

WEIL'S SCOTUS TERM IN REVIEW

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Courts Applying Judicial Estoppel In Bankruptcy Context Must Consider Totality of the Circumstances

By Josh Wesneski, Zack Tripp, and Rachael Jones

Today, the Supreme Court issued a unanimous ruling in *Keathley v. Buddy Ayers Construction Inc.*, holding that, assuming the doctrine of judicial estoppel applies in the bankruptcy context, courts must use a flexible, totality-of-the-circumstances test to determine its application in a given case. The decision is exceedingly narrow.

As background, when a debtor files for bankruptcy, the debtor must disclose all assets to the bankruptcy court, including unliquidated claims against third parties. This allows creditors and the court to evaluate the bankruptcy estate. Certain courts, including the Fifth Circuit, have held that debtors who fail to disclose the existence of legal claims can be later barred from pressing those claims in other litigation under the equitable doctrine of “judicial estoppel,” which precludes parties from taking inconsistent positions in litigation. The inconsistency is the disconnect between pursuing a claim after taking the position that no claim existed.

In *Keathley*, the petitioner was involved in a car accident during his Chapter 13 bankruptcy, giving rise to a valuable claim against the respondent. The petitioner failed, however, to update his bankruptcy disclosures to reflect the claim as one of his assets. The petitioner later sued respondent for the car accident, and the respondent argued that the petitioner’s claim was barred by judicial estoppel—namely, that the petitioner had impliedly represented to the bankruptcy court that no such claim existed, and so he should be estopped from pressing the claim in a different proceeding. The Fifth Circuit affirmed the district court’s grant of summary judgment in the personal-injury lawsuit, relying on circuit precedent that judicial estoppel bars claims not disclosed to the bankruptcy court unless “the debtor did not know the facts underlying the claim” or there was “no potential motive to conceal the claim.” The Tenth Circuit had similar precedent, whereas other circuit courts used a more flexible approach. The Supreme Court granted review to resolve the conflict.

In a unanimous opinion authored by Justice Jackson, the Supreme Court vacated and remanded, holding that the test applied by the Fifth Circuit was too rigid and broad. Notably, the Court assumed without deciding a series of threshold questions: that judicial estoppel could apply in the bankruptcy context, that inadvertence or mistake could function as an exception to that

application, and that debtors have an obligation to update their schedules to reflect assets that arise post-filing. Operating under these assumptions, the Court held that the Fifth Circuit's application of judicial estoppel was too rigid because it failed to take into account the equitable basis of judicial estoppel; equity requires considering the totality of the circumstances. The Court further explained that the Fifth Circuit's test was also inappropriately "broad"—the "one-size-fits-all" test almost always found that a debtor's failure to disclose a claim was intentional.

Justice Thomas wrote a concurring opinion, joined by Justice Gorsuch, expressing doubts about judicial estoppel itself, which he described as having a "questionable" foundation. Justice Sotomayor concurred to explain why, in some cases (including this one), estopping a debtor from asserting a claim in a non-bankruptcy proceeding may not be the most

equitable outcome and may actually frustrate creditor interests.

The Court's opinion in the case is exceedingly narrow. The Court expressly assumed without deciding several key issues, including whether the doctrine of judicial estoppel applies in the bankruptcy context at all. Likewise, the Court did not opine on whether "inadvertence or mistake" should be an exception to judicial estoppel, whether bad faith is required for the doctrine to apply, and whether petitioner indeed had a duty to contemporaneously disclose his personal-injury claim to the bankruptcy court. But the Court's decision does give some modest guidance regarding how to apply judicial estoppel in those circuits that recognize the doctrine in the bankruptcy context. The decision also is a notable example of how much the Court is willing to assume without deciding in order to resolve a circuit split.

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Practice Co-Heads:

[Robert B. Niles-Weed](#)

Appeals and Strategic Counseling
New York
+1 212 310 8651

robert.niles-weed@weil.com

[Zack Tripp](#)

Appeals and Strategic Counseling
Washington, D.C.
+1 202 682 7220

zack.tripp@weil.com

Authors:

[Josh Wesneski](#)

Appeals and Strategic Counseling
Washington, D.C.
+1 202 682 7248

joshua.wesneski@weil.com

[Rachael Jones](#)

Appeals and Strategic Counseling
Washington, D.C.
+1 202 682 7084

rachael.jones@weil.com

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