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Crowdsourcing (Bankruptcy) Fee Control

Matthew Bruckner, *Howard University*

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MATTHEW ADAM BRUCKNER *

Introduction

In absolute terms, corporate bankruptcy cases1 can be very expensive.2 And, in recent years, the cost of corporate bankruptcy cases has substantially outpaced inflation.3 The expense stems both from the need to hire scores of bankruptcy professionals to guide companies through the process, and from the indirect costs, such as lost goodwill, confused clients, angry suppliers and creditors, and persuading the public that a distressed firm will be successfully reorganized.4 The extensive negotiations common to corporate

* Assistant Professor of Law, Howard University School of Law, J.D., NYU School of Law, B.A., Binghamton University. I would like to thank workshop participants at the University of Kentucky’s Developing Ideas Conference for their comments on a very early draft of this Article. Additional comments, ideas and suggestions were provided by Kara Bruce, Nancy Rapoport, and Ray Warner, by workshop participants at the Mid-Atlantic People of Color Conference and my wonderful colleagues at Howard University School of Law. Research assistance was provided by Nairuby Beckles, Brittany Davis, Howell, and Endia Sowers. As always, this article would not have been possible without the support and feedback of my wife, Morgan Hall.

1 The phrase “corporate bankruptcy cases” is used to refer to cases brought under chapter 11 of the United States Bankruptcy Code, notwithstanding that individuals may also file chapter 11 cases. See Bankruptcy Reform Act of 1978, as amended. Pub. L. No. 95-598, 92 Stat. 2549 (codified in scattered sections of 11 U.S.C.) (hereinafter Bankruptcy Code or Code).

2 For example, professional fees in the Lehman cases have already exceeded $2.5 billion dollars. See James O’Toole, Five Years Later, Lehman Bankruptcy Fees Hit $2.2 Billion, CNN MONEY (Sept. 13, 2013, 6:24 AM), http://money.cnn.com/2013/09/13/news/companies/lehman-bankruptcy-fees/. Of course, bankruptcy cases are not necessarily “too expensive.” In fact, they may not even be as expensive as comparable non-bankruptcy transactions. See Stephen Lubben, The Direct Costs of Corporate Reorganization: An Empirical Examination of Professional Fees in Large Chapter 11 Cases, 74 AM. BANKR. L.J. 509, 512 (2000) (hereinafter Lubben, Direct Costs) (Finding that “Chapter 11 is substantially less expensive than other significant corporate transactions.”).

3 More than five times as fast as the rate of inflation according to one study. S Lynn M. LoPucki & Joseph W. Doherty, Professional Overcharging in Large Bankruptcy Reorganization Cases, 5 J. OF EMPIRICAL LEGAL STUD. 983, 985 (2008) (hereinafter, LoPucki & Doherty, Professional Overcharging) (reporting that professional fees and expenses increased by 71 percent over the six year period of the study compared to a 14 percent rise in consumer prices).

bankruptcy cases are both disruptive and expensive, disruptive because they divert managerial attention from other issues and expensive because they require that firms hire bankruptcy professionals to lead many of those negotiations.\footnote{Law (2013) available at https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=AFA2014&paper_id=107.}

Chapter 11 cases are too expensive. They are not too expensive because they cost a lot of money in absolute terms, but because some bankruptcy professionals are stealing from the estate.\footnote{For example, in American Airlines’ recent bankruptcy case more than 2,200 timekeepers sought compensation for their work. And, in Lehman Brothers’ cases approximately 5,300 timekeepers sought compensation. See Brief for the Neutral Fee Examiners in support of neither party as Amicus Curiae at 18, Baker Botts L.L.P. v. Asarco, L.L.C., Sup. Ct. argued Feb 25, 2015 (filed Dec. 10, 2014,), No. 14-103, available at http://www.scotusblog.com/case-files/cases/baker-botts-l-l-p-v-asarco-l-l-c/.}

This theft takes several forms, including when professionals “pad” their bills by charging for work they never performed. But theft also comes in more insidious forms.\footnote{The very idea of chapter 11 is that it may be possible to reorganize a company, pay related expenses and leave creditors better off than they would have been if the company was not reorganized. See 11 U.S.C.§ 1129(a)(7) (setting forth the “best interests” test, and requiring that each creditor or interest holder receive as much under a chapter 11 plan as they would have received in a chapter 7 liquidation). In addition, empirical evidence suggests that bankruptcy may be “substantially less expensive” than comparable non-bankruptcy transactions. Stephen Lubben, Direct Costs, supra note 2, at 512.}


Although it is not clear exactly how significant
the problem is, empirical evidence suggests that professional overcharging is a frequent and widespread issue.\(^{10}\)

Professional overcharging need not and should not occur. To identify and prevent professional overcharging, Chapter 11 has developed an elaborate fee control system.\(^{11}\) But that system is currently unable to prevent professional overcharging.\(^{12}\) Chapter 11’s fee control system is nearly defenseless to prevent professional overcharging for at least three reasons.

The first reason why chapter 11’s fee control system cannot prevent professional overcharging relates to information asymmetries. The success of chapter 11’s fee control system is premised on an expectation that people who know the estate has been overcharged will file an objection with the bankruptcy court highlighting that professional overcharging.\(^{13}\) Yet, those people with the best information regarding professional overcharging generally do not share that information with those parties tasked with controlling professionals fees. In order to prevent professional

\(^{10}\) See infra Section II.B.i.

\(^{11}\) Many have argued that professional overcharging will remain impossible to prevent until all bankruptcy professionals adopt a value-based billing model. See, e.g., Steven J. Harper, Op-Ed, The Tyranny of the Billable Hour, N.Y. TIMES (Mar. 28, 2013), http://www.nytimes.com/2013/03/29/opinion/the-case-against-the-law-firm-billable-hour.html?_r=0. While this may be true, there appears to be no bankruptcy-specific reason why bankruptcy professionals who bill by the hour outside of bankruptcy should be forced to adopt an alternative billing method inside of bankruptcy. See Butner v. U.S., 440 U.S. 48 (1979). Instead, this Article takes as a starting point that some bankruptcy professionals, particularly attorneys, bill by the hour and offers a solution for sorting reasonable and necessary fees expenses from unreasonable and unnecessary fees and expenses. See Ross, Ethics, supra note 7, at 19 (noting that “most private practitioners seem relatively satisfied with time-based billing,” and concluding, therefore, that “changes in billing procedures are likely to occur only if corporate counsel or clients demand them.”).

\(^{12}\) Large swaths of lawyers freely admit to “padding” their bills, and regularly charging for work completed by lawyers unnecessarily senior for a task, thus driving up the bill. See Ross, Ethics, supra note 7, at 15. In addition, that an overwhelming majority claimed to “know some” or “know many” lawyers who “pad” their hours to bill clients for work that they do not actually perform” suggesting that professional overcharging is both widespread and regular. Id.; see also Parker & Ruschena, Billable Hours Pressure, supra note 7, at 650; Lynn M. LoPucki & Joseph W. Doherty, PROFESSIONAL FEES IN CORPORATE BANKRUPTCIES: DATA, ANALYSIS, AND EVALUATION, at 180 (Oxford U. Press 2011) (hereinafter LoPucki & Doherty, Professional Fees) (too few objections are made for “billing too many hours for the task” because our fee control “system has no defense against that kind of overcharge.”).

\(^{13}\) See, e.g., Ross, Ethics, supra note 7, at 13-14 (suggesting that professional overcharging is not widespread because judges regularly approve all or most of the professional fees billed).
overcharging, chapter 11’s fee control system needs a solution to these information asymmetries.

The second and third reasons relate to the task of fee control itself, which is challenging, tedious, and—in many cases—overwhelming. A single large chapter 11 case can necessitate the review of more than ten thousand pages of time and expense entries. In order to prevent professional overcharging, these entries must be carefully reviewed to identify patterns, compared against relevant local rules or fee application guidelines, and cross-checked across professionals. In mega bankruptcy cases, the sheer volume of fee applications that must be reviewed can overwhelm even the most diligent Fee Controllers. Chapter 11’s fee control system needs a greater ability to scale up the number of fee reviewers to ensure a close reading of every time and expense request. Finally, this work is extremely tedious. Manually reviewing and cross-checking these entries can be a mind-numbing task when performed by only a few people. While diligent bankruptcy judges, bankruptcy court clerks and assistant United States Trustees put in a good faith effort every day, the evidence suggests that they are not catching many instances of professional overcharging.

Crowdsourcing can help Fee Controllers with each of the three aforementioned problems. Crowdsourcing allows large, tedious projects to be broken into small, discrete problems that can then be outsourced to potential problem-solvers. It has been successfully used for this purpose in other settings, and because bankruptcy fee applications already report time in increments as small as six minutes, fee control seems well-suited to being crowdsourced. Crowdsourcing is also incredibly useful as an

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14 *See* FED. R. BANKR. P. 2016(a) (requiring that professionals wishing to receive compensation from the estate submit a formal fee application setting forth, among other information, “a detailed statement of (1) the services rendered, time expensed and expenses incurred, and (2) the amounts requested.”).

15 This Article uses the term “Fee Controllers” to refer to the bankruptcy court and assistant United States Trustee involved in a particular case. In certain instances, other parties in interest and, where appointed, fee examiners may also serve as Fee Controllers. However, other parties to the case rarely object and fee examiners are infrequently appointed.

16 Fee examiners, fee committees and auditors already serve this role in certain cases. But, as discussed *infra*, crowdsourcing can perform these tasks better and less expensively.

17 *See infra* Section II.B.ii.

18 *See infra* Section I.

19 *See infra* Section III.

20 *See infra* Section I.A-C.
information-gathering tool. Every bankruptcy case involves a coterie of bankruptcy professionals who have the information and judgment necessary to help (even the most competent) Fee Controllers do their job better. In addition, crowdsourcing could allow other parties, even non-bankruptcy experts, to supply information about their relevant experiences to improve chapter 11’s fee control system. Moreover, because a crowdsourced system can overlay (and need not displace) the existing fee control infrastructure, there appears to be little downside risk to crowdsourcing fee control.

It’s time to apply crowdsourcing principles to solve bankruptcy problems, and this Article suggests how crowdsourcing might be employed to reduce the cost of corporate bankruptcy cases. The remainder of this Article will proceed as follows. In Section I, this Article explains how crowdsourcing works and provides three examples that demonstrate crowdsourcing’s advantages in solving chapter 11’s fee control problem. Section II explains the design of chapter 11’s fee control system and why it necessarily results in sub-optimal fee review. This section will also discuss the empirical evidence suggesting that professional overcharging is a significant and widespread problem. Finally, Section III will explain how crowdsourcing can solve at least five problems with chapter 11’s fee control system.


22 See, infra note 298 and the accompanying text. One question that must be addressed when designing a crowdsourcing system is who should be part of the crowd. Some studies suggest casting the widest possible net, but others suggest a more limited crowd may be appropriate. See, e.g., Daren C. Brabham, Crowdsourcing the Public Participation Process for Planning Projects, 8 PLANNING THEORY 242, 245 (2009) (hereinafter Brabham, Crowdsourcing Public Participation) (noting that unrestrained public participation may not be an unmitigated good); see also Matthew C. Stephenson, Information Acquisition and Institutional Design, 124 HAV. L. REV. 1422, 1466 (2011) (noting that larger crowds produce more information but that each piece of information is, on average, of lesser quality when the crowds are larger). The distinction between studies seems to boil down to two related inquiries: how many responses will a system generate and will the volume of those responses overwhelm the person(s) responsible for sorting through them. While addressed to some degree in this Article, this issue will be explored in greater detail in a planned follow-up article. See also, note 250 infra.

23 Corporate bankruptcy cases have long been thought to be excessively expensive. See Stephen Lubben, The Costs of Corporate Bankruptcy: How Little We Know, (Seton Hall Public Law Research Paper No. 2446663) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446663 (dating concerns about bankruptcy costs to the first national bankruptcy laws). However, the problem continues to metastasize and we should bring to bear the tools of crowdsourcing to bring those costs under control.
I. What is Crowdsourcing?

Defining crowdsourcing is harder than might be expected because the word lacks a widely agreed-upon definition. Jeff Howe, who is widely credited with coining the term, defined crowdsourcing as a process by which employees and suppliers were replaced by an undefined, but generally large group of individuals identified via an open call on the Internet. By contrast, Wikipedia—often described as an example of a successful crowdsourcing project—defines crowdsourcing as “the process of obtaining needed services, ideas, or content by soliciting contributions from a large group of people, and especially from an online community, rather than from traditional employees or suppliers.” This Article will use a definition similar to Wikipedia’s, and defines crowdsourcing as any problem-solving method that generates solutions by drawing on the wisdom of crowds.

Crowdsourcing—broadly conceived as solving problems by drawing on the contributions of many people—has been around for as long as humans have worked together to solve problems.

26 A distinction is sometimes drawn between crowdsourcing, where the benefits of the crowd’s wisdom accrue to the person or entity positing the problem to be solved, and open source, where the benefits are returned to the crowd itself. See, e.g., Daren C. Brabham, Crowdsourcing as a Model for Problem Solving: An Introduction and Cases, 14 Convergence: The Int’l J. of Research into New Media Techs. 75, 81-82 (2008). This Article accepts this sensible distinction between open source and crowdsourcing, and thus would consider Wikipedia to be an open source project and not a crowdsourced project because Wikipedia’s entries are “free content.” Wikipedia: FAQ/Overview, WIKIPEDIA.COM, http://en.wikipedia.org/wiki/Wikipedia:FAQ/Overview#Who_owns_Wikipedia.3F.
28 “Under the right circumstances, groups are remarkably intelligent, and are often smarter than the smartest people in them.” See James Surowiecki, The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies, and Nations, at xiii (Doubleday 2004); see also Brabham, Crowdsourcing Public Participation, supra note 22, at 250; Adrian Vermeule, Many-Minds Arguments in Legal Theory, 2009 J. of Legal Analysis 1 (suggesting that many minds are better than one because they more efficiently aggregate information, but only in some circumstances).
Crowdsourcing is literally the foundation of market economies, as prices represent the wisdom of crowds employed to determine how to allocate goods. However, crowdsourcing only truly gained prominence with the rise of online crowdsourcing. Online crowdsourcing is a phenomenon that touches the lives of millions of people every day without much thought by those affected. Anyone who has ever read consumer reviews on a website like Amazon or Yelp has taken advantage of crowdsourcing. Anyone who has planned a trip using information gleaned from websites like Lonely Planet or Tripadvisor has also taken advantage of crowdsourcing. Crowdsourcing is being used in new ways every day, including to design and sell clothing, to solve scientific or technical problems, to collect and map radiation levels, prevent election fraud, and more.

