

GAO Highlights

Highlights of [GAO-15-839](#), a report to the Chairman, Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

Since 2010, there have been at least 765 Chapter 11 bankruptcy filings by large companies. The associated fees for bankruptcy professionals, including attorneys, can run into the hundreds of millions of dollars. The size of these fees has raised questions about whether professionals have charged a premium for large bankruptcies and used the venue selection process to file in courts where they believed they would receive higher fees. The USTP, a Department of Justice component, is responsible for, among other things, reviewing whether fees requested by professionals in bankruptcy cases are reasonable and necessary in accordance with the Bankruptcy Code. In 2013, the USTP issued new guidelines governing its review of attorney fee applications in large Chapter 11 cases.

GAO was asked to review the USTP's 2013 guidelines. This report examines (1) the extent to which fee applications observed the 2013 guidelines and bankruptcy stakeholders' opinions regarding the guidelines' key provisions and their effects, and (2) what bankruptcy stakeholders and available research identify as contributing factors and effects of venue selection in large Chapter 11 cases. GAO conducted 57 nongeneralizable interviews with bankruptcy judges, attorneys, and AUSTs in 15 bankruptcy court jurisdictions responsible for large Chapter 11 cases. GAO also reviewed USTP data and court documents on cases subject to the 2013 guidelines, and relevant academic literature on professional fees and venue selection. The USTP generally agreed with GAO's findings.

View [GAO-15-839](#). For more information, contact David C. Maurer at (202) 512-9627 or MaurerD@gao.gov.

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CORPORATE BANKRUPTCY

Stakeholders Have Mixed Views on Attorneys' Fee Guidelines and Venue Selection for Large Chapter 11 Cases

What GAO Found

GAO's analysis of U.S. Trustee Program (USTP) data and interviews with bankruptcy stakeholders including Assistant U.S. Trustees (AUST), selected bankruptcy judges, and attorneys indicate that attorneys' fee applications for cases subject to the USTP's 2013 fee guidelines (cases involving assets and liabilities each of \$50 million or more) have generally contained the information requested by the guidelines. This information is intended to assist the courts in determining whether requested fees are reasonable and necessary. Specifically, in the data GAO reviewed, the USTP identified no issues in submitted fee applications in 47 of the 94 cases filed since the guidelines went into effect in November 2013. Attorneys resolved almost all of the issues in the other 47 cases by providing an explanation or additional information. Bankruptcy stakeholders had mixed perspectives of the overall value of the guidelines and of their potential effect on the efficiency and transparency of the Chapter 11 bankruptcy process, or the fees awarded. Similarly, opinions regarding the effect of specific provisions of the 2013 guidelines also varied by group. For example, 15 of 18 AUSTs said the provision requesting that attorneys provide budgets was likely to have a positive effect on the fee review process, while 10 of 14 attorneys said it was unlikely to have an effect. For example, stakeholders with a positive view said the budgeting provision encourages early communication in a case, while those with a negative view said that the unpredictability of bankruptcy cases limit the value of a budget.

Bankruptcy attorneys and judges GAO interviewed and academic research identify several factors that contribute to venue selection—the process of choosing where to file. Companies filing for bankruptcy have several options available to them when determining the venue, or court, in which to file their case, including their place of incorporation, principal place of business or assets, or where an affiliate has filed a Chapter 11 case. The most frequently cited factors—prior court rulings, the preferences of lenders, and judge experience—all contribute to overall predictability in a case and can provide some insights into what to expect from a court as a case proceeds through the bankruptcy process. For example, knowing a judge's level of experience with large cases and how a court has ruled on certain matters can help an attorney advise a client about how a court is likely to respond to issues in a specific case. Eight of the 39 attorneys and judges GAO interviewed cited perceived court attitudes on professional fees as a significant factor in venue selection. Approximately 61 percent of large Chapter 11 bankruptcy cases filed since October 2009 were filed in two jurisdictions—the Southern District of New York (SDNY) and the District of Delaware (Delaware). Bankruptcy attorneys and judges and academic research identified both positive and negative effects of the concentration of cases in these two jurisdictions. The positive effect most commonly cited by attorneys and judges was the significant large case experience developed by judges in the SDNY and Delaware. In contrast, the negative effects most commonly cited by attorneys were the difficulty local bankruptcy firms face in maintaining a bankruptcy practice outside of the SDNY and Delaware and the lack of opportunity for courts outside of these jurisdictions to develop precedent and expertise.