The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed June 24, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re	§	
	§	**Chapter 11**
Pilgrim's Pride Corporation,	§	
et al.,	§	**Case No. 08-45664 (DML)**
	§	
Debtors.	§	**Jointly Administered**

MEMORANDUM ORDER

Before the court is the *Motion for Leave to File a Proof of Claim out of Time* (the "Motion") filed by Douglas Traylor, Jr. ("Traylor"), on November 17, 2009. The Motion was opposed by Pilgrim's Pride Corporation and affiliated entities (collectively, "Debtors"), which filed an objection on November 30, 2009, arguing that the court should not allow Traylor to file a proof of claim out of time. Debtors filed their objection on the court's electronic filing system

incorrectly; thus, the court did not initially learn of any objection by Debtors. The court consequently granted the Motion as unopposed on December 8, 2009. Debtors then filed a motion to reconsider on December 21, 2009, and the court granted that motion on the same day. A hearing was held respecting the Motion on April 27, 2010, in which the court considered testimony from Traylor and argument and exhibits offered by the parties.

This matter is subject to the court's core jurisdiction. *See* 28 U.S.C. §§ 1334, 157(b)(2)(B). This memorandum order embodies the court's findings of fact and conclusions of law. *See* Fed. R. Bankr. P. 7052 and 9014.

I. Factual Background

Traylor, a resident of Titus County, Texas, works as a trailer shuttle driver at a plant operated by Debtors in Mount Pleasant, Texas. On November 18, 2007, Traylor's supervisor instructed him to clean a high-pressure cooking machine even though it was not normally his responsibility. Traylor complied with the instruction. As Traylor began his task, hot grease and steam blew out of the pressurized machine, knocking him back and scalding him. Traylor suffered second- and third-degree burns over sixteen percent of his body, mostly his arms and face. Although PPC was a non-subscriber to the Texas worker's compensation program, it was self-insured for $5 million of liability coverage. Traylor did not file suit against PPC or any of its affiliates at that time.

On December 1, 2008, Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code.[1] In the latter half of 2009, Debtors filed a plan of reorganization that proposed 100% cash payment to all creditors. The plan was confirmed on December 8, 2008, and became

[1] 11 U.S.C. §§ 101 *et seq.*

effective on December 28, 2008.

The bar date for filing proofs of claim was set for June 1, 2009. Debtors assert in general terms that they mailed notice of the bar date, along with proof-of-claim forms, to all parties they knew to have potential claims against Debtors' estates. Although he admitted to being aware of Debtors' chapter 11 filing, Traylor testified in court that he never received a proof-of-claim form or notice of the bar date. He testified that, although an employee of Debtors' was in contact with him regarding his injury, neither that employee nor any other employee or co-worker ever informed him of the need to file a proof of claim. Furthermore, Traylor testified that although he occasionally reads the local newspaper in which notice of the bar date was published, he does not subscribe to that newspaper and has never read any notices regarding bar dates or proofs of claim. Traylor does not read the two national newspapers in which Debtors published notice. Traylor is a high-school graduate without any higher education and has no training or meaningful knowledge of law or bankruptcy.

After the bar date, through counsel, Traylor learned of the need to file a proof of claim in order to preserve his claim against Debtors. Upon learning that Traylor had not filed a proof of claim in Debtors' chapter 11 cases, his counsel promptly filed Traylor's proof of claim on November 17, 2009. Traylor then filed the Motion asking that his claim be allowed notwithstanding its filing after bar date.

II. Discussion

Fed. R. Bankr. P. 3003(c)(3) states that in a chapter 11 case, the court "for cause shown may extend the time within which proofs of claim or interest may be filed." The Supreme Court,

in *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, instructed that, to determine whether sufficient cause exists to allow a late-filed proof of claim, a court must look to the "excusable neglect" standard of Rule 9006(b)(1). *Pioneer*, 507 U.S. 380, 389 (1993); *see* Fed. R. Bankr. P. 9006(b)(1). The *Pioneer* court concluded that excusable neglect is a "somewhat 'elastic concept,'" so when considering whether to allow a party to file a late proof of claim, "the determination is at bottom an equitable one." *Pioneer*, 507 U.S. at 392 (citing 4A C. Wright & A. Miller, *Federal Practice and Procedure* § 1165 (2d ed. 1987)). For guidance, the Supreme Court gave a non-exclusive list of four factors to use in assessing whether a failure to file a claim timely resulted from excusable neglect: (1) "the reason for the delay, including whether it was within the reasonable control of the movant," (2) "whether the movant acted in good faith," (3) "the danger of prejudice to the debtor[s]," and (4) "the length of the delay and its potential impact on judicial proceedings." *Id.* at 395. Although the Supreme Court stated that this list of factors is non-exclusive, most courts, including the Court of Appeals for the Fifth Circuit, have limited their inquiry regarding excusable neglect to the enumerated factors. *See, e.g., In re Eagle Bus Mfg., Inc.*, 62 F.3d 730, 737 (5th Cir. 1995); *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000); *In re Dartmoor Homes, Inc.*, 175 B.R. 659, 665-66 (Bankr. N.D. Ill. 1994). Accordingly, this court applies these four factors in the case at bar.[2]

