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Education Brief

Timing is Everything: The Fifth Circuit's Narrow View of Post-Confirmation Proof of Claim Amendments

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Introduction

Timing is everything. This is especially true when a creditor seeks to amend a timely filed proof of claim.[1] As a general rule, bankruptcy courts liberally allow amendments to proofs of claim prior to plan confirmation.[2] When considering a pre-confirmation claim amendment, courts focus on whether the proposed amendment relates back to the original claim or if it is an entirely new claim, and whether the amendment is prejudicial to the debtor or creditors. However, if the amended claim is filed *after* plan confirmation, courts apply a much more stringent standard, illustrating the inherent tension between the Bankruptcy Code's dual goals of allowing debtors to restructure their debts and safeguarding creditors' interests and expectations.

The Fifth Circuit recently addressed the standard for allowing a post confirmation proof of claim amendment in *CLO HoldCo, Ltd. v. Kirschner (In re Highland Capital Management, L.P.)*.[3] The decision highlights the significance that courts place on enforcing the finality of confirmed

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[1] Courts apply a different analysis when a creditor seeks to file a proof of claim after the relevant bar date. See Bankr. Rule 9006(b)(1) (granting courts the discretion to extend a period of time where a deadline, such as a bar date, has passed and the pertinent parties failed to act due to "excusable neglect"). See also *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) (holding in the context of a late filed proof of claim that whether neglect is "excusable" is an equitable determination considering "all relevant circumstances," including prejudice, length of delay, reason for delay, and good faith).

[2] *In re Kolstad*, 928 F.2d 171 (5th Cir. 1991)

[3] *CLO Holdco Ltd. v. Kirschner (In re Highland Capital Management LP*), 23-10660 (5th Cir. May 21, 2024).

plans and how amendments proposed after plan confirmation are only permitted in truly "compelling circumstances."

Procedural Background and Facts

Highland Capital Management, L.P. ("Highland") and various affiliates (together with Highland, the "Debtors") were a multibillion-dollar global alternative investment manager and served as the investment manager for the Highland Crusader Fund (the "Crusader Fund"). In September and October 2008, during the financial crisis in the United States, Highland received numerous redemption requests from investors in the Crusader Fund. Thereafter, disputes concerning the distribution of assets arose between and among Highland and certain investors represented by a court-appointed redeemer committee (the "Redemption Committee"), eventually leading to arbitration before the American Arbitration Association (the "AAA"). Approximately 11 years later, in March 2019, the AAA awarded approximately $3 million to the Redemption Committee and ordered either the transfer or cancellation of certain redemption claims (the "Award").[4]

On October 16, 2019 (the "Petition Date"), before the Redemption Committee could reduce the Award to a judgment, Highland filed for Chapter 11 bankruptcy protection in the Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"). Shortly, thereafter, the Bankruptcy Court entered an order establishing April 8, 2020 as the general bar date for the filing of claims arising before the Petition Date.

On April 8, 2020, CLO HoldCo, Ltd. ("CLO HoldCo") timely filed a general unsecured claim for $11,340,751.26, based on its participation and interest in the same redemption claims covered by the Award.[5] CLO HoldCo expressly reserved its right to amend its proof of claim.

Subsequently, Highland, the Crusader Fund, and the Redemption Committee entered a settlement that canceled Highland's redemption claims (the "Redeemer Settlement").[6] On October 20, 2020, the Bankruptcy Court held a hearing on Redeemer Settlement Motion. At the hearing, the Bankruptcy Court approved the Redeemer Settlement, which authorized the cancellation of redemption claims covered by the Award. In light of this cancellation, on October 21, 2020, CLO HoldCo filed a first amended proof of claim (the "First Amended Claim"), which reduced its claim to $0 and included a rider indicating that it would subsequently withdraw its claims.

On February 22, 2021, the Debtors' fifth amended Chapter 11 plan (the "Plan") was confirmed.[7] On November 9, 2021, Marc S. Kirschner, the litigation trustee for the Highland

[4] *CLO HoldCo, Ltd. v. Kirschner (In re Highland Capital Management, L.P.*), No. 23-10660 at 2.
[5] Id. at 3.
[6] On September 23, 2020, Highland filed the *Debtor's Motion For Entry Of An Order Approving Settlements With (A) The Redeemer Committee Of The Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1089] (the "Redeemer Settlement Motion"). In the Redeemer Settlement Motion, Highland explained the relevant terms of the proposed settlement as follows, "The Debtor and [Eames, Ltd., a wholly-owned subsidiary of Highland] will each (a) consent to the cancellation of certain interests in the Crusader Funds held by them that the Panel found were wrongfully acquired, and (b) agree that they will not object to the cancellation of certain interests in the Crusader Funds held by the [Charitable DAF Fund, LP] that the Panel also found were wrongfully acquired." *Id*. at ¶23.
[7] Id. at 4.

Litigation Sub-Trust filed the *Omnibus Objection to Certain Amended and Superseded Claims and Zero Dollar Claims*, through which he objected to the First Amended Claim.[8]

Notwithstanding, on January 11, 2022, CLO HoldCo filed a second amended proof of claim (the "Second Amended Claim") asserting for the first time that cancellation of the redemption claims resulted in a "credit" to Highland equal to the purchase price of the underlying claims, allegedly entitling CLO HoldCo to a new, unliquidated claim.[9] According to the rider to the Second Amended Claim:

> Upon information and belief, the credit is estimated to be at least $3,788,932 (which amount was calculated using some Crusader Fund documents to which CLO HoldCo has access, as [Highland] documents and Arbitration documents are not available to CLO HoldCo), and up to an amount that is the difference between the amount of the award ($3,106,414), and the initial Crusader valuation of its claim ($8,897,899), or up to the difference of $5,791,485 (this difference very likely reflects the credit for the purchase price paid by [Highland]).

