

Appellate Court Rules that Creditors Deserve Reimbursement for Bankruptcy Participation

In the first appellate decision of its kind, a team of Miller Canfield attorneys, led by Marc Swanson, successfully represented a credit insurer at the Sixth Circuit Court of Appeals in recovering all of its expenses and attorneys' fees due to the substantial contribution it made in a large trucking firm's bankruptcy case.

In the bankruptcy case, the bankruptcy trustee mishandled a clawback suit and the court sanctioned the trustee by dismissing the case and depriving the estate of potentially millions of dollars in recoveries. The trustee declined to investigate the possibility of there being a malpractice claim against his law firm for the loss. Miller Canfield convinced the Bankruptcy Court that the trustee could not investigate his own legal liability and that he should be replaced as trustee. Further, Miller Canfield helped negotiate a settlement with the trustee's insurance carrier to the benefit of all creditors.

Because the court found these acts to be of significant value to the estate, Miller Canfield asked the bankruptcy court to allow the estate to reimburse them. The bankruptcy court and the district court on appeal both denied the request, applying a narrow reading of the Bankruptcy Code. The Sixth Circuit reversed, allowing the credit insurer to recoup its expenses along with the now-enhanced recovery on its claim in the trucking firm's bankruptcy case.

Miller Canfield utilized the Sixth Circuit's ruling to obtain reimbursement for a client for its fees and expenses in a subsequent case.