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Informal Proof of Claim: Form or Substance?

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Although bankruptcy courts are courts of equity and prefer to have issues decided on the merits rather than strict adherence to formalities, there are limits on the liberal application of the bankruptcy rules. One area that has tested the boundaries is the filing of informal proofs of claim. Recently, the Third Circuit had an opportunity to review an informal proof of claim sent by a personal injury lawyer to a court-appointed claims agent in a case filed in the District of Delaware.[1] The Third Circuit applied a five-prong test and found that the letter sent to the claims agent did not make the requisite demand upon the debtor to satisfy the requirements of an informal proof of claim. The court further held that the attorney's neglect in failing to file a proof of claim was inexcusable and did not merit the extension of time under Fed. R. Bankr. P. 9006(b)(1) and *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership,* 507 U.S. 380 (1993).

Underlying Facts

A seaman was injured while working for a company that owned and operated a riverboat known as the Delta Queen. After advising the company of his claim, the seaman hired a lawyer, who sent a written notice of the claim to the company. Four months later, the company filed for chapter 11 protection.

The bankruptcy clerk mailed a notice of the commencement of the bankruptcy case to all creditors that advised them to file their proof of claims with the court-appointed claims agent. The seaman's lawyer received the notice and sent a letter to the claims agent requesting a proof-of-claim form and advising the claims agent that the seaman was injured on the Delta Queen and "has a claim against the debtor."

The next month, the claims agent sent the seaman and his lawyer a copy of the notice setting the bar date to file a proof of claim and a proof of claim form. Neither the seaman nor his lawyer filed a proof of claim. Rather, three months after the bar date passed, the seaman's lawyer filed a motion for stay relief to pursue the claim under the Jones Act. Debtor's counsel opposed the motion, arguing that the stay should not be lifted because the claim was barred. The seaman's attorney immediately filed a motion to enlarge the time to file a proof of claim and, in the alternative, argued that his prior letter to the claims agent constituted an informal proof of claim. The bankruptcy court denied both motions, and the U.S. District Court affirmed on appeal.

Informal Proof of Claim

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The Third Circuit started its analysis by noting that nearly 100 years ago the court recognized informal proofs of claim in the bankruptcy context, *citing First National Bank of Woodbury v. West (In re Thompson),* 227 F. 981 (3d Cir. 1915), 405 F. 3d 127 (3rd Cir. 2005). The *Thompson* court stated that in order to qualify as an informal proof of claim, the claim must (1) make a demand against the bankruptcy estate and (2) clearly show the creditor's intention to hold the estate liable. This two-prong test was in effect for many years.

In reviewing more current case law, the Third Circuit noted that many courts have moved to a more elaborate five-prong test in reviewing informal proofs of claim. Citing cases from the Fifth, Sixth and Tenth Circuits, as well as lower courts in the Third Circuit, the appeals court stated that:

> Under the five-part test, a document will qualify as an informal proof of claim in bankruptcy court only if it is in writing, contains a demand by the creditor on the bankruptcy estate, expresses an intent to hold the debtor liable for the debt, the document is filed with the bankruptcy court...and it would be equitable to treat the document as a proof of claim (citation omitted).

The Third Circuit did not apply the facts to all five prongs. Rather, the court found that the letter sent by the seaman's attorney failed prong two of the five-prong test. Specifically, the court stated that in order to meet the requirement of the second prong, the demand must "be sufficient to put the debtor and/or court on notice as to the existence, nature and amount of the claim (if ascertainable)." Since the letter did not state the nature and amount of the claim against the bankruptcy estate, it was too ambiguous to meet the requirement of making a demand against the bankruptcy estate. The court did not address the other prongs or comment on the district court's finding that the filing of the letter with the claims agent does not meet the requirement of the first prong (filing with the bankruptcy court).

The cases cited by the Third Circuit provide examples of the types of "filings" that will be allowed or not allowed in bankruptcy cases. For example, the following pleadings or documents have been accepted as informal proofs of claim:

- complaint objecting to discharge[2]
- involuntary bankruptcy petition[3]
- objection to bankruptcy sale under Code §363[4]
- fee application[5]
- filing of disclosure statement and plan.[6]

The common thread running through each of these cases is that the demand must meet the substantive requirements of Bankruptcy Rule 3001(a), which incorporates Official Form No. 10. Once the substantive aspects of the claim are met (*i.e.,* the nature and amount of claim, date the claim arose and sufficient proof of the claim), the court is more likely to allow the claim by relaxing the court rules in order to avoid the

1 *In re American Classic Voyages Co.,* ___ F.3d ___ (3rd Cir. Case No. 03-3944, April 27, 2005).

2 *See In re Petrucci,* 256 B.R. 704 (Bankr. D. N.J. 2001).
3 *See In re Wilbert Winks Farm Inc.,* 114 B.R. 95 (Bankr. E.D. Pa. 1990).
4 *See Sun Basin Lumber,* 432 F.2d 48 (9th Cir. 1970).
5 *See In re Penn State Clothing Corp.,* 205 B.R. 62 (Bankr. E.D. Pa. 1997).
6 *See Wright v. Holm,* 931 F.2d 620 (9th Cir. 1991).

harsh results of a strict application of the rules. Further, it is important to note that a creditor may meet the first four prongs of the test and have an informal proof of claim, but the claim may be disallowed for equitable reasons under prong five.

Excusable Neglect

Counsel next argued that the failure to file a proof of claim by the bar date was the result of "excusable neglect" and that the court should allow the late-filed claim. Under *Pioneer,* courts look at four factors: (1) prejudice to the debtor, (2) length of delay and its potential impact on judicial proceedings, (3) reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.

The Third Circuit found that the first three factors weighed against a finding of excusable neglect, with the primary emphasis on the reason for the delay. The court found that the debtor would be prejudiced because there are thousands of claims against the estate, many of which were filed late, and the allowance of this claim may open the floodgate to other motions. Moreover, the seaman did not file the motion until several days after the debtor filed its liquidation plan. However, the main factor weighing against the seaman was the finding that the delay was entirely avoidable and the direct result of the seaman's counsel's negligence, since he simply failed to read the notice of the bar date or complete the proof of claim he received from the claims agent.

Conclusion

Seeking an allowance of an informal proof of claim should be done immediately when the "holy cow, I missed a deadline" feeling comes over you. Counsel needs to thoroughly review all letters and pleadings filed before the bar date and assemble the documents that provide the most thorough description of the claim. If the motion can be filed before a disclosure statement is filed, there is less of a chance that the debtor will truly be prejudiced by an amendment to the informal proof of claim. ■

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