

Circuit Split Deepens: Bankruptcy Court's Jurisdiction over Social Security and Medicare Claims



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IN BRIEF

- The Fifth Circuit has added to the circuit split over whether bankruptcy courts have jurisdiction to hear Social Security and Medicare claims.
- Section 405(h) provides that no claim arising under the Social Security Act can be brought under 28 U.S.C. §§ 1331 and 1346 unless and until the Social

Security Act's administrative appeal process has been "exhausted"; this requirement has been extended to the Medicare Program by 42 U.S.C. § 1395ii.

- Fifth Circuit joins Ninth Circuit in concluding that section 405(h)'s plain meaning fails to also bar bankruptcy jurisdiction under section 1334.

Under 42 U.S.C. § 405(h), no plaintiff may bring a claim arising under the Social Security Act under 28 U.S.C. §§ 1331 and 1346 until they have exhausted administrative appeal remedies (the Exhaustion Requirement). The latter provisions provide federal jurisdiction for district courts related to federal questions and contract claims against the United States, respectively. But bankruptcy courts exercise federal jurisdiction under 28 U.S.C. § 1334. Thus, relying on the plain text of section 405(h) in a bankruptcy adversary proceeding, the Fifth Circuit held that bankruptcy courts are not barred from exercising their jurisdiction under section 1334 to hear Social Security claims. *Benjamin v. United States (In re Benjamin)*, No. 18-20185, 2019 WL 3334653 (5th Cir. July 25, 2019). Given that this bar applies to healthcare companies operating in the Medicare Program pursuant to 42 U.S.C. § 1395ii, the *In re Benjamin* decision is important for healthcare entities filing for bankruptcy protection.

BENJAMIN'S ADVERSARY PROCEEDING AGAINST THE SOCIAL SECURITY ADMINISTRATION IN BANKRUPTCY COURT

The SSA determined that it had overpaid Benjamin by nearly \$20,000 and was withholding \$536 per month from Benjamin's Social Security check. Benjamin filed for chapter 7 bankruptcy. To demand the return of money that the SSA collected from him, Benjamin initiated an adversary proceeding against the SSA. The bankruptcy court granted the SSA's motion to dismiss, however, and the district court affirmed. On appeal to the Fifth Circuit, the sole issue was whether the bankruptcy court had jurisdiction to hear Benjamin's claims.

CIRCUIT SPLIT: 3D/5TH/9TH VERSUS 11TH

Courts of appeals are split on whether section 405(h) bars bankruptcy jurisdiction under section 1334. When enacted in 1939, section 405(h) referred to 28 U.S.C. § 41, which contained virtually all jurisdiction for federal courts, but Congress later adopted revised language that refers to only two kinds of jurisdiction for federal courts. In a neighboring section to the revised section 405(h), Congress characterized the changes as "technical."

In addressing bankruptcy jurisdiction in this context, the Eleventh Circuit followed the reasoning of the courts of appeals that have held that the Exhaustion Requirement applies in diversity jurisdiction cases (which arise under 28

U.S.C. § 1332), which is also not expressly mentioned in section 405(h). *Fla. Agency for Health Care Admin. v. Bayou Shores SNF, LLC (In re Bayou Shores SNF, LLC)*, 828 F.3d 1297 (11th Cir. 2016) (citing *Midland Psychiatric Assocs. v. United States*, 145 F.3d 1000 (8th Cir. 1998); *Bodimetric Health Servs., Inc. v. Aetna Life & Casualty*, 903 F.2d 480 (7th Cir. 1990)). In *Bayou Shores*, the Eleventh Circuit explained that it relied on the recodification canon to hold that the Exhaustion Requirement also applies to bankruptcy jurisdiction. Courts will not presume, under this canon, that Congress intended a substantive change without a clear indication otherwise. To that end, the Eleventh Circuit found that Congress did not intend to alter the substantive scope of section 405(h).

Two circuits have more complicated precedent related to the Exhaustion Requirement. The Third Circuit has held that the Exhaustion Requirement applies to diversity jurisdiction, *see Nichole Med. Equip. & Supply, Inc. v. TriCenturion, Inc.*, 694 F.3d 340 (3d Cir. 2012), but does not apply to bankruptcy jurisdiction, *see Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065 (3d Cir. 1992) ("Thus we agree with the Ninth Circuit that 'where there is an independent basis for bankruptcy court jurisdiction, exhaustion of administrative remedies pursuant to other jurisdictional statutes is not required.'").

The Ninth Circuit has also held that the Exhaustion Requirement applies to diversity jurisdiction, *see Kaiser v. Blue Cross of Cal.*, 347 F.3d 1107 (9th Cir. 2003), but does not apply to bankruptcy jurisdiction, *see Sullivan v. Town & Country Home Nursing Servs., Inc. (In re Town & Country Home*

Nursing Servs., Inc.), 963 F.2d 1146 (9th Cir. 1991).

Unlike the Third Circuit, the Ninth Circuit has recognized this inconsistency and explained that it is because bankruptcy jurisdiction is unique. *See Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134 (9th Cir. 2010) ("But upon closer reading, *Kaiser* and *In re Town & Country* can be reconciled. *In re Town & Country's* reasoning relies almost exclusively on the special status of § 1334's "broad jurisdictional grant over all matters conceivably having an effect on the bankruptcy estate. . . ." Thus, its reading of 42 U.S.C. § 405(h) can reasonably be understood to apply only to actions brought under § 1334, while not bearing on the relationship between § 405(h) and other jurisdictional provisions such as § 1332." (citations omitted)).

The Fifth Circuit relied on the plain reading of section 405(h) to reach the conclusion that the Exhaustion Requirement does not apply in bankruptcy courts. The Fifth Circuit concluded that the intent of Congress may be found in places other than a neighboring section in the Statutes at Large. Indeed, the Fifth Circuit contended that the actual words of the new provision are the most obvious source of congressional intent. And given that the statutory text failed to mention a bar against bankruptcy courts from exercising jurisdiction to hear Social Security claims, the Fifth Circuit refused to find that such a bar existed.

CONCLUSION

The Fifth Circuit joins the Third and Ninth Circuit to deepen the circuit split over whether bankruptcy courts have jurisdiction over Social Security and Medicare claims. For a more in-depth discussion, see Samuel R. Maizel & Michael B.

Potere, Killing the Patient to Cure the Disease: Medicare's Jurisdictional Bar Does Not Apply to Bankruptcy Courts, 32 Emory Bankr. Dev. J. 19 (2015).

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