The next section provides three examples of how crowdsourcing has been used to solve some problems relevant to fixing chapter 11’s fee control system. The first two examples are examples of how companies have embraced crowdsourcing as a solution to information gaps and the need for contingent workers, among other problems. The final example discusses a crowdsourcing platform that can be used by any company or

the crowdsourcing of “ancient Babylonian health care” as when “the family of the sick person would leave him or her out in the middle of town. There, ‘passers-by come up to him, and if they have ever had his disease themselves or have known anyone who has suffered from it, they give him advice.’”)  
34 LONELY PLANET, https://www.lonelyplanet.com/thornreef (an online forum for exchanging travel information, advice, hints and tips since 1996).  
36 Tina Rosenberg, Crowdsourcing a Better World, supra note 33.  
37 Threadless is a t-shirt company whose designs originate from the crowd and are voted on by potential purchasers. See Orozco, Democratizing the Law, supra note 25; see also Brabham, Crowdsourcing Public Participation, supra note 22, at 251.  
38 See Brabham, id. at 251 (discussing InnoCentive.com, which is, itself, discussed at note 76 infra).  
39 Tina Rosenberg, Crowdsourcing a Better World, supra note 33 (referencing three such sites, rdn.org, geigercrowd.net and japanstatus.com).  
individual with a problem to solve, particularly if they have a
tedious but divisible problem. All three examples provide insights
into how crowdsourcing can solve bankruptcy problems. Among
other things, these examples demonstrate that crowdsourcing: (i) is
an ideal tool for information gathering, including information
about complex problems requiring specialized knowledge; (ii) can
help divide large, tedious tasks into digestible chunks that can be
solved by any interested member of the crowd; (iii) allows the
participation of non-experts, who often develop interesting
solutions that bankruptcy professionals might never consider; and
(iv) can be vastly cheaper than paying bankruptcy professionals for
the same work. These four benefits explain crowdsourcing’s
intuitive appeal for enhancing bankruptcy’s fee control system.

A. The Goldcorp Challenge

In 2000, Goldcorp, Inc. was in trouble and turned to
crowdsourcing to solve its problems. The Canadian gold-mining
company was “[b]esieged by strikes, lingering debts, and an
exceedingly high cost of production.” To make matters worse, the
gold market was contracting. Things had gotten so difficult that
the company had ceased its mining operations. Although
Goldcorp’s CEO, Rob McEwen, believed the company owned
valuable property, the company’s in-house geological team hadn’t
been able to reliably locate gold veins, or to estimate the amount of
gold they would find in any particular vein. In response, McEwen
took an unprecedented step for his industry and published his
company’s confidential and proprietary geological data on the
Web. In addition, the company offered more than half a million
dollars in prize money to the team(s) that submitted the best
estimates of where the company should mine and how much gold


42 The contraction was so severe that the price of an ounce of gold fell below Goldcorp’s extraction costs. *Competitive Advantages via Quantitative Methods*, CAVQM.BLOGSPOT.COM (Feb 22, 2012), http://cavqm.blogspot.com/2012/02/goldcorp-challenge-and-beginning-of.html.

43 With the price of gold falling below Goldcorp’s extraction costs, if they had continued to mine, they would have lost money with each ounce of gold they extracted from the ground. See Tapscott, *supra* note 41.

44 *Id.*
particular mines would contain. The results were nothing short of miraculous, and it seems fair to say that crowdsourcing solved the company’s financial woes.

Crowdsourcing produced results for Goldcorp that were so stunning that they nearly caused the CEO to fall out of his chair when he saw them. News spread fast that the company had put “400 megabytes worth of data about the 55,000 acre site . . . on the company’s website.” Within only a few weeks, submissions poured in. Eventually, more than 1,000 “virtual prospectors” from 50 countries reviewed the company’s data. In addition to an army of geologists, the company received submissions applying solutions from fields as diverse as “math, advanced physics, intelligent systems, computer graphics, and organic solutions.” Many of the virtual prospectors employed methods that had never before been used in the mining industry, and the results were impressive.

The prize-winning entry resulted from collaboration between two Australian groups, Fractal Graphics and Taylor Wall & Associates, and employed a novel solution. Together, these companies developed a 3-D map of the mining site that enabled Goldcorp to see the potential in one of its primary assets. The Australian prospectors were able to identify more than 110 sites, half of which the company’s in-house team had not previously identified. In addition, the Australian prospectors were accurate, uncovering “significant gold reserves” in more than 80% of their targets. Notably, these firms were reported to have earned less in prize money than they normally charged for their services, possibly in pursuit of publicity for their efforts.

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46 See Tapscott, supra note 41.
47 Id.
48 Id.; see Linda Tischler, He Struck Gold on the Net (Really), FASTCOMPANY.COM (May 31, 2002, 5:00 AM), http://www.fastcompany.com/44917/he-struck-gold-net-really (putting the number at more than 1,400 participants).
49 See Tapscott, supra note 41.
50 See id.
51 See id.; see also Tischler, supra note 48.
52 See id.
53 Open Innovation, supra note 45.
The results of Goldcorp’s crowdsourcing experiment were phenomenal. The company saved years of exploration time and still managed an 851% increase in production.\(^{55}\) It also reduced its per ounce extraction costs by approximately 84%, going from $360 per ounce to $59 per ounce.\(^{56}\) In the end, it successfully mined over $6 billion in gold as a result of the challenge.\(^{57}\) For an approximately half-million dollar investment, Goldcorp was catapulted from an “under-performing $100 million company into a $9 billion juggernaut while transforming a backwards mining site in Northern Ontario into one of the most innovative and profitable properties in the industry.”\(^{58}\)

Several lessons can be drawn from this example. First, crowdsourcing need not be limited to small, simple problems but can be used to develop solutions to complex challenges. Second and related, crowds can bring specialized knowledge to bear. Third, the crowd may offer interesting and unexpected perspectives on problems, such as a 3-D map, that may be surprisingly effective. Fourth, crowdsourcing may be cheaper than the existing alternatives.\(^{59}\)

B. Proctor and Gamble Crowdsources R&D

For more than a decade, Proctor and Gamble (“P&G”) has enthusiastically embraced crowdsourcing.\(^{60}\) P&G is the world’s largest consumer products company,\(^{61}\) a company whose brands are household staples such as Pantene shampoo, Crest toothpaste, Tide laundry detergent, and Pampers diapers.\(^{62}\) The company sells its products in almost every country in the world,\(^{63}\) racking up more than $84 billion in goods sold in fiscal 2013, and delivering more than $11 billion in profits.\(^{64}\) But, despite its global reach and a robustly-funded in-house research and development (“R&D”)

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\(^{55}\) See Competitive Advantages, supra note 42.

\(^{56}\) See id.; see also Tischler, supra note 48.

\(^{57}\) Open Innovation, supra note 45.

\(^{58}\) See Tapscott, supra note, 41.

\(^{59}\) GoldCorp Challenge, supra note 42.


team, P&G decided to share its “R&D, consumer understanding, marketing expertise, and brand equity” in order to bring “great innovations to market and into the lives of consumers faster.” As a result of the company’s “open innovation strategy,” it has established “more than 2,000 successful agreements with innovation partners around the world.” In short, P&G has embraced crowdsourcing because crowdsourcing has produced valuable results.

P&G turned to crowdsourcing only after its own internal innovation program had stopped being particularly innovative and its share price fell. R&D had long been at the core of the company’s success, but its R&D department’s performance had slipped. New product launches were no longer as successful as they had been in the past. Despite already having one of the world’s largest R&D budgets, P&G tried to fix the problem by increasing that budget further. After several years of trying to re-ignite its internal R&D team’s innovative fire with additional resources, P&G decided to try a new approach. A new approach was needed because additional money had not solved the company’s problems. Put differently, P&G turned to crowdsourcing because it was struggling and needed to shake things up.

By embracing crowdsourcing, P&G has been able to turn itself around. It has entered into a wide array of deals with external innovators, including academic partnerships, joint ventures, trademark-licensing agreements, patent licensing arrangements, and more. By leveraging crowd wisdom, the company has been able to successfully launch more new products, and better

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66 Id.
68 Id.
69 Id.
70 Id.
72 “Critical components of more than 35 percent of the company’s initiatives were generated outside P&G.” Howe, supra note 25.
73 Successful product launches occur more than one-half of the time now instead of only one-third of the time. Kastelle, supra note 67.
monetize its patent portfolio.\textsuperscript{74} Because the company embraced crowdsourcing, it has emerged as one of the world’s most innovative companies and reclaimed its status as the world’s largest consumer products company.\textsuperscript{75}

Like with the Goldcorp Challenge, access to a diverse pool of potential problem-solvers has been a key to P&G’s successful turn-around. Notably, P&G does not crowdsource only through its own website, but has partnered with other companies that help crowdsource solutions, such as InnoCentive.\textsuperscript{76} InnoCentive also draws from a very diverse group of potential “solvers.” Although some “solvers” have formal expertise in areas related to the problems they attempt to solve, others are merely hobbyists “working from their proverbial garage.”\textsuperscript{77} Perhaps counter-intuitively, a study of InnoCentive found that “the odds of a solver’s success increased in fields in which they had no formal expertise.”\textsuperscript{78}

Once again, there are some larger lessons to be learned from P&G’s example. First, P&G’s in-house team was already very large (9,000), but crowdsourcing gave the company access to a significantly larger (1.5 million) pool of contingent workers. Second, these contingent problem-solvers came from a diverse background and better able to devise creative solutions to P&G’s problems than its in-house R&D team could. Third, P&G was able to leverage the ideas of others to re-establish itself as the preeminent consumer products company (i.e., much of crowdsourcing’s benefits inured to the benefit of P&G rather than the crowd). Fourth, the crowd workers were able to handle

\textsuperscript{74} Going from less 10% of patents in use in products to more than 50%. \textit{Id.}

\textsuperscript{75} Katie Jacobs, \textit{How to Build an Innovative Company}, HR MAGAZINE (Jan. 21, 2013), http://www.hrmagazine.co.uk/hr/features/1075996/how-build-innovative-company.

\textsuperscript{76} InnoCentive is a platform for crowdsourcing solutions to complex problems. The “seekers” pay “solvers” anywhere from $10,000 to $100,000 per solution, and its solvers have cracked more than 30 percent of the problems posted on the site, “which is 30 percent more than would have been solved using a traditional, in-house approach.” Howe, supra note 25.

\textsuperscript{77} Id.

complex jobs, and do so at a price that is a mere fraction of the value of their ideas.79

C. Amazon Mechanical Turk and “Microtasking”

Introduced in 2005,80 Amazon Mechanical Turk (“mTurk”) is a crowdsourcing platform intended to “give businesses and developers access to an on-demand, scalable workforce,” and to allow workers to work on appealing projects at times that are convenient for them.81 mTurk coordinates “the use of human intelligence to perform tasks that computers are currently unable to do.”82 mTurk allows companies and individuals (“Requestors”) to post Human Intelligence Tasks (“HITs”) that they would like accomplished. HITs are “typically simple enough to require only a few minutes to be completed” and payments for such tasks can be as low as 1 cent,83 and rarely exceed $1.84 However, HITs can be more complicated, take longer, and pay more. Sample tasks might include translating a single English language sentence into Urdu, annotating documents,85 tagging images or audio transcriptions, or completing a survey.86

For Requestors, mTurk offers several challenges and benefits. The primary challenges are to divide complex tasks into

79 The wages paid to crowdworkers is a contentious issue. See, e.g., Karën Fort, Gilles Adda, & Kevin Bretonnel Cohen, Amazon Mechanical Turk: Gold Mine or Coal Mine?, 37 COMPUTATIONAL LINGUISTICS (MIT Press 2011).
80 Id. at 2.
82 Amazon Mechanical Turk, WIKIPEDIA.COM, http://en.wikipedia.org/wiki/Amazon_Mechanical_Turk. Incidentally, this is also where the name comes from; the original Mechanical Turk was an 18th century chess playing “automaton” that was, in fact, operated by a concealed person. See Gabriele Paolacci et al., Running Experiments on Amazon Mechanical Turk, 5 JUDGMENT AND DECISION MAKING, 411, 411 (2010).
83 Some HITs are listed as paying nothing at all, though many of these seem to be test HITs. See All HITs, AMAZON MECHANICAL TURK.COM, https://www.mturk.com/mturk/findhits?match=false!.
84 For example, on January 23, 2015, mTurk listed 277,871 HITs available and only 409 of those HITs paid more than $1. Search results on file with author. Some of those HITs, however, paid more than $50 each. Search results on file with author. See also Aniket Kittur, et al., CrowdForge: Crowdsourcing Complex Work, UIST’11 (Oct. 16-19, 2011), available at http://ra.adm.cs.cmu.edu/anon/anon/hcii/CMU-HCII-11-100.pdf (reporting that the average HIT in their study paid 3 cents).
86 Paolacci, supra note 82, at 412 (tagging and survey examples); see also Planet Money #600: The People Inside Your Machine (Jan. 30, 2015), http://www.npr.org/blogs/money/2015/01/30/382657657/episode-600-the-people-inside-your-machine.
basic steps, fix an appropriate (and usually very low) reward, and define successful completion.\(^87\) Quality-control is also a potential challenge,\(^88\) but it is a seemingly surmountable one.\(^89\) Among other techniques, Requestors can require that workers (usually referred to as “Turkers”) pre-qualify before accepting any HITs, which seems to improve the quality of responses.\(^90\) Requestors are also free to accept or reject any work done by a Turker, although mTurk tracks this data and a high rejection rate makes it harder to attract Turkers to accept your future HITs.\(^91\) Requestors pay Amazon a ten percent commission, and pay only for successfully completed HITs.\(^92\) Finally, Turkers are classified as independent contractors and thus they are not subject to certain labor law obligations that would arise if Turkers were classified as employees.\(^93\)

Despite some concerns about the service,\(^94\) mTurk has been successfully used in a variety of applications. These successful applications include: (i) conducting experimental research;\(^95\) (ii) writing articles;\(^96\) (iii) identifying duplicate entries and verifying the details of item entries;\(^97\) and (iv) collecting information.\(^98\) These

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\(^{87}\) Fort, supra note 85, at 2.

\(^{88}\) Id. at 2.

\(^{89}\) Requestors have used a variety of techniques to ensure quality results, including: (i) providing above-average payments; (ii) incorporating some sort of reputation score for Turkers; (iii) building the Requestor’s reputation with Turkers; (iv) identifying intrinsically motivated people; and (v) having the Requestor directly verify a sample of the results. Catherine E. Schmitt-Sands & Richard J. Smith, Prospects for Online Crowdsourcing of Social Science Research Tasks: A Case Study Using Amazon Mechanical Turk, (Jan. 9, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2377016; see also Julie S. Downs, et. al., Are Your Participants Gaming the System? Screening Mechanical Turk Workers, CHI 2010 (April 10-15, 2010), available at http://dl.acm.org/citation.cfm?id=1753688 (discussing screening workers in advance as a quality control technique).

\(^{90}\) AMAZON, supra note 82. See also Schmitt-Sands & Smith, id.

\(^{91}\) AMAZON, id. See also Schmitt-Sands & Smith, id. (finding that the Requestor’s reputation was an important determinant in worker quality).

\(^{92}\) AMAZON, id.

\(^{93}\) Id. See Fort, supra note 86, at 2 (labeling mTurk as “an unregulated labor marketplace: a system which deliberately does not pay fair wages, does not pay due taxes, and provides no protections for workers”).

\(^{94}\) See, e.g., Ellen Cushing, Amazon Mechanical Turk: The Digital Sweatshop, UTNE (Jan./Feb. 2013), http://www.utne.com/science-and-technology/amazon-mechanical-turk-zm0z13jzlin.aspx#ixzz3PgZ2MnIC (referring to mTurk as a “digital sweatshop.”)

\(^{95}\) See Gabriele Paolucci, supra note 82, at 413.


\(^{97}\) AMAZON, supra note 82 (describing how mTurk can be used to find duplicative listing in yellow pages directories, identify duplicate entries in online product catalogs, and verify details of restaurants, such as hours of operation.)
latter two applications are particularly relevant to fee control. Chapter 11’s fee control system is less effective than it could be because Fee Controllers lack the best information available, and would benefit from outsourcing some aspects of the fee control process to workers who could quickly, inexpensively and accurately review fee applications.

