Court Provides Guidance on When Bankruptcy Claims Arise

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When it comes to the issue of when a claim arises in the context of a bankruptcy case, I'm all ears. I guess that makes me a little odd, but I've done a lot of research in this area and for some reason, I find it very interesting. You have two competing theories: 1) a fresh start for the debtor; and 2) due process for claimants. Many times this comes down to big company versus little guy, so formulating a test to protect both parties isn't the easiest objective.

The 3rd U.S. Circuit Court of Appeals took a big step in the right direction when it overruled Frenville in its 2010 decision in Jeld-Wed Inc. v. Van Brunt (In re Grossman's Inc.) Frenville espoused the "accrual test" and held that a claim arose in the bankruptcy context when the claimant had a right to payment under the applicable state law. Frenville was universally rejected by other courts as promoting a test that too narrowly defined a bankruptcy claim and being contrary to the fresh start policy. Then along came Grossman's and a favorable nod toward (although not total acceptance of) the pre-petition relationship test.

In short, Grossman's held that "a 'claim' arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a 'right to payment' under the Bankruptcy Code." However, that wasn't the end of the analysis. Grossman's also held that even if a claim arises pre-petition under the new test, a claimant has a due process right to notice of the bankruptcy proceeding. Accordingly, lack of notice will preclude the discharge of a claim that arose pre-petition. The Grossman's court left the issue of due process to the district court, but it did list a number of factors to consider in making the determination, which was anything but a black and white test.

That brings me back to the non-Delaware case of Wright v. Owens Corning - a 2011 case in the U.S. District Court for the Western District of Pennsylvania. Owens Corning did file for bankruptcy in Delaware, but Wright filed suit in Pennsylvania for defective roof shingles that were installed prior to the bankruptcy but that did not manifest defects until 2009 after the Owens' bankruptcy plan was confirmed. Wright's co-plaintiff, West, also sued but for defective shingles but they were installed post-petition with a post-confirmation manifestation of defects.

Wright appeals to me for two reasons: 1) it easily makes the next logical leap that the Grossman's test can be used to determine whether a claim arises pre-confirmation and therefore, subject to discharge (assuming appropriate due process); and 2) it clarifies the due process determination.

Wright acknowledged that the Grossman's court was not confronted with the issue of whether a claim arising from a post-petition, pre-confirmation relationship can be discharged under a bankruptcy plan. However, unlike some decisions read by this author, the Wright court doesn't over-analyze the issue. Simply, Grossman's determines when a claim arises, so it can logically be extended to determine whether a claim arises pre- or post-confirmation. As West had purchased and installed the shingles pre-confirmation, his claim was subject to discharge if he received appropriate due process. As an aside, Wright was determined to hold a pre-petition claim by

virtue of the pre-petition purchase and installation of her roofing shingles, but she was also entitled to a due process determination.

Grossman's, in my very humble opinion, didn't assist the due process analysis. Granted, the issue was remanded and the comments geared toward asbestos claims, but the factors listed by the court muddied the line between the due process afforded to known claimants and the due process afforded to unknown claimants. Me, I'm a bright-line kind of person (as much as you can have bright lines in the law), so I like the known-versus-unknown determination and Grossman's references to the "circumstances of exposure," the claimants' awareness of "vulnerability to asbestos" and existence of a "colorable claim" make my head spin a little bit.

Which brings me to the second reason I like Wright. If you are an unknown claimant, you are entitled to notice by publication and if you are a known claimant, you are entitled to actual notice. That's it. Both Wright and West were determined to be unknown claimants because they purchased the shingles through third-party contractors, and it was not reasonable to suggest that Owens was required to contact every conceivable third-party contractor who purchased shingles in order to identify the homeowners upon whose homes the shingles were installed. Owens had published notice of the bankruptcy in local, national and international publications. Accordingly, Wright's pre-petition claim and West's pre-confirmation claim were both discharged.

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