Baker Botts L.L.P. v. ASARCO LLC, No. 14-103 (previously described in the October 2, 2014, Docket Report)

Section 330(a) of the Bankruptcy Code grants discretion to bankruptcy judges to award "reasonable compensation for actual, necessary services rendered" by an attorney or other professional employed by the estate. 11 U.S.C. § 330(a)(1). In order to receive compensation, the professional must submit a fee application. The Courts of Appeals previously were divided over whether § 330(a) permits a bankruptcy court to award attorneys' fees for work performed in defending such a fee application in court.

Today, in *Baker Botts L.L.P. et al. v. ASARCO LLC*, No. 14-103, the Supreme Court resolved that conflict and held that § 330(a) does not authorize compensation for the costs that counsel or other professionals bear to defend their fee applications. In an opinion written by Justice Thomas, the Court found no reason to depart from the American Rule, pursuant to which litigants generally pay their own attorneys' fees. In particular, although § 330(a)(1) authorizes fee shifting for "reasonable compensation for actual, necessary services rendered," the Court held that "services" cannot reasonably be interpreted to refer to an attorneys' pursuit of his own compensation.

The Court also rejected the Government's policy argument that awarding fees for fee-defense litigation will ensure the congressional aim that talented attorneys will take on bankruptcy work. The Court concluded that "[i]n our legal system, *no* attorneys, regardless of whether they practice in bankruptcy, are entitled to receive fees for fee-defense litigation absent express statutory authorization."

Justice Sotomayor concurred in the judgment and declined to join the Court's rejection of the Government's policy argument. According to Justice Sotomayor, "it would be improper to allow policy considerations to undermine the American Rule" "[g]iven the clarity of the statutory language."

Justice Breyer filed a dissenting opinion in which Justices Ginsburg and Kagan joined. Although he agreed with the Court that "a professional's defense of a fee application is not a 'service' within the meaning of the Code," he would have accepted the Government's position that compensation for fee-defense work is "part of the compensation for the underlying services in [a] bankruptcy proceeding." In Justice Breyer's view, "when a bankruptcy court determines 'reasonable compensation,' it may take into account the expenses that a professional has incurred in defending his or her application for fees." Noting that the Bankruptcy Code affords courts broad discretion to decide what constitutes "reasonable compensation," he would have held that "work performed in defending a fee application" may be considered when "calculating 'reasonable compensation.'"

The Supreme Court's decision in this case is significant for the business community because it makes it more difficult for professionals to obtain compensation for services provided in bankruptcy proceedings and limits the total compensation they can receive if their fee application is challenged. Under the Supreme Court's decision, § 330(a) does not allow the bankruptcy court to award attorneys' fees for work performed in defending a fee application in court. Notably, the Court's holding in this case affects only professionals who provide services on behalf of bankruptcy estates or creditor committees because those professionals must submit a fee application in order to receive compensation under the Bankruptcy Code. Professionals providing services to other interested parties in bankruptcy, such as secured creditors, are not required to file fee petitions for compensation and will not be directly affected by this decision.

Any questions about this case should be directed to Brian Trust (+1 212 506 2570) in our New York office, Thomas S. Kiriakos (+1 312 701 7275) in our Chicago office, or Carl Summers (+1 202 263 3247) in our Washington office.