflict of interest,
    - Preparing fee bills,
    - Billing one hundred percent of the hourly rate when an attorney is traveling.

15. Obtained and reviewed copies of deposition transcripts to determine whether attorneys billed by the firm for attending depositions are shown on the deposition transcripts and whether multiple attorneys attending depositions were authorized by the FDIC.

Review of Expenses Paid

16. Selected a sample of expenses paid by the FDIC and verified that the expenses:

    - relate to the applicable FDIC matter,
    - are adequately supported and
    - billed at actual costs.

17. Reviewed a sample of invoices to ensure that photocopying charges were billed at the rate authorized by the Guide.

18. Reviewed a sample of invoices to ensure that the firm did not bill the FDIC for local facsimile transmissions and local telephone calls.

19. Reviewed a sample of invoices to ensure that the firm was reimbursed for lodging, meals and incidental expenses at the applicable government per diem rates.

20. Examined selected invoices to ensure that entertainment expenses were not billed the FDIC.

21. Reviewed a sample of invoices to determine whether the amount billed the FDIC for courier service charges incurred from the use of the law firm's employees included a fee in addition to the employee's hourly rate.

22. Verified that the firm obtained the FDIC approval for expert witness and consultant fees billed.

MANAGEMENT COMMENTS AND OIG EVALUATION

On June 2, 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 $180 of the questioned costs in recommendation 1 and all questioned costs in recommendations 3, 4, and 5 totaling $597. The auditors questioned $2,210 in recommendation 1 for tasks that appeared to be administrative based on the description provided on the invoice. The firm provided additional explanation of the charges after issuance of the draft report and the Legal Division allowed all but $180 of the questioned charges. The OIG accepts management's explanation and accordingly reduced questioned costs to $180.

In recommendation 2, the auditors questioned $957 for lodging costs in excess of allowable per diem rates. The firm stated that their lawyers always try to obtain accommodations at the lowest possible costs; however, there were many times when FDIC travel was required on very short notice and the cheaper or bargain hotel rates were unavailable. The Legal Division reviewed the questioned charges and accepted the firm's explanation because it appeared to them that they moved to less expensive lodgings when they became available. The OIG accepts management's explanation and accordingly reduced questioned costs to $0.

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 $597 (including $97 in unsupported costs) in our *Semiannual Report to the Congress*.

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

May 27, 1999

MEMORANDUM TO: David H. Loewenstein
Assistant Inspector General

THROUGH: William F. Kroener, III
General Counsel

William S. Jones
Supervisory Counsel

FROM: Phillip F. Ty
Counsel

SUBJECT: Audit of Legal Expenses Paid by FDIC to Mullin, Hoard & Brown, L.L.P. (Amarillo, Texas.)

This memorandum constitutes the Legal Division's response to both the Office of Inspector General's draft audit report ("Report") (Exhibit A) and the response from Mullin, Hoard & Brown, L.L.P. ("Firm") dated March 17, 1999 (Exhibit B). The audit was conducted by Owusu & Company, an independent public accounting firm ("IPA"). The audit scope covered all FDIC payments to the Firm from March 1, 1997 through March 31, 1998, which included 150 fee bills totaling $3,000,863. The Report questions $3,584. After reviewing the Report and the Firm's response, the Legal Division will disallow a total amount of $597.

The Legal Division's position regarding each recommendation is explained below in the order in which it appears in the Report.

Recommendation No. 1: Disallow $2,210 for administrative tasks.

According to the Report, the Firm billed the FDIC $2,210 for 17.4 hours of attorney time spent preparing facsimiles, reviewing billings, organizing and copying files, working on travel plans and vouchers and preparing Federal Express packages, which are administrative tasks that should not be billed to the FDIC.

According to the Firm, the two attorneys whose time charges have been most frequently questioned as being administrative in nature are [material redacted]. With respect to [material redacted]'s time, the Firm states that the OIG auditors simply misunderstood the time descriptions. The Firm explains that [material redacted] did not bill the FDIC for administrative tasks associated with preparing facsimile transmissions or federal express packages, rather when [material redacted] uses a description such as "prepare facsimile to" or "prepare federal express correspondence to," the entries refer to the preparation of the substantive document being sent by facsimile or Federal Express. The Firm explains that the time entries do not describe time for preparing a facsimile cover sheet or standing at the fax machine physically sending a fax.

