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## Third Circuit Holds That Bankruptcy Courts Have the Power to Establish Bar Dates For, and Discharge, Post-Confirmation Administrative Claims

In a recent precedential opinion, the Third Circuit upheld the enforceability of bar dates for administrative expense claims that arise after confirmation of a Chapter 11 plan, an issue of first impression that could particularly impact certain creditors such as trade creditors, vendors and contract counterparties.

### Background

Bar dates are an integral aspect of any bankruptcy case. Bar dates establish deadlines for the filing of claims against a debtor's bankruptcy estate. They further the Bankruptcy Code's policy of providing a fresh start to debtors by allowing debtors to get their arms around the universe of claims they will need to address to emerge from bankruptcy successfully. Thus, with certain very limited exceptions, claims that are not filed by the applicable bar date are typically discharged, forever barring the claimant from ever pursuing recovery against the debtor.

Courts have long recognized that under section 503 of the Bankruptcy Code, the bankruptcy courts have the power to establish bar dates for the filing of administrative expense claims that arise from the actual and necessary cost of administering the bankruptcy estate. But no circuit court had ever addressed the specific question raised in *Ellis v. Westinghouse Electric Co., LLC*, Case No. 20-2867 (3d Cir. Aug 30, 2021); namely, whether the bankruptcy courts have the power to establish and enforce bar dates for administrative expense claims arising after confirmation of a debtor's Chapter 11 plan.

In *Ellis*, the Third Circuit addressed whether a plaintiff alleging employment discrimination, who was terminated by the debtor after its Chapter 11 plan was confirmed, but prior to the effective date of the plan, was barred from continuing his lawsuit against the debtor because he failed to file an administrative claim prior to the applicable bar date. Although Chapter 11 plans typically become effective shortly after confirmation, in *Ellis*, the effective date of the debtor's plan was delayed for several months, pending certain necessary governmental approvals. In the interim, the debtor terminated the plaintiff's employment, and the plaintiff asserted that his termination was motivated by age discrimination. Although the plaintiff eventually filed an employment discrimination complaint in federal court, he never filed a claim in the bankruptcy case.

### The Third Circuit's Analysis

On review of the district court's denial of the reorganized debtor's motion for summary judgment, the Third Circuit had to answer three distinct, but related questions:

- (i) Is a post-petition employment discrimination claim asserted against a debtor an administrative expense of the bankruptcy estate?

(ii) Does section 503 of the Bankruptcy Code allow the bankruptcy courts to set bar dates for post-confirmation administrative expense claims?

(iii) Does section 1141(d)(1) prohibit the discharge of post-confirmation claims?

### Post-Petition Employment Discrimination Claims Are Administrative Expense Claims

Although recognizing that treating a discrimination claim as an expense of bankruptcy administration seems counterintuitive, relying on Supreme Court precedent, the Third Circuit held that post-petition employment discrimination claims are “actual and necessary” administrative expenses of the bankruptcy estate. The Third Circuit cited *Reading Company v. Brown*, 391 U.S. 471 (1968), in determining that an employment discrimination claim is a cost incident to operating a business because although discrimination itself may not be necessary to a debtor’s post-petition operation of its business, such claims arise from an individual’s employment with the debtor which indisputably benefits the debtor’s business and, in turn, the bankruptcy estate. Further, as noted by the Third Circuit, treating post-petition discrimination claims as administrative expense claims furthers the purposes of the Bankruptcy Code because administrative claims are required to be paid in full under Chapter 11 of the Bankruptcy Code. By treating such claims as administrative claims, the Bankruptcy Code incentivizes employees to remain with an employer by ensuring appropriate compensation in the event discrimination occurs during the pendency of the employer’s bankruptcy.

### Section 503 of the Bankruptcy Code Authorizes the Bankruptcy Courts to Establish Bar Dates for Post-confirmation Administrative Expense Claims

In *Ellis*, the plaintiff asked the Third Circuit to hold that bankruptcy courts do not have the authority to establish bar dates for post-confirmation administrative claims. However, as noted by the Third Circuit, section 503(a) does not say that *only* pre-confirmation administrative claims must be timely filed. Rather, the court concluded that because administrative expense claims are premised on the actual and necessary costs and expenses of preserving the bankruptcy estate, the only temporal limitation placed on such claims is tied to the existence of the bankruptcy estate. Although the bankruptcy estate’s existence frequently ends at plan confirmation, Chapter 11 plans often condition termination of the estate on a plan effective date that may occur after plan confirmation. As the Third Circuit concluded, “[t]he Bankruptcy Code thus ties the viability of administrative expense claims (and, by extension, the coverage of a bar date for those claims) to the existence of the estate, not confirmation of the plan.”