These examples were intended to help explain what crowdsourcing is and what it can do. Hopefully they have also begun to hint at crowdsourcing’s potential in the bankruptcy realm. With that, this Article will now turn to an explanation of chapter 11’s fee control system and its current problems. After understanding the problems with the current system, this Article will then consider how crowdsourcing can help solve problems in the bankruptcy space in further detail.

II. The Chapter 11 Fee Control System

A. How Chapter 11’s Fee Control System Works

Chapter 11’s fee control system imposes numerous obligations on bankruptcy professionals. In bankruptcy cases, the bankruptcy court must approve a professional person’s employment before the estate can incur an obligation to pay that professional’s fees.99 Section 327(a) of the Bankruptcy Code sets forth the standard governing the employment of most professional persons working for the debtor-in-possession or the trustee,101 and it provides that:

the trustee,102 with the court’s approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not

98 Id. (describing how mTurk can be used to collect information, such as “searching data elements . . . in large government and legal documents.”)
100 Section 327(a) governs the employment of professionals doing bankruptcy-related work, but other sections govern the employment of professionals for other purposes. See Rapoport, Value Billing, id. at 122. See also 11 U.S.C. § 327(e).
101 And perhaps for committees as well. See Rapoport, Value Billing, id. at 123, n.34.
102 In many Bankruptcy Code sections, references to the trustee are generally understood to also include the debtor-in-possession because the debtor-in-possession enjoys most of the rights and duties of the trustee where the debtor-in-possession has not been displaced by a trustee. See 11 U.S.C. § 1107(a); see also Rapoport, Value Billing, id. at 121; Philip A. Schovanec, Bankruptcy: The Sale of Property Under Section 363: The Validity of Sales Conducted Without Proper Notice, 46 OKLA. L. REV. 489 (1993).
hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties under this title.

In order to determine whether professionals are “disinterested” and whether they “hold or represent” interests adverse to the estate, professionals must file retention applications.\(^\text{103}\) While the vast majority of professionals are retained by the debtor-in-possession, other parties are also entitled to have the bankruptcy estate pay for their professional representation.\(^\text{104}\) For example, the estate pays the professional representatives of any official committees.\(^\text{105}\)

Once a professional’s employment is approved, that professional’s fees may be paid as an administrative expense after notice and a hearing, pursuant to section 330.\(^\text{106}\) Section 330 provides that professionals may earn “reasonable compensation for actual, necessary services rendered.”\(^\text{107}\) This means both that professionals may not charge an unreasonable rate, and that professionals may only charge for services that were necessary to have performed.\(^\text{108}\) The Bankruptcy Code provides additional

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104 See Lynn M. LoPucki & Joseph W. Doherty, Rise of the Financial Advisors: An Empirical Study of the Division of Professional Fees in Large Bankruptcies, 82 AM. BANKR. L.J. 141, 142 (2008) (noting that approximately 19% of fees are paid to representatives of unsecured creditors and only approximately 1% to professionals advising all other parties).
105 Section 1103 is relevant to the employment of professionals working for official committees. In relevant part, 11 U.S.C. § 1103 provides that official committees “may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.”
106 See 11 U.S.C. §§ 330(b) and 503; see also Rapoport, Value Billing, supra note 99, at 124-25.
107 Under section 330, attorneys’ fees are reviewed for their reasonableness after the representation has concluded. See 11 U.S.C. § 330(a)(1)(A); see also Hon. Colleen Brown, et al., When a Pig Becomes a Hog it is Slaughtered: Retention and Payment of Professionals in Bankruptcy Cases, AM. BANKR. INST. (July 2010), available at www.abiworld.org/committees/newsletters/ethics/vol7num4/pig.pdf.
108 A reasonable rate may still be a facially large hourly rate. For example, partners at some of the most prominent bankruptcy law firms earn in excess of $1000 per hour. See David Lat, Legal Fee Voyeurism: American Airlines’ Big-Time Bankruptcy Bills, ABOVE THE L. (Oct. 12, 2010, 2:03 PM), http://abovethelaw.com/2012/10/legal-fee-voyeurism-american-airlines-big-time-bankruptcy-bills/ (reporting that at least five Weil Gotshal attorneys in the American Airlines bankruptcy case—Harvey R. Miller, Thomas A. Roberts, Steven A. Newborn, Stephen Karotkin and Stuart J. Goldring—billed the estate $1,075 per hour, while two of the firm’s other lawyers charged $1,050 per hour, another two charged at $1,025 per hour, and three more billed $1,000 per hour.); see also Debra
guidance and prohibits compensation for “(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case.” 109 To aid courts in making these determinations, section 330 provides a list of factors for courts to consider when reviewing the fees of bankruptcy professionals, including but not limited to:

(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.110

To facilitate judicial review of the reasonableness and appropriateness of their fees,111 professionals typically file so-called


In addition, investment bankers are commonly paid hundreds of thousands of dollars per month and can also qualify for liberally-defined “success fees” that exceed millions of dollars at the conclusion of a case. See, e.g., Rapoport, Value Billing, supra note 99, at 120, n.20 (2012) (discussing the proposed retention application for debtors’ financial advisors in In re Energy Partners, Ltd., No. 09-32957, 2009 WL 2970393, at *1 (Bankr. S.D. Tex. 2009)). Other professionals are similarly well compensated.

111 And to comply with guidelines promulgated by the office of the United States Trustee and adopted in many bankruptcy courts. See Rapoport, Value Billing, supra note 99, at 126.
fee applications. Fee applications are supposed to “contain sufficient information about the case and the applicant so that the court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents.” Fee Controllers should approve all of the requested compensation if professionals accurately and adequately describe the services they rendered, and only request “reasonable compensation for actual, necessary services rendered.” And if professionals seek unreasonable compensation or compensation for services that were not actually rendered or necessary for the estate, Fee Controllers should not approve such compensation. In order to make these determinations, though, chapter 11’s fee control system depends primarily on Fee Controllers to review professional fee applications and to catch and prevent any overcharging.

Apparently, Congress also expected that the estate’s creditors would assist with the fee control process by reviewing the professional fee applications and objecting to professional overcharging. However, that expectation appears unjustified, as creditors and other parties-in-interest rarely object to fee applications. To the extent that fee applications are subject to any objections at all, those objections tend to be filed by assistant United States Trustees when they believe that professionals have violated narrow, technical rules. Without a robust pool of insightful objections to focus their attention on instances of potential professional overcharging, Fee Controllers are unable to conduct effective fee reviews. As a result, cuts to professional fee applications, if any, tend to involve small dollar amounts.

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112 28 C.F.R. § 58, App. A(a); see Rapoport, Value Billing, id. at 126.
115 See LoPucki & Doherty, Professional Fees, supra note 12, at 170 (reporting that only 20% of fee applications receive any objections, and the vast majority of those objections are filed by the United States Trustee and involve small dollar sums). But see G. Ray Warner & KEITH J. SHAPIRO, NATIONAL REPORT ON PROFESSIONAL COMPENSATION IN BANKRUPTCY CASES 3, 53, 56, and 57 (LPR Publications, 1991) (“fee applications are being subjected to substantial scrutiny”).
116 See LoPucki & Doherty, Professional Fees, supra note 12, at 131.
117 At least three reasons have been put forward to explain why parties do not participate in chapter 11’s fee control system. First, objections are expensive to prepare and prosecute. These costs are born by the objecting party, but the benefits of successful objections do not necessarily inure to their benefit. Cynthia A. Baker, Other People’s Money: The Problem of Professional Fees in Bankruptcy, 38 ARIZ. L. REV. 35, 57-58 (1996). Second, parties may be concerned that an objection will derail unrelated negotiations. See id. at 70 (“attacking a fee application can be a bit of an atom bomb,
Even with objections to focus Fee Controllers’ attention, fee review would be an enormous task; without them, it may be an impossible one. In a large corporate bankruptcy case, a bankruptcy court typically receives fee applications from 12-16 professional firms each month, and each fee application is usually 30 or more pages. Assuming 12 professional firms each filing a 30 page application for 24 months, Fee Controllers must closely scrutinize 8,640 pages of “single-spaced, small font lines of time entries and expense details” over the course of the case. Add only four more professional firms, and Fee Controllers will

when you want a low caliber pistol.” (citing Barbara Franklin, “Passing Fee Inspection: Bankruptcy Bar Adjusts to Reduce Costs,” N.Y. L.J. 5 (1992)). Third, some have alleged that a “conspiracy of silence” exists. See LoPucki & Doherty, Professional Fees, supra note 12, at xxi; id. at 58 (“courts often bemoan the lack of participation in the fee process.”). In short, this third argument is that the existence of repeat players in corporate bankruptcy cases creates incentives that span individual cases, encouraging parties-in-interest (and their professionals) not to object to each other’s fees in any one particular case because of concerns about future retribution. See id.; see also Nancy B. Rapoport, Rethinking Professional Fees in Chapter 11 Cases, 5 J. BUS. & TECH. L. 263, 269 (2010) (noting the possibility of a “conspiracy of silence” among professionals who regularly appear in chapter 11 cases to avoid challenging each other’s fees); Schwartz & Creswell, supra note 108. (“Lawyers were reluctant to challenge their peers, fearing retaliation.”); Sol Stein, A FEAST FOR LAWYERS, (Beard Books 1999), at 60.


119 Fee examiners, committees or auditors are appointed in many mega-bankruptcy cases, but they also seem unable to meaningfully contribute to the fee control process by obtaining more than modest fee reductions in individual applications. See LoPucki & Doherty, Professional Fees, supra note 12, at XX. Even worse (and counter-intuitively), empirical evidence suggests that cases involving fee examiners tend to have higher than average fees. Id.

120 LoPucki & Doherty, Professional Overcharging, supra note 3 (reporting an average of 12 professionals per case in large corporate reorganization cases with plans confirmed between 1998 and 2003, with the 26 most recent cases averaging more than 16 professionals per case); see also, Zolfo, Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 255-56 (3d Cir. 1995) (seventeen legal, financial and accounting firms were each submitting monthly fee applications for the court’s review and approval). See Rapoport, Value Billing, supra note 99 (naming the professionals normally hired in every large, chapter 11 case).

121 See FED. R. BANKR. P. 2016(a); see also In re Robinson, 368 B.R. 492, 498 (Bankr. E.D. Va. 2007); In re Fine Paper Antitrust Litig., 751 F.2d 601 (3d Cir. 1984) (noting the “massive set of fee applications, which, if stacked in one pile, would amount to a pillar of paper 27 feet high.”) (J. Becker, concurring).

122 Rapoport, Value Billing, supra note 99, at 128; see also Clifford J. White III & Walter W. Theus, Jr., Professional Fees Under the Bankruptcy Code: Where Have We Been, and Where Are We Going?, 29 AM. BANKR. INST. J. 22 (2011) (noting that “tens of thousands of pages of fee applications” are filed in every major bankruptcy case).
have to scrutinize 11,520 pages (and hundreds of thousands of lines of time and expense entries) instead.\textsuperscript{123}

Fee control is so challenging because Fee Controllers must analyze these 8,640-11,520 pages very closely. Mere skimming is not likely to be sufficient. To uncover instances of overcharging, Fee Controllers must review these fee applications to look for patterns, double-check the fees and expenses against any relevant local rules or guidelines, cross-check time entries across billers and across professionals, and then follow up with professionals to discuss facially excessive or unreasonable charges.\textsuperscript{124}

Fee control would be a challenging task for a small group of Fee Controllers even assuming every bankruptcy professional was scrupulous in their billing practices.\textsuperscript{125} But, as discussed in the next section, evidence suggests that bankruptcy professionals do not always exercise appropriate billing judgment,\textsuperscript{126} and sometimes bill the estate inappropriately. Unfortunately, often no one catches this overcharging because fee review is an enormous and tedious task. Fee Controllers appear to need assistance reviewing fee applications, particularly in the largest chapter 11 cases.

B. An Overcharged Estate and Sub-Optimal Fee Review

i. Empirical Evidence Suggests Professional Overcharging May Be Pervasive

\textsuperscript{124} Id.
\textsuperscript{125} See, e.g., In re Jefsaba, Inc., 172 B.R. 786, 798 (Bankr. E.D. Pa. 1994) (court expects that “unproductive time will be written off.”); see also James P. Schratz, Billing Guidelines and Fee Disputes: A Case Law Review, 18 TRIAL DIPLOMACY J. 159, 161 (1995); In re Wildman, 72 B.R. 700, 707 (Bankr. N.D. Ill. 1987) (“before performing any service . . . first scrupulously weigh and assess the necessity and propriety of each task for which he will be seeking compensation.”).
\textsuperscript{126} By “billing judgment,” bankruptcy courts seem to mean that they expect professionals will: “write off unproductive research time, duplicative services, redundant costs precipitated by overstaffing, or other expenses with regard to which the professional generally assumes the cost as overhead in corresponding non-bankruptcy matters, or for which analogous non-bankruptcy clients typically decline to pay.” In re Busy Beaver, 19 F.3d 833, 855-56 (3d Cir. 1994); see also In re Jefsaba, Inc., 172 B.R. at 798 (court expects that “unproductive time will be written off.”); see also Schratz, supra note 125, at 161.
Chapter 11’s fee control system is failing to prevent or control professional overcharging. The system is intended to do two things: (i) allow professional firms to be paid only for their reasonable and necessary services, and (ii) encourage bankruptcy professionals to exercise *ex ante* billing judgment before performing services that may not be compensable. To ensure the former occurs, Fee Controllers should pay particular attention to two issues. First, Fee Controllers must prevent the estate from paying professionals for services that were not actually performed. Second, Fee Controllers must prevent the estate for paying professionals for services that were actually rendered, but that are either unreasonably expensive, or not reasonably necessary for a professional to have provided. If the Fee Controllers can prevent these types of professional overcharging, bankruptcy professionals are more likely to self-regulate in future cases. Unfortunately, Fee Controllers generally do not control either type of overcharging and therefore professionals do not adequately self-regulate.

Empirical research suggests that bankruptcy professionals routinely overcharge their clients. To be clear, fraud, abuse, or malfeasance should not be assumed every time a professional’s fees or expenses are disallowed, and legitimate disagreements do occur about the appropriate charges for reasonable and necessary work, or whether work was reasonable or necessary to perform at all. But in surveys of non-bankruptcy attorneys, many lawyers readily admit to overcharging their clients, with some admitting outright fraud and others simply admitting to inefficiency. An even larger percentage of those surveyed believe that their fellow attorneys overcharge.

