

Amundsen Davis In the United States Supreme Court Again!

June 16, 2015

We reported earlier this month on our role in helping to secure a victory for financial institutions (see below). For the second time in as many weeks, Amundsen Davis Amundsen is again on the winning side in a United States Supreme Court case. On June 15, in *Baker Botts, LLP v. ASARCO, LLC*, the Court ruled 6-3 that counsel for a bankruptcy trustee could not recover fees for defending its own fee application. Baker Botts was awarded over \$100 million and wanted another \$5 million for defending its fee application.

The brief argued that the relevant bankruptcy statutes did not permit such an award, and did not alter the basic rule that a party pays its own attorneys' fees. While the outcome is easily stated, the case presented highly technical and difficult issues of statutory construction and interpretation, as well as policy considerations.

On June 1, 2015, the United States Supreme Court in *Bank of America, N.A. v. Caulkett* unanimously ruled that underwater junior liens cannot be stripped-off or removed in a chapter 7 case, securing the rights of financial institutions to recover money if a property retained by the debtor goes up in value in the future. This is a victory for secured lenders, but will help lenders take more risks, making credit more readily available to those who may need it most.

Earlier this year, Amundsen Davis filed a friend-of-the-court amicus brief on behalf of the Community Bankers Association of Illinois in the matter. Significantly, the court based its decision, in part, on an argument contained in the brief. Amundsen Davis partner Michael Cortina acted as Of Counsel.

Community Bankers Association of Illinois President Bob Wingert and General Counsel Jerry Cavanaugh provided the following statement: "The Community Bankers Association of Illinois ("CBAI") is thrilled with the U.S. Supreme Court's June 1 decision resolving the case of *Bank of America, N.A. v. Caulkett* and with the efforts of CBAI Associate Member law firm Smith Amundsen LLC in preparing an amicus brief on behalf of CBAI and CBAI's members throughout Illinois. The victory in this decision protects the secured interests of junior lienholders in bankruptcy cases, and CBAI believes that the arguments submitted in the amicus brief were reflected in the Court's opinion. A big "thank you" to Smith Amundsen LLC, including Michael Cortina, who guided CBAI through the amicus drafting and kept CBAI apprised of the status of the case. The *Caulkett* decision is a big victory

PROFESSIONALS

Michael G. Cortina
Partner

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for junior lienholders.”

This case has received widespread, national coverage in the media today including in the Financial Times, New York Times, Forbes, and Reuters.

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