



LOWENSTEIN BANKRUPTCY LOWDOWN

Lowenstein Bankruptcy Lowdown Video 14 – SCOTUS Decision in *Hammons Fall* Might Result in Significant Refunds for Debtors

By [Michael Savetsky](#) and [Erica G. Mannix](#)

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Michael Savetsky: Hi, I'm Michael Savetsky, and with me today is Erica Mannix. Welcome to another edition of the [Lowenstein Bankruptcy Lowdown](#).

Erica G. Mannix: As promised, my colleague Michael Savetsky and I are here to update you on developments stemming from the Supreme Court's recent holding in *Siegel* that the United States Trustee fee increase that went into effect in 2018 was unconstitutional.

In October of 2021, the 10th Circuit Court of Appeals in *in re John Q Hammons Fall 2006 LLC* held that the increase in the amount of quarterly fees that Chapter 11 debtors must pay into the United States Trustee System Fund under the Bankruptcy Judgeship Act of 2017 violated the uniformity requirement of the Bankruptcy Clause of the U.S. Constitution because it did not immediately apply in the two states with Bankruptcy Administrators rather than U.S. Trustees.

To remedy the disparate treatment between Chapter 11 debtors and U.S. Trustee versus Bankruptcy Administrator districts, the 10th Circuit determined that the *Hammons Fall* debtors were entitled to a refund of over \$2.5 million in quarterly fees, representing the fees the debtors had paid in excess of what they would have paid during the same time period had their cases been pending in a Bankruptcy Administrator district.

Michael Savetsky: The Office of the United States Trustee appealed to the Supreme Court, which granted certiorari, vacated the judgment, and remanded the case back to the 10th Circuit for further consideration in light of its decision in *Siegel vs. Fitzgerald*, which we discussed in an [earlier Lowdown episode in July](#).

On August 15th, the 10th Circuit issued an order and judgment adhering to its original decision last year, requiring that the government refund the debtors' overpayment of U.S. Trustee fees.

The Second Circuit ordered the same remedy in a decision issued in May 2021, in the Chapter 11 cases of *Clinton Nurseries*. It remains to be seen if other courts will follow suit.

The *Hammons Fall* decision is timely, especially in light of a class action

challenging the U.S. Trustee fee increase that was revived by the *Siegel* decision and is pending in the Court of Federal Claims in Washington, D.C. If the class action holds up and the Court of Federal Claims and Federal Circuit follow the 10th Circuit and Second Circuit's approach, Chapter 11 debtors across the country affected by the unconstitutional fee increase could see substantial refunds.

Erica G. Mannix: Thank you for watching, and please stay tuned for more [Lowenstein Bankruptcy Lowdown](#) videos.