

ABI Chapter 11 Fee Study (Summary Outline)

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1. In early 2005, the American Bankruptcy Institute awarded me a \$345,000 grant to conduct the most comprehensive, independent empirical study of professional fees in chapter 11 cases to date.
2. The cases in the ABI Chapter 11 Fee Study were drawn from 33 districts around the United States. Three districts from each of the eleven numbered judicial circuits were selected: one from each of the high, low and median population states in the circuit, as determined by the July 1, 2003 Population Estimate published by the U.S. Census.
3. Up to forty cases were selected from each district. Up to twenty cases were selected from the first six months of the year, and up to twenty more cases were selected from the final half of the year. Within each six-month period, cases were selected in the order they were filed.
4. All cases in the sample were filed in 2004. Cases were followed for approximately two years or until they ceased to be in chapter 11 (because of conversion or dismissal).
5. There are 945 chapter 11 cases in the random sample and 81 cases in the big case sub-sample, for a total database of 1,026 chapter 11 cases. There are 99 cases in the separate big case dataset when the 81 cases in the big case sub-sample are combined with the 18 cases already in the main database under the general case selection rules.
6. Cases in the random sample were weighted to reflect the different probabilities of selection in each district. For example, the sample includes almost every business chapter 11 case filed in North Dakota and Wyoming in 2004, but only a mere sliver of the chapter 11 cases filed in New York during that year. To account for this, I weight the cases in the random sample by the inverse of the sampling fraction, rescaled to return the sample to its original size.
7. The average firm in the random sample has assets of \$21.2 million and liabilities of more than \$37 million, and the median firm has assets of \$818,000 and liabilities of about \$1.2 million.
8. The average firm in the big case dataset has assets of \$423.4 million and liabilities of more than \$775.7 million, and the median firm has assets of \$13.7 million and liabilities of about \$50.2 million.

9. In the random sample, cases took less than a year, on average, to reach resolution (mean = .91 years). If the cases that were still pending when data entry was completed are omitted, the length drops to 0.85 years. Approximately a quarter of the cases ended in a confirmed plan, and a similar number of cases converted to chapter 7 – dismissal was the most common outcome, with more than forty-five percent of the cases leaving chapter 11 via dismissals.
10. In the big case dataset, confirmed chapter 11 plans are the norm: 70 of the 99 cases in the sample ended with confirmation. Conversions and dismissals are similarly rare, together representing just seventeen cases. Cases in the big case dataset took an average of 1.08 years to complete – or just under a year to complete, if the still pending cases are ignored (M = 0.98).
11. In the random sample, the debtor’s lead counsel billed an average of 1,725.5 hours per case. In the big case dataset lead counsel billed an average of 5,026.7 hours per case.
12. In the random sample, debtors also retained an average of 0.84 additional professionals, beyond lead and local counsel. In the big case dataset, the debtors retained an average 3.80 additional professionals.
13. Among those cases with committees and retained professionals, committees in the random and big case datasets retained an almost equal number of additional professionals, 86 in the random sample and 87 in the big case dataset. Remember that random sample is almost ten times larger than the big case dataset, so we again see much greater use of professionals in the big case dataset.
14. Courts rarely deny retention applications – just 2% of retention applications in both samples were rejected.
15. In the random sample, the debtor’s lead counsel’s fee applications motivated objections in about 10% of the cases. The United States Trustee objected to the lead counsel’s fee application in just over 3% of the cases.
16. In the big case dataset, these objections are somewhat more common, with the U.S. Trustee objecting to lead counsel’s fee applications in more than 13% of the cases and all parties objecting in fewer than 20% of the cases.
17. The following tables, reproduced from the report, summarize the raw costs involved with the sample cases:

3A: Summary of debtor and committee fees (weighted random sample)

		<i>Total debtor fees requested, expenses requested, and pre-petition payments (n=945)</i>	<i>Total committee fees requested and expenses requested (n=176)</i>	<i>Sum of debtor committee requests pre-petition (n=)</i>
Mean		\$356,948.89	\$403,489.74	\$432,94
% Confidence Interval for Mean	Lower Bound	\$220,248.50	\$227,221.77	\$267,06
	Upper Bound	\$493,649.28	\$579,757.71	\$598,81
Trimmed Mean		\$62,823.42	\$184,279.17	\$72,98
Median		\$10,000.00	\$46,009.22	\$10,00
Standard Deviation		\$2,141,314.19	\$1,184,862.25	\$2,598,36
Skewness (SE of skew)		11.49 (0.08)	5.39 (0.15)	10.83 (1

13B: Summary of debtor and committee fees (big case dataset)

		<i>Total debtor fees requested, expenses requested, and pre-petition payments (n=99)</i>	<i>Total committee fees requested and expenses requested (n=67)</i>	<i>Sum of debtor committee requests pre-petition (n=)</i>
Mean		\$5,845,543.44	\$1,807,553.54	\$7,115,654
% Confidence Interval for Mean	Lower Bound	\$3,855,068.51	\$1,244,634.24	\$4,791,075
	Upper Bound	\$7,836,018.38	\$2,370,472.84	\$9,440,233
% Trimmed Mean		\$4,281,234.00	\$1,512,055.79	\$5,366,314
Median		\$1,794,021.22	\$891,072.33	\$2,118,143
Standard Deviation		\$9,979,995.15	\$2,307,810.87	\$11,655,150
Skewness (SE of skew)		3.27 (0.24)	1.95 (0.29)	2.94 (0.

18. Almost 35% of cases in the random sample result in no payment whatsoever to the professionals. These are typically smaller cases that are often converted to chapter 7 or dismissed outright.
19. Fees in either dataset total about 4% to 4.5% of the sum of assets and debts. There are some differences among debtors when divided into size quintiles, although few reach statistical significance once the one anomalous outlying case is removed from the analysis.
20. Reporting fees and expenses as a percentage of debtor size has the clear advantage of simplicity, but a regression model is the only way to account for the multiple factors that may influence the total cost of a chapter 11 case. In addition, reporting fees as a percentage of debtor size does not allow for estimation of fees among a range of debtors, since chapter 11 costs exhibit economies of scale.

21. Table 17 in the report presents a series of regression models that explain the total cost of chapter 11 for the big case sample. For big cases, over 85% of the cost of chapter 11 can be predicted by the size of the firm (assets plus debts) before the chapter 11 process begins.
22. From these models we can conclude that a one percent increase in the sum of the debtor's assets and debts results in a 0.38% increase in professional costs. The size of the debtor and whether the debtor retains 3 or more professionals, beyond its bankruptcy counsel, are also key predictors of the overall cost of the case.
23. Unlike prior studies, I find that time spent in chapter 11 seems to have very little independent effect on the costs of the case. Factors like the size of the debtor corporation, the number of professionals retained, and whether a committee is appointed play much bigger roles. It appears that previous significance of time spent in chapter 11 was actually the result of case outcome and complexity factors that are now represented elsewhere in this model.
24. Table 19 then extends the models to the random sample. The final model on this table explains more than 77% of the total cost of chapter 11 across this broad range of cases. The size of the case is no longer statistically significant, suggesting that among smaller cases, factors other than firm size are important for predicting costs.
25. The final two sections of the report examine the possible effects of missing data and clustering of the data. Both sections are highly technical and the reader is urged to review the report for further information on these topics.