

Post-confirmation administrative claims can be discharged

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In the first federal appellate court decision to address the issue, the 3rd U.S. Circuit Court of Appeals recently held that administrative claims arising after confirmation of a debtor's plan, but before the plan's effective date, can be discharged just like claims that arise prior to the plan confirmation date. *See Ellis v. Westinghouse Electric Co.*, No. 20-2867, 2021 WL 3852612 (3d Cir. Aug. 30, 2021).

Background

Westinghouse Electric Company LLC and its affiliates ("Westinghouse") filed for Chapter 11 bankruptcy protection in March 2017. The bankruptcy court set a general bar date of September 2017 for claims that arose prior to the bankruptcy filing date, but as is customary in Chapter 11 bankruptcy cases, the bar date for administrative claims was set for a later date because the estate continues to incur expenses throughout the bankruptcy.

The Third Circuit held that "[t]he holder of a post-confirmation administrative claim cannot choose to bypass the bankruptcy process, so if the claim is not timely filed by the bar date, it faces discharge like a pre-confirmation claim."

The Westinghouse plan contemplated an administrative claims bar date of 30 days after the plan's effective date. As is common in Chapter 11 plans, the Westinghouse plan provided that holders of administrative expense claims would be enjoined and estopped from asserting their claims if they failed to file the claims prior to the bar date and also that such claims would be discharged as of the effective date of the plan.

Westinghouse's plan was confirmed in March 2018. While plans usually become effective shortly after confirmation, substantial delays can occur in certain circumstances. For example, effectiveness can be delayed if regulator approval is required or if the debtor needs time to finalize post-confirmation financing. The effectiveness of Westinghouse's plan was delayed for these reasons and the plan did not become effective until Aug. 1, 2018. Westinghouse provided notice of the effective date of its plan and

advised its creditors that the bar date required all administrative expense claims to be filed no later than Aug. 31, 2018.

The administrative expense claim at issue

An executive of Westinghouse was terminated in May 2018 after Westinghouse's plan was confirmed, but before the plan became effective. The executive, who was 67 years old at the time of his termination, believed that his termination was the result of unlawful age discrimination. He hired counsel and filed a charge with the Equal Employment Opportunity Commission in July 2018. He then filed suit against Westinghouse in October 2018.

The executive acknowledged receiving notice of the general bar date for filing claims against Westinghouse as well as a notice regarding plan objection and voting deadlines but denied receiving notice of the effective date of the plan and the administrative claims bar date. The parties, however, agreed that the claim "arose" when he was terminated, so that it was a claim occurring after confirmation of Westinghouse's plan but before its effective date.

Westinghouse filed a motion for summary judgment against the executive, arguing that his claim was discharged by the plan and order confirming it since he had not timely filed an administrative expense claim. The district court denied summary judgment to Westinghouse and, instead, granted it to the executive.

While the district court found that the executive received notice of the administrative claim bar date and that the notice was proper, it nevertheless held that 11 U.S.C. § 503 does not authorize a bar date to discharge post-confirmation claims and that 11 U.S.C. §1141(d) also prohibits the discharge of post-confirmation claims. The district court certified an interlocutory appeal to the Third Circuit.

The Third Circuit's decision

The Third Circuit reversed the district court. It held that "[t]he holder of a post-confirmation administrative claim cannot choose to bypass the bankruptcy process, so if the claim is not timely filed by the bar date, it faces discharge like a pre-confirmation claim."

The Third Circuit began by concluding that the executive's claim was an "actual and necessary expense" of preserving Westinghouse's estate as that term is defined in 11 U.S.C. § 503(b).

The Third Circuit then went on to affirm that 11 U.S.C. § 503(a) permits bankruptcy courts to set and enforce bar dates for filing administrative expense claims, with timely filed claims receiving

priority treatment and full payment, but tardy claims facing discharge. The Third Circuit held that this harsh result is justified because, just like bar dates for general claims, bar dates for administrative expense claims help debtors know their liabilities and implement a viable plan. Conversely, unexpected administrative claims can “jeopardize the entire restructuring[.]”

The Third Circuit next held that, although the executive’s claim arose after confirmation of Westinghouse’s plan, it was still an administrative expense claim subject to discharge. In reaching its conclusion, the Third Circuit considered the text of 11 U.S.C. § 503(b)(1)(A), which provides that a claim is administrative if it accrues before the bankruptcy estate ceases to exist.

While a bankruptcy estate typically ceases to exist when the plan is confirmed, the plan can extend the life of the plan to a later date, such as the plan’s effective date. This permits the bankruptcy court to manage all claims against a debtor’s estate and allows the bankruptcy court to use bar dates as a reorganization tool. The Third Circuit held that this flexibility is important where the gap between the confirmation date and effective date is significant since concerns about undisclosed liabilities are heightened during that time.

While the district court had questioned whether 11 U.S.C. § 503 provides authority for discharging administrative claims, since it does not include the word “discharge,” the Third Circuit rejected this concern. It held that § 503 and § 1141 work in tandem, with § 503 giving bankruptcy courts power to set and enforce bar dates and

§ 1141(d) allowing the plan and confirmation order to govern the discharge of claims.

Finally, the Third Circuit held that 11 U.S.C. § 1141(d)(1) creates only a default rule for discharging pre-confirmation debts and applies only when the plan and confirmation order are silent on the issue. Section 1141(d)(1) provides that “[e]xcept 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 . . .” 11 U.S.C. § 1141(d)(1) (emphasis added).

The Westinghouse plan provided for the discharge of all post-confirmation claims not filed by the administrative claims bar date, and therefore altered the default rule in § 1141(d). The executive’s claim was barred by § 503 and discharged by § 1141(d).

Key takeaway

The *Westinghouse* decision makes clear that parties doing business with debtors in bankruptcy at any time prior to the effective date of the debtor’s plan need to be mindful of the bar dates set forth in the debtor’s plan. The consequence of missing the administrative claim bar date can result in a claim that should have been paid in full being discharged and the holder of the claim receiving no recovery. The text of the debtor’s plan and the confirmation order are key as they can alter the default provisions set forth in 11 U.S.C. §§ 503 and 1141.

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