SLC Leg'd 6/29/95

Office of the Attorney General
Washington, D. C. 20530

June 28, 1995

Michael Davidson, Esquire
Senate Legal Counsel
642 Hart Building
Washington, D.C. 20510

Dear Mr. Davidson:

Pursuant to 2 U.S.C. 288k(b), I write to advise you that, in the course of deciding the case in the government's favor, the court of appeals in St. Angelo, Acting Trustee for Region 17 v. Victoria Farms, Inc., 38 F.3d 1525 (1994), modified, 46 F.3d 969 (9th Cir. 1995), held that Section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (commonly referred to as the Judicial Improvements Act), Pub. L. No. 101-650, 104 Stat. 5115, violates the Bankruptcy Clause (Art. I, § 8, cl. 4) of the Constitution. By order dated May 31, 1995, Justice O'Connor granted our motion to extend the time in which to file a petition for a writ of certiorari to and including July 5, 1995.

The facts of the case are set forth in the opinion of the court of appeals, attached for your reference as an exhibit hereto. Briefly, Victoria Farms, Inc. (VFI) filed a petition for reorganization under chapter 11 of the Bankruptcy Code in the United States District Court for the Eastern District of California. In the context of that bankruptcy proceeding, VFI successfully disputed the amount of the U.S. Trustee's statutory fee assessed against it. On the U.S. Trustee's appeal to the district court, VFI raised for the first time a claim that the United States Trustee program violates the uniformity requirement of the Bankruptcy Clause, and that the program (including its fee system) is therefore invalid. The district court ruled largely in favor of the debtor on the fee issue and did not address the constitutional challenge.

On the U.S. Trustee's appeal, the Ninth Circuit held that Section 317(a) of the Judicial Improvements Act -- which extended by 10 years the deadline by which the six federal judicial districts in Alabama and North Carolina must opt into the United States Trustee program -- violates the uniformity requirement of the Bankruptcy Clause. 38 F.3d at 1532.[1]

The court rejected the U.S. Trustee's argument that the extension does not come within the purview of the uniformity requirement because the United States Trustee program is administrative, rather than substantive, in character. In the court's view, the program affects substance because it "governs the relationship between creditor and debtor," and (to the extent that the imposition of U.S. Trustees' fees increases the cost of the proceedings) "has a concrete effect on the relief available to creditors." 38 F.3d at 1530-1531. The court also rejected the argument that Congress had justifiably delayed the phase-in for the districts in Alabama and North Carolina to study further the differences between the workings of the traditional system and the United States Trustee program. Id. at 1529-1530. Finally, it found that there were no "geographically isolated problems" that could justify treating the North Carolina and Alabama districts so differently than the other federal judicial districts. Id. at 1531-1532.

---

[1] In 1978, Congress created the United States Trustee system as a pilot program, with the purpose of "separat[ing] the administrative duties in bankruptcy from the judicial tasks, [and] leaving the bankruptcy judges free to resolve disputes untainted by knowledge of administrative matters unnecessary and perhaps prejudicial to an impartial determination." H.R. Rep. No. 764, 99th Cong., 2d Sess. 18. Under the pilot program, the United States Trustee system was used initially in 18 federal judicial districts. See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 224, 92 Stat. 2662 (1978).

Following an evaluation of the pilot program, Congress made the United States Trustee program permanent in 1986, and expanded it to all judicial districts. See Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, §§ 301-302, Pub. L. No. 99-554, 100 Stat. 3118-3124 (1986). Congress decided, however, to bring the remaining judicial districts into the program in four phases. In the fourth, and final, phase, the program was to take effect in each of the six judicial districts in Alabama and North Carolina upon election by the district judges of the district, but not later than October 1, 1992. The deadlines for the first three phases remained intact, but Section 317(a) of the Judicial Improvements Act extended the opt-in deadline for the six North Carolina and Alabama districts until October 1, 2002.

The court of appeals did not, however, afford the debtor relief from its U.S. Trustee's fees; it held that the 10-year extension was unconstitutional, but left the remainder of the program intact. The result, in the court's view, was a valid program that applied uniformly in all judicial districts and could properly be applied to the debtor before it. 38 F.3d at 1532-1533. Turning to the other fee issues presented in this case, the court ruled in favor of the U.S. Trustee. Id. at 1534-1535.

Judge Poole concurred in the result. He agreed with the court's resolution of the fee issue, but criticized the majority for unnecessarily reaching the constitutional issue and thereby spawning litigation in other courts. 38 F.3d at 1535-1536.

Largely for the reasons expressed by the court of appeals, we believe that the 10-year extension effected by Section 317(a) of the Judicial Improvements Act raises substantial uniformity concerns. This case does not, however, present a proper vehicle for review of that issue in the Supreme Court. The court of appeals' holding regarding the constitutionality of Section 317(a) of the Judicial Improvements Act had no effect on the outcome of the case, in which the U.S. Trustee prevailed. The holding also had no concrete effect on the administration of bankruptcies in North Carolina and Alabama, which lie outside the sphere of the Ninth Circuit. The government has not, therefore, been aggrieved by the decision in any cognizable respect.[2]

Sincerely,

Janet Reno

---

[2] Although the text of 28 U.S.C. 1254 permits a petition for a writ of certiorari by "any party," the Solicitor General knows of no case where a party that has prevailed in the court of appeals has petitioned successfully for certiorari. A petition might be proper if a prevailing party were injured in a concrete way by a court's holding, but this case does not present that circumstance.