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Are Ch. 11 Professional Fees on the Upswing? Case Data Says, "Not Really"



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There is a narrative found in some business media stories covering restructuring activity regarding professional fees running up in recent years. The purported increase in restructuring professional² fees since the COVID-19 period has gotten attention from some industry-related publications, notably *Petition*, which revels in calling out chapter 11 cases where total professional fee totals were exorbitant.

Petition's commentary is especially harsh on high-fee cases when the reorganized company again encounters financial distress not long after emergence, and it is hard not to nod in agreement when that happens regardless of circumstances. However, are outlier cases with nine-digit fee totals (those more than \$100 million) getting undue attention and skewing the perception of professional fees generally, or are case fee totals trending higher as a norm? Moreover, how should such things be measured and evaluated to make this determination? This article quantifies and evaluates advisory fee trends since 2019 in a comprehensive manner. For those who wish to bypass the details of this analysis, let's cut to the chase with these primary takeaways:

- Average professional fee totals per case and per case day in large cases that have emerged from chapter 11 in the past six years have been consistent from year to year, and there is little

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² The terms "professional fees" and "advisory fees" are used interchangeably throughout this article and refer to the fees of retained legal counsel, financial advisors or investment bankers in a chapter 11 case by a debtor or official committee whose hiring is subject to bankruptcy court approval. Therefore, it excludes distressed-debt exchanges, LMEs and any other type of out-of-court restructuring. It should also be noted that distressed exchanges, including LMEs, that fail to prevent a subsequent chapter 11 filing will incur professional fees in each instance.

Exhibit 1: Advisor Fee Analysis (All Cases)

	All Cases	All Cases	All Cases	All Cases	All Cases	All Cases
Emergence Year	# of Total Cases	Avg. Liabilities at Filing	Avg. Case Length (in days)	Avg. Total Fees per Case (Legal, IB & FA)	Avg. Fees per Day (Legal, IB & FA)	Avg. Fees as a % of Liabilities (Legal, IB & FA)
2024	56	\$588,503,219	182	\$19,443,658	\$124,586	4.8%
2023	63	\$798,817,460	202	\$18,118,114	\$116,415	4.2%
2022	31	\$900,342,258	276	\$19,421,595	\$78,899	3.6%
2021	61	\$1,085,556,066	249	\$22,664,599	\$107,019	4.2%
2020	78	\$1,089,209,359	170	\$16,260,531	\$114,361	2.4%
2019	37	\$1,122,402,703	165	\$18,745,486	\$121,727	3.0%
	326	\$932,203,804	203	\$18,947,240	\$112,605	3.7%

Source: Octus Credit Cloud and FTI Consulting analysis

evidence of trending increases in average case fee totals (see Exhibit 1);

- Of the 338 cases initially evaluated, 12 had professional fees in excess of \$100 million and were judged to be outliers in all respects and omitted from this analysis, but several of these 12 cases attracted considerable business media attention. Another 26 cases had professional fee totals of \$50 million to \$100 million;
- Average professional fee totals per case for prearranged filings (pre-packaged or pre-negotiated cases) were not materially different from average fee totals incurred in freefall filings, although they were completed in nearly half the time (see Exhibit 2); and
- A debtor's size at filing was not as strongly correlated with case length and fees as expected, as size alone often fails to capture other case aspects and complexities that can impact professional fees. While average case size has decreased notably since 2022, average total professional fees per case did not. Fee metrics based on case size can be misleading.

The Methodology for Measuring Professional Fees in Large Chapter 11s

We evaluated aggregated advisory fee totals for 326 large cases (more than \$100 million of liabilities at the time of filing) that filed for chapter 11 reorganizations in the Delaware, Southern District of New York, Southern District of Texas or New Jersey venues only, and emerged between 2019-24 where at least two advisors (financial advisor, investment banker or counsel) to either the debtor or an official committee had court-approved final fee application data available. All case information and data were obtained from queries of Octus's Credit Cloud. We aggregated and summarized case advisor fee data annually based on the year of a debtor's effective date, then segmented this annual fee analysis by select case attributes.

Foremost, let's recognize that advisor fee totals per case that are not expressed on some relative basis are of limited usefulness for comparative purposes, as advisor fee totals will vary with case attributes that also should be considered. However, defining and capturing some of these attributes can be challenging (*e.g.*, how should litigation-intensive cases be identified?) Total advisor fees per case expressed

in dollars can be fodder for *Petition* stories, but they do not provide much context that allows for meaningful comparisons across cases.