With respect to attorney [material redacted], the Firm states that none of the time entries are administrative in nature, but rather that [material redacted]'s entries were for substantive work to advance the FDIC's interests in PLS litigation, as follows:

> Time entries regarding bills and statements of various individuals concern supervision of expert witness efforts, control of their billable tasks, and review and control of the content of their bills so protected materials are not discovered by opposing parties.
>
> Work with paralegals on files means assisting paralegals in understanding how to find particular liability evidence, usually used as exhibits to support motions.
>
> Work on disk documents refers to secret encoded defendants' documents to be used as critical evidence if the documents could be deciphered.
>
> Work with paralegals on production issues refers to giving guidance on how to respond to defendants' discovery demands.
>
> Organization of expert witness, or liability files including originals received from FDIC tech, and search for certain documents, means selection and organization of evidence in order to conduct depositions or respond to motions.
>
> Telephone conferences with various individuals all relate to expert preparation or resolving crises posed by experts refusing to testify at critical times because FDIC has not promptly paid their bills.
>
> Faxing a memo to [material redacted]. with comments consisted of critical review of a document necessary for lead counsel's understanding of issues.
>
> Telephone conference with [material redacted]. concerns coordinating with co-counsel to reschedule a court hearing involving numerous lawyers.

> Conferences regarding law firm bills, billing issues, and work on “billings to [material redacted],” referred to efforts to detect nature of work performed by lawyers for savings and loan, which defendants knew, to use as incriminating evidence.

Finally, with respect to the two time entries made by attorney [material redacted] in the amount of $180 the Firm responds that these entries could be considered administrative in nature.

Legal Division accepts the Firm’s explanation with respect to attorneys [material redacted] and [material redacted] and will allow $2,021. However, with respect to attorney [material redacted], it will disallow and demand reimbursement of $180.

Recommendation No. 2: Disallow $957 for lodging costs in excess of allowable rates.

According to the Report, the Firm billed the FDIC for lodging costs incurred on 14 separate occasions at rates that exceeded the maximum allowable government rate applicable to the location. The Report states that the FDIC was over billed by $957 when billed rates are compared to 120% of approved government rates.

In its response, the Firm states that their lawyers always try to obtain accommodations at the lowest possible costs, however, there were many times when FDIC travel is required on very short notice and the cheaper or bargain hotel rates are simply unavailable. The Firm’s explanation appears to be consistent with the pattern of questioned costs which shows that on several occasions, Firm attorneys moved to less expensive lodgings when they become available.

The Legal Division accepts the Firm’s explanation and will allow $957.

Recommendation No. 3: Disallow $219 for mark-up on telephone charges.

The Report states that the Firm billed the FDIC $219 for marking-up telephone charges. The Firm explains that it thought it was billing the FDIC for the Firm’s actual costs for long distance telephone charges which were recorded on an Equitrac System. The Firm states that after the OIG auditors discovered the discrepancy, the Firm contacted Equitrac and the problem has since been corrected. The Firm has no objection to reimbursing the FDIC the amount of $219.

The Legal Division disallows $219 and will request reimbursement of this amount.

Recommendation No. 4: Disallow $101 for overhead expenses.

According to the Report, the Firm billed the FDIC $101 in overhead expenses such as internal courier services and for facsimiles transmitted locally between its Lubbock and Amarillo, Texas offices. The Firm does not question this finding and agrees to reimburse the FDIC for this amount.

Legal Division disallows $101 and will request reimbursement of this amount.

Recommendation No. 5: Disallow $97 in unsupported expenses.

The Report states the Firm was unable to provide supporting documentation for four of the document reproduction charges reviewed. The Firm has no objection to reimbursing the FDIC the amount of $97.

The Legal Division disallows $97 and will request reimbursement of this amount.

The Legal Division has determined that it will disallow and seek recovery of fees and expenses as follows (questioned costs are shown in parentheses):

1. Administrative Tasks	($2,210)	$180
2. Excessive Lodging Costs	($957)	- 0 -
3. Mark-Up on Telephone Charges	($219)	219
4. Overhead Expenses	($101)	101
5. Unsupported Expenses	($97)	97
Total:		$597

The Assistant General Counsel is authorized to make such minor accounting corrections as may be required by the OIG but which do not affect the substantive position stated in this memorandum. The Legal Division expects to complete the collection process within 180 days from the issuance of the final audit report by the OIG.

Attachments:
Tab A - OIL Draft Audit Report
Tab B - Firm's Response to the Draft Audit 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 $180 for administrative charges.	180 days from final report	Law Firm Refund Check	$180 disallowed costs	Yes
2	The Assistant General Counsel, Legal Operations Section, allowed $957 in lodging costs over the per diem rate.	Completed	Legal Division Response	N/A	Yes
3	The Assistant General Counsel, Legal Operations Section, agreed to disallow $219 for mark-up on telephone charges.	180 days from final report	Law Firm Refund Check	$219 disallowed costs	Yes
4	The Assistant General Counsel, Legal Operations Section, agreed to disallow $101 for overhead expenses.	180 days from final report	Law Firm Refund Check	$101 disallowed costs	Yes
5	The Assistant General Counsel, Legal Operations Section, agreed to disallow $97 for unsupported expenses.	180 days from final report	Law Firm Refund Check	$97 disallowed costs	Yes