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Groff v. DeJoy: Redefining the meaning of an "undue hardship" under Title VII of the Civil Rights Act of 1964

By: Richard J. Sauceda

Under Title VII of the Civil Rights Act of 1964, it is unlawful for covered employers "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges [of] employment, because of such individual's . . . religion." 42 U. S. C. §2000e-2(a)(1) (1964 ed.). Following this legislation, the EEOC formulated that employers are obligated "to make reasonable accommodations to the religious needs of employees" whenever that would not work an "undue hardship on the conduct of the employer's business." 29 CFR § 1605.1 (1968). However, the EEOC did not specifically define what constituted an "undue hardship," so the interpretation of this term was left to the courts.

In *TWA v. Hardison*, a case that dealt with an employee's request to not work from sunset on Fridays until past sunset on Saturdays due to his religious beliefs, the U.S. Supreme Court held that the employer was justified in finding that the employee's request would impose an undue hardship. 432 U.S. 63 (1977). Specifically, the Court found that the employee's request would require senior employees to fill in the plaintiff's shifts, and because this would disrupt the legal protections given to senior employees under Title VII, this was not a reasonable accommodation. However, the important language from this opinion was the Court stating: "To require TWA to bear more than a ***de minimis*** **cost** in order to give Hardison Saturdays off is an undue hardship." *Id.* at 84 (emphasis added).

After *Hardison*, the language "*de minimis* cost" became the authoritative interpretation of "undue hardship" under Title VII by many courts, including the Eighth Circuit. *See, e.g., Brown v. Polk Cty.*, 61 F.3d 650 (8th Cir. 1995). This meant that courts imposed a relatively low bar for an employer to reasonably find that an employee's request for a religious accommodation imposed an undue hardship – an employer denying an employee's request for religious accommodation only needed to show that the request would impose a "very small or trifling" cost. Black's Law Dictionary 388 (5th ed. 1979).

However, the Supreme Court recently clarified the meaning of an "undue hardship" under Title VII, effectively eliminating the "*de minimis*" standard and adopting a new legal standard entirely. *Groff v. DeJoy*, 143 S. Ct. 2279 (2023). In *Groff*, Mr. Groff, who was an employee for the United States Postal Service, believed Sunday to be a day of worship and rest. When he first started in his position in 2012, it did not entail working on Sundays. However, in 2013 USPS entered into an agreement with Amazon, and part of the agreement entailed USPS delivering packages on Sundays. Mr. Groff was told that he would have to work Sundays, and in response, he sought and received a transfer to a smaller USPS station that did not contract with Amazon. However, in 2017, this USPS station too began delivering packages on Sundays in conjunction with Amazon.

Mr. Groff was unwilling to deliver packages on Sundays, citing his religious views. In response, his USPS station utilized other staff, including some who did not ordinarily deliver packages at all, to

Congratulations

Congratulations to **Valerie Perkins** on passing the Minnesota Bar Exam and joining the JLO team as an Associate Attorney!

Valerie earned a Bachelor of Arts from the University of Wisconsin-Milwaukee. She got her J.D. from the University of Minnesota Law School. She looks forward to assisting clients in the area of Civil Litigation.

deliver packages on Sundays. Mr. Groff received progressive discipline for refusing to work on Sundays. In early 2019, he resigned from his position. A few months later he sued the postmaster general at his former USPS station in federal court, alleging that his employer failed to accommodate his religious beliefs under Title VII.

The federal district court granted summary judgment to Mr. Groff's employer, finding that his employer was justified in finding that his accommodation requests would have imposed an undue hardship. *Groff v. Dejoy*, No. 19-1879, 2021 U.S. Dist. LEXIS 66174 (E.D. Pa. Apr. 6, 2021). The Third Circuit affirmed, citing *Hardison* in finding that the employee's request would impose more than a "*de minimis* cost" on his employer. *Groff v. Dejoy*, 35 F.4th 162, 175 (3d Cir. 2022). Specifically, the court found that his request "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." *Id.*

Mr. Groff petitioned to the U.S. Supreme Court, which granted his petition for a writ of certiorari. The Supreme Court reversed and remanded to the federal district court. The Court held that the phrase "undue hardship" implies more than a showing of a *de minimis* cost to an employer. For one, the Court discussed that the ordinary meaning of the term "undue hardship" implied something more than a "mere burden," but rather something more substantial. The Court also discussed that the EEOC's own guidelines implied that "undue hardship" was something more severe in nature, and that the EEOC's use of the term in other instances also implied it was more than simply a cost. Finally, the Court noted that the term "undue hardship" was used in other statutes and had been interpreted to mean something more substantial than a *de minimis* cost when applied.