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127 See, e.g., LoPucki & Doherty, Professional Fees, supra note 12.
128 See id.
129 See generally LoPucki & Doherty, Professional Overcharging, supra note 3; LoPucki & Doherty, Determinants, supra note 118; Ross, Ethics, supra note 7, at 15; see also Saab Fortney, supra note 9, at 190 (noting the incentive to “overwork” files created by high billable hour requirements); Parker & Ruschena, Billable Hours Pressure, supra note 9, at 619; Bogus, supra note 9, at 914.
130 Parker & Ruschena, Billable Hours Pressure, supra note 7, at 621 (noting that “even in the absence of fraud, clients run the risk of paying for inefficient lawyering, costs incurred in training junior lawyers, turnover, and aggressive time recording.”); see also Schwartz & Creswell, supra note 108.
131 There is no reason to suspect that a survey of bankruptcy attorneys would return different results. The results may also be generalizable to all bankruptcy professionals.
132 Parker & Ruschena, Billable Hours Pressure, supra note 7, at 642 (finding that 23% of survey participants claimed to have actually observed instances of “padding” bills for work never performed); see also Ross, Ethics, supra note 7. Cf. Lisa Lerman, A Double Standard for Lawyer Dishonesty: Billing Fraud Versus Misappropriation, 34 Hofstra L. Rev. 847, 882 (1999) (calling it “commonplace” when lawyers pad their hours.)
attorneys overcharge their own clients even more regularly.\textsuperscript{134} For example, one survey found that a majority of lawyers believed that, occasionally or frequenting, “lawyers deliberately ‘pad’ their hours to bill clients for work that they do not actually perform.”\textsuperscript{135} Almost two-thirds of this survey’s participants (64.5\%) admitted specific knowledge of lawyers padding their hours by charging for work they did not perform.\textsuperscript{136} Of course, “padding” is sometimes just a euphemism for fraud. The same survey found that 29\% of lawyers agreed that they or other lawyers were regularly billing clients at attorney rates for work that could have been done by secretaries or paralegals.\textsuperscript{137} Although this is less egregious, it is still unlikely to be compensable under section 330.\textsuperscript{138} In short, evidence suggests that “many attorneys who bill by the hour have turned to engaging in deceptive billing practices.”\textsuperscript{139}

Additional studies, case law, and anecdotal evidence provide further support for the suggestion that legal professionals regularly overcharge their clients.\textsuperscript{140} For example, Professors LoPucki and Doherty have argued that professionals do not exercise billing judgment, but take advantage of “billing opportunity” in mega-bankruptcy cases to overcharge their

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\textsuperscript{134} Ross, Ethics, supra note 7, at 16; see also Parker & Ruschena, Billable Hours Pressure, supra note 7, at 642 (noting that 34\% of attorneys surveyed reported concerns about the billing practices of other members of their law firm.)
\textsuperscript{135} Ross, Ethics, supra note 7, at 93.
\textsuperscript{136} Ross, Ethics, id. at 16.
\textsuperscript{137} Id. (29\% of work currently performed by lawyers could, to a “moderate” or “substantial” degree be replaced by work performed by secretaries or paralegals.) Ensuring the appropriate professional does a particular task is also a problem. See, e.g., In re Jefsaba, Inc., 172 B.R. at 796 (Court should investigate whether the “appropriate professional or paraprofessional is assigned to the various tasks performed.”); In re Fine Paper Antitrust Litig., 751 F.2d at 593 (finding that more than 5,000 hours of partner time should have been assigned to associates and refusing to approve the requested fees as a result).
\textsuperscript{138} Section 330(a)(3)(B) requires bankruptcy courts consider “the rates charged for such services” when determining whether to approve professional compensation requests. This seems to require that firms use the least expensive service provider.
\textsuperscript{140} See Ross, Ethics, supra note 7, at 15 (anecdotal examples of fraud or otherwise inflated bills.)
\end{IEEEbiблиография}
clients.\textsuperscript{141} Their argument, which aligns with the views of at least some judges,\textsuperscript{142} is that professionals should voluntarily reduce their fees when, for example, the firm engages in unnecessary or excessive research. This does not appear to be happening, particularly in the largest cases. Instead, they find that firms are regularly billing the estate for unnecessary services.\textsuperscript{143} In their view, overcharging is more pronounced in the largest bankruptcy cases because there are more opportunities to overcharge.\textsuperscript{144} In the biggest cases, these professors suggest that professional firms take the view that, “The size of this case justifies the size of the fees.”\textsuperscript{145} In other words, professionals may charge more in large cases simply because there are more opportunities to do work related to a case, but that is actually unnecessary to perform.\textsuperscript{146}

There are also numerous cases trimming excessive professional fees and colorfully describing deplorable professional behavior.\textsuperscript{147} For example, one court refused to approve certain

\textsuperscript{141} LoPucki & Doherty, Professional Overcharging, supra note 3, at 985. Cf. Lubben, Direct Costs, supra note 2 (finding that big cases cost more, but acknowledging that size could be a proxy for case complexity).

\textsuperscript{142} See, e.g., In re Busy Beaver, 19 F.3d at 855-56; see also In re Jefsaba, Inc., 172 B.R. at 798 (court expects that “unproductive time will be written off.”).

\textsuperscript{143} Id. at 1012; see also Lisa G. Lerman, Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers, 12 GEO. J. OF LEGAL ETHICS 205, 230 (1999) (suggesting that when lawyers are servicing large clients and expect to deliver them large bills, making “small modifications in time sheets or expense vouchers [can] seem insignificant or permissible.”).

\textsuperscript{144} Instead of reducing fees for unnecessary or duplicative services, this evidence suggests that professional firms in the largest corporate bankruptcy cases are engaging in billing opportunism. LoPucki & Doherty, Professional Overcharging, supra note 3, at 1012.

\textsuperscript{145} Schwartz & Creswell, supra note 108 (quoting Bryan Marsal, CRO of Lehman Brothers).

\textsuperscript{146} See Lerman, supra note 143, at 231, 245 (suggesting that a lot of overcharging is not simply a failure of judgment but reflects “shameless, pre-meditated chronic thievery.”); see generally Ross, Ethics, supra note 7 (discussing survey results about the “rich opportunities for unscrupulous attorneys to overcharge clients, since the amount of time that needs to be spend on [various tasks] is highly subjective.”). But see Lois R. Lupica & Nancy B. Rapoport, Best Practices for Working with Fee Examiners, 32 AM. BANKR. INST. J. 5 (June 2013) (the authors suggest that they operate on the presumption that professionals do not intend to overcharge the estate); but see also Claire Hamner Matturro, Auditing Attorneys’ Bills: Legal and Ethical Pitfalls of a Growing Trend, 78 FLA. BAR J. 5 (May 1999) (claiming that “commentators have noted that the majority of attorneys are ethical in their billing practices.”).

\textsuperscript{147} See, e.g., In re Lederman Enters., Inc. 997 F.2d 1321, 1323-24 (10th Cir. 1993); see also Keate v. Miller (In re Kohl), 95 F.3d 713, 715 (8th Cir. 1996) (denying attorney’s fees for work that counsel should have realized could not benefit the estate); In re Patronek, 121 B.R. 728, 734 (Bankr. E.D. Penn. 1990) (reviewing and disallowing fees because the bill was “clearly inflated” and the work was likely “concluded in a matter of seconds.”); In re Bank of New England Corp., 142 B.R. 584 (D. Mass. 1992) (reducing fees by 42% despite noting problems with less than 2% of the relevant time entries
professional fee requests because those professionals were treating the debtor like a “cash cow to be milked to death.”\textsuperscript{148} Other courts have labeled professionals as hogs that ought to be slaughtered.\textsuperscript{149} While these cases suggest that chapter 11’s fee control system does work occasionally, there are too few of them to suggest that most instances of professional overcharging are being caught.\textsuperscript{150}

The evidence seems indisputable that some professionals engage in outright fraud; others do not defraud their clients, but nor do they exercise the degree of billing judgment, including writing-off unproductive time, that the Code, commentators and courts expect.\textsuperscript{151} One area where lawyers seem particularly likely to overcharge their clients is when they are repurposing work done for a former client for use by a new client.\textsuperscript{152} For example, assume that a law firm is retained on an hourly basis by two secured creditors in a chapter 11 case, and that both clients want to file objections to the debtor’s plan of reorganization. Client A retains the law firm first and pays $10,000 for the work, based on the firm’s hourly rates multiplied by the number of hours expended.\textsuperscript{153} If the law firm then “recycles” the work it did for Client A when preparing Client B’s objection, it now faces a choice. Should it

because “courts should not spend nonexistent Court resources to track down every entry, correlate them against other fee applications, and . . . delete those entries insufficently substantiated."); Real v. The Continental Group, Inc. 653 F. Supp. 736 (N.D. Cal. 1987) (court reduced fees by 40% because of, among other things, “inflated billing.”); \textit{In re} Fine Paper Antitrust Litig., 751 F.2d at 572-73 (noting that the bankruptcy court reduced fee applications by approximately 80% because it found that the fee petitions were “grossly excessive on their face” and that attorneys “wasted hours on useless tasks,” duplicated efforts and masked “outright padding.”)


\textsuperscript{149} \textit{In re} Energy Partners, Ltd., \textit{id}.

\textsuperscript{150} \textit{See} Jones, \textit{supra} note 108 (Quoting famed bankruptcy lawyer Harvey Miller on billing rates).

\textsuperscript{151} \textit{See} id.

\textsuperscript{152} Parker & Ruschena, \textit{Billable Hours Pressure}, \textit{supra} note 7, at 626 (discussing the practice of recycling previously completed work for new clients and the impulse to bill the second client in excess of the hours expended to complete that work).

\textsuperscript{153} This is known as the “lodestar” method of computing appropriate professional fee requests. \textit{See}, e.g., Stabraker v. DLC Ltd., 376 F.3d 819, 825 (8th Cir. 2004) (“The lodestar method, calculated as the number of hours reasonable expended multiplied by a reasonable hourly rate, is the appropriate calculation of fees [under 11 U.S.C. §330].")
charge Client B $10,000 or should it charge Client B only for those hours reasonably expended in modifying Client A’s objection to suit Client B’s needs? Although it is widely agreed that the former option is likely fraudulent, \(^{154}\) approximately one quarter of surveyed lawyers suggested that it is either ethical to charge Client B a premium or that they would do so notwithstanding the ethical issues presented.\(^{155}\) If recycling Client A’s work product for Client B resulted in time savings, that time savings must be passed along to Client B under an hourly fee arrangement. Fee Controllers are charged with ensuring this happens.

To sum up, empirical evidence suggests that professionals are regularly charging clients for work never performed (i.e., “padding” their bills), work performed but that was not necessary (i.e., “milking” client files), or charging higher-than-appropriate rates because they are not using the lowest-cost provider for that work.\(^{156}\) While the differences are relevant to the moral (and potentially criminal) culpability of the involved professionals, they are not relevant to chapter 11’s fee control system. All professional overcharging represents non-compensable fee requests. Although much of the data on professional overcharging comes from the non-bankruptcy context, there is no reason to suspect that bankruptcy professionals are somehow less tempted to overcharge their clients than their non-bankruptcy counterparts.\(^{157}\)

\[ii. \quad \text{Sub-Optimal Fee Review is the Norm in Chapter 11}\]


\(^{155}\) Ross, Ethics, supra note 7, at 58; Parker & Ruschena, Billable Hours Pressure, supra note 7, at 648-50.

\(^{156}\) Not only did 20-25% of surveyed lawyers freely admit to “padding” their bills, but 29% also admitted to regularly charging for work completed by lawyers more senior (and thus more expensive) than was required by the task. In addition, that an overwhelming majority (64.5%) claimed to “know some” or “know many” lawyers who “pad” their hours to bill clients for work that they do not actually perform.” See Ross, Ethics, supra note 7, at 15; see also Parker & Ruschena, Billable Hours Pressure, supra note 7, at 650.

\(^{157}\) While it is possible that the professionals in these surveys were overreporting fraud and other types of overcharging, this seems unlikely because they were casting themselves, their profession, and their peers in a negative light. Instead, these reasons suggest that it is more plausible that the surveyed professionals were underreporting instances of overcharging. See Bogus, supra note 9, at 927 n.148 (exploring various reasons—all related to Ross’ survey methodology—why his results likely under-reported instances of padding.).
Given the aforementioned admissions of professional overcharging, an effective fee control system should be able to regularly identify and then reduce the fees and expenses paid to bankruptcy professionals.\(^\text{158}\) Yet, chapter 11’s fee control system appears to neither control nor deter virtually any of this professional overcharging.\(^\text{159}\) For example, one study found that approximately 96% of fees requested in corporate bankruptcy fee applications were approved in 43 of the 48 cases examined.\(^\text{160}\) This same study found that the median reduction in fees in Delaware—where many of the largest bankruptcy cases are filed—was less than one percent.\(^\text{161}\) Given the empirical evidence suggesting that professional overcharging is a widespread problem, the lack of fee reductions suggests that chapter 11’s fee control system is broken.\(^\text{162}\)

As a result of the system’s failure to adequately control professional fees, the cost of professional representation in corporate bankruptcy cases has grown at more than five times the rate of inflation in recent years.\(^\text{163}\)

In order to prevent professional firms from being paid supra-competitive wages, it is necessary to understand why Fee

\(^{158}\) Some scholars have argued that the opposite may be true and that bankruptcy professionals have a greater ability to bill opportunistically and therefore engage in more, rather than less, inappropriate billing. See LoPucki & Doherty, Professional Overcharging, supra note 3, at 985. In large law firms, attorneys are generally expected to bill their clients for more than 2000 hours a year and, in the face of such expectations, “there are bound to be temptations to exaggerate the hours actually put in.” Chief Justice William H. Rehnquist, Dedicatory Address: The Legal Profession, 62 Indiana L.J. 151, 155 (1987); see also Bogus, supra note 9, at 924-25 (describing lawyers reported annual billings as “quite literally, incredible.”) Put in starker terms, it is widely believed that “many attorneys who bill by the hour have turned to engaging in deceptive billing practices.” Hammer Matturro supra note 147; see also Amer. Bar Assoc, supra note 140; Saab Fortney, supra note 9; Milton C. Regan, Corporate Norms and Contemporary Law Firm Practice, 70 Geo. Wash. L. Rev. 931 (2002); Parker & Ruschena, Billable Hours Pressure, supra note 7.

\(^{159}\) LoPucki & Doherty, Professional Overcharging, supra note 3 (suggesting that chapter 11’s fee control system does not successfully control the cost of professional services).

\(^{160}\) It is possible that a less-than four percent reduction (or 1% in Delaware) adequately captures all of the unreasonable or excessive bills that the survey data alludes to. See LoPucki & Doherty, Determinants, supra note 130, at 114, 135. However, this hypotheses seems unlikely. Rather, it seems more likely that our current fee control system is failing to identify instances of professional overcharging and therefore failing to adequately control it by cutting fee requests. See supra, text surrounding notes 132-139.

\(^{161}\) Id.

\(^{162}\) “There’s clearly pressure on people to create more revenue,” says Robert White, a former bankruptcy partner at O’Melveny & Myers who retired in 2006 after practicing for 35 years. See Schwartz & Creswell, supra note 108; see also White III & Theus, Jr., supra note 122; Rapoport, Value Billing, supra note 99, at 128.

\(^{163}\) LoPucki & Doherty, Professional Overcharging, supra note 3, at 985.
Controllers do not currently adequately control professional overcharging.164 Outside of bankruptcy, clients are expected to take the laboring oar in controlling the cost of their professional assistants and ensuring the appropriateness of any fees charged. For example, before hiring a law firm, the client may host a so-called “beauty contest”165 where it can try to ensure both that it is hiring a professional firm with the right expertise to address its needs, and negotiate on billing rates.166 After a bill for professional services arrives, clients outside of bankruptcy will often scrutinize that bill carefully, sometimes with the help of a fee auditor, and may question potentially inappropriate or especially large entries.167 Outside of bankruptcy, if the client does not control these costs, no court or other third party is likely to interfere with its decision to overpay for professional services.168

164 See id. (noting that the cost of bankruptcy professionals’ fees has risen at more than five times the rate of inflation during the six years of their study).

165 Corporations often solicit proposals from different firms competing for a given representation, in so-called ‘beauty contests.’ Once a firm is selected, inside counsel monitors its services and fees, reviews its decisions, authorizes particular strategies, and closely examines its bills, sometimes with the help of professional auditors. Corporations generally have made it clear, for instance, that they are not willing to be billed for work that trains associates, or for efforts to produce work product that duplicates prior services. Pressures have mounted for the use of ‘task-based billing,’ which breaks down legal services into discrete activities, for which specific amounts are budgeted.

