

ALERTS

Update on Bankruptcy Fee Shifting

November 10, 2015

“Each litigant [in the U.S. legal system] pays [its] own attorney’s fees, win or lose, unless a statute or contract provides otherwise.” *Baker Botts LLP v. ASARCO LLP*, 135 S. Ct. 2158, 2164 (2015) (6-3), quoting *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252-53 (2010). A majority of the U.S. Supreme Court purported to follow this so-called “American Rule” against “fee shifting” in *ASARCO*, holding on June 15, 2015 that the Bankruptcy Code (“Code”) “does not permit bankruptcy courts to award compensation for ... fee-defense litigation [i.e., the cost of a professional’s defending against an objection to its fees].” Other recent bankruptcy cases, though, confirm that: (1) the Code *does* permit fee shifting in specific cases; (2) courts will ignore the American Rule in the right cases; and (3) more bankruptcy fee disputes continue to be litigated.

Practices

BUSINESS REORGANIZATION

Attachments

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