Ultimately, the Court held that for an employer to find that an employee's request for a religious accommodation constitutes an undue hardship, "an employer must show that the burden of granting an accommodation would result in **substantial increased costs in relation to the conduct of its particular business**." *Groff*, 143 S. Ct. at 2295 (emphasis added). Consistently, the Court stated that a possible accommodation having an effect on co-workers is not enough by itself to satisfy the burden of showing an undue hardship, but that the accommodation's effect on co-workers must have ramifications for the conduct of the employer's business. The new standard is fact-intensive, as the Court noted: "What matters more than a favored synonym for "undue hardship" (which is the actual text) is that courts must apply the test in a manner that takes into account **all relevant factors** in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of [an] employer." *Id.* (internal citation omitted)

Following *Groff*, it is clear that the meaning of an undue hardship under Title VII, specifically pertaining to religious accommodations, has changed. Employers no longer can rely on the simple and easily satisfiable standard of showing that an employee's request would impose a *de minimis* cost. Rather, employers must now consider "all relevant factors" pertaining to the accommodation request. *Id.* Moreover, employers must show that a request for an accommodation would impose "substantial increased costs" in relation to the conduct of its business rather than simply a "*de minimis* cost." While this revised language doubtlessly will be up for interpretation by federal district courts, what is clear is that the standard has changed, and employers now face a higher burden when denying employees' requests for religious accommodations.

Why You Should Always Ask if a Claimant Has Filed for Bankruptcy

Impacts of a Bankruptcy Filing on Pending/Potential Litigation

By: Jake W. Peden

Introduction

"Have you or any entities you have ever owned filed for bankruptcy?" It is a simple question that can easily be overlooked when interviewing/deposing a claimant, but the simple question can have huge ramifications in settling a potential claim, or even provide grounds for a complete dismissal of such.[1] In the last year, business bankruptcies rose 29.9 percent, and overall bankruptcies are up 13 percent, totaling 433,658 bankruptcy cases.[2]

A key principle of bankruptcy law is that the bankrupt debtor must provide notice of their filing to *all their creditors*, and they must disclose "all legal and equitable interests" (including insurance claims, lawsuits, or potential lawsuits) on their bankruptcy schedules.[3] This means that unless a search is conducted and the claimant is specifically asked about whether they filed bankruptcy, it is very possible that their insurer may never receive any notice of such.

Generally, a bankruptcy filing only releases or "discharges" the bankrupt debtor's obligations and does not relieve an insurer or third-party from performing contractual obligations. However, the procedures/duties mandated by the bankruptcy code and rules need to be taken into consideration anytime you are dealing with a party who has filed bankruptcy. This article provides an overview of considerations to take into account whenever a claimant or other involved party has filed for bankruptcy.

Who filed for bankruptcy and under what chapter?

While it may be obvious, the starting point is to determine who exactly filed for bankruptcy and under what Chapter. There are six different Chapters of bankruptcy: Ch. 7 (liquidation), Ch. 9 (for municipalities), Ch. 11 (reorganization plan), Ch. 12 (for family farmers and fisherman), Ch. 13 (reorganization plan for individuals), and Ch. 15 (international cases). The Chapters vary greatly, as debt reorganization plans in bankruptcy can last for five years or longer, while a discharge granted through a Chapter 7 liquidation bankruptcy will normally be ordered three-to-four months after the case is filed.

It is important to know who filed for bankruptcy, because once the bankruptcy is filed, the protections of the bankruptcy code normally only apply to the bankrupt debtor themselves and not affiliated persons or entities. The bankruptcy code applies differently to individuals versus businesses, with businesses being unable to file bankruptcy under certain Chapters and ineligible to receive a discharge under Chapter 7 (the most-common bankruptcy filing).

When was the bankruptcy filed?

Since the bankrupt debtor's assets consist of "all legal and equitable interests" they have as of the date their petition is filed, there are two primary items that should be considered with their filing date: (1) Is the claim part of the bankruptcy estate? And (2) does the automatic stay or discharge injunction apply?

(1) If the claimant's bankruptcy filing date is *after* the date their claim arose, then the claim is likely property of the bankruptcy estate (meaning the claimant needs permission from the bankruptcy court to prosecute or settle the claim), unless it fits an exemption that allows the debtor to "exempt" their claim from the bankruptcy estate.[3] It is the bankrupt debtor's burden to claim applicable exemptions on their Schedule C, and if they fail to disclose their pre-petition claim in their bankruptcy schedules, it can provide grounds for a court to dismiss their underlying claim.[5]

If the claimant's bankruptcy filing date is *before* the date their claim arose, then the claim is likely not part of the bankruptcy estate. Although if the bankruptcy is still ongoing (such as a debt reorganization plan), assets that the debtor acquires after their case was filed may become part of the bankruptcy estate.