A. Reason for the Delay

First, the court considers "the reason for the delay, including whether it was within the reasonable control of the movant." *Id.* While the court does not consider this factor dispositive, it

[2] The court, in another case, might find relevant other considerations, *e.g.*, prejudice to creditors, as opposed to just the debtor.

is clearly important to focus on the conduct of the creditor seeking relief. *See Am. Classic*, 405 F.3d at 134; *Lowry*, 211 F.3d at 463; *City of Chanute v. Williams Natural Gas Co.,* 31 F.3d 1041, 1046 (10th Cir. 1994). Even if the circumstances surrounding the delay were in the control of the moving creditor, a court may still find excusable neglect. *Pioneer*, 507 U.S. at 388. In interpreting the excusable-neglect standard of Rule 9006(b)(1), the Supreme Court opined, "Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Id.*

In the instant case, there is a mix of inadvertence and intervening circumstances beyond the movant's reasonable control. It is unclear whether Traylor received either a notice of the bar date for filing proofs of claim or a form on which to file a proof of claim. Although he was in contact with an employee of Debtors regarding his injury, the employee never explained to him the need to file a proof of claim. Notice of the bar date was published in two national newspapers and one local newspaper, but Traylor testified credibly that he did not read the notice in any of them.

Whether these facts constitute inadvertence attributable to Traylor or intervening circumstances beyond his control is a moot point. The court concludes that even if Traylor's failure to file a timely proof of claim could be charged to his inadvertence or carelessness, such behavior does not bar a finding of excusable neglect in certain situations. *See id.*

Traylor is not a sophisticated creditor, as he has no experience with, or training in bankruptcy or the law. The court finds that Traylor had actual knowledge of Debtors' chapter 11 cases but is not prepared to find that he received the mailed notice of the claims bar date.[3] Even if

[3] Due process requires that chapter 11 debtors give sufficient notice to a creditor that a

he did receive the notice, however, Traylor's relative lack of sophistication — as well as the conclusion that notice does not obviate excusable neglect — counsel against weighing this factor too heavily against him. *See id.*

B. Good Faith of the Movant

Second, the court considers "whether the movant acted in good faith." *See Pioneer*, 507 U.S. at 395. In Traylor's case, after the bar date had passed, Traylor acquired counsel to represent him in filing a claim against Debtors for his injury. Once Traylor's attorney learned of the need to file a proof of claim on behalf of Traylor, he did so immediately. The court finds no indication that Traylor acted in bad faith in filing a late proof of claim. Traylor had nothing to gain, and his whole claim to risk, by delaying his filing until after the bar date. The court concludes that Traylor's tardiness in filing was not intended to gain him a tactical advantage in the claims process. Therefore, the court finds that Traylor acted in good faith in filing out of time.

C. Danger of Prejudice to the Debtors

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claim may be discharged, before the discharge may operate against that creditor. *See City of N.Y. v. N.Y., N.H. & H.R. Co.*, 344 U.S. 293, 296-97 (1953); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *In re Christopher*, 28 F.3d 512, 516 (5th Cir. 1994); *Reliable Elec. Co. v. Olson Constr. Co.*, 726 F.2d 620, 621 (10th Cir. 1984). The Supreme Court, in *City of N.Y.,* construed the Bankruptcy Act of 1898 to require that a creditor whose claim may be discharged receive "reasonable notice" of the claims bar date, not merely the pendency of the bankruptcy case itself. *City of N.Y.*, 344 U.S. at 296; *see Christopher*, 28 F.3d at 517. The Tenth Circuit, in *Reliable Electric*, considered the *City of N.Y.* rule part of a due-process analysis. *Reliable Elec.*, 726 F.2d at 623. Nevertheless, the Court of Appeals for the Fifth Circuit does not accept the Tenth Circuit's view of the constitutional requirements of due process. *See Christopher*, 28 F.3d at 517; *In re Sam*, 894 F.2d 778, 782 (5th Cir. 1990). The Court of Appeals for the Fifth Circuit considers due process satisfied if the creditor has formal *or* actual notice of the pendency of the bankruptcy and if the creditor receives such notice with reasonable time to assert its rights. *Christopher*, 28 F.3d at 518-19.