Regan, supra note 158, at 934.

166 “The law firm beauty contest is an orchestrated interviewing process. The company is the buyer. The law firm is the seller. The process allows each to take the measure of the other before becoming engaged.” See Wendeen H. Eolis, Beauty Pageants, N.Y. L. J, available at http://eolis.com/content/beauty-pageants; see also Lisa G. Lerman, supra note 143, at 222 (“Corporate clients that once each had a deep and stable relationship with a single firm now solicit bids from law firms for various chunks of legal work.”); see, e.g., Vanessa O’Connell, Big Law’s $1,000-Plus an Hour Club, WALL ST. J. (Feb. 23, 2011, 12:01 AM) http://www.wsj.com/articles/SB10001424052748704071304576160362028728234 (“The average law-firm partner now asks $635 an hour and bills $575, the firm said.”)


168 As Professor Cynthia Baker asked in her article, Other People’s Money: The Problem of Professional Fees in Bankruptcy, 38 ARIZ. L. REV. at 41-69, if the person paying the bill doesn’t care, then why should anyone else? See Schratz, supra note 125, at 164 (citing In re Associated Grocers of Colorado, Inc., 137 B.R. 413 (Bankr. D. Colo. 1990)); see also Stephen Lubben, The Intangible Costs of Bankruptcy, supra note 4 (claiming that the reasons for our fee control system are “deeply undertheorized”). But see Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D. 237, 266 (1986) (Court has a role in fee control because there is “a significant conflict of interest between client and attorney” once the work is done and the attorney seeks money that would otherwise inure to the estate or to the creditors.)
In bankruptcy cases, clients evidence less concern with professional fees than their non-bankruptcy counterparts. They appear less careful in their initial hiring decisions, and less aggressive when negotiating for discounts or scrutinizing the bills of their professionals and pushing back against large or questionable charges. A variety of reasons for these differences have been advanced,\textsuperscript{169} including agency issues—clients tend to literally be spending someone else’s money\textsuperscript{170}—and the client’s fear of alienating its professional advisors.\textsuperscript{171} There are also time pressures inherent in many bankruptcy cases that are not present outside of bankruptcy.\textsuperscript{172} Another reason, not often discussed, is that even generally sophisticated clients may not be sophisticated consumers of professional corporate bankruptcy services.\textsuperscript{173} This seems especially likely to be a problem with debtors because they represent the single largest consumer of professional representation in chapter 11 cases.\textsuperscript{174} Although some companies file for bankruptcy under chapters 22 or 33, most companies will never spend time in bankruptcy and those that do will usually only make one trip through the system.\textsuperscript{175} Whatever the reason(s), bankruptcy

\textsuperscript{169} In re Ginji Corp., 117 B.R. 983, 988 (Bankr. D. Nev. 1990); see also In re Saturley, 131 B.R. 509, 516 (Bankr. D. Maine 1991) (suggesting that excessive fees result from “foreknowledge that the assets so expended will be surrendered in any event, by the debtor’s unwillingness to ‘strain his relationship with his life-robe, his attorney,’ and by the timidity of other counsel who, although adverse, may expect payment from the estate, as well.”) (citation omitted); Rapoport, Value Billing, supra note 99, at 131.

\textsuperscript{170} See Baker, supra note 117, at 41-69; see also (LoPucki & Doherty, Professional Fees, supra note 12, at xv (suggesting that corporate bankruptcy cases tend to cost far more than we would expect).

\textsuperscript{171} Rapoport, Value Billing, supra note 99, at 131; see also In re Saturley, ibid.

\textsuperscript{172} See Matthew A. Bruckner, Improving Bankruptcy Sales by Raising the Bar: Imposing a Preliminary Injunction Standard for Objections to Section 363 Sales, 62 CATH. U. L. REV. 1 (2012) (discussing the frequent assertion by debtors that bankruptcy sales must be hastily approved or its assets will melt away like an ice cube); see also Melissa B. Jacoby and Edward J. Janger, Ice Cube Bonds: Allocating the Price of Process in Chapter 11 Bankruptcy, 123 YALE L.J. 862 (2014) (same); see also Stein, supra note 117, at 45 (noting that many CEOs are in a hurry to hire bankruptcy professionals and have neither the time nor the capacity to determine whether potential hires are a good match).

\textsuperscript{173} See Stein, id. at 44 (comparing the CEO of a troubled company to a newborn baby when it comes to bankruptcy matters).

\textsuperscript{174} See Lynn M. LoPucki & Joseph W. Doherty, Rise of the Financial Advisors: An Empirical Study of the Division of Professional Fees in Large Bankruptcies, 82 AM. BANKR. L.J. 141, 142 (finding that approximately 80% of professional fees are incurred “for representation of, or advice to, the debtor-in-possession.”); see also Rapoport, Value Billing, supra note 99, at 139-140.

\textsuperscript{175} Chapter 22 is the colloquial phrase sometimes used when a company takes a second spin through chapter 11. See, e.g., What is Chapter 22 bankruptcy? Do any prominent examples come to mind?, BERNSTEIN-BUCKLEY, P.C. ATTORNEYS AT LAW, http://bernsteinlaw.com/faq-list/chapter-22-bankruptcy-creditors-rights-questions-and-answers/. Similarly, Chapter 33 is the phrase for the far less common occurrence of a company
clients appear poorly positioned to contribute to the success of chapter 11’s fee control system relative to their non-bankruptcy peers.\textsuperscript{176}

Given the numerous problems with a client-centered fee control system in bankruptcy, it is unsurprising that Congress imposed an external check on fees awarded to bankruptcy professionals in chapter 11 cases.\textsuperscript{177} But its solution has not proved to be effective, and fee control obligations seem to overwhelm even the most diligent Fee Controllers. It could hardly do otherwise, considering that in a single case Fee Controllers are expected to review a “massive” volume of fee applications, which “if stacked in one pile, would amount to a pillar of paper 27 feet high.”\textsuperscript{178} But professionals will almost surely be overpaid if Fee Controllers decide not to put on their green eyeshades\textsuperscript{179} and audit professional fee applications, because Fee Controllers are the last line of defense in chapter 11’s fee control process. Nevertheless, professional overcharging may be inevitable because it’s not clear that Fee Controllers can prevent most professional overcharging even if they make a good faith effort.\textsuperscript{180} Fee Controllers occasionally catch overcharging professionals, but not nearly as often as the evidence suggests overcharging may be occurring.\textsuperscript{181}

\textit{a. Fee Controllers cannot effectively control professional overcharging without additional assistance.}

Since clients seem ill-equipped to vet the bills of their professional service providers, Congress has required Fee Controllers to act as “a surrogate for the estate, reviewing fee...
applications much as a sophisticated non-bankruptcy client would review a legal bill.” 182 Having Fee Controllers acting as surrogates is supposed to ensure that bankruptcy professionals do not overcharge their clients and deprive the estate of assets. Although Fee Controllers are better equipped than clients to control professional overcharging in chapter 11 cases, they too are generally ineffective. 183 Currently, chapter 11’s fee control system reduces fees by very little, and costs more to operate than it saves. 184 Some bankruptcy scholars have asserted that we should scrap chapter 11’s entire fee control system and redesign it from the bottom up. 185 However, with appropriate crowdsourcing enhancements, that ought to be unnecessary.

Evidence suggests that professional fees are too high, in part, because the statutorily mandated fee reviews in chapter 11 cases are ineffective. 186 An effective fee review requires that Fee Controllers do at least three things well. First, they must know 187 every estate-paid professional. Second, Fee Controllers must be familiar with all of the work produced in a case and paid for by the estate. 188 Finally, Fee Controllers must compare the work produced to the charges incurred for its production. But, as described immediately below, Fee Controllers struggle with each task, and would benefit from crowdsourcing some aspects of the process. As

182 See 11 U.S.C. § 330. Judges are charged with second guessing the debtors-in-possession because debtors-in-possession are not “real fiduciaries.” LoPucki & Doherty, Professional Fees, supra note 12, at 132 (judges have been seen as necessary to prevent abuse because there “may be little incentive for parties in interest, and especially for the debtor, to monitor and object to excessive fee requests.”); see also Baker, supra note 117, at 59 (Because of the lack of stakeholder participation, the system has adopted administrative controls— independent review by bankruptcy courts or review by the U.S. Trustee—to fill the gap.)

183 See notes 158-162, supra.

184 See LoPucki & Doherty, Professional Fees, supra note 12, at 165; see also Warner & Shapiro, supra note 115, at 1 (“Few areas of bankruptcy practice are more publicly controversial or less consistently administered than the determination of reasonable compensation for the trustees and professionals who are essential to an efficient and well-managed bankruptcy process.”)

185 See LoPucki & Doherty, Professional Fees, supra note 12, at 165 (claiming that our current fee control system costs approximately four times as much as it saves).

186 See notes 158-162, supra.

187 Either through personal interactions, or by otherwise acquiring sufficient information about these professionals to make the appropriate determinations.

188 As matters currently stand, it isn’t economical for Fee Controllers to review every piece of written work produced in a case. In the interests of cost efficiency and because of the need for triage, some Fee Controllers are presumably left only reviewing the largest charges.
a result, they do not perform effective fee reviews, and professional overcharging goes largely unchecked.

1) **Effective fee reviews require three things Fee Controllers struggle with**

   A. **Know the professionals**

The first requirement for an effective fee review is to know the estate-paid professionals well enough to make a variety of determinations required by section 330. These include determining: (i) the reasonableness of “the time spent on such services”\(^ {189} \) and “whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;”\(^ {190} \) (ii) the reasonableness of “the rates charged for such services;”\(^ {191} \) (iii) whether each professional person is “board certified or otherwise has demonstrated skill and experience in the bankruptcy field;”\(^ {192} \) and (iv) the reasonableness of the compensation requested “based on the customary compensation charged by comparably skilled practitioners” in non-bankruptcy cases.\(^ {193} \) These determinations appear to require that Fee Controllers be somewhat intimately familiar with the professionals in the particular case at bar, and with “comparably skilled practitioners.” But there can be hundreds (or even thousands) of estate-paid professionals involved in any given case.\(^ {194} \) Thus, Fee Controllers may not possess sufficient familiarity with many bankruptcy professionals, particularly the newer ones, to make these determinations.\(^ {195} \) This is true despite

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190 *Id.* at § 330(a)(3)(D).
191 *Id.* at § 330(a)(3)(B).
192 *Id.* at § 330(a)(3)(E).
193 *Id.* at § 330(a)(3)(F).
195 In many firms, mid-level professionals take the laboring oar on many tasks in a bankruptcy case. These mid-level professionals are unlikely to have encountered Fee Controllers often enough for Fee Controllers to have a personal impression of them. Although Fee Controllers can request additional information about these professionals, it is unclear that is sufficient. Cf. Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. at 262 (judges may find that it is “difficult, indeed, in most instances, impossible, to police these matters by looking over the shoulders of lawyers to monitor the way they handle their cases. To impose that obligation on the Bench is
the presence of repeat players. Fee Controllers need to obtain better information from outside sources, and could probably also use help reviewing the information received—particularly in the largest cases.

Section 330 requires that Fee Controllers obtain a substantial amount of information about the estate-paid professionals, but provides few tools for obtaining this information. Existing information-acquisition methods appear limited to two options: (i) Fee Controllers’ first-hand knowledge of that professional and (ii) disclosure obligations imposed on the professionals. Both of these methods seem insufficient for obtaining the type of information necessary to prevent professional overcharging, particularly in large bankruptcy cases where thousands of professionals will seek compensation from the estate.

Whether a bankruptcy case involves a dozen estate-paid professionals or thousands, the very structure of chapter 11 cases makes it difficult for Fee Controllers to personally know each professional well enough to make the requisite section 330 determinations. It is the nature of chapter 11 cases that negotiations often occur between different parties-in-interest concurrently, and that some estate-paid professionals are actively engaged while others are much more passive. Fee Controllers do not know the estate-paid professionals because many firms only send a small cadre of professionals to court, which is where most Fee Controllers would interact with and get to know the relevant professionals. Instead, most firms’ professionals will labor totally in the background (at least to the eyes of Fee Controllers). As a result, Fee Controllers lack sufficient personal familiarity with some portion of

unrealistic, unduly time-consuming and typically will amount to little more than an exercise in hindsight.”).

196 See Lubben, Direct Costs, supra note 2, at 531 (Contesting the claim that there are as many repeat players as is commonly thought).

197 Fee Controllers might also benefit from innovative solutions to processing any information received about bankruptcy professionals. For example, perhaps there could be a database listing every bankruptcy professional and their experience so that professionals lacking substantial bankruptcy experience cannot bill their time at rates comparable to more seasoned bankruptcy professionals. As matters currently stand, most law firms disclose only the class year of associates, which is, at best, a rough proxy of general experience and provides no insight into an associate’s bankruptcy experience.

198 Until professionals are sufficiently senior to appear in court, it’s unclear where many Fee Controllers would become personally acquainted with those professionals. To the extent that firms continue to employ an “up or out” model, this suggests that most professionals working on a case will be virtually unknown to Fee Controllers. See Up or Out, WIKIPEDIA.COM, http://en.wikipedia.org/wiki/Up_or_out.
the estate-paid professionals, making an effective fee review difficult if the professionals’ disclosures are not sufficient.199

Fee Controllers are expected not only to know the bankruptcy professionals in the case at bar, but also to obtain information about “comparably skilled practitioners.”200 Given that Fee Controllers lack sufficient personal contact with the bankruptcy professionals who appear in bankruptcy matters, it is surely true that Fee Controllers will have even less information about comparably skilled non-bankruptcy professionals. Obviously, some non-bankruptcy professionals appear in bankruptcy cases from time to time, but this is not a robust source of information about the market rates for non-bankruptcy professional services. In short, as bankruptcy professionals themselves, Fee Controllers’ first-hand knowledge of non-bankruptcy fees is necessarily limited.

Even though Fee Controllers lack sufficient first-hand information about both bankruptcy professionals and their comparably skilled non-bankruptcy brethren, Fee Controllers have an alternative method for obtaining this information. Bankruptcy professionals are required to file fee applications that, among other things, must “contain sufficient information about the case and the applicant so that the court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents.”201 In addition, the United States Trustee’s Office has recently promulgated new guidelines for professional disclosures in bankruptcy cases (the “Guidelines”).202 Among other things, in mega-bankruptcy cases, bankruptcy professionals now have “comparable compensation disclosure” obligations.203 Unfortunately, these Guidelines are both too new to have a sufficient track record to judge their efficacy, and apply in only a

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199 To the extent Fee Controllers believe they know professionals involved in a case, it is likely because that professional has appeared in a prior bankruptcy case. Since Fee Controllers know the professionals who are repeat players, this means that they know the older and more experienced bankruptcy professionals. Thus, they may know the more skilled professionals, which can skew their perceptions of the aggregate body of all professionals toward a more favorable perception.


201 28 C.F.R. § 58, App. A(a); see Rapoport, Value Billing, supra note 99, at 126.

202 U.S. DEP’T OF JUSTICE, FEE GUIDELINES (2014), available at http://www.justice.gov/ust/eo/rules_regulations/guidelines/ (the new Fee Guidelines have some requirements that only apply to cases of a certain size).

limited subset of bankruptcy cases. As a result, legitimate concerns remain about where Fee Controllers will obtain the necessary information to make the section 330 determinations they are required to make.

