

SCOTUS Ruling on US Trustee Fees Shows Reluctance on Remedy Issue

By Daniel Gill

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- Court vacates ruling that US Trustee's hiked fees were unconstitutional
- Decision comes after it deemed the fees unconstitutional a week earlier

The US Supreme Courts' decision to summarily vacate the Tenth Circuit's ruling on the constitutionality of the US Trustee's fee hike further signified the justices' reluctance to wade into whether bankrupt debtors who paid them should be refunded.

The high court's June 13 "grant, vacate and remand" (GVR) order on *US Trustee v. In re John Q. Hammons Fall 2006 LLC* essentially tasks the US Court of Appeals for the Tenth Circuit to review again its ruling that the increased fees were unconstitutional because it didn't uniformly apply to all 50 states.

But the GVR order perplexed bankruptcy practitioners, as the Supreme Court, in another case a week ago, essentially came to the same conclusion as that of the Tenth Circuit. In *Siegel v. Fitzgerald*, the high court said that increased quarterly fees charged by the US Trustee were unconstitutional and remanded the case to the US Court of Appeals for the Fourth Circuit to work out what should be done to remedy the overpayments.

In leaving the Tenth Circuit to redo its *Hammons* ruling, the Supreme Court is signaling yet again after *Siegel* that it's not ready to figure out how and if debtors who overpaid should be compensated, practitioners said.

"In *Siegel*, Justice Sotomayor wrote that the lower court has to come up with what the solution should be," said attorney Monique Almy of Crowell & Moring LLP.

"My guess is that the GVR designation is just a short-hand that the lower courts have to figure all that out," she said.

Remedy Question

In 2018, the US Trustee, which monitors bankruptcy cases in 48 states, temporarily raised its fees to make up for its budget shortfall.

The fee hike didn't apply to cases in Alabama and North Carolina, the two states where bankruptcies are monitored by bankruptcy administrators working under the Judicial Conference of the United States.

That disparity triggered several lawsuits, resulting in the US Supreme Court's siding with those who argued the fee hike was unconstitutional. The US Trustee has said that there's about \$324 million in over-payments at stake.

Daniel Geysler of Haynes Boone LLP, who represented the petitioner in *Siegel*, found the court's GVR ruling to be "unusual."

He said resolving the question of an appropriate remedy may have factored in the Supreme Court's decision.

"If I had to guess it's because the court left the remedy question open. The opinion didn't grapple with the issues," Geysler said.

The Tenth Circuit will now undertake its second review of *Hammons* and will likely draw a similar conclusion as it had before — echoing the ruling in *Siegel* that the hiked fees are unconstitutional, said Brad Drell of Gold Weems Bruser Sues & Rundell LLP. Drell is representing a proposed class of Chapter 11 debtors who paid increased US Trustee fees.

"Note that the SCOTUS order is not a reversal but vacates the prior order. By not reversing, SCOTUS left open the idea the Tenth Circuit might reaffirm their decision," he said.

The Tenth Circuit could address the remedy question but it's not bound to do so. It's "uncertain" whether the court will, Drell said.

Other Cases

The high court is still considering whether to take up at least two more circuit court decisions on the quarterly fee hike.

The Second Circuit in *Harrington v. Clinton Nurseries, Inc.* also found that the fee hike was unconstitutional.

In *Bast Amron LLP v. US Trustee Region 21*, the Eleventh Circuit ruled in favor of the US Trustee that the fee hike was constitutional.

"I bet SCOTUS will reverse in *Bast Amron*, rather than merely vacate the decision, given that the Eleventh Circuit's opinion is contrary to *Siegel*," Drell said.

Meanwhile, the questions of how much debtors will be repaid, if at all, may not be determined until the Fourth Circuit and Tenth Circuit—and perhaps the Second and Eleventh Circuits as well—review again, following the Supreme Court's orders.

"What if the circuits come back with different remedies?" said Almy.

The Supreme Court may have to weigh in on the appropriate remedy "if the results are disparate," she said.

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