



LOWENSTEIN BANKRUPTCY LOWDOWN

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Video 8- The Critical Nature of Bankruptcy Dates and Deadlines

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Philip J. Gross: Hi, I'm Phil Gross from Lowenstein's Bankruptcy & Restructuring Department. There are many complex factual and legal issues that get debated, litigated, and negotiated every day in the corporate bankruptcy world. I want to briefly discuss two recent bankruptcy court decisions that I think really drive home the critical nature of bankruptcy dates and deadlines, and that emphasize the dire consequences to creditors that miss dates and deadlines.

The first case is *Alto Maipo* from the Bankruptcy Court in Delaware. That case was filed several months ago, and there, as in typical and large chapter 11 cases, the lenders and the debtor agreed on a cash collateral order, which allows the debtor to operate with cash during the case, and that order set a challenge deadline for creditors to assert claims against the lenders related to their liens or other related claims. The creditors committee was appointed in that case the same exact date that the deadline for the bringing challenges against lender was set to expire, and the committee immediately saw a 60-day consensual extension from the lender and the debtors. The lenders and debtors had proposed a shorter extension, which the committee did not agree on, then the committee filed a motion three days after that deadline expired to extend the challenge deadline. In the bankruptcy court in that case, Judge Karen Owens had this to say—she said, look, it's a fairly simple issue. My order was final. You guys were three days late in filing the extension request, and I have to respect the finality of my order," and the court denied that extension.

The second case I want to mention is *Ellis v. Westinghouse*, which was a recent third circuit decision decided last year. In that case, Ellis, who was a former executive of Westinghouse, was fired during the bankruptcy process, and Ellis sought to bring an age discrimination lawsuit. However, as typical in chapter 11 cases, the chapter 11 plan in that case had set an administrative claim deadline for creditors with claims that arose during the bankruptcy process to file those claims before a certain date. Ellis filed his claims after that date had expired, and the third circuit emphasized dates are critical in bankruptcy, dates really matter in bankruptcy, and in this case the bankruptcy court had full authority to set an administrative deadline. The creditor here, the litigation claimant in this case, filed his claims too late, and those claims were barred under the plan, and those claims could not go forward.

Time and again, we get calls from clients or creditors in bankruptcy proceedings that they missed a key date or deadline, or simply forgot about a date or deadline. First and foremost, pay attention and do your best to really

not miss those key dates and deadlines, because they're really critical to be able to maximize your claims in the bankruptcy process. Finally, while creditors should not assume that a creditor that missed a date or deadline is going to automatically get an extension of that date or deadline from the court, all hope is not lost, and creditors should feel free as soon as they learn about a date or deadline that that has been missed, to reach out to their bankruptcy attorney, and to the extent that there are extenuating circumstances, there can be relief sought from the bankruptcy court.

Thank you for listening to the Lowenstein Bankruptcy Lowdown, and we look forward to future talks in this series.