



BANKRUPTCY LAW

Must the Office of the United States Trustee Issue Refunds of Fees Collected Under the UST Fee Schedule the Supreme Court Determined Was Unconstitutional in Its 2022-2023 Term?

CASE AT A GLANCE

The Supreme Court does not often take up appeals in bankruptcy cases, generally averaging only one per term. There is a notable uptick this term, with the Supreme Court granting *certiorari* in three bankruptcy cases through the date of this article.¹ One of these cases, *Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC*, has financial consequences for chapter 11 cases filed between January 1, 2018, and March 31, 2021. The Court in *Hammons* is being asked to decide whether the Office of the United States Trustee (UST) must issue refunds of fees collected under the UST fee schedule the Supreme Court determined was unconstitutional in its 2022–2023 term in *Siegel v. Fitzgerald*. The UST estimates refund claims could exceed \$300 million.

United States Trustee v. John Q. Hammons Fall 2006, LLC
Docket No. 22-1238

Argument Date: **January 9, 2024** From: **The Tenth Circuit**

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Issue

Is the appropriate remedy for the constitutional uniformity violation found by this Court in *Siegel* to require the United States Trustee to grant retrospective refunds of the increased fees paid by debtors in United States Trustee districts during the period of disuniformity, or is it instead either to deem sufficient the prospective remedy adopted by Congress or to require the collection of additional fees from a much smaller number of debtors in Bankruptcy Administrator districts?

Facts

Commonly referred to as the nation’s “bankruptcy watchdog”, the United States Trustee (UST) is a unit of the

Department of Justice (DOJ) and serves in a regulatory and oversight capacity for bankruptcy cases across the United States, with the exception of cases filed in six federal judicial districts found within the state boundaries of North Carolina and Alabama. In those districts, the Bankruptcy Administrator program serves a similar function and performs duties analogous to the UST. The Bankruptcy Administrator program is not administered by the DOJ, but is instead overseen by the Administrative Office of the United States Courts.

For the period between January 1, 2018, and March 31, 2021, the fee collection regimes of the UST and Bankruptcy Administrator programs were not uniform. The incongruity of the two fee collection systems led to

¹ See *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73 (4th Cir.), cert. granted sub nom. *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 144 S. Ct. 325 (2023). *In re John Q. Hammons Fall 2006, LLC*, No. 20-3203, 2022 WL 3354682 (10th Cir. Aug. 15, 2022), cert. granted sub nom. *United States Tr. v. Fall*, No. 22-1238, 2023 WL 6319661 (U.S. Sept. 29, 2023). *In Re Purdue Pharma L.P.*, 69 F.4th 45 (2d Cir.), cert. granted sub nom. *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44 (2023).

the Supreme Court's decision in *Siegel v. Fitzgerald*, 596 U.S. 464 (2022), (see below), which found the UST fee schedule to be unconstitutional.

In the *Hammons* case, the Supreme Court is now asked to decide the appropriate remedy to address fees collected under the unconstitutional schedule. Should the Bankruptcy Administrator be compelled to retroactively collect higher fees to match the UST program's fee schedule that was in effect and found unconstitutional? Or, should the UST program be required to issue \$300 million in refunds to the chapter 11 debtor estates that paid the unconstitutional fees?

The UST's Collection of Fees in Chapter 11 Cases

The UST's budget (which was approximately \$255 million in FY 2023) is funded largely by the collection of fees paid by chapter 11 debtors as calculated under a formula set forth in Title 28 of the U.S. Code, Section 1930(a)(6). The formula changes periodically to reflect the UST's budgetary needs. Between January 1, 2008, and December 31, 2017, any chapter 11 debtor aggregating more than \$30 million of quarterly disbursements was subject to the maximum fee of \$30,000 for that quarter.

Effective January 1, 2018, Congress revised the formula to increase the fees collected by the UST, including a \$250,000 maximum fee. This revised formula remained in effect until March 31, 2021.

Like the UST, the Bankruptcy Administrator's budget is funded by the collection of fees from debtors in bankruptcy. The Bankruptcy Administrator's formula was not required to match the formula applicable to the UST. As a result, bankruptcy cases pending in federal judicial districts within North Carolina and Alabama generated fee schedules different from the uniform fee structure applicable to judicial districts administered by the UST.

Challenges to the UST and Bankruptcy Administrator fee schedules followed on grounds that the disparity violated the uniformity requirement in the Constitution's Bankruptcy Clause.

Case Analysis

The United States Courts of Appeals for the Second and Tenth Circuits (in the case currently before the Supreme Court) held the UST fee schedule was unconstitutional and determined that the appropriate remedy for affected debtors was a refund of fees to reflect the amount that the debtor would have paid if the debtors' cases had been in a jurisdiction overseen by the Bankruptcy Administrator.

See *In re John Q. Hammons Fall 2006, LLC*, 15 F.4th 1011 (10th Cir. 2021); *In re Clinton Nurseries, Inc.*, 998 F.3d 56 (2d Cir. 2021).

