

University Wins Important Tuition Claw-Back Case

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A federal bankruptcy court in Connecticut recently ruled in favor of Johnson & Wales University in a tuition claw-back case. *Roumeliotis v. Johnson & Wales University (In re DeMauro)*, 2018 WL 3064231 (Bankr. D. Conn. June 19, 2018). Wiggin and Dana attorneys Aaron Bayer, Benjamin Daniels, and Sharyn Zuch had filed an *amicus curiae* brief in support of the University on behalf of the Connecticut Conference of Independent Colleges, the Association of Independent Colleges & Universities of Massachusetts, and the Association of Independent Colleges & Universities of Rhode Island.

The federal bankruptcy trustee in *Roumeliotis* sought to force the University to disgorge tuition payments that the parent-debtors had paid on behalf of their daughter. The trustee claimed that the payments were fraudulent transfers because the parents were insolvent at the time, and because the trustee believed that parents do not receive value when they pay for their adult children's education. The trustee argued that the tuition should be returned to the debtors' estate and be available for distribution to the parents' creditors – even though the University was unaware of the parents' financial circumstances when it received the payments and had long since provided the educational services to the daughter.

The bankruptcy court granted summary judgment dismissing the claim, finding that the tuition was never part of the parents' assets. The decision turned, in large part, on the precise nature of the tuition payments at issue. The parents had used federal Direct PLUS Loans to pay the tuition. However, under that program, the proceeds of the loan were paid directly to the University and never held by the parents. Therefore, the loans were never technically the parents' assets and never were held by the parents. To hold otherwise, the court concluded, would conflict with and undermine the purposes of the Direct PLUS Loan program. The trustee has not taken an appeal.

You can find the Bankruptcy Court decision [here](#). You can find the *amicus* brief [here](#).

We continue to await a decision by the First Circuit in another very significant tuition claw-back case, *DeGiacomo v. Sacred Heart University (In re Palladino)*, No. 17-1334 (1st Cir.). In that case, the Court is expected to rule on the question whether parents received "reasonably equivalent value" for tuition payments they made on behalf of their child. The bankruptcy trustee claims that they did not, because the child and not the parents received the education, and seeks to recover the tuition

payments from the University.

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