
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). Today, the Supreme Court granted certiorari in *Baker Botts L.L.P. v. ASARCO LLC*, No. 14-103, to decide whether § 330(a) grants bankruptcy judges discretion to award compensation for the defense of a fee application.

After ASARCO entered chapter 11 bankruptcy in 2005, petitioners Baker Botts L.L.P. and Jordan, Hyden, Womble, Culbreth & Holzer, P.C., were retained as counsel to the ASARCO estate. After resolution of the bankruptcy case, petitioners filed their final fee application, which the reorganized ASARCO challenged. Following a six-day fee trial, the bankruptcy court awarded fees to petitioners, including \$5 million in fees that they incurred defending the fee application. The district court affirmed the bankruptcy court’s final fee award.

Reversing in part, the Fifth Circuit denied petitioners the \$5 million in defense fees. It held that, as a matter of law, § 330(a) does not authorize compensation for the costs that counsel or other professionals bear in defending their fee applications. The Fifth Circuit relied on the language of § 330(a), which expressly allows fees for preparing a fee application but does not expressly allow fees for defending one. The Fifth Circuit also reasoned that the so-called American Rule, under which each party to litigation bears its own costs, weighs against allowing fees for defense of a fee application. In so holding, the Fifth Circuit disagreed with the Ninth Circuit’s decision in *In re Smith*, 317 F.3d 918 (9th Cir. 2002), which held that bankruptcy courts have discretion to award compensation for the defense of a fee application.

The Supreme Court’s decision in this case will be significant for the business community because it will determine the scope of compensation for professional services provided to bankruptcy estates.

Absent extensions, amicus briefs in support of petitioners will be due on November 24, 2014, and amicus briefs in support of respondent will be due on December 24, 2014. Any questions about the case should be directed to Brian Trust (+1 212 506 2570) in our New York office, Thomas S. Kiriakos in our Chicago office, or Dan Himmelfarb (+1 202 263 3035) in our Washington office.