The Fourth, Fifth, and Eleventh Circuits held the revised fee schedule did not violate the uniformity requirement and was therefore constitutional. See *United States Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp.)*, 22 F.4th 1291 (11th Cir. 2022); *In re Circuit City Stores, Inc.*, 996 F.3d 156 (4th Cir. 2021); *In re Buffets, LLC*, 979 F.3d 366 (5th Cir. 2020). Similarly, the United States Bankruptcy Court for the District of Delaware and the Southern District of Ohio, as well the Court of Federal Claims, held the revised fee schedule was constitutional. See *In re Exide Techs.*, 611 B.R. 21 (Bankr. D. Del. 2020); *In re ASPC Corp.*, 631 B.R. 18, 35 (Bankr. S.D. Ohio 2021); *Acadiana Mgmt. Grp., LLC v. United States*, 151 Fed. Cl. 121 (2020).

Last term the Supreme Court resolved the split in *Siegel v. Fitzgerald*, reversing the Fourth Circuit's decision and holding that the UST fee schedule was unconstitutional. The Court determined that the revised fee schedule violated the uniformity clause and was therefore unconstitutional. The Supreme Court reasoned that the Bankruptcy Clause in Article I of the Constitution empowers Congress to establish "uniform laws on the subject of Bankruptcies throughout the United States" that section 1930(a)(6), the statute which sets forth the UST fee schedule, was subject to the Constitution's bankruptcy uniformity requirement. U.S. Const., Art. I, § 8, I. 4.

The Supreme Court held that the uniformity requirement prohibits a statute that burdens debtors with disparate fees based on the jurisdiction of their cases. Accordingly, the Supreme Court ruled that the UST fee schedule was unconstitutional.

The Supreme Court in *Siegel* did not decide whether or when a refund was the proper remedy for the payment of unconstitutional fees.

Post-Siegel Remedy Rulings by Circuit Courts

Following its decision in *Siegel*, the Supreme Court remanded the case back to the Fourth Circuit, which in turn sent the case back down to the bankruptcy court to determine whether a refund remedy was appropriate. The bankruptcy court subsequently decided that a refund was the appropriate remedy, a decision which the UST appealed back to the Fourth Circuit.

The Second and Tenth Circuits, which had previously found the revised fee schedule unconstitutional, reiterated

their refund rulings following *Siegel*. See *In re John Q. Hammons Fall 2006, LLC*, No. 20-3203, 2022 WL 3354682 (10th Cir. Aug. 15, 2022), *cert. granted sub nom. United States Tr. v. Fall*, No. 22-1238, 2023 WL 6319661 (U.S. Sept. 29, 2023); *In re Clinton Nurseries, Inc.*, 53 F.4th 15, 18 (2d Cir. 2022). Additionally, the Eleventh Circuit, which previously held the formula constitutional, revisited its decision in light of *Siegel*, and joined the Second and Tenth Circuit deciding that refunds are the appropriate remedy. *In re Mosaic Mgmt. Grp., Inc.*, 71 F.4th 1341 (11th Cir. 2023). The Ninth Circuit, which had yet to weigh in at the time of the Supreme Court's decision in *Siegel*, also found in favor of a refund remedy. *USA Sales, Inc. v. Off. of United States Tr.*, 76 F.4th 1248, (9th Cir. 2023).

Shortly after the Tenth Circuit reiterated its approval of the refund remedy in *Hammons*, the UST filed a petition for a writ of *certiorari*, which the Court granted on September 29, 2023.

The UST argues that the constitutional violation at issue in *Siegel* was remedied when Congress updated the fee schedule in 2021 and expressly imposed equal fees for all jurisdictions throughout the country. Refunds, the UST argues, are unnecessary because relief has already been given. Alternatively, the UST argues that if the appropriate remedy is some form of retroactive relief, then the UST should be allowed to collect underpayments from debtors in Bankruptcy Administrator districts to capture fees they would have paid in UST districts.

Conversely, the debtors argue, the appropriate remedy is a refund to debtors in UST districts to the extent of any overpayments made pursuant to the unconstitutional fee schedule, consistent with the rulings from the Second, Tenth, and Eleventh Circuits.

Significance

In addition to *Hammons*, the UST requested the Supreme Court take their appeals in *Clinton Nurseries* and *Mosaic*. However, the Supreme Court did not grant *certiorari* in those cases. Disputes on the refund issue in the lower courts are currently in abeyance while the Court considers *Hammons*.

For several years, chapter 11 debtor estates were confronted with difficult choices due to the substantial UST fees levied during the *Siegel* period. Some debtors on the edge of administrative insolvency were unable to fund liquidating plans (for the benefit of unsecured creditors) because of fees paid to the UST program. A uniform remedy across

all circuits will be the first step in developing a process for the return of overpayments. The more complicated step will need to be addressed by the lower courts—how and to whom should overpayments be returned.

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