



Neglecting a Deadline May Be Excusable

March 21, 2022

Michael H. Traison

Chicago/NYC – 312.860.4230

Amanda A. Tersigni

Garden City – 516.357.3738

In prior client alerts, we have explained to non-lawyers the dual nature of our judicial system as both courts of law and equity.^[1] The origin of this duality dates back to chancery courts in the middle ages where the church presided over certain matters. In some states, the distinction is still preserved while, for the most part, the two concepts of “law” and “equity” are merged into a unitary court system in the federal and state structures. When sitting as a court of law, a judge may look to equitable doctrines when mistakes in procedure are made to afford the opportunity for a just result.

Generally, filing deadlines must be strictly observed. However, on occasion, the failure to adhere to a deadline may be excused.^[2] It is key for clients to appreciate the importance of deadlines that are statutorily guided or set by the courts. However, it is also important to recognize that if one misses a deadline, it may or may not be fatal.

In the state and federal court systems, including bankruptcy courts, failure to follow deadlines may arise in the context of filing claims, appeals, and a host of other pleadings and responses. Because courts prefer to hear matters on their merits, defaults are abhorred and normally, procedural deficiencies are secondary to decisions on the merits. See *Rodriguez v. Village Green Realty, Inc.*, 788 F.3d 31, 47 (2d Cir. 2015) (citing *Cargill, Inc. v. Sears Petroleum & Transp. Corp.*, 334 F. Supp. 2d 197, 247 (N.D.N.Y. 2004) (“Because of the preference to have issues and claims decided on their merits, rather than on the basis of a procedural shortcoming, the exclusion of otherwise relevant evidence on technical grounds is generally not favored....”)).

Courts may consider factors relating to procedure and the interests of relevant parties when deciding whether the procedural deficiency of neglecting a deadline is excusable or whether it is so unforgivable that the court must give it more credence than waiting to hear the case on its merits.

Recent decisions highlight considerations of excusable neglect. In *In re Westinghouse Elec. Co., LLC*, Case No. 17-10751, 2022 WL 467797 (Bankr. S.D.N.Y. Feb. 15, 2022), the creditor moved the court for an order seeking relief from the administrative bar date and granting him permission to file a tardy administrative expense claim. This motion was filed more than three years after the deadline set by the court for filing administrative claims and more than

two years after the creditor was notified that he missed this deadline. Instead of putting his claim before the bankruptcy court, the creditor “made a deliberate tactical decision” to pursue his claim in the Pennsylvania district court against the reorganized debtor, as opposed to the bankruptcy court, arguing that his claim was not discharged through the bankruptcy. *Westinghouse*, 2022 WL 467797, at *1.

Following a complicated procedural history before both the bankruptcy court of the Southern District of New York and the Pennsylvania district court regarding the creditor’s claim, the creditor in *Westinghouse* argued before the bankruptcy court that “extraordinary circumstances” existed warranting acceptance of his late-filed claim and his neglect to file sooner was excusable under Rule 9006 of the Federal Rule of Bankruptcy Procedure (“FRBP”).^[3] The *Westinghouse* court cited to the Supreme Court’s ruling in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993) in which the Supreme Court enumerated four factors as the “excusable neglect standard” to consider when determining if excusable neglect principles permit relief.^[4]

In relying on the *Pioneer* factors,^[5] the *Westinghouse* court denied the creditor’s motion to file a late administrative claim. While pursuit of the creditor’s motion may have been undertaken in good faith, the court ultimately concluded that the creditor’s delay was fully within his control, which “weigh[ed] heavily against his motion for relief,” the delay was extremely lengthy, and the incredibly late filing of the claim would result in prejudice to the debtor and other creditors. *Westinghouse*, 2022 WL 467797, at **7-10.

