
U.S. SUPREME COURT ADOPTS TOTALITY OF THE CIRCUMSTANCES TEST FOR APPLICATION OF JUDICIAL ESTOPPEL IN BANKRUPTCY PROCEEDINGS

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In a bankruptcy, debtors must disclose all assets to the bankruptcy court, so the court can create a complete bankruptcy estate and ensure proper payment to creditors. Those assets include, *inter alia*, homes, vehicles, and personal property such as furniture and other household goods, and importantly, claims against third parties, even when the debtor has not yet filed a lawsuit or demanded payment. Debtors must also aver, under penalty of perjury, that their disclosures are true and correct. When debtors later pursue claims they omitted from their bankruptcy schedules, lower courts have, at times, applied judicial estoppel to bar those claims.

Judicial estoppel protects the integrity of the judicial process by preventing parties from taking inconsistent positions in successive litigation. In bankruptcy cases, many lower courts have treated a debtor's failure to disclose a claim as an implicit representation that the claim did not exist. On June 11, 2026, the U.S. Supreme Court resolved a circuit split and held that courts must evaluate judicial estoppel under a totality of the circumstances analysis, applied on a case-by-case basis.

WHY THE DECISION MATTERS

The Court's decision carries significant implications for bankruptcy proceedings. When debtors fail to report third-party claims, the court and creditors cannot accurately assess the full scope of the debtor's assets or evaluate whether to support or object to a proposed repayment plan. The value of the bankruptcy estate can affect whether the debtor must repay creditors on a truncated timeline or with additional interest. Undisclosed claims may also reduce the funds available to creditors and delay repayment.

BACKGROUND

Thomas Keathley and his wife filed for Chapter 13 bankruptcy in December 2019. As of the petition date, they did not list any claims against third parties. The bankruptcy court confirmed their Chapter 13 plan in April 2020 allowing them to repay their debts, *interest free*, over five years.

In August 2021, Keathley and an employee of Buddy Ayers Construction were involved in an automobile accident. Keathley informed his bankruptcy counsel that he had hired a personal injury attorney and intended to file suit. In December 2021, Keathley commenced a personal injury action. Buddy Ayers moved for summary judgment by the application of judicial estoppel, arguing that Keathley failed to notify the bankruptcy court about the claim; therefore, the personal injury claim did not exist.

Immediately, amended schedules were filed, alongside affidavits in response to the motion for summary judgment, explaining that the omission was inadvertent, and that no benefit was received. The District Court, relying on Fifth Circuit precedent, barred Keathley's personal injury claim finding that he knew the underlying facts and had a hypothetical motive to conceal the claim – avoidance of additional interest payments on his debt had he disclosed the suit. The Fifth Circuit affirmed, finding a debtor's omission qualified as inadvertent or mistaken only if the debtor lacked knowledge of the underlying facts or had no hypothetical motive to conceal the claim.

RATIONALE

The U.S. Supreme Court unanimously reversed the Fifth Circuit's decision. The Court held that, when determining if a debtor omitted a claim inadvertently or by mistake for purposes of judicial estoppel, a court's analysis must consider the totality of the circumstances surrounding the omission.

The Court rejected the Fifth Circuit's rule as both too rigid and overly broad. Because judicial estoppel is an equitable doctrine, courts must apply it flexibly and evaluate each case on its own merits. Fifth Circuit precedent unduly narrowed courts to two factors and excluded potential evidence that may demonstrate inadvertence. With respect to the Keathleys, Mr. Keathley believed he had taken the necessary steps because he informed bankruptcy counsel about the personal injury claim.

The Court found the rule to be overly broad because it treated knowledge of the claim and a potential benefit from nondisclosure as nearly dispositive. As the Court noted, those circumstances

will usually exist whenever a debtor omits a claim. This approach prevents courts from fairly assessing whether the omission actually resulted from inadvertence or mistake.

Justice Thomas, joined by Justice Gorsuch, and Justice Sotomayor wrote concurring opinions that questioned the use of judicial estoppel in this setting. Justice Thomas questioned the doctrine's foundation and noted that the lower courts' application of judicial estoppel relieved the alleged tortfeasor of liability, an outcome he viewed as inconsistent with equity. Justice Sotomayor questioned whether courts should apply judicial estoppel at all in bankruptcy proceedings. She explained that bankruptcy courts can address nondisclosure more directly by imposing sanctions, modifying repayment plans, converting Chapter 13 cases to Chapter 7, or allowing trustees to pursue claims for the benefit of creditors.

TAKEAWAYS

Importantly, the Court did not decide whether judicial estoppel definitively applies in bankruptcy proceedings or whether debtors have an ongoing duty to disclose assets acquired during bankruptcy. Justice Jackson's majority opinion assumed, without deciding, that judicial estoppel can apply in bankruptcy cases and that inadvertence or mistake can provide an exception. Justices Thomas, Gorsuch, and Sotomayor also questioned the doctrine's application.

Even so, when a party raises judicial estoppel based on a debtor's omitted claim, courts now must evaluate the debtor's explanation under a case-by-case, totality of the circumstances analysis. The decision gives debtors more room to defend honest mistakes, but it does not reduce the importance of prompt and complete disclosure.

For creditors and bankruptcy courts, the ruling preserves access to claims that the Fifth Circuit's prior rule might have barred. The Supreme Court's decision empowers trustees to exercise their fiduciary duties to the bankruptcy estate by pursuing claims that the Fifth Circuit, along with other circuits, previously barred.

The decision is [*Keathley v. Buddy Ayers Construction, Inc.*, Sup. Ct. No. 25-6](#).

If you have any questions regarding the matters covered in this alert, please reach out to the lawyer(s) listed below or your usual WH Burkley contact.

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