

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

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In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
Dbá ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	Related to Docket No. 242
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**DEBTOR’S OBJECTION TO TIMOTHY W. FOX’S MOTION TO ALLOW CLAIM
AS TIMELY FILED**

“Timing is everything—especially in the law.” *In re Witt*, AP 21-01100, 2023 WL 384210 (10th Cir. BAP (Colo.) Jan. 25, 2023), *aff’d*, *In re Witt*, 23-1035, 2023 WL 8524923 (10th Cir. Dec. 8, 2023) (describing the BAP’s remark as an “objectively accurate observation”), cert. denied sub nom. *Lane v. Witt*, 145 S. Ct. 171 (2024). Timothy Fox admits that he filed his Proof of Claim (the “Fox Claim”) after the deadline set by this Court’s *Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Form and Manner for Filing Proofs of Claim; and (III) Approving the Form and Manner of Notice of Bar Dates* [Dkt. No. 140], at 2 (the “Bar Date Order”). Timothy Fox cannot show excusable neglect for his failure to timely file the Fox Claim. Treating the untimely Fox Claim as if it were timely filed is not warranted by application of the *Pioneer* factors. See *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P’ship*, 507 U.S. 380, 395 (1993). For these and other reasons set forth herein, the Debtor respectfully requests that this Court deny *Timothy W. Fox’s Motion to Allow Claim as Timely Filed* [Dkt. No. 242] (the “Fox Motion”).

Facts Relevant to the Relief at Issue

1. On December 18, 2024, this Court entered the Claims Bar Date Order.
2. On December 20, 2025, Verita, the Debtor’s claims and noticing agent, served the Claims Bar Date Order on Fox, through his counsel by email, and by first class mail. See *Certificate of Service* [Dkt. No. 146], at 8 and 31, respectively.



3. The Bar Date Order established a General Bar Date¹ of January 22, 2025 at 4:00 p.m. prevailing Central Time. *Id.* at 2, ¶ 1.

4. The Bar Date Order expressly provides that:

All proofs of claim must be **actually received** by Verita on or before the applicable Bar Date. If proofs of claim are not received by Verita on or before the applicable Bar Date, the holders of the underlying claims shall be barred from asserting such claims against Debtor and precluded from voting on any chapter 11 plan filed in this Chapter 11 Case and/or receiving distributions from Debtor on account of such claims in this Chapter 11 Case.

Id. at 3-4, ¶ 6 (emphasis orig.).

5. The Fox Claim is unliquidated and disputed; therefore, Fox was required to timely file a proof of claim. *Id.* at 4, ¶ 7.

6. The Bar Date Order instructed Claimants, including Fox, how to submit a proof of claim. *Id.* at 7, ¶ 13.

7. On January 23, 2025, one day after the Bar Date, Fox filed a proof of claim (the “ECF Claim”) using the CM/ECF system.

8. On the same date, Verita processed the ECF Claim and locked its system to prevent duplicate filing through ePOC.

9. Nonetheless, Fox attempted to late-file an ePOC.

10. On January 23, 2025, Fox also mailed a proof of claim to Verita (the “Mail Claim”). The Mail Claim was received by Verita on January 28, 2025. Thus, the Mail Claim was late-filed pursuant to the Bar Date Order. *Id.* at ¶ 6.

11. On March 27, 2025, the Debtor filed the *Disclosure Statement for Chapter 11 Plan of Reorganization of Hospital for Special Surgery, LLC dba OneCore Health* [Dkt. No. 221] (the “Disclosure Statement”). Attached thereto as Exhibit 1 is the *Chapter 11 Plan of Reorganization of Hospital for Special*

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Claims Bar Date Order.

Surgery, LLC dba OneCore Health, dated March 27, 2025 (as may be amended, supplemented, or modified from time to time and, together with all exhibits and schedules thereto, the “Plan”), which the Debtor subsequently filed on April 16, 2024, as Docket No. 254. The Plan does not separately classify the Fox Claim or provide for Fox’s recovery of insurance proceeds.

12. On March 18, 2025, Fox filed *Timothy W. Fox’s Motion for Relief from Automatic Stay* [Dkt. No. 206] (the “Stay Relief Motion”). The Stay Relief Motion did not acknowledge that the Fox Claim was late-filed and barred by the Bar Date Order.

13. On April 1, 2025, the Debtor filed the *Debtor’s Objection to Timothy W. Fox’s Motion for Relief from Automatic Stay* [Dkt. No. 231].

14. On April 11, 2025, Fox filed the Fox Motion.

15. On April 16, 2025, the Court entered the *Order (I) Approving the Disclosure Statement, (II) Establishing a Voting Record Date, (III) Approving Solicitation Packages and Solicitation Procedures, (IV) Approving the Forms of Ballots, (V) Establishing Voting and Tabulation Procedures, and (VI) Establishing Notice and Objection Procedures for Confirmation of the Plan* [Dkt. No. 252] (the “Solicitation Procedures Order”).

16. On the same date, the Debtor filed the *Notice of Hearing to Consider Confirmation of Debtor’s Chapter 11 Plan of Reorganization* [Dkt. No. 255] (the “Confirmation Hearing Notice”). Objections to Plan confirmation must be filed by May 5, 2025, at 5:00 p.m. prevailing Central Time. The deadline to vote on Plan confirmation is May 5, 2025, at 5:00 p.m. prevailing Central Time. The Confirmation Hearing shall occur on May 13, 2025, at 10:00 a.m.