For example, larger average advisor fee totals more likely reflect longer average case lengths or greater case complexity rather than changes in billing rates or case staffing decisions. How can advisory fees be measured to reflect relative case aspects that might impact their final size? In addition to average total advisor fees per case (an absolute measure), this article's evaluation expressed relative case fee totals in two distinct ways.

Advisor Fees Relative to Case Length

Total case advisor fees divided by the number of days between filing date and plan effective date are how to calculate advisor fees relative to case length. This relative framing recognizes that longer case lengths likely will generate larger fee totals and expresses advisor fee totals as an *average fee per case day*. Assuming that longer cases generate more total advisor fees, this metric allows the comparison of relative advisor fee totals across cases adjusted for case length.

Advisor Fees Relative to Case Size

This is total case fees divided by liabilities at filing, which was used as a proxy for debtor size and, perhaps, case complexity. The relative framing recognizes that larger debtors might also be more complex cases that will generate larger fee totals, and expresses advisor fee totals as a *percentage of liabilities at filing*. Assuming that larger cases generate more total advisor fees, this metric allows a comparison of relative advisor fee totals across cases adjusted for case size.

Other Considerations: Treatment of Outliers; Merits and Shortcomings of Professional Fee Metrics

This analysis indicated that the largest fee cases were outliers not only in absolute dollar terms, but in relative terms, too. Twelve cases that have emerged since 2019 with total fees exceeding \$100 million have been identified. These 12 cases averaged \$178 million in total court-approved fees, representing \$337,000 per case day and 7 percent of liabilities at filing — with those two relative fee

Exhibit 2: Advisor Fee Comparison Between Freefall Filings and Prepacks

Emerge Year	# of Freefalls	# of		% Freefall	% Prepacks or Pre-neg	Avg. Liabilities at Filing		Avg. Case Length (in days)		Avg. Total Fees		Avg. Fees per Case Day		Avg. Fees as a % of Liabilities	
		Prepacks or Pre-neg	Freefall			Freefall	Prepack / Preneg	Freefall	Prepack / Preneg	Freefall	Prepack / Preneg	Freefall	Prepack / Preneg	Freefall	Prepack / Preneg
2024	27	29	48%	52%		\$434,122,972	\$732,236,552	237	132	\$20,808,185	\$18,173,236	\$97,921	\$149,412	6.8%	2.9%
2023	28	35	44%	56%		\$492,255,357	\$1,044,067,143	278	142	\$16,423,006	\$19,474,200	\$67,000	\$155,947	5.8%	2.9%
2022	16	15	52%	48%		\$1,019,321,875	\$773,430,667	350	198	\$21,573,098	\$17,126,660	\$55,681	\$103,665	3.9%	3.4%
2021	30	31	49%	51%		\$502,786,333	\$1,649,526,774	323	178	\$22,137,812	\$23,174,392	\$70,151	\$142,698	6.5%	2.0%
2020	30	48	38%	62%		\$564,757,667	\$1,416,991,667	251	118	\$17,112,079	\$15,728,313	\$74,481	\$139,286	3.5%	1.6%
2019	12	25	32%	68%		\$652,425,833	\$1,347,991,600	247	125	\$21,756,066	\$17,300,408	\$93,772	\$135,146	5.1%	1.9%
	143	183	44%	56%		\$571,112,239	\$1,214,368,251	279	142	\$19,618,212	\$18,422,929	\$76,049	\$141,170	5.4%	2.3%

Source: Octus Credit Cloud and FTI Consulting analysis

measures being triple and more than double the average of all 338 cases, respectively.

Furthermore, these 12 cases were also considerably larger and longer than the average case that was evaluated, averaging 592 days in chapter 11 and \$3.5 billion of pre-petition liabilities, each being triple the average of all cases. Nine of the 12 cases involved either crypto, mass tort liabilities or major airlines. The analysis concluded that these dozen filings unduly influenced annual case fee averages, were not representative cases and were omitted from this final analysis, thus reducing the number of cases evaluated to 326. Several of these cases have been lightning rods for criticism in the business media for the advisor fees generated and, in some instances, their wobbly post-emergence performance. We will withhold any judgment on that front, instead choosing to conclude that these were extraordinary cases that should be excluded from this data set and analysis of broader fee trends over time. Of the remaining 326 cases, only 26 cases (8 percent) had court-approved advisor fee totals of between \$50 million to \$100 million.