(2) Perhaps the most well-known provision of the bankruptcy code is 11 U.S.C. § 362, known as the "automatic stay." The stay is automatic in that it goes into effect immediately upon filing of a case, and it generally prohibits all collection activities against *the debtor*, including the continuation of any

judicial proceeding or use of legal process, unless it is for a specified reason in § 362(b). The duty to prevent violation of the automatic stay is affirmatively on the party who received notice of the bankruptcy, and § 362(k) requires attorney's fees and costs to be paid for willful violations and it allows for punitive damages. If a party files for bankruptcy during pending litigation, discovery and deadlines in the Court's scheduling order should be suspended or stayed to avoid violating the automatic stay, as well as ceasing all contact with the debtor.

Was a discharge granted?

Similar to the automatic stay, once a bankrupt debtor receives their discharge, an injunction is entered "against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor."[6] You should always ask a claimant if they received a discharge in their bankruptcy, because if they did not, it means that they either did not complete the required processes, or an interested party in the bankruptcy brought an action to deny or revoke their discharge (usually on the basis of making false representations to the bankruptcy court or for other fraudulent actions).

Using Bankruptcy to Drive Resolution of a Claim

Commonly, the threat of a bankruptcy filing is used by defendants to negotiate a lower settlement, based on the plaintiff being unable to collect on a successful judgment even if one is entered against the defendant. However, if a pre-petition insurance policy provides coverage for the claim, it is long-established that a tortfeasor filing for bankruptcy does not relieve their insurer(s) from contractual obligations they owed to the debtor as of their bankruptcy filing date.[7]

Conversely, if the plaintiff/claimant filed for bankruptcy, their current need for funds can be used to negotiate a discounted settlement versus having a trial long into the future. If the claim is part of the bankruptcy estate (or potentially part of the bankruptcy estate), then settlement may be driven based on what the debtor will actually receive from anything he/she may recover and what their bankruptcy trustee's position is on the claim.

For example, a debtor normally can only protect for themselves "a payment, not to exceed $27,900, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent."[7] Additionally, a debtor normally cannot protect any recovery based on punitive damages.[9] When the case was filed and what exemptions the debtor elects in their bankruptcy case determines what claims for damages they can actually recover, versus the proceeds becoming property of their bankruptcy estate. In order for the debtor to recover more than what they can exempt, they are required to pay off all the creditors in their bankruptcy in full, plus applicable statutory fees and administrative expenses.

Whether a claimant has filed for bankruptcy will typically be known in an initial background investigation for the claim. If a bankruptcy is found, special attention should be paid to the bankruptcy petition, schedules, and orders in the bankruptcy case to determine if they provide any defenses or grounds to limit damages/exposure for the claim.

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[1] *See Bell v. Arneson,* No. 21-692 (DWF/ECW), 2022 U.S. Dist. LEXIS 128396 (D. Minn. July 20, 2022)(argued by Jardine, Logan & O'Brien).

[2] https://www.uscourts.gov/news/2023/10/26/bankruptcy-filings-rise-13-percent (Sept. 30, 2022 – Sep. 30, 2023).

[3] *See* 11 U.S.C. § 541; *see also* Bankruptcy Forms: Schedule A/B, and Statement of Financial Affairs.

[4] See 11 U.S.C. § 522. The question of whether a claim (or portions of a claim) is exempt is a very fact dependent inquiry, and the law and statutes applicable to what is exempt or not varies from state to state. Bankruptcies with debt reorganization plans often have specific terms for dealing with pending claims or litigation and get confirmed by the bankruptcy court.

[5] *See Bell, 2022 U.S. Dist. LEXIS 128396.*

[6] *See 11 U.S.C. § 524(a).*

[7] *See In re Jet Fla. Sys., Inc.*, 883 F.2d 970, 972 (11th Cir. 1989).

[8] *See* 11 U.S.C. § 522(d)(11)(D). Claims based on wrongful death or loss of future earnings are exempt "to the extent reasonably necessary for the support of the debtor and any dependent[s]." Debtors with valuable claims will typically elect state law exemptions which can afford expanded protection and apply to different types of claims. *See* 11 U.S.C. § 522(b)(2); *see also* Minn. Stat. § 550.37; Wis. Stat. § 815.18.

[9] *See generally* 11 U.S.C. § 522(d); *see also In re Cook*, 138 B.R. 943 (Bankr. D. Minn. 1992).

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