

Dan Geyser in Law360, Bloomberg Law on Oral Arguments Before SCOTUS

April 19, 2022 Daniel Geyser, Ben Mesches

PRACTICES Chapter 11 Debtor, Appellate, U.S. Supreme Court

Haynes Boone Partner [Dan Geyser](#) presented oral arguments before the U.S. Supreme Court this week in the case of *Siegel v. Fitzgerald* involving debtors' Chapter 11 fee disparities. Below are excerpts from of publications that covered the case.

[Law360](#): 'Ch. 11 Trustee Fee Hike Was Non-Uniform Law, Justices Told'

An attorney for the liquidating trustee of former electronics retailer Circuit City told the U.S. Supreme Court on Monday that a system that allows debtors in different jurisdictions to pay disparate fees to the Office of the U.S. Trustee is a clear violation of the Constitution's uniformity rules for bankruptcy.

During oral arguments, Daniel L. Geyser of Haynes Boone said having separate bankruptcy systems that assess debtors' fees differently based on where they file for Chapter 11 runs afoul of the bankruptcy clause of the Constitution.

"The Constitution requires uniform bankruptcy laws and a bifurcated system that imposes different charges on indistinguishable debtors is not uniform under any ordinary definition," Geyser argued. ...

Under questioning from the justices, Geyser said there is nuance to how different fees can be charged to debtors in different jurisdictions without running afoul of the uniformity clause. For instance, he said, if Congress had passed a law allowing all federal districts to charge fees based on local market rates, that would be permissible because it would give all jurisdictions the same choice in how to assess fees regardless of if they were applied differently.

"Those are different effects," Geyser said. "The clause says the laws have to be uniform, not that the effects have to be uniform."

He also conceded that the trustee program and the bankruptcy administrator program are closely aligned in their operation, so there could be some merit in saying the differing laws that created the two programs are uniform in practice. But once the disparate fee amendment came into play, that argument failed, Geyser argued. ...

Geyser said there are two problems with a clawback option: It would be retroactive lawmaking that is subject to increased scrutiny by the high court, and it would create an administrative morass in seeking out past debtors — many of which have since closed their Chapter 11 cases — and trying to pry the balance of the fees from them.

Gannon said there could be some trickiness in pursuing a clawback, but it wouldn't create insurmountable legal issues. He also said the justices could render a decision on the constitutionality of the fee amendment without fashioning a specific remedy and could simply remand to the lower court for a decision. ...

Circuit City's liquidating trustee is represented by Jeffrey N. Pomerantz, Andrew W. Caine and Robert J. Feinstein of Pachulski Stang Ziehl & Jones LLP, and Daniel L. Geysler and [Ben L. Mesches](#) of Haynes Boone.

[Bloomberg Law](#): 'Justices Question Fixes for U.S. Trustee Bankruptcy Fee Disparity'

The U.S. Supreme Court wrestled with how to address debtors' Chapter 11 fee disparities that stem from systemic quirks existing in only two states. ...

Federal law has allowed two different oversight regimes to exist, but the Constitution requires that bankruptcy laws be uniform across all districts, said Haynes Boone's Daniel Geysler, an attorney for Siegel. To fix the issue, the Supreme Court should find the 2017 legal change unconstitutional and fully return fees paid under the law, he said.