17. Verita has completed service of all solicitation packages.

Arguments and Authorities

A. The Bar Date Order Precludes Late Filing of the Fox Claim.

18. As shown in paragraph 4 above, the Fox Claim is barred by the Bar Date Order. The Bar Date Order is law of the case and Fox has provided no reason for reconsideration of this final order. The Fox Motion should be denied.

B. The Pioneer Factors Support Denial of the Fox Motion.

19. The *Pioneer* factors are as follows: (i) the danger of prejudice to the debtor, (ii) the length of the delay and its potential impact on judicial proceedings, (iii) the reason for the delay, including whether it was within the reasonable control of the movant, and (iv) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 395 (1993).

20. Fox alleges that there is no danger of prejudice to the Debtor in permitting the late filing of the Fox Claim. This is incorrect. The Debtor's Disclosure Statement has been conditionally approved, the Debtor has filed its Plan, and the Debtor has served all solicitation packages. The Plan does not separately classify the Fox Claim, so Fox is not entitled under the Plan to seek to recover any insurance proceeds. The Debtor respectfully submits that it should not have to amend its Plan and start over. Likewise, the Debtor should not be exposed to potentially higher insurance premiums going forward as a consequence of revival of a claim that is barred by the Bar Date Order and for which excusable neglect is lacking.

21. While Fox argues that the length of the delay is negligible, he is using the wrong measuring stick. Yes, Fox was only a day late in filing the Fox Claim, but Fox did not contemporaneously file the Fox Motion. Instead of filing the Fox Motion on January 23, 2025, Fox waited until April 11, 2025, and even filed a motion seeking relief from the automatic stay in the interim. During that time, as set forth in the above facts, quite a lot happened in this Chapter 11 Case. Indeed, the Debtor requests the Court confirm the Plan on May 13, 2025. We are nearing the finish line, and Fox failed to meet a deadline without excuse, then failed to promptly seek to rectify his error.

22. Fox provides little explanation for his conclusion that the requested relief would have minimal impact on the proceedings. To the contrary, “[a] delay which hinders ‘the objective of finality which the fixing of a bar date seeks to establish’ has an adverse impact on efficient court administration.” *In re Centric Corp.*, 901 F.2d 1514, 1517 (10th Cir. 1990) (citation omitted); *see also, In re Maxus Energy Corp.*, 639 B.R. 51, 63 (Bankr. D. Del. 2022) (“[A] claims bar date operates as a federally created statute of limitations, after which the claimant loses all of [its] right to bring an action against the debtor. A bar date means a drop-dead date that bars claimants who fail to file a proof of claim as set by the court” (internal

quotations and citations omitted)); *In re Centric Corp.*, 901 F.2d at 1517 (citing with approval the lower court’s statement that to allow a motion out-of-time would “send a message to creditors and the bar alike that schedules, timelines, and bar dates are not of importance in bankruptcy proceedings”).

23. The reason for the delay is generally considered the most important factor in determining the existence of excusable neglect. *See, e.g., United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004). Indeed, even where all the other factors weigh in favor of finding excusable neglect, if the reason for the delay is insufficient, the standard is not met. *Id.* Fox’s excuse for his delay is disingenuous. Fox seeks to blame his delay on the fact that “the Instructions for Proof of Claim failed to advise that PACER/ECF could be used to file a Proof of Claim.” Mot., at 5. But this is false. The Notice of Claims Bar Date, which was served on Fox’s counsel via e-mail and first-class mail (See Dkt. No. 146), provides “**Instructions for Filing Claim Forms**” as follows:

Timely Service. Each proof of claim form, including supporting documentation, must be filed or submitted, including supporting documentation, through any of the following methods: (i) electronic submission through PACER (Public Access to Court Electronic Records at <https://ecf.okwb.uscourts.gov/>); (ii) via the electronic filing interface available at <https://www.veritaglobal.net/OneCore> or (iii) by U.S. mail, overnight U.S. mail, or other hand delivery system, so as to be actually received by Verita on or before the applicable Bar Date at the following address: OneCore Claims Processing Center c/o KCC dba Verita 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245.

Notice of Claims Bar Date, at 6, paragraph (E) (emphasis added). Confusion of clear and unambiguous instructions is an insufficient reason for delay and does not support a finding of excusable neglect. *See, e.g., U.S. v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004) (holding that counsel’s incorrect understanding of filing deadlines did not support a finding of excusable neglect and citing support from Pioneer and case law from four other circuits as support).

24. Fox’s final argument is that, because the Debtor amended its Schedules following the late-filing of the Fox Claim to acknowledge that a claim had been untimely filed and was disputed, Fox should be given the benefit of the Debtor’s amendment to its Schedules, such that the Fox Claim should be considered timely. Fox Motion, at 5. The preceding sentence was as difficult to sensibly write as it is to

make sense of, and the Debtor respectfully requests that the Court reject this line of reasoning.

Conclusion

The Debtor respectfully requests that this Court deny the Fox Motion and grant it such other and further relief as is necessary and in the interests of justice.

Respectfully submitted,

ONECORE

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