

BUSINESS

Baker Botts not owed fees for legal fight with a client, Supreme Court rules

Justices rule lawyers can't seek reimbursement for the time they spend fighting over their expenses

By **Mark Curriden, The Texas Lawbook** | June 15, 2015 | Updated: June 16, 2015 12:41pm

0



Photo: Gittings Photography

IMAGE 1 OF 2

Jeffrey Oldham of Bracewell & Giuliani

Lawyers who fight with their own clients in bankruptcy court over legal fees cannot seek reimbursement for the time they spend battling over those fees - even if the bankruptcy judge rules the lawyers did a great job and deserve the money, the U.S. Supreme Court ruled Monday.

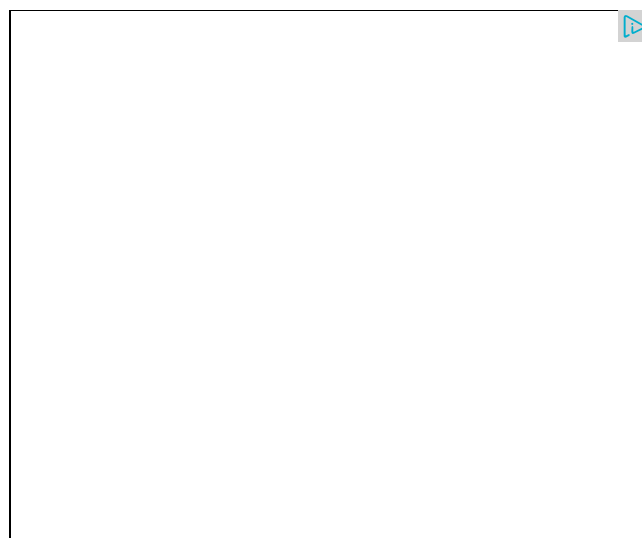
In a 6-to-3 decision, the justices ruled that Asarco does not have to pay Baker Botts the \$5.2 million the law firm spent fighting the copper mining company over the \$120 million in legal fees that the bankruptcy judge had already awarded the Houston-based firm.

Justice Clarence Thomas, writing for the majority, said the bankruptcy law simply "does not authorize the award of fees for defending a fee application, and that is the end of the matter."

"Congress has not granted us roving authority to allow counsel fees whenever we might deem them warranted," Thomas said.

Legal experts say the decision's effect is unclear, but it gives debtors and creditors a tool in negotiating lower legal fees at the end of a bankruptcy case.

"This decision could bring about more fights over fees, which means it could make bankruptcy even more expensive," said Godwin Lewis bankruptcy partner Sid



Scheinberg, who wasn't involved in the case.

While businesses only rarely object to the fees awarded to lawyers by bankruptcy judges, the cases where it does happen can be very expensive and time consuming because the amount of legal bills in complex bankruptcies of Texas companies, such as those in the RadioShack and Energy Future Holdings cases, can exceed tens of millions of dollars.

"It remains to be seen whether this decision will give creditors and debtors a tactical tool to effectively seek lower fees, especially if the parties think the lawyer fees are too high," said Bill Wallander, a partner in the bankruptcy section at Vinson & Elkins who wasn't involved in this case.

Wallander, who is chair of the Bankruptcy Section of the State Bar of Texas, said that companies that frivolously fight legal fees could face the wrath of bankruptcy judges who can still issue sanctions and penalties against companies they feel are misusing the court proceedings.

"The facts in the Asarco case are very unique," Scheinberg said.

Asarco, a subsidiary of Grupo Mexico, hired Baker Botts to file for restructuring and reorganization in U.S. Bankruptcy Court in Corpus Christi in 2005. The mining, smelting and refining company faced huge fines and cleanup costs at nearly 20 locations that the U.S. Environmental and Protection Agency identified as Superfund sites.

BUSINESS

Quanex buys plastics supplier



Baker Botts not owed fees for legal fight with a client, Supreme



Houston-based ATM operator still sees profit in cash



Judge sides with ex-AIG chief Greenberg against U.S. but awards



Online lost and found created for back wages

In brief: Refinery workers to vote on offer early next week

By all accounts, Baker Botts did a superb job for its client in bankruptcy court. The law firm obtained a \$7 billion judgment against Asarco's parent company on fraudulent transfer claims. All of Asarco's creditors were paid in full, and the company emerged from bankruptcy with \$1.4 billion in the bank.

The bankruptcy judge awarded about \$120 million in fees to the lawyers, including a \$4.1 million bonus enhancement for a job well done.

The newly formed Asarco objected to the large lawyer fee award. The company demanded that Baker Botts turn over 6 million pages of documents stored in more than 2,000 banker boxes. It also wanted and received 189 gigabytes of electronic data.

At the end of a six-day trial, the bankruptcy judge found in favor of Baker Botts and awarded the law firm an additional \$5.2 million in legal fees to cover the cost of Asarco's fight over lawyer fees.

On Monday, Chief Justice John Roberts and Justices Antonin Scalia, Anthony Kennedy, Samuel Alito and Sonia Sotomayor joined Thomas in rejecting Baker Botts' request, stating that the bankruptcy law simply didn't allow for the extra award of litigation fees.

"Asarco has argued from the beginning that the Bankruptcy Code's plain text does not authorize Baker Botts' attempt to get paid from estate funds for its purely self-interested work litigating over its underlying fee requests," said Jeffrey Oldham, a partner for Bracewell & Giuliani in Houston who represents Asarco in the case and argued before the Supreme Court.

Aaron Streett, a partner in Baker Botts' Houston office who also appeared before the court, said he was disappointed that the law firm would not be compensated "for defeating meritless objections" to the fee application.

"We are gratified that the Court recognized Baker Botts' exceptional performance in the Asarco bankruptcy, which led to the Fifth Circuit affirming a \$4.1 million bonus for Baker Botts' extraordinary performance and results-an outcome that remains undisturbed by the Supreme Court's opinion," Streett said in an email.

Justice Stephen Breyer, in his dissent, said a lawyer's "work performed in defending a fee application may, in some cases, be a relevant factor in calculating 'reasonable compensation'."

"I would hold that it is within a bankruptcy court's discretion to consider as 'relevant factors' the cost and effort that a professional has reasonably expended in order to recover his or her fees," wrote Breyer, who was joined by Justices Elena Kagan and Ruth Bader Ginsburg.

For a longer version of this article, subscribe to TexasLawbook.net, an online publication that covers business law in Texas.

HEARST *newspapers*

© 2013 Hearst Newspapers, LLC.