The evaluation of all 326 cases by emergence year without making any distinctions for case attributes indicates that average total professional fees per case for retained advisors and average fees per case day have held quite steady since 2019, while relative advisor fees by case size have trended higher over these six years, particularly in 2023-24. This is mostly attributable to the fact that average case size (measured by liabilities at filing) has decreased considerably over the last few years, while average total fees per case have remained fairly constant, thus causing average case fees stated as a percentage of liabilities at filing to have increased notably since 2022 (see Exhibit 1).

If this finding is taken at face value, it would indicate that smaller average case sizes have not resulted in lower average total case fees, causing advisor fees relative to case size to increase appreciably, to 4.8 percent in 2024 vs. an average of 3.7 percent over the entire six-year period, and less than 3 percent in 2019-20 (see Exhibit 1). However, there is another way to interpret this finding that calls into question the reliability of case size as a key determinant of case length and total advisor fees.

Do larger debtors necessarily result in longer cases and higher fees, all other things being equal, and is case size an

accurate indicator of case complexity? It is to some degree, but likely not as much as one might expect. A linear regression of case length vs. case size (*i.e.*, liabilities at filing) for these 326 cases produced a best-fit regression equation that was positively sloped, as one would expect, but with a coefficient of determination (R-Squared) of just 0.23 (meaning that case size variation explains approximately one-quarter of the variability in case length, with other unidentified factors accounting for most of the variation). This is also evident in Exhibit 1, which indicates only modest changes in average case length in 2023-24 compared to 2019-20, even as average liabilities at filing decreased appreciably between those periods.

Case size alone might not be an adequate proxy of case complexity and ultimately case length, as it does not explicitly capture other variables that can impact case length and total advisor fees, such as capital structure composition, key creditor constituents and their cooperation or obstruction with the debtor's reorganization intentions, operating turnaround challenges, and off-balance-sheet liabilities such as litigation-related issues, to name a few. These other attributes also can cause case lengths and fees to vary materially irrespective of a debtor's size, including similarly sized debtors. Conversely, some large debtors with simple capital structures and creditor blocs willing to be equitized often can reorganize in short order via a pre-arranged plan despite their large size.

In short, case size itself (however it is measured) has some bearing on case length and total fees. Using it as a denominator to measure relative advisor fees is still worthwhile, but often it falls short as a reliable proxy of case complexities that otherwise can cause advisor fees to mount. To this point, significantly smaller cases since 2022, on average, did not result in shorter average case lengths or lower average total advisor fees compared to 2019-20, and some will find that result surprising.

Average advisor fees per case day — the other relative measure of advisor fees — was relatively consistent over the six-year period with the exception of 2022, which appears to be an outlier year reflecting case resolutions of some long-running chapter 11 filings made during the COVID-19 period. *Average total advisor fees per case, average case length and average fees per case day were impressively consistent over this time period except for 2022.* On this basis,

Exhibit 3: Advisor Fee Comparison of § 363 vs. Non-§ 363 Cases

Emergence Year	# of § 363	# of No § 363			Avg. Liabilities at Filing		Avg. Case Length (in days)		Avg. Total Fees		Avg. Fees per Case Day		Avg. Fees as a % of Liabilities	
			% § 363	% No § 363	§ 363	No § 363	§ 363	No § 363	§ 363	No § 363	§ 363	No § 363	§ 363	No § 363
2024	42	14	75%	25%	\$559,370,244	\$675,902,143	202	122	\$22,132,440	\$11,377,311	\$121,696	\$133,256	5.8%	1.9%
2023	44	19	70%	30%	\$691,582,500	\$1,047,151,053	241	112	\$19,784,599	\$14,258,887	\$92,326	\$172,201	5.2%	1.9%
2022	20	11	65%	35%	\$450,347,500	\$1,718,514,545	272	285	\$12,789,842	\$31,479,329	\$49,139	\$133,009	4.1%	2.7%
2021	37	24	61%	39%	\$695,901,081	\$1,686,274,167	297	176	\$25,394,814	\$18,455,517	\$89,973	\$133,299	5.6%	2.1%
2020	40	38	51%	49%	\$821,338,250	\$1,371,178,947	223	113	\$16,806,781	\$15,685,530	\$87,217	\$142,934	3.2%	1.4%
2019	17	20	46%	54%	\$539,340,588	\$1,618,005,500	207	129	\$18,886,021	\$18,626,032	\$88,652	\$149,842	4.5%	1.6%
	200	126	61%	39%	\$653,503,951	\$1,374,584,524	240	144	\$19,944,117	\$17,364,897	\$92,406	\$144,667	4.8%	1.8%

Source: Octus Credit Cloud and FTI Consulting analysis

there is not a compelling indication that advisor fees have been trending higher in recent years.