Although the disclosures professionals are required to make are better than nothing, these disclosures also suffer from limitations. First, the disclosures related to each professional’s skill and bankruptcy experience tend to be very limited. For example, in Weil, Gotshal & Manges LLP’s fee applications in the Lehman Brothers cases, the law firm disclosed only the year each associate was admitted to the bar and their practice group at the firm. Although professionals attest that, where possible, they use skilled junior associates and paralegals, these limited disclosures are insufficient to allow Fee Controllers to determine whether these attestations are true. Similarly, determining whether a professional spent a reasonable amount of time on a particular task requires much more specific information about that particular professional’s skill and experience. Rough proxies, such as class year, are not sufficient to make these determinations accurately in every instance.

Of course, if more substantial disclosures were made—particularly in the largest bankruptcy cases—Fee Controllers would need assistance in making good use of that information. Under the current system, Fee Controllers are already overwhelmed by the quantity of information they must review. Strengthening chapter 11’s fee control system, therefore, requires both better information—through more robust disclosures or otherwise—and

204 See, e.g., NYC BAR ASSOC.’S COMM. ON BANKR. AND CORPORATE REORGANIZATION, Comment Letter, Comment Letter on the Proposed US Trustee Guidelines for Reviewing Compensation Reimbursement Guidelines (Jan. 27, 2012), available at http://www2.nycbar.org/pdf/report/uploads/20072236-CommentLetterontheProposedUSTrusteeGuidelinesforReviewingCompensationReimbursementGuidelines.pdf; Cf. Fennell, Crowdsourcing, supra note 30, at 408 (we need to “engage participation that is appropriately scaled and representative.” Typically, this will not mean “maximizing participation, and may indeed require some rationing and gatekeeping. Thus an initial refinement to the open-ended notion of crowdsourcing involves defining and cultivating the crowd.”).
205 The Guidelines do represent a clear step forward and the United States’ Trustee’s office should be commended for their effort.
206 I highlight Weil’s fee application because they are one of the most prominent and successful bankruptcy firms, not because they are—in any way—acting less appropriately than other firms. By contrast, in this author’s opinion, they have always acted with the highest degree of professionalism and ability of any law firm.
207 This is the standard practice. All professional fee applications are available through ECF, but are also available at http://dm.epiq11.com/LBH/Project#.
the ability to make efficient use of that information. As discussed below, crowdsourcing is well situated to strengthen chapter 11’s fee control system in precisely these two ways.

B. Know the professionals’ work

The second requirement for an effective fee review is for Fee Controllers to be intimately familiar with all of the services provided and work product produced for the case and billed to the estate. The Code requires Fee Controllers to evaluate whether the professional services rendered are “reasonably likely to benefit the estate,” or “necessary to the administration of the case.”\footnote{11 U.S.C. § 330(a)(4)(A).} If neither criterion is met, then Fee Controllers may not authorize the estate to pay for the services provided by the professionals. In making these determinations, Fee Controllers are also expected to determine “whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.”\footnote{11 U.S.C. § 330(a)(3)(D).} Here, Fee Controllers are likely to have sufficient information but may not have the ability to efficiently sort through that information to make the necessary determinations. This is particularly true in the largest chapter 11 cases.

Suggesting that Fee Controllers are unable to do this job efficiently is not meant to critique hard-working bankruptcy judges and assistant United States Trustees. Instead it is meant as a critique of a system that imposes impossible obligations on Fee Controllers. It is literally impossible for one or two people (e.g., a bankruptcy judge and an assistant United States Trustee) to efficiently review all of the professional services provided in a large bankruptcy case. As a result, many Fee Controllers likely rely on their (considerable) experience with chapter 11 cases to determine—in a general way—what is appropriate in a particular case. But section 330 appears to require more particularized determinations of reasonableness.

Fee Controllers must rely on disclosures made by estate-paid professionals in their fee applications to understand what services were provided in a particular case.\footnote{Fee Controllers are not personally familiar with all of the services provided to parties-in-interest and billed to the estate because most of the activity in large chapter 11 cases happens outside of court, particularly for the non-legal professionals. In the largest} Unlike the disclosures related...
to the skill and experience of the estate-paid professionals, these disclosures are very robust. For example, in Weil, Gotshal & Manges LLP’s 10th interim fee application, the firm provided approximately 20 pages describing, in narrative form, all of the work it provided to the estate and thereby sought to justify the almost $41 million in compensation it requested. In addition to the interim fee applications, each firm typically files a monthly fee application listing all of the work performed by each professional in increments of time as small as six minutes. If Fee Controllers were able to review these enormously detailed fee disclosures, they could gain a more complete understanding of all the work performed in the case. But, particularly in the largest cases, these disclosures must often be overwhelming. As a result, Fee Controllers may often lack the ability to review every time and expense entry and to check that each professionals’ billing records align with those of other professionals.

In order to make efficient use of the information being disclosed by the professionals, Fee Controllers need additional assistance. As explained below, crowdsourcing can provide this assistance.

C. Compare the professionals’ work to the charges for that work

The third aspect of an effective fee review requires that Fee Controllers compare the work product produced or services

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chapter 11 cases, estate-paid professionals will request hundreds of millions of dollars in compensation for work that takes place outside the watchful gaze of Fee Controllers. But even in smaller cases, a large percentage of work will not occur in court. Therefore, while the dollar figures will be smaller, it will remain difficult for Fee Controllers to be personally familiar with all of the work.

Because most professional compensation is earned for out-of-court work, it is inherently difficult for Fee Controllers to know if every person present at every meeting performed services “reasonably likely to benefit the estate,” or “necessary to the administration of the case.” 11 U.S.C. § 330(a)(4)(A); see also In re Fleming Companies, 304 B.R. 85, 91 (Bankr. D. Del. 2003). (citing In re Jefsaba, 172 B.R. at 809-10 (each professional attending a hearing must “have a role . . . If two or more professionals are billing time, they each should make a contribution.”); see also Schratz, supra note 125, at 169 (collecting cases where courts cut fees across-the-board even though all attorneys were prepared for and participated in hearings because those courts found that the professionals had duplicated efforts).

Once again, Weil is highlighted because they are one of the most prominent bankruptcy firms and not to reproach them specifically.

See In re Fine Paper Antitrust Litig., supra note 121.
rendered to the charges billed for these same.\footnote{213} This is time-consuming work, because it requires a close reading of the work product and the astute mind of a professional reviewer to determine if the work product was appropriate to draft and, if appropriate, to determine if the work product was produced efficiently. In addition, a bankruptcy judge can only approve the requested compensation if they have considered the time spent as compared to the “complexity, importance, and nature of the problem, issue, or task addressed.” \footnote{214} Although many Fee Controllers are very experienced with reviewing fee applications and making these determinations, the sheer volume of fee applications in a large chapter 11 case makes this an onerous (if not impossible) task.\footnote{215} And when coupled with the issues noted above—not knowing the professionals billing time to the estate and not having a chance to review much of the work product—fee review becomes virtually impossible to do well.

In sum, Congress has mandated that Fee Controllers perform a fee review in every chapter 11 case to ensure that estate-paid professionals are not benefitting at creditors’ expense.\footnote{216} Yet Fee Controllers are not properly equipped (and are sometimes unwilling)\footnote{217} to adequately complete any of the three aspects of an effective fee review without additional assistance.

2) \textit{This difficult task engenders seemingly inaccurate assumptions}

Given their difficult (or even impossible) task, it is not surprising that Fee Controllers do not always perform a thorough review of every fee application filed, even in smaller chapter 11 cases. Some courts have responded to the near impossibility of their obligations by selectively sampling fee applications and related work product, and then extrapolating from that sample. For example, in \textit{In re Maruko, Inc.} the bankruptcy court sampled a discrete number of time entries and then ordered a 30\% across-the-
board reduction because it determined that the professional had billed the estate for some unnecessary or unreasonable work in the sampled time entries.\footnote{218}{In re Maruko, Inc. 160 B.R. 633, 641 (Bankr. S.D. Cal. 1993).} The court merely sampled the fee applications instead of doing a full review of every time and expense entry because a full review would have been too onerous.\footnote{219}{Id. at 641; see also In re Bank of New England Corp., 142 B.R. at 586 (“courts should not spend non-existent Court resources to track down every entry, correlate them against other fee applications, and delete those entries insufficiently substantiated.”)} While this approach has much to recommend it, it appears at odds with Congressional demands.

Another approach courts have taken is to simply assume away the problems with their task. For example, some courts assume that (i) bankruptcy professionals exercise billing judgment,\footnote{220}{Id. at 855-56; see also In re Jefsaba, Inc., 172 B.R. at 798 (court expects that “unproductive time will be written off.”); see also Schratz, supra note 125, at 161.} (ii) the market for chapter 11 professional services will discipline overcharging professionals,\footnote{221}{See, e.g., In re Patronek, 121 B.R. at 731; In re Jefsaba, Inc., 172 B.R. at 797 (citing In re Busy Beaver, 19 F.3d 833).} and (iii) that “[i]t is almost impossible to ‘second guess’ the proper amount of time that counsel should have spent on a particular matter.”\footnote{222}{In re Consolidated Bancshares, Inc., 49 B.R. 467, 472 (Bankr. N.D. Tex. 1985) (commenting on the difficulty in proving “that an issue was illusory, irrelevant or frivolous or that too many facts and transcript references had been marshaled”).} By making these assumptions, Fee Controllers may feel justified in declining to don their green eyeshades and dig through towering stacks of fee applications. However, all three of these assumptions appear meritless.

Not only are the aforementioned assumptions meritless, but they may also be at odds with modern chapter 11 billing practices. The assumption regarding billing judgment has been thoroughly discussed above and those arguments will not be retread here.\footnote{223}{See supra, text surrounding note 141.} Instead, we begin with the second assumption—that professional compensation in chapter 11 is “market-driven.” This assumption is also erroneous. Professional services providers in bankruptcy cases are not subject to the same market pressures as firms outside of bankruptcy.\footnote{224}{See supra, text surrounding notes 169-176.} Once a professional firm’s retention has been approved by the bankruptcy court, that firm is incentivized to attempt to charge the estate as much as possible. As such, professional firms may be treating their fee applications as the
opening bid in a negotiation, a bid that Fee Controllers can decline to approve. Furthermore, in cases where fee examiners are present, estate-paid professionals may decide to leave a little fluff in their bills so that the fee examiner can justify his or her presence by cutting a little, while allowing the professional to be paid the full amount it believes it’s due.\textsuperscript{225} Without price pressure from clients, objections from other parties-in-interest, or a close examination by Fee Controllers, professional service providers are simply not constrained by a functioning market or anything approximating one.\textsuperscript{226} It’s no surprise then that chapter 11’s fee control system cannot rein in unreasonably high fees.

Clients may also be complicit in this overcharging. As noted above,\textsuperscript{227} courts review professional fees because clients do not. Not only do clients fail to adequately monitor professional fees, but they are incentivized to spend as much as possible. After all, most or all of that cost is likely to be borne by someone else.\textsuperscript{228} Thus, when the bankruptcy court in \textit{In re Patronek}, suggested that “[t]he proper measure of what fee is reasonable in any context is ascertainment of what an informed client and an informed attorney would agree should be paid for certain services,” it missed the mark.\textsuperscript{229} Informed clients would be willing to pay almost anything for the best possible representation and informed attorneys would gladly bill the estate for any services that might be remotely useful for their client.\textsuperscript{230} With no party able to put price pressure on professional firms, it’s no surprise that the cost of professional representation in bankruptcy cases has risen at five times the rate of inflation recently.\textsuperscript{231}

The third assumption Fee Controllers make is that second-guessing a bankruptcy professional’s billing judgment is impossible.\textsuperscript{232} But it may only be impossible because of the way

\textsuperscript{225} If fee examiners feel pressure to cut fees to justify their appointment and professionals want to be paid for the full value of the services they provided, those professionals may view their fee applications more like an opening bid in negotiations over their fees instead of the most accurate possible statement of how much they ought to be paid for their services for a particular matter.
\textsuperscript{226} Cf. Orozco, \textit{Democratizing the Law}, supra note 25 (a functional market is expected to put strong price pressure on law firms and should result in a reticence to pay for associates’ time if those associated are overused).
\textsuperscript{227} See supra note 182 and surrounding text.
\textsuperscript{228} See LoPucki & Doherty, \textit{Professional Fees}, supra note 12, at 137.
\textsuperscript{230} See infra note 172.
\textsuperscript{231} See supra note 3.
\textsuperscript{232} \textit{In re Consolidated Bancshares, Inc.}, supra note 222.
chapter 11’s fee control system is currently designed. In the absence of routine objections to professional fee applications, 233 it is difficult for Fee Controllers to focus their attention on instances of potential abuse. 234 Because the fee application and review process “provides the one real opportunity to control professional costs under the current system,” it is important that chapter 11’s fee control system be strengthened. 235

The obligations on Fee Controllers make effective fee reviews exceedingly rare. As a result, courts seldom make substantial cuts to the fees requested, 236 despite the widespread belief that a large number of attorneys perform unnecessary work. 237 In the next section, this Article explores how crowdsourcing can help fix a number of specific problems with chapter 11’s fee control system.

III. Crowdsourcing Fee Control

Our current fee control system is broken because it places a too-heavy burden on Fee Controllers to control unreasonable or unnecessary professional fees without providing them with sufficient tools to make that burden bearable. 238 In particular, Fee Controllers need better information about both the skill and experience of estate-paid professionals and “comparably skilled” non-bankruptcy professionals. Fee Controllers also need the resources to make efficient use of this information. Without these tools, chapter 11’s fee control system is virtually defenseless to control certain types of professional overcharging. For example, when professionals bill too many hours for the task at hand, chapter 11’s fee control system is generally unable to root out this type of overcharging. 239

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233 See supra note 115 and surrounding text.
234 See LoPucki & Doherty, Professional Fees, supra note 12, at 131 (claiming that only approximately 20 percent of all fee applications receive any objection, and that most of those objections are brought by the United States Trustee for violations of narrow, technical rules that involve only small dollar amounts).
236 See Lavien, supra note 213, at 137; see also LoPucki & Doherty, Professional Fees, supra note 12, at 257 (suggesting that corporate bankruptcy cases tend to cost far more than we would expect).
237 See Ross, Ethics, supra note 7, at 3.
238 See supra notes 158-162.
239 See LoPucki & Doherty, Professional Fees, supra note 12, at 180 (too few objections are made for “billing too many hours for the task” because our fee control “system has no defense against that kind of overcharge.”)
Crowdsourcing can help fix chapter 11’s broken fee control system in at least four ways. First, crowdsourcing fee control can involve non-experts in solving bankruptcy-specific problems. Although this might seem unlikely to be helpful, the Goldcorp and P&G examples from above suggest that non-experts’ innovative ideas or techniques can often solve problems that those with more conventional wisdom have been unable to solve. Second, crowdsourcing fee control can also increase the participation of bankruptcy professionals in fixing chapter 11’s broken fee control system. Although bankruptcy judges and assistant United States Trustees are an important part of the fee control system, they need not shoulder this task alone. Other bankruptcy professionals—whether working on the current case or not—can be incentivized to share their wisdom and informed judgments with Fee Controllers. While not every professional is likely to meaningfully participate in the fee control process, some bankruptcy professionals are both well-positioned to do so and may be willing to participate. Their “local knowledge” may be a useful source of insight for Fee Controllers.