Third, the court considers "the danger of prejudice to the debtor[s]." *See id.* The Fifth Circuit has emphasized the importance of this factor in the determination of excusable neglect. *See Eagle Bus*, 62 F.3d at 737. The key consideration in evaluating the danger of prejudice to Debtors is whether allowing the late filing of a claim will have a material adverse effect on their reorganization. *In re Sacred Heart Hosp. of Norristown*, 186 B.R. 891, 895, 897 (Bankr. E.D. Pa. 1995); *In re Earth Rock, Inc.*, 153 B.R. 61, 63-64 (Bankr. D. Idaho 1993). In the instant case, Debtors have exited their chapter 11 bankruptcies with assets worth between two and three billion dollars, and they have paid their creditors 100% of the amount of their allowed claims plus interest. If Traylor's claim against Debtors is permitted to proceed to trial, the amount of his judgment claim against Debtors would be insignificant compared to the size of their asset pool. For this reason, allowing Traylor to file a late proof of claim would not have a material adverse effect on Debtors' reorganization. Therefore, the court finds no danger of prejudice to Debtors.

The court considers relevant not only prejudice to Debtors that may arise by allowing a late-filed claim, but also prejudice to Traylor by not allowing his case to be decided on the merits. It was observed long ago that the common law favors cases being decided on their merits. *See Berri v. Rogero*, 145 P. 95, 97 (Cal. 1914). "The policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or *neglect* of his adversary." *Id.* (emphasis added). The instant case will be decided in accordance with the common law's preference of merit-based decisions. *See id.* Allowing Traylor to file a proof of claim out of time would permit his personal injury claim to be determined on its merits. Therefore, the factor of prejudice, whether toward the debtor or the claimant, runs in favor of

permitting Traylor to file a late proof of claim.

D. Length of the Delay and Its Potential Impact on Judicial Administration

Fourth, the court considers "the length of the delay and its potential impact on judicial proceedings." *See Pioneer*, 507 U.S. at 395. Courts have held that a delay of as long as two years between the claims bar date and the filing of a proof of claim may be excused, as long as the delay does not have a significant impact on judicial proceedings. *See In re Dix*, 95 B.R. 134, 138 (B.A.P. 9th Cir. 1988), *cited in Pioneer*, 507 U.S. at 385-86; *see also In re Beltrami Enters., Inc.*, 178 B.R. 389, 392 (Bankr. M.D. Pa. 1994). With *Dix* and *Beltrami* in mind, the delay of five-and-a-half months that passed between the bar date and Traylor's filing of a proof of claim is not in itself enough to preclude a finding of excusable neglect.

Regarding this fourth factor, the critical consideration is not the elapsed time of the delay, but rather the effect of that delay on the judicial administration of the case. *See Earth Rock*, 153 B.R. at 64. In *Earth Rock*, a chapter 11 debtor gave formal notice to a creditor of the bar date for filing proofs of claim. *Id.* at 61-62. The debtor, anticipating the creditor's filing of a timely proof of claim, included the creditor in its proposed disclosure statement as the holder of a disputed claim. *Id.* at 63. Nonetheless, because the creditor was expecting the debtor to exercise a right of setoff against its claim, the creditor made a conscious and "clearly negligent" decision to delay filing its proof of claim until eight months after the bar date. *Id.* at 62-63. The bankruptcy court, applying *Pioneer*, found that despite the creditor's misguided yet intentional decision to disregard the bar date, the delay did not prejudice the debtor by adversely impacting its reorganization efforts, nor did it retard the judicial administration of the case. *Id.* at 64.

In the instant case, Debtors assert that they mailed notice of the bar date and a proof-of-claim form to every one of their known creditors, including Traylor. As noted above, Traylor testified that he never received the notice or form. On this point, the instant case differs from *Earth Rock*, in which it was undisputed that the creditor received notice. *See id.* at 61-62. Nonetheless, if Debtors are correct in asserting that they attempted to notify Traylor personally, it is logical to assume they must have anticipated Traylor's filing of a proof of claim. In this respect, the instant case parallels *Earth Rock*, in which the debtor anticipated the creditor's filing of a proof of claim. *See id.* at 63. In *Earth Rock*, the court found no adverse effect on the debtor's reorganization efforts or the efficient judicial administration of the case. *See id.* at 63-64. Similarly, in the instant case, this court finds no adverse effect on Debtors' reorganization or on the court's ability to oversee the bankruptcy effectively due to Traylor's filing of a late proof of claim.

E. Reservation of Rights

While the court applies here the excusable neglect standard to determining whether Traylor's late filed claim is time barred, it does not address whether the claim, once filed, would be subject to disallowance based on laches, waiver or some similar doctrine. To the extent Debtors might successfully urge such a defense in suit brought by Traylor, the court's determination respecting excusable neglect should not limit Debtors' ability to assert it by objection to Traylor's claim. A determination that the bar date in a bankruptcy case does not mandate disallowance of a claim is not the same as determining the claimant has acted in a fashion that would result is loss of the claim had it been pursued outside of bankruptcy.

III. Conclusion

For the reasons listed above, the court finds excusable neglect. The court, by its authority under Rules 3003(c)(3) and 9006(b)(1), hereby grants Traylor's Motion, and allows him to file a proof of claim out of time, without prejudice to assertion by Debtors of defenses to the claim based on Traylor's dilatory conduct.

It is so **ORDERED**.

END OF MEMORANDUM ORDER # # #