

NEWS RELEASES

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Husch Blackwell Scores Significant Appellate Win in Decade-Long Bankruptcy Battle

THE NINTH CIRCUIT REVERSED AND REMANDED LOWER COURTS' ORDERS; SHIELDS STATE OF MONTANA FROM BANKRUPTCY COURT LAWSUIT.

Husch Blackwell prevailed in the U.S. Court of Appeals for the Ninth Circuit on behalf of the State of Montana Department of Revenue in an appeal arising from a bankruptcy dispute dating back to 2011 against former billionaire Tim Blixseth. Recently, the Ninth Circuit refused Blixseth's request to reconsider its decision.

Following Montana's 2010 audit of Blixseth and his business entities, the State of Montana Department of Revenue, Idaho State Tax Commission, and California Franchise Tax Board joined together in 2011 and filed an involuntary Chapter 7 bankruptcy petition against Blixseth for unpaid taxes, including over \$55 million owed to Montana.

After a 2013 trial on the involuntary petition and appeals that lasted through 2020 (including over four years in front of one appellate court), Blixseth filed suit in 2021 after the Ninth Circuit determined the Montana Department of Revenue lacked grounds to pursue the involuntary bankruptcy because its claim was partially in dispute.

Arguing sovereign immunity, the State of Montana sought to dismiss the 2021 case, but the U.S. Bankruptcy Court for the District of Nevada concluded the State was not immune from liability. Montana argued that its partial waiver of immunity by filing the involuntary bankruptcy was not a waiver of the claims brought by Blixseth in the 2021 lawsuit. As a case of first impression under the

Eleventh Amendment to the Constitution, Montana appealed to the Ninth Circuit and prevailed on all issues:

We are not persuaded that any of the grounds relied upon by the bankruptcy court to deny sovereign immunity to the State survive the Katz analysis. Rather, we conclude that under the reasoning and analysis in Katz, the State properly invoked sovereign immunity for Blixseth's claim brought under § 303(i).

The Husch Blackwell team—which included partner Lynn Butler and senior associate Danny Solomon—appealed the bankruptcy court's denial of sovereign immunity to the Ninth Circuit, which reversed and remanded the lower court's decision with instructions to dismiss Blixseth's claim as barred by sovereign immunity.

“We are pleased with the court's ruling in this case of first impression,” Butler said. “While Montana was advocating what should be a natural result from the Supreme Court's Katz decision, an adverse result would have broad implications for all fifty states in dealing with bankruptcy matters.”

In addition to Butler and Solomon, the Husch Blackwell team included attorneys Erica Baines, Jeff Nobles, and Mark Benedict and paralegal Petrina Bailey.