Third, crowdsourcing is a very useful technique for solving divisible problems that would be intolerably tedious (or impossible) for a small group of people to do alone. Although some problems lack sufficient “modularity” to successfully crowdsource, fee control is easily divisible into discrete chunks that different individuals could work on and provide feedback on asynchronously. If the task were clearly defined and the crowd appropriately incentivized, much of the tedious work of

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240 Brabham, Crowdsourcing Public Participation, supra note 22, at 244.
241 Some professional firms might seek to develop a reputation as honest and straightforward in their billing practices, and be willing to share with Fee Controllers their thoughts as to when other firms appear to be attempting to maximize their compensation from a particular case instead of exercising appropriate billing judgment. See Brabham, Crowdsourcing Public Participation, supra note 22, at 244.
243 Fennell, Crowdsourcing, supra note 30, at 405.
244 A lot of the crowdsourcing literature has focused on devising appropriate incentives. Money is clearly one incentive, but it is not the only one. See Ichatha and Ellen, supra note 243. Other possible incentives include altruism, reputation-building, group-
reviewing fee applications, such as cross-checking time and expense entries and searching for patterns, could be effectively crowdsourced.

Finally, crowdsourcing can simply be an additional tool to improve chapter 11’s fee control system. For example, in P&G’s case, the company already had a well-established R&D department. Yet, it turned to crowdsourcing because it believed that this would allow the company to do better than it could otherwise. Similarly, there is a role for crowdsourcing in chapter 11’s fee control system to support bankruptcy judges, assistant United States Trustees and fee examiners, who already perform many fee control tasks. Crowdsourcing need not displace Fee Controllers, but could serve to supplement their efforts and help control the cost of corporate bankruptcy cases.

Greater participation in fee review matters because the evidence suggests that fee applications that are subject to objection tend to be cut more often and more deeply than those that are not. In other words, bankruptcy judges are, by themselves, not able to identify and prevent most instances of professional overcharging. Thus, greater participation in the fee control process is likely to help reduce professional overcharging.

In essence, determining the appropriate fees in a bankruptcy case is predicated on a problem: how to solicit the optimal amount of professional services without overpaying for those services. This problem—like any problem that can be clearly framed and where the relevant data can be made available to interested problem-solvers—can be crowdsourced. The complexity of the problem

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246 See LoPucki & Doherty, Professional Fees, supra note 12, at 189.
247 See Brabham, Crowdsourcing Public Participation, supra note 22, at 252.
248 Eggers & Hamill, supra note 243 (discussing how to crowdsource complex problems that require creative solutions, such as how the city of Santa Cruz, CA effectively crowdsourced solutions to its budget deficit); see also Brabham, Crowdsourcing Public Participation, supra note 22, at 252.
and the need for some specialized knowledge\textsuperscript{249} are not barriers to crowdsourcing a solution, as the Goldcorp and P&G examples above help illustrate. If history is any guide, crowdsourcing fee control ought to result in greater fee reductions because more eyes will be on professional fee applications.

Designing an appropriate crowdsourcing solution for chapter 11’s problems will not be simple. Among other things, the following questions need to be answered, including: (i) who belongs in the crowd; \textsuperscript{250} (ii) how to notify the crowd that a potential problem is available to be solved; (iii) how to incentivize the crowd to participate; \textsuperscript{251} (iv) who owns the solutions offered by the crowd; \textsuperscript{252} (v) whether larger tasks must be divisible into smaller pieces; \textsuperscript{253} (vi) whether members of the crowd must be able to build

\textsuperscript{249} Stephen M. Wolfson & Matthew Lease, \textit{Look Before You Leap: Legal Pitfalls of Crowdsourcing}, 48 \textit{PROCEEDINGS OF THE AMER. SOCIETY FOR INFO. SCI. AND TECH.} 1, 2 (2011) (discussing crowdsourcing problems that require “specialized skills and a significant time commitment from the workers.”)

\textsuperscript{250} The appropriate crowd is likely to vary with the type of problem being solved. Although some tasks may benefit from being offered to the largest possible crowd of potential problem-solvers, other tasks might be more effectively solved by limiting the size of the crowd. Even when a problem is opened to everyone in the world, the crowd of solvers may be “surprisingly small” at times. Franklin, \textit{et al.}, \textit{supra} note 243. At the same time, it is important to try to prevent over-participation by self-interested parties. Fennell, \textit{Crowdsourcing}, \textit{supra} note 30, at 404. In addition, too many potential solutions can be worse than too few when all of the solutions need to be filtered through a limited group of people before they can be implemented. See Vermeule, \textit{supra} note 28 (expressing concern about creating a potential choke-point). \textit{See also}, note 22 \textit{supra}.

\textsuperscript{251} \textit{See supra} note 245; \textit{Cf.} Anthony J. Casey & Anthony Niblett, \textit{Noise Reduction: The Screen Value of Qui Tam}, 91 \textit{WASH. U. L. REV.} 1169 (2014) (discussing how to construct appropriate incentives to encourage parties to disclose high quality information of potential overcharging but not low-quality information); Baker, \textit{supra} note 117, at 59 (“clients, under the current system, are unlikely to gain control over professional costs in bankruptcy. Because of the lack of stakeholder participation, the system has adopted administrative controls—indeed, independent review by bankruptcy courts or review by the U.S. Trustee—to fill the gap.”)

\textsuperscript{252} Some scholarship has distinguished open-source (information owned by no one/the public) and crowdsourced solutions (information typically owned by the requesting party). \textit{See, e.g.}, Daren C. Brabham, \textit{Crowdsourcing as a Model for Problem Solving: An Introduction and Cases}, 14 \textit{CONVERGENCE: THE INT’L J. OF RESEARCH INTO NEW MEDIA TECHS.} at 81-82; Orozco, \textit{Democratizing the Law}, \textit{supra} note 25 (suggesting that, in a crowdsourcing model, the “lion’s share of value” is captured by the crowdsourcing company).

\textsuperscript{253} Matthew C. Stephenson, \textit{Information Acquisition and Institutional Design}, 124 \textit{HARV. L. REV.} at 1468 (discussing divisibility in the context of information substitutes and compliments); Ichatha and Ellen, \textit{supra} note 243 (divisible projects allow people to work in parallel with each other, and also allows those with only a few spare hours to devote to contribute meaningfully to a project where everyone else is similarly a part-time contributor); Franklin, \textit{et al.}, \textit{supra} note 243 (dividing a project into microtasks—those taking not more than one minute in the usual cases—allows the participation of people who have no special training and does not require a lot of their time); Wolfson & Lease,
on each other’s work; and (vii) whether crowdsourcing is always an online process. Another critical inquiry relates to quality control; how to sort high-quality information from low-quality information. These are difficult questions; thankfully, smart people have already thought about these issues in non-bankruptcy contexts. With appropriate borrowing, a crowdsourced bankruptcy fee control system could surely be developed. The exact parameters of that system’s design is beyond the scope of this Article, and will be addressed in a planned follow-up.

Although the following does not provide fully-fleshed out proposal for a crowdsourced bankruptcy fee control system, the next section discusses how crowdsourcing can help solve several problems with that system.

A. How Crowdsourcing Can Help Fix Chapter 11’s Fee Control System

As noted above, chapter 11’s fee control system is broken because Fee Controllers lack the information necessary to make the host of determinations that are critical to determining the reasonableness and necessity of any fees and expenses requested by estate-paid professionals. These determinations include: (i) the amount of time actually spent on the services rendered (despite what the fee application may say); (ii) whether the services were

See note 249, at 2; Fennell, *Crowdsourcing*, supra note 30, at 405 (noting that, for some projects, the “modularity” of tasks—the ability to break down the project into chunks—is the greatest issue.)

See, e.g., Ichatha and Ellen, *supra* note 243 (Crowdsourcing’s power comes from the ability to engage in a “collaborative community initiative.”)

See, e.g., Mergel, et al., *supra* note 21 (noting that the Internet has “further enhanced” crowdsourcing); Fennell, *Crowdsourcing*, *supra* note 30, at 390 (claiming that new technologies, such as the Internet, can lower the cost of acquiring information, which would shift the efficient level of information obtained upward).

A lot of the crowdsourcing literature has also addressed this question. See, e.g., Jeff Howe, *The Rise of Crowdsourcing*, *supra* note 25 (The larger and more diverse the group, the larger number of solutions you may receive that are almost all “complete crap.”); Franklin, *et al.*, *supra* note 243 (looking at mTurk’s reputation scores); Schmitt-Sands & Smith, *supra* note 89 (suggested reputation scores, but also adequate cash incentives, screening for intrinsically motivated people, building the Requestor’s reputation with the work force and verify the crowd’s findings directly); Fennell, *Crowdsourcing*, *supra* note 30, at 394; Vermeule, *supra* note 28 (expressing concern about creating a potential choke-point by filtering the crowd’s wisdom through too few people).

For example, a lot of technology already exists—many of them Internet-based—to encourage greater communication and to increase problem solving, which could be used for crowdsourcing in the bankruptcy context. *Cf.* Brabham, *Crowdsourcing Public Participation*, *supra* note 22, at 248.

See notes158-162, *supra*. 
necessary or beneficial; (iii) whether the “services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;” 259 (iv) whether a “professional person . . . has demonstrated skill and experience in the bankruptcy field;” 260 and (v) “whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.” 261

In suggesting that Fee Controllers struggle to obtain the necessary information to make these decisions, it is meant as an indictment of the current system and not of Fee Controllers. As discussed above, Fee Controllers are almost wholly dependent on reporting from estate-paid professionals for much of this information. It’s true that Fee Controllers have first-hand knowledge that relates to some of these questions, but not nearly enough to make well-informed decisions.

There is nothing inherent in the fee control process that requires bankruptcy courts to make decisions in the absence of adequate information. In some cases, bankruptcy courts have appointed fee examiners in an effort to obtain additional information about the appropriateness of professional fee requests. Clearly, many bankruptcy judges understand the need for greater assistance. Unfortunately, there is some evidence that suggests that fee examiners have also not been sufficient to prevent professional overcharging. 262 Another option is clearly needed to aid Fee Controllers in identifying and preventing professional overcharging.

Crowdsourcing can help even where other solutions to fee control have failed. Crowdsourcing can aid Fee Controllers in determining the optimal amount of professional services estate-paid professionals should render and prevent the estate from overpaying for those services. Finally, crowdsourcing allows chapter 11’s Fee Controllers to obtain the information necessary to determine the reasonableness of fees and expenses requested by the estate-paid professionals. Crowdsourcing can also alleviate some of

262 Fee examiners appointed in major bankruptcy cases appear unable to obtain more than modest fee reductions in individual applications. See LoPucki & Doherty, Professional Fees, supra note 12, at XX. Even worse (and counter-intuitively), empirical evidence suggests that cases involving fee examiners tend to have higher than average fees. Id.
the burden on Fee Controllers to review fee applications closely on the initial pass, and allow them to focus on their higher value functions.

Each of the five aforementioned problems will be discussed in turn, with an explanation of how crowdsourcing might be able to help.

i. Determining the Time Spent on Services Rendered

Fee Controllers depend on estate-paid professionals to honestly and accurately report how much time they spent rendering services to the estate, but the system does not encourage honest and accurate reporting. Unsurprisingly, the evidence discussed above suggests that some portion of estate-paid professionals are likely willfully misrepresenting the amount of time they work.\(^\text{263}\) Moreover, some additional portion likely takes the view that fee applications are merely the opening salvo in negotiations over how much they will be paid for their services.\(^\text{264}\) It is unclear why bankruptcy courts expect estate-paid professionals to exercise billing judgment when the incentives clearly disfavor taking a conservative approach. So long as estate-paid professionals avoid sanctionable conduct, taking an aggressive position on the fees due for services rendered seems like a no-lose proposition.\(^\text{265}\) Even if a professional’s fees are reduced for being unreasonable, there is no accompanying penalty. And if the fees are not reduced, the professional gets a little bit more than they had expected.

One way crowdsourcing can alter this dynamic and encourage more honest reporting is by creating a series of benchmarks for the cost of common professional services in chapter 11 cases. Professional fees in bankruptcy cases are a matter of public record and members of the public could review the data in prior bankruptcy cases to create these benchmarks.\(^\text{266}\) For example, this type of work might reveal that in the last ten mega-bankruptcy cases, professionals were paid a median fee of $10,000 to prepare a

\(^{263}\) See supra section II.B.i.
\(^{264}\) See id.
\(^{266}\) Another benefit of these benchmarks might be to convince some bankruptcy professionals to more confidently switch from an hourly fee model to a value billing model, using these benchmarks as a guide.
If in a new case a professional firm requests $20,000 to prepare a joint administration motion, Fee Controllers might justifiably require that firm to explain why an upward departure from historic norms is appropriate. Similarly, it might be appropriate to safe-harbor compensation requests that fall below that historic norm.

Another way crowdsourcing might help solve the problem of professional overcharging is by incorporating feedback from past clients and former colleagues about a particular professional’s prior billing practices. For example, opening up this type of question to the public could reveal that this professional has had his or her previous bills reduced because of misstated bills. While having previous bills reduced is not a clear indication of prior overcharging, a robust record of prior reductions might be sufficient to justify a closer look at that professional’s fee requests in a current matter. And while Fee Controllers might be able to uncover this information on their own, if this information is going to come to light, it is much more likely to come from past clients and former colleagues than from assistant United States Trustees or bankruptcy judges.

ii. Whether the Services were Necessary or Beneficial, and Not Duplicative

The Bankruptcy Code makes clear that Fee Controllers should only allow compensation for estate-paid professionals that is related to services that “were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title.” The corollary is that duplicative, unreasonable or unnecessary services are non-

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268 Or even current clients and colleagues that believe the professional overbills their time.
269 T. Michael Mather, Twelve Most Common Mistakes by Beginning Attorneys, XXVI TEMPLE J. OF SCI., TECH. & ENVTL. L. 43, 49 (2007) (noting that attorneys’ reputations are regularly discussed informally by their fellow attorneys).
270 It’s not terribly common for professionals to be called out for their over-billing, but it does happen. See, e.g., Ronald D. Rotunda, The Problem of Inflating Billable Hours, Verdict (Nov. 17, 2014), http://verdict.justia.com/2014/11/17/problem-inflating-billable-hours (describing several cases).
compensable. Unlike some other issues, Fee Controllers clearly have personal and professional experiences that they can bring to bear when making these determinations. In addition, fee applications typically contain more robust disclosures about the professional services rendered, which also make such determinations easier.

Nevertheless, crowdsourcing can still be useful in improving Fee Controllers’ section 330(a)(3)(C) determinations for at least three reasons. First, when Fee Controllers bring their personal and professional experiences to bear in making these determinations, they are necessarily extrapolating from their prior experiences to the current case. But there is no reason why chapter 11’s fee control system should depend so heavily on a few individuals’ prior experiences to spot instances of potential overcharging. Although Fee Controllers have “experience with fee petitions and . . . expert judgment pertaining to appropriate billing practices, founded on an understanding of the legal profession,” they are not the only parties in chapter 11 cases with such experience, judgment, and understanding. Crowdsourcing allows the fee control system to take advantage of the existence of a large body of knowledgeable and informed persons—the bankruptcy professionals involved in the case—to assist with this task.

Second, identifying potentially duplicative, unreasonable or unnecessary services still requires Fee Controllers to carefully review every estate-paid professional’s fee application. Instead of relying on a few individuals to review stacks of fee applications that can reach almost three stories high, containing hundreds of thousands of single-spaced lines of time entries and expense details, a crowdsourced fee control system would allow people to assume some of this responsibility. Members of the public could be used to review fee applications for patterns, double-check the fees and expenses against any relevant local rules or guidelines, and cross-check time entries across billers and across professionals because much of this work requires no specialized expertise. Because no special expertise is required, the pool of people who could potentially serve as adjunct fee controllers is enormous.

