

VLP Partner Mark D. Taylor authors Inside Counsel article, “Baker & Botts: Efforts continue to define its scope.”

VLP Partner Mark D. Taylor wrote an article for Inside Counsel entitled, “Baker & Botts: Efforts continue to define its scope.”

The article covered the case of Baker & Botts LLP v. Asarco LLC. In that case, the Supreme Court held that (a) the American Rule applies to fee-defense fees in bankruptcy fee applications, and (b) Section 330(a)(1) of the Bankruptcy Code does not include a statutory exception to the American Rule, but rather only authorizes reasonable compensation for actual, necessary services. The article goes on to note that reasonableness, in turn, is evaluated using the lodestar analysis of Section 330(a)(3). The American Rule provides that, absent statutory or contractual exception, each litigating party must bear its own legal expenses. The structural effect of this ruling is to deny compensation to retained professionals who seek receiver of fees incurred while defending their fees.

Mr. Taylor notes in the article that the bankruptcy bar initially received this decision with surprise, since many in the bar had little familiarity with the American Rule and no appreciation for the fact that it might apply in multi-party contests, like complex bankruptcy proceedings. However, true to form, the bar has begun exploring the parameters of Baker & Botts and using it as a tool to create leverage.

The entire article may be viewed on the [Inside Counsel website](#).