In tandem with filing the Second Amended Claim, CLO Holdco also filed a *Motion to Ratify Second Amendment to Proof of Claim [Claim no. 198] and Response to Objection to Claim*.[10] On August 17, 2022, after a contested hearing, the Bankruptcy Court denied CLO HoldCo's motion to ratify the Second Amended Claim.

On August 31, 2022, CLO Holdco appealed the Bankruptcy Court's decision to the U.S. District Court for the Northern District of Texas (the "District Court"), and, on September 28, 2022, the District Court affirmed the Bankruptcy Court's ruling. On October 20, 2022, CLO HoldCo appealed to the Fifth Circuit.

The Fifth Circuit's Decision

On appeal to the Fifth Circuit, CLO HoldCo argued that the holding in *In re Kolstad*[11] required that the court limit its inquiry to a two-part test: (1) whether the amendment asserted a new claim, and (2) whether the debtor suffered prejudice.[12]

On the other hand, the Debtors contended that plan confirmation should be treated like a final judgment, which fixes the universe of allowed claims. Under that principle, permitting a creditor such as CLO Holdco to amend its proof of claim after confirmation would undermine both the finality of and assumptions underlying the plan. Taken together, permitting such a late claim amendment could disrupt the stability of the reorganized estate. The Debtors also argued that *Kolstad*, which addresses pre-plan confirmation amendments, is not binding in the post-confirmation context. Instead, they asserted that the post-confirmation setting requires a more demanding standard than what *Kolstad* prescribes.

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[8] See Dkt. No. 3001.
[9] Id. at 5.
[10] *See* Dkt. No. 3177.
[11] 928 F.2d 171 (5th Cir. 1991).
[12] Id. at 6.

Accordingly, the Debtors urged the Fifth Circuit to adopt a heightened "compelling circumstances" test for post-confirmation proof of claim amendments — a standard that places the burden on the claimant to justify why a late modification should be allowed despite the confirmed plan's finality. Applying the "compelling circumstances" test, the Debtors argued that authorizing the Second Amended Claim would (i) prejudice other parties, (ii) contradict earlier representations made by CLO HoldCo (including amending the proof of claim to zero and advising the Bankruptcy Court that the claim would be withdrawn), and (iii) shift legal theories too late in the process.

The Fifth Circuit agreed with the Debtors, noting that *Kolstad's* holding was limited to *pre-confirmation* proof of claim amendments, and instead relied on decisions from the Seventh and Eleventh Circuit Courts.[13] The seminal cases *Holstein* and *Winn-Dixie* held that a confirmed plan is equivalent to a final court judgment and thus enjoys a degree of *res judicata*.[14] Consistent with these authorities, the Fifth Circuit adopted the "compelling circumstances" standard, emphasizing that, by the time the plan is confirmed, there should be a fixed universe of allowed claims and that post-confirmation amendments will only be granted in the rarest of cases.

The Fifth Circuit further reasoned that even if *Kolstad* applied, its two-part test was optional and not mandatory, and still subject to "several equitable considerations." In effect, *Kolstad* required a broader equitable inquiry and a stricter standard than CLO HoldCo argued was applicable.[15]

Moreover, the Fifth Circuit emphasized that post-confirmation claim amendments could unravel the careful balance of rights embodied in a confirmed plan, potentially disrupt distributions, and undermine the reliance of other stakeholders on a confirmed plan's terms. Accordingly, the Fifth Circuit found that the Bankruptcy Court had properly weighed (i) CLO HoldCo's nearly one-year unexplained delay in amending its prior proof of claim, (ii) its earlier representations that its claim was "of no value," and (iii) the potential prejudice to the Debtors and other creditors.[16]

Given the foregoing, The Fifth Circuit ultimately affirmed the District Court's decision.

Conclusion

Based on the Fifth Circuit's decision, if a post-plan confirmation proof of claim amendment may upset the expectations (economic or equitable) of parties whose rights are adjusted under a confirmed plan, then the amendment will likely not be approved. The only way the

[13] Id. at 7; *See Holstein v. Brill*, 987 F.2d 1268, 1270–71 (7th Cir. 1993) (holding that once a reorganization plan is confirmed, the time for filing or amending proofs of claim has passed, and allowing a post-confirmation amendment would undermine the finality of the plan); *In re Winn-Dixie Stores, Inc.*, 639 F.3d 1053, 1056 (11th Cir. 2011) (holding that post-confirmation amendments to proofs of claim are permitted only in "compelling circumstances" given the strong policy favoring the finality of confirmed plans).

[14] Res judicata precludes parties (or those in privity with them) from relitigating a claim that was—or could have been—raised in a prior action that resulted in a final judgment on the merits by a court of competent jurisdiction. *See In re Paige*, 610 F.3d 865, 870–71 (5th Cir. 2010); see also *In re Howe*, 913 F.2d 1138, 1143–44 (5th Cir. 1990).

[15] Id. at 8.

[16] Id.

amendment will be approved is if the creditor can point to compelling circumstances, supported by concrete, equitable justifications. As the Fifth Circuit does not specify what those circumstances may be, to avoid the fate of CLO HoldCo, creditors should amend their claims as soon as they become aware of new information and include a clear explanation as to why the amendment could not have been filed earlier in the bankruptcy case.