The *Pioneer* factors are also used to determine the existence of “excusable neglect” in other provisions of the FRBP besides FRBP 9006. For example, it was used in *Ballinger v. Smith (In re Smith)*, Case No. 20-8015, 2021 WL 212361 (B.A.P. 6th Cir. Jan. 21, 2021) regarding a 14-day deadline to file an appeal pursuant to FRBP 8002(a).^[6]

Furthermore, this standard concerning excusable neglect goes beyond bankruptcy and we find an identical application of *Pioneer* factors in the Federal Rules of Civil Procedure (“FRCP”). See *In re Buckskin Realty Inc.*, 525 B.R. 4, 9 (Bankr. E.D.N.Y. 2015) (finding that the same standard for excusable neglect applies under FRCP 6 and 60 as FRBP 9006(b)(1)); *McCarty v. Astrue*, 528 F.3d 541, 544 (7th Cir. 2008) (discussing “[t]he standard for reviewing whether neglect was ‘excusable’ is an equitable one, taking into consideration relevant circumstances” and citing to the *Pioneer* factors). FRCP 6(b) grants the court power to extend deadlines, for good cause, on a motion made after the expiration of time when a party demonstrates excusable neglect and FRCP 60 allows the court to relieve a party from a final order or judgment. *In re Buckskin Realty Inc.*, 525 B.R. at 9-10.

While there are some courts that give greater weight to certain of the *Pioneer* factors, there are other courts which take a holistic approach and do not focus on one factor over another. The *Pioneer* factors were implemented by the Court of Appeals, Fifth Circuit in a recent decision whereby the court reviewed the bankruptcy court’s denial of a motion for leave to file late proofs of claim made by a class of employee-claimants after such denial was reversed by the district court. *W. Wilmington Oil Field Claimants v. Nabor Corp. Servs., Inc. (In re CJ Holding Co.)*, Case No. 21-20394 (5th Cir. Mar. 10, 2022).

The Fifth Circuit in *CJ Holding Co.* made clear that it did not believe any one of the four *Pioneer* factors were primary as to the other three. Finding that three of these factors weighed in favor of the debtor and only one in favor of the claimants, the Fifth Circuit reversed the district court’s decision and reinstated the bankruptcy court’s denial of the claimants’ motion disallowing them from filing late claims.

Knowing that excusable neglect is a concept recognized under the law and by courts, clients need not panic when a deadline has been blown. If that happens, act promptly to consult with counsel to understand your options to rectify an oversight. Consider how late your submission may be and what your good faith explanation is for your delayed filing, as well as how this late filing will impact your opponent, if at all.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of bankruptcy law, please contact Michael Traison at 312.860.4230 and/or Amanda Tersigni at 516.357.3738.

Footnotes

[1] Recent Bankruptcy Court Decisions of Statutory Interpretation Reiterate the Importance of Equitable Consideration in Bankruptcy Cases - Cullen and Dykman LLP (cullenllp.com)

[2] “Excusable Neglect”: When Missing a Deadline May Not Be Fatal - Cullen and Dykman LLP (cullenllp.com); Don’t Miss the Bar Date! The Importance of Timely Filing Bankruptcy Proofs of Claim - Cullen and Dykman LLP (cullenllp.com).

[3] FRBP 9006(b) generally provides that an act which is required to be done at or within a specified period, the court may use its discretion to enlarge that timeframe (1) with or without motion or notice if the request is made before the expiration period or as extended by prior order, or (2) on motion made after the expiration period where failure to timely act was the result of excusable neglect. Fed. R. Bank. P. 9006(b).

[4] These factors are as follows: (1) the danger of prejudice [to the opposing party]; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395.

[5] “The Second Circuit has taken what it has called a ‘hard line’ in applying the *Pioneer* factors.” *Westinghouse*, 2022 WL 467797, at *7.

[6] FRBP 8002(a) provides that a notice of appeal must be filed with the bankruptcy clerk 14 days after the entry of judgment, order or decree to be appealed.

Practices

- Bankruptcy and Creditors' Rights

Attorneys

- Michael H. Traison