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273 In re Fleming Companies, 304 B.R. at 90; see also Zolfo, Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 258 (Bankruptcy courts are “experts on the value of services rendered in a bankruptcy proceeding and are not bound by the evidence offered.”)
274 In re Fine Paper Antitrust Litig., 751 F.2d at 610 (J. Becker, concurring).
addition, some non-bankruptcy professionals might be able to bring innovative solutions to bear from other fields to mine this data more effectively than the current system.

Even for work that requires special expertise, crowdsourcing can be useful. Generally only very experienced professionals with case-specific knowledge may be able to rival a Fee Controller’s ability to identify charges that potentially were not necessary or beneficial by analogizing from their prior experience. There is a core group of turnaround-management, accounting, law and investment banking firms that regularly handle chapter 11 cases in every jurisdiction. In many cases, these parties are as well-suited as most Fee Controllers to determine whether another professional has, as a *prima facie* matter, billed too much for a task. Like Fee Controllers, these bankruptcy experts also have a well-developed sense of how much effort tasks should take and how high fees should be as a result. Even without case-specific information, local bankruptcy experts might be rewarded for reviewing professional fee applications and informing Fee Controllers when an estate-paid professional has requested compensation for work that has rarely or never been appropriate in similar past cases.

Crowdsourcing’s third benefit is that it merely supplements the work being done by Fee Controllers. It would still fall to Fee Controllers to follow-up with the estate-paid professionals whose fee applications contain facially unreasonable items. In this way, crowdsourcing is merely outsourcing some of the tedium of reviewing fee applications by identifying areas of potential professional overcharging. Hopefully, this assistance will allow Fee Controllers to focus their attention on the potentially most problematic areas and avoid feeling overwhelmed by the task. In any case, this Article is suggesting merely that chapter 11’s fee control system broaden its view of who might usefully provide input on this issue because it proved to be an effective strategy for

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275 Rapoport, *Value Billing*, supra note 99, at 160 (citing See LoPucki & Doherty, *Professional Fees*, supra note 12, at xxiii). *But see* Lavien, *supra* note 213, at 137 (“The bankruptcy judge has been held to be in the best position to determine the value of legal services.”); *but see also* In re Fleming Companies, 304 B.R. at 90 (A “judge’s experience with fee petitions and his or her expert judgment pertaining to appropriate billing practices, founded on an understanding of the legal profession, will be the starting point for any analysis.”)

276 Rapoport, *Value Billing*, supra note 99, at 128; *see also* White III & Theus, Jr., *supra* note 122, at 22 (noting that “tens of thousands of pages of fee applications” are filed in every major bankruptcy case).
both Goldcorp and P&G. It might well be effective in the bankruptcy context too.

iii. Whether the “services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed”277

A critical step in any effective fee review is to compare the services rendered and work product produced in a case to the charges billed for that professional’s work.278 Even in smaller bankruptcy cases, this is challenging and time-consuming work. But in the largest cases, this task becomes potentially impossible for a few people to do by themselves. And it is surely impossible to do well, even though Fee Controllers are very experienced with reviewing fee applications and making these determinations, because of the sheer volume of fee applications in a large chapter 11. While many Fee Controllers may put on their reading glasses and give it their best effort, others have expressed displeasure at the tediousness of the task,279 and have publicly stated their disdain for the job.280 For example, in In re Busy Beaver, the Third Circuit suggested that it doesn’t befit “the stature of a federal bankruptcy judge to spend wasteful hours poring over fee applications.”281

But Fee Controllers need not do this work alone. Crowdsourcing’s ability to outsource tedious, divisible problems to interested members of the public could potentially be very useful here. For example, as discussed in the Amazon Mechanical Turk example, crowdsourcing is a potentially very useful technique for solving divisible problems that would be intolerably tedious (or impossible) for a small group of people to do alone.283 Crowdsourcing fee control would allow Fee Controllers to break the larger task of ensuring that every service was performed within a reasonable amount of time to be broken into the smaller, more

278 See supra section II.B.ii.a.1.C.
279 cf. Simmons, supra note 217 (“auditing a fee application is a grind.”)
280 Although some bankruptcy judges have very publicly acknowledged their disdain for fee control, this Article presumes that most Fee Controller wish to do the best job possible.
281 In re Busy Beaver, 19 F.3d at 844-45, n.12 (emphasis added).
282 Amazon Mechanical Turk. See supra, section I.C.
283 Eggers & Hamill, supra note 243; see also Ichatha and Ellen, supra note 243; Franklin, et al., supra note 243 (noting that dividing a larger task into “microtasks” allow the participation of people who have no special training and does not require a lot of their time).
discrete tasks of ensuring that each time entry represents a reasonable expenditure of time, given the nature, importance and complexity of the problem, issue or task being completed.\textsuperscript{284} Fee review would seem to be a nearly ideal project for a crowdsourced solution. The guidelines for fee applications already require estate-paid professionals to keep contemporaneous time entries “in time periods of tenths of an hour,” that services “be noted in detail and not combined or ‘lumped’ together, with each service showing a separate time entry,” and that time entries “give sufficient detail” to identify the nature of the service provided.\textsuperscript{285} In short, professional fee applications are already divided into the type of discrete chunks of information that separate individuals could review asynchronously and provide feedback on.\textsuperscript{286}

The value of crowdsourcing is particularly evident when considering the type of cross-referencing that must be part of a detailed fee review. One point of cross-referencing professional fee applications is to verify the accuracy of the requested compensation. For example, when multiple professionals attend the same meeting, cross-referencing their fee applications helps to ensure that no professional is requesting compensation for more time than others at the same meeting. The crowd should be able to identify every professional billing time for attending the same hearing and then flag for Fee Controllers if one or more professionals billed—perhaps inadvertently—more time than the rest of the professionals at that hearing. In that case, Fee Controllers (rather than the crowd) can follow-up with the relevant professional. Where, like this example, a task can be clearly defined and the crowd can be appropriately incentivized,\textsuperscript{287} much of the tedious work of reviewing fee applications could be effectively crowdsourced.

Crowdsourcing could also be useful in determining whether a task was completed in a reasonable time because it could draw on the wisdom of other estate-paid professionals, who are already likely to have an informed view of the matter. Typically, as part of their role as professional representatives to the estate’s creditors

\textsuperscript{284} See 11 U.S.C. § 330(a)(3)(D); see also id.
\textsuperscript{286} Fennell, Crowdsourcing, supra note 30, at 405.
\textsuperscript{287} See supra note 245.
and interest holders, many estate-paid professionals will routinely review work product being produced by other estate-paid professionals. For example, if a creditor files a motion for summary judgment, a variety of estate-paid professionals, including debtor’s counsel, will review that motion. But, perhaps that motion was improvidently filed because there were obviously contested material facts. In that case, soliciting input from other estate-paid professionals could be an efficient way to ensure the estate does not pay for this unnecessary or unreasonable summary judgment motion. In this way, crowdsourcing can piggy-back on the work already being done by estate-paid professionals to efficiently evaluate the fee applications of other professionals involved in a particular bankruptcy case.

These are two of the most obvious ways that crowdsourcing could be useful, but there are likely others. One benefit of crowdsourcing fee control is that the crowd might develop unexpectedly innovative solutions. For example, the benchmarks discussed above might also be useful for making section 330(a)(3)(D) determinations. Crowdsourcing is also likely to generate some less obvious solutions to this problem.

iv. Whether a “professional person . . . has demonstrated skill and experience in the bankruptcy field”

As discussed above, chapter 11’s fee control system is flawed because it relies on Fee Controllers knowing the estate-paid professionals well enough to make a variety of determinations, but they lack sufficient knowledge to make these determinations well. It may be particularly difficult for Fee Controllers to know whether non-lawyer professionals have the requisite skill and experience to justify their billing rates in a chapter 11 case. While the existence of repeat players mitigates this knowledge gap to a certain extent, it does not solve the problem. At a minimum, Fee Controllers will never know every new junior estate-paid professional. While Fee Controllers can request information about them (e.g., how long have they practiced in the bankruptcy field), these disclosures are

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290 See supra, Section II.B.ii.a.1.A.
far less useful than if information about bankruptcy professionals were crowdsourced.

In a crowdsourced fee control system, every client and bankruptcy professional that has ever come into (professional) contact with the professional person seeking compensation from the estate could aid in the determination of whether that professional person “has demonstrated skill and experience in the bankruptcy field.”

Crowdsourcing allows many minds to make light work of these determinations because many minds can “employ dispersed information better than the judgment of one.”

And, once again, this information could be purely supplemental to the views already held by Fee Controllers and the information already provided to them by the professionals seeking compensation. For instance, what if the professional requesting compensation had previously made a major error, such as mistakenly authorizing the filing of a UCC-3 termination statement that rendered a client’s $1.5 billion security interest voidable? This information would seem relevant to whether that professional has “demonstrated skill” in the field, or whether they have demonstrated, at least once, the tendency to make careless errors with enormous ramifications for the client. Yet, the people best situated to raise this kind of issue are not currently asked to do so.

As a result, this Article suggests that a crowdsourced picture of a particular professional’s competency is very likely to produce a more robust view than one limited to only Fee Controllers.

v. Determining “customary compensation” in Non-Bankruptcy Cases

Section 330(a)(3)(F) instructs bankruptcy courts to compare the compensation requested in a particular case to the “customary compensation charged by comparably skilled practitioners in cases other than cases under this title,” but provides no guidance on how bankruptcy courts can obtain this information. As suggested above, Fee Controllers have limited means available to obtain this information.

information. Likely sources include first-hand knowledge through experience as a practitioner or in Fee Controllers’ current positions, or through disclosures from estate-paid professionals. Both of these information sources suffer from severe limitations, limitations that a crowdsourced solution does not suffer from.

“Customary compensation” is one of the more complex determinations Fee Controllers must make under section 330. It requires information about what non-bankruptcy professionals are charging and whether those non-bankruptcy professionals are ‘comparable’ to the bankruptcy professionals. As bankruptcy experts, Fee Controllers’ first-hand experiences tend to be with bankruptcy professionals and with the customary compensation charged by practitioners in bankruptcy cases, not in non-bankruptcy cases. Fee Controllers are not likely to interact more than occasionally non-bankruptcy professionals, and therefore their first-hand knowledge will be necessarily limited. These occasional interactions with non-bankruptcy professionals do not provide a solid basis for making the required determinations.

Similarly, professional disclosures are likely to be of limited use in making “customary compensation” decisions. First, it presumes that firms will honestly and accurately disclose this information, and there is some evidence that professional firms have not traditionally disclosed all of the information they are already required to disclose. In addition, under the new Guidelines, comparable compensation disclosures are required only in mega-bankruptcy cases, but the comparable compensation standard applies to all chapter 11 cases. Finally, unless these disclosures relate to the amounts actually paid by other clients (instead of the rates charged), which is likely to be viewed as proprietary business information, the required disclosures would appear to add little value. Professional firms are increasingly under pressure by non-bankruptcy clients to discount their fees. Thus, having estate-paid professional disclose their headline billing rates might be virtually useless as a basis of comparing the compensation earned by non-bankruptcy professionals.

Although Fee Controllers appear to base their section 330(a)(3)(F) determinations on the best information currently available to them, crowdsourcing could produce better information.
and thus allow better decision-making. As discussed above, the currently available information is both limited and potentially compromised. By contrast, information relating to customary non-bankruptcy compensation is very clearly conducive to crowdsourcing.\footnote{Cf. Eggers & Hamill, \textit{supra} note 243 (discussing how crowdsourcing allows decision-makers to harness “on-the-ground knowledge from the people who know a problem intimately”).} Consumers of bankruptcy services (\textit{i.e.}, clients) might be willing to reveal the discounts they received on their bills, or the hourly rates they were charged. In addition, non-bankruptcy professionals might be willing to disclose similar information.\footnote{For some, offering information to the group appears to be its own reward. Fennell, \textit{Crowdsourcing}, \textit{supra} note 30, at 405.} In other contexts, consumers regularly volunteer enormous amounts of information about their experiences.\footnote{Fennell, \textit{id.} at 392-93.} For example, millions of people voluntarily complete product reviews on Amazon.com for seemingly altruistic reasons. Perhaps consumers of bankruptcy services would not act similarly. And, if they do not report this information for altruistic reasons, they might do so for other reasons. In short, a crowdsourced fee control system can generate useful information for Fee Controllers to consider so long as we create “a set of conditions that both enable and motivate people who possess the relevant information to reveal it.”\footnote{Fennell, \textit{id.} at 393.} 

Again, crowdsourcing is merely complimentary to existing forms of information-gathering already available to and employed by Fee Controllers. By enhancing chapter 11’s top-down system with crowdsourced features, chapter 11 could be improved in two ways. First, chapter 11’s fee control system would be better able to incorporate feedback from both bankruptcy professionals and interested non-experts who possess useful information. Second, it could put to use parties willing to serve as adjunct fee controllers and thereby reduce the burdens on bankruptcy judges and assistant United States Trustees.\footnote{Fennell, \textit{Id.} at 392.}

**Conclusion**

Crowdsourcing is useful for performing the sort of tasks that chapter 11’s fee control system needs help with. Crowdsourcing is a process of obtaining needed services, information, ideas or content by soliciting contributions from a large group of people. It
is also a particularly useful strategy for subdividing tedious work, and is most effective when each participant can perform a discrete portion of the work that must be done. These are exactly the problems chapter 11’s fee control system needs to solve. Chapter 11 would benefit if Fee Controllers had additional information about potential overcharging in fee applications, and if they could outsource some of the tedious, detail-oriented work required in a typical fee review. Individually, each member of the crowd could make small but significant contributions to chapter 11’s fee control process. Collectively, the crowd can make important and potentially game-changing contributions. Chapter 11’s fee control system should be re-examined to determine where crowdsourcing can make the most significant impact.

Crowdsourcing holds great promise for fixing chapter 11’s flawed fee control system. In other contexts, crowdsourcing has resulted in creative solutions to problems that previously stumped experts in those fields. From the Netflix prize, which improved movie-watching experiences, to Amazon’s product reviews, which improve shopping experiences, crowdsourcing allows companies to draw on insights from both experts and non-experts. Crowdsourcing generated innovative solutions for locating rich veins of gold for Goldcorp to mine. Crowdsourcing allowed P&G to recapture its place as the world’s largest consumer products company by allowing the company to find innovative partners who reignited the firm’s R&D department. Based on these examples, there is reason to believe that crowdsourcing would result in creative solutions being developed to fix flaws in chapter 11’s fee control system.

That said, crowdsourcing in the bankruptcy context surely has some hurdles to clear. These hurdles include figuring out how to: (i) maximize the appropriate amount of public participation; (ii) motivate the public to participate initially and sustain its engagement; and (iii) ensure that the public’s contributions are utilized and that the information received does not overwhelm

302 See Brabham, Crowdsourcing Public Participation, supra note 22, at 256.
303 See id.; see also Fennell, Crowdsourcing, supra note 30, at 403.
304 See id.
305 Fennell, id. at 406 (suggesting that “reporting would be expected to taper off if users learn that their reports have no effect.”)
the Fee Controllers. These problems all seem surmountable. As a result, an appropriately-crafted, crowdsourced fee control system should be able to decrease professional overcharging and preserve value for creditors of the estate.

See, e.g., Vermeule, supra note 28, at 35 (citing Wilson 2008) (expressing concern that the “Wisdom of crowds” not become the “wisdom of chaperones”).