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Kodak Bankruptcy Filings Reveal \$1,000-per-hour Rates

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The National Law Journal

06-03-2013

Eastman Kodak Co.'s bankruptcy case is providing a glimpse into the billing rates of one of Washington's biggest firms: Wilmer Cutler Pickering Hale and Dorr.

Court filings in Kodak's pending bankruptcy reveal the hourly rates for more than a dozen partners and associates, including intellectual property litigators, in several of the firm's offices. One longtime Wilmer litigation partner in New York, who represents technology and pharmaceutical companies, topped his colleagues—charging more than \$1,000 an hour.

The Wilmer attorneys are disclosing their rates in monthly fee statements filed in Kodak's action in U.S. bankruptcy court in New York, where the photography company filed for Chapter 11 bankruptcy last year.

Most of Wilmer's legal bills flow from the firm's work for Kodak in patent infringement and licensing disputes. Wilmer has long represented Kodak—for more than a decade—in intellectual property and commercial litigation action.

Kodak in 2010 accused Kyocera Corp. of failing to pay millions of dollars in royalties for the use of patented technology used in camera phones. A year later, Kodak filed a complaint against Asia Optical Co. Inc., alleging the company failed to pay royalties for technology used in its digital cameras.

Last year, Wilmer received \$4.3 million in fees and expenses from Kodak, the bankruptcy filings reveal. In Wilmer's most recent fee statement, it billed \$1,105,326 for fees and expenses—\$974,853 after applying a discount—for legal services performed in March. For work provided in February, Wilmer is asking for \$904,082.

Intellectual property practitioners and legal consultants said that, despite the potential sticker shock for some clients, a limited pool of talented IP litigators, coupled with high-stakes litigation, allows select lawyers to charge at the high end of the hourly fee scale.

Wilmer partner Robert Gunther Jr.'s \$1,155 rate was the highest among the firm lawyers who were identified in the Kodak bankruptcy filings. Jordan Hirsch, who practices in intellectual property in Wilmer's office in Boston, billed the most hours in March of any partner—183.8, at \$730 an hour.

Gunther, who joined Wilmer in 2007, and Hirsch didn't respond to messages seeking comment, and a Wilmer spokeswoman said the firm would not talk about billing rates. Gunther has more than two decades of litigation experience. He formerly led the Latham & Watkins global litigation department.

"Whether someone can legitimately charge \$1,100 an hour for their rate, and I'll be candid, it is a lot higher than my rate, really depends on the market," said Joanne Zimolzak, the Washington managing partner of McKenna Long & Aldridge. "It seems crazy and incongruous, but in the right situation it might actually be worth it. Wouldn't you rather pay the guy who charges \$1,100 an hour when it will take him one hour to do something when it may take 10 hours for a first-year associate billing out at \$300 an hour?"

Zimolzak declined to disclose her hourly rate. "We have heard clients say they have been willing to pay for talent," Zimolzak said. "Now, whether that means \$1,100 or \$700, that is a different question."

Overall, the average hourly rate for Wilmer partners and associates is consistent with similar firms. A recent analysis of billing hours by sibling publication *The American Lawyer* and TyMetrix Inc. found that partners among the top 20 revenue per lawyer firms—Wilmer ranks 14th—charged on average \$915 an hour.

The eight Wilmer partners listed in the April 30 fee statement in the Kodak bankruptcy averaged \$872 an hour. The average hourly rate of the nine listed associates, who are still at Wilmer, was \$585 an hour.

At the Washington firm Sterne, Kessler, Goldstein & Fox, which focuses on intellectual property matters, there isn't a partner who charges more than \$1,000 an hour, managing director Michael Ray said. The median rate for an intellectual property litigation partner is \$596, Ray said, while the median rate for IP litigation associates is \$354. Sterne Kessler counts among its clients Apple Inc., Google Inc. and Medtronic Inc.

Clients are less focused on hourly billing rates and more concerned about the overall cost, Ray said. "The clients care most about 'What will this project cost?' and 'Will I get value for it?' " Ray said.

For clients, getting a good deal can mean a discount on services. Ray said that an increasing number of companies are asking firms for discounts on work—generally between 5 percent and 10 percent. In-house corporate attorneys have an easier time justifying the cost of outside counsel when a discount is tacked on, he said.

For its work for Kodak, Wilmer offered an alternative fee structure with a 12.5 percent discount on hourly billing rates, and in some cases premiums tied to a successful outcome. After Kodak filed for bankruptcy, Wilmer extended the same discount, but without the added premium.

Despite pressure from clients, Ray said Sterne Kessler does not offer reduced prices. "We don't play the 'crank your rates up and slash them with discounts' game," Ray said. "We have a single billing rate and we strive to keep the rate."

Legal consultants said intellectual property litigation attorneys are in high demand by firms and therefore charge higher rates. "People who can try a patent trial to jury successfully are highly sought after," said Mary Young, a consultant with Zeughauser Group. "There aren't that many people who have the technical background and the ability to bring what is a very complex case to trial."

Matthew Huisman writes for The National Law Journal, a Daily Report affiliate.