

PUBLICATIONS

Update on Bankruptcy Fee Shifting

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“Each litigant [in the U.S. legal system] pays [its] own attorney’s fees, win or lose, unless a statute or contract provides otherwise.” *BakerBotts LLP v. ASARCO LLP*, 135 S. Ct. 2158, 2164 (2015) (6-3), quoting *Hardt v. Reliance StandardLife 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].” 135 S. Ct. at 2169. In this article, partner Michael L. Cook examines other recent bankruptcy cases that show: 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.

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