Advisor Fee Analysis: Freefall Filings vs. Pre-Negotiated Filings/Prepacks

This breakdown of advisor fee metrics between freefall filings and prepack/pre-negotiated filings produced some notable takeaways, primarily that average total advisor fees per case did not differ significantly between the two — even though freefall cases were in chapter 11 nearly twice as long (see Exhibit 2). Consequently, average advisor fees per case day were much larger for prepacks/pre-negotiated cases, which is likely attributable to the intensity of the staffing and manhours needed to get a debtor to emergence in an expedited fashion. Consistently, prepacks/pre-negotiated cases passed through the chapter 11 process in nearly half the time as freefalls, but this speed has not brought much in the way of fee relief, with average case fee totals for freefalls being only modestly higher across time.

Moreover, because prepacks/pre-negotiated filings most likely incur larger advisory fees during the pre-petition period (paid in full prior to filing and not reflected in this analysis) than freefalls, the former are likely more costly once pre-petition advisor fees are factored in. There are many good reasons to pursue a prepack/pre-negotiated filing if it is feasible to do so, but lower advisory fees does not appear to be one of them despite their shorter case lengths.

Lastly, freefall filings strongly tend to occur with smaller companies (see Exhibit 2), as larger companies are more likely to attract debtor-in-possession financing and to engage large distressed investors willing to invest the considerable time, effort and cost of developing a reorganization strategy or plan prior to filing. Consequently, average advisor fees as a percentage of liabilities were much larger for freefall filings given their consistently smaller denominators when using that measurement.

Advisor Fee Analysis: Section 363 Sales vs. No § 363

A § 363 sale process has become a more prevalent case feature in recent years, accounting for nearly 75 percent of cases that concluded in 2023-24 vs. nearly 50 percent in 2019-20 (see Exhibit 3). Of the 200 § 363 cases since 2019 that were evaluated, 123 (62 percent) were freefall filings, and this percentage also was highly consistent from year to year. Similar to freefall filings (and owing to their considerable overlap), § 363 sales were far more likely to occur with smaller filers, where less interest from large distressed investors to participate in a formal business reorganization via a POR increases the likelihood of a § 363 sale process. Consequently, average advisor fees as a percentage of liabilities at filing were much higher for cases with § 363 sales due to their smaller average size.

Cases with a § 363 sale process took considerably longer to complete compared to cases without § 363 sales — about 67 percent longer on average — as cases without a § 363 sale were also far more likely to be prepacks/pre-negotiated filings. Of the 126 cases that were not § 363 sales, approximately 84 percent were prepacks/pre-negotiated filings.

Consequently, average advisor fees per case day were much lower for cases that featured a § 363 sale because they consistently took longer to complete. The notion that a § 363 sale process helps to expedite case completion is not supported by the data, which indicates that a § 363 sale often takes considerable time to get done, especially if there is robust third-party interest in the debtor's assets. Assumedly, this lengthier sales process results in stronger recoveries.

Conversely, a pre-arranged filing without a § 363 sale might be the result of a failed pre-petition marketing process that indicated little outside bidding interest for a debtor's assets and weak recovery prospects. Perhaps most notably, average total fees per case between § 363 and non-§ 363 cases did not differ very significantly overall considering the stark differences in their respective case lengths and case sizes.

Conclusion

This analysis indicates that average total professional fees per case are not trending noticeably higher on an objectively measured basis. The body of large case data since 2019 supports this conclusion, with the exception of some aberrant COVID-impacted cases and a few large outlier cases that garnered business media attention, but that we deemed not representative of broader fee trends.

Average total advisor fees per case and average fees per case day were surprisingly consistent over the period reviewed. Average advisor fees expressed on a case-size basis did trend higher due to smaller sized debtors in recent years, but this metric can be misleading. Case size is an imperfect proxy for other case attributes that can impact case length and fees, such as major litigation issues or highly fragmented creditor groups.

Whether advisor fees overall are “reasonable” or “excessive” in the larger picture is a subjective matter that is dependent on many case factors and considerations — not all of which can be easily quantified and evaluated. This article makes no commentary on that issue; rather, we conclude that advisor fees have not changed appreciably in recent years, irrespective of the wide range of opinions about the reasonableness of professional fees. **abi**

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