Thus, where a bankruptcy estate continues to exist after plan confirmation, post-confirmation administrative claims can arise and the bankruptcy courts must have the power to establish bar dates to effectively deal with them. The Third Circuit explained



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that this result is perfectly logical because it allows bankruptcy courts to manage all claims and ensure that where there is an extended gap between plan confirmation and the effective date, unknown claims will not create uncertainty with respect to a debtor’s ability to consummate a plan.

### Section 1141(d)(1) of the Bankruptcy Code

In denying the reorganized debtor’s motion for summary judgment, the district court noted that section 503 does not mention “discharge” at all, but rather, section 1141 of the Bankruptcy Code expressly governs the discharge of claims. The Third Circuit disagreed with the district court’s analysis, finding that section 503 and 1141(d) work together with section 503 authorizing bankruptcy courts to establish bar dates for administrative claims and section 1141(d) allowing the plan and confirmation order to govern the discharge of such claims.

Section 1141(d)(1) provides that:

*Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan –*

- (A) discharges the debtor from any debt that *arose before the date of such confirmation*, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title . . .; and
- (B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

11 U.S.C. § 1141(d)(1) (emphasis added).

The district court interpreted the above provision to categorically prohibit the discharge of post-confirmation claims. But the Third Circuit disagreed, concluding that the opening phrase converts the provision that follows from a categorical rule to a default rule that provides flexibility by allowing plans or confirmation orders to discharge post-confirmation claims in addition to pre-confirmation claims. The court found that this reading of section 1141(d) comports with the structure of section 1141, generally, which provides debtors and the bankruptcy courts with flexibility in constructing plans and confirmation orders that override the default rules contained in section 1141. Thus, the Third Circuit concluded that so long as other requirements are satisfied, including appropriate notice to claimants, a plan or confirmation

order may discharge a post-confirmation administrative claim where the claimant fails to submit a request for payment prior to the applicable bar date established by the court under section 503 of the Bankruptcy Code.

Accordingly, the Third Circuit reversed the district court's denial of summary judgment, noting that its decision addresses only the enforceability of a bar date for administrative expense claims and that the plaintiff could have challenged confirmation of the plan in the first instance and would still have the option of requesting that the bankruptcy court permit him to file a tardy administrative expense claim for cause under section 503.

### Takeaways

There are several important takeaways from the Third Circuit's decision.

- Monitor the bankruptcy docket carefully at all stages of the proceedings

The bankruptcy process and orders entered during the course of the case may irrevocably alter the rights of parties engaged with the debtor, whether employees, vendors, trade creditors or contract counterparties. Further, parties dealing with debtors at any stage, even after plan confirmation, must give careful consideration to how claims they may have against the debtors will be treated in the context of a bankruptcy.

- Engage counsel

The Third Circuit's decision underscores the need for creditors to engage counsel to closely monitor Chapter 11

bankruptcy cases, even after confirmation of a plan. In those atypical cases where a case may drag on for months after plan confirmation – due to regulatory or other issues – parties must continue to monitor the case and give careful consideration to whether their rights may be affected by post-confirmation activity. For those parties who continue to have business with the debtors after confirmation (for example, contract counterparties or employees as in *Ellis*), careful thought should be given to whether any post-confirmation conduct on the part of the debtors might give rise to administrative or other claims that may need to be asserted to avoid discharge.

- Always file a claim if you have one

Finally, when in doubt, *file the claim*. Of course, administrative expense claims and other claims are filed under penalty of perjury and, accordingly, a creditor should always be sure there is a sound basis for asserting such a claim. Nevertheless, as the Third Circuit noted, “the burden to comply with a bar date is low. . . . A creditor does not even have to know the amount or validity of the claim, for he can easily file a ‘protective’ claim putting the debtor on notice without conceding any issues.” Thus, any time a party may have a claim against a debtor, a pending bar date may apply and provided there is an appropriate basis for doing so, there is no harm in filing a claim even with less than complete information. Supplemental information to support a claim can typically be provided during the claims allowance process, but the bar date is the bar date, and a failure to timely file